



Touring the Talmud Makot 13-19: (Perashat Veyetse)

Damage Control

'The beginning of atonement is the sense of its necessity.'

— Lord Byron

'It wasn't only wickedness and scheming that made people unhappy, it was confusion and misunderstanding; above all, it was the failure to grasp the simple truth that other people are as real as you.'

— Ian McEwan

As free beings we have profound liberty to do great good and great evil. In the developments of evolution — driven by the fundamental law of 'survival of the fittest', we have found ourselves in an ever augmented arms race. Everything comes down to the question of survival.

Our pleasures, proclivities, vices and even sins have their roots in what is essential for our survival. We need to eat, and so we love to eat, and we then end up eating what we love instead of what we need. And so it is with all of our bodily essentials. When getting what we 'need' becomes our paramount goal, its chase fills our minds and results in all manner of hurt and damage to ourselves and those around us.

The freedom of the human mind makes us the most dangerous animal on the planet. While the other animals can be ferocious and deadly, not one species comes close to the level of our viciousness, destruction and danger. All other animals do what they have been programmed to do by nature to do for their survival. They rarely if ever veer from the natural script. We however, have the ability to think of alternative realities, and ways in which we can not only get what we want, but make it better, more exciting and more satisfying.

We have brought ourselves to a point in which our drive to think creatively has brought us the ability to annihilate ourselves and a great deal of life on the planet with us. With the discovery of quantum physics we have learned that splitting the nucleus of an atom, releases enough energy to utterly destroy life instantly on an enormous scale. With one click we can blast ourselves into oblivion.

The finality and magnitude of it is humbling. We humans wield unprecedented power to destroy. Yet, while we can tear much down with relative ease, we cannot so easily rectify and build. And, of course, there are instances of damage that result in destruction that cannot be rectified. Our liberty is both our greatest strength and our greatest threat.

When we do cause damage in the world whether it be to ourselves or others we have two major elements of reparation that we must address. One is forgiveness which is socially, emotionally and psychologically based, and the other is atonement or rectification which is existential. In Torah's terms: *seliha* and *kapara* respectively. For instance, if we break someone's window we must not only apologise for breaking it (forgiveness/*seliha*), we must also repair the window (atonement/*kapara*).



The apology addresses the relationship while the repair addresses the existential damage.

In some cases *seliha* - forgiveness is the only rectification necessary. If, for example, we have tainted a connection through a passive act — we missed an anniversary, we forgot a birthday, we did not attend a child's play or football match, we did not visit, call, text — the damage is on the relationship itself and it is rectified with reconnecting and rebuilding through care, remorse and forgiveness. The *seliha* is the *kapara*.

When, however, there is active harm — damage, wounding, theft — we must not only find forgiveness, but we must also rectify the damage. We must seek *kapara*. In some cases all we can do is provide monetary compensation. If we damage property we must pay for, fix or replace it.

In our relationship with God the concepts are the same. There are times when we must ask forgiveness (*seliha*) alone and times when we must also seek rectification or atonement (*kapara*). Committing active transgressions of the Torah's commandments are not only seen as damaging to our relationship with God, but as 'breaking His windows'. Forgiveness (*seliha*) must also include atonement and rectification (*kapara*). It is possible for someone to achieve forgiveness from God for a transgression but not atonement (one can be forgiven for destroying another's property without fixing or replacing it).

The third chapter of Makot discusses the Torah's punishment of lashes and its many circumstances.

And it shall be if the wicked man deserves to be flogged that the judge shall cause him to lie down and be flogged before him, according to the measure of his iniquity, by number. Forty lashes he shall flog him, he shall not exceed...and your brother shall be weakened before your eyes. (Deut., 25:1-4)

In the Torah, lashes address atonement not forgiveness. Torah sees the flogging as a means of fixing and repairing the damage caused by the transgressor. It is to 'weaken' him — to rein in the personal confidence and or recklessness with which the transgression was made. Thus, even if one repents completely and admits his wrongdoing before God in full remorse, lashes are still required. 'Even if one repented, the earthly court does not absolve him' (13b).

We therefore find throughout the discussions this week, issues in which atonement and are addressed, rather than repentance and forgiveness. When, for example one can rectify a transgression by subsequently performing a positive commandment, lashes are not given unless the ability to perform the positive commandment is obviated — rectification must occur through other means. When one performs many transgressions, even with one action, he receives a set of lashes for each of the transgressions, as each needs rectification.

In our lives we affect many things. We move through the world often unaware of the way we impact others with our words and actions. There are times that we might deeply move or inspire someone without knowing it. There are also times we might cause unknown damage. Part of our work in achieving self-awareness and growth is to make whole again that which we might have broken, to repair any damage to others or their property that we may have inadvertently caused.



The more we become aware of what requires rectification the more we can act in ways that prevent hurt and damage. It is far more difficult to repair something than to break it, and our attempts at healing may not always yield results. Nevertheless, if we cannot help, we can aim not to hurt. It is the responsibility of a free human being to try.



Touring the Talmud: Makot 13-19 Outline/Summary

Introductory Notes:

Six types of negative commandments for which one is *not* flogged for transgressing (some are the subject of debate in our chapter):

1. Those punishable by capital punishment
2. Those that are rectified through payment (i.e. theft, deceit)
3. Those that do not include action (in most cases speech is not considered an action)
4. Those that can be rectified by performing a positive commandment
5. Negative commandments that are implied by a positive commandment (i.e. It is written about Egyptians and Edomites: 'Children that they produce of the third generation may enter God's community (Nation of Israel as converts)' implying that first and second generation may not).
6. Transgressions that are derived from a multi-faceted verse
 - i. a list of transgressions explicitly written together and are under one overarching 'umbrella' transgression, and therefore only one set of lashes is administered even if multiple (related) ones are transgressed.
 - ii. Multiple transgression learned from the same verse (i.e. "do not eat over blood" – do not eat of animal before it has died, a court may not eat on the day it enacts capital punishment...)

All other negative commandments are punishable by lashes.

Key Terms:

'Warning' – In order to be culpable, the perpetrator of a crime must be warned by two witnesses of his punishment prior to transgression.

'Karet' – Literally 'cut off'; Maimonides explains this as meaning cut off from the World to Come. (Mishneh Torah, Laws of Repentance, 8.1)

TITHES:

Biblically, grains, grapes and olives are called *Tebel* upon harvesting and are subject to multiple tithes; until all tithes are separated, someone who eats *Tebel* is liable for lashes. Rabbinically, all other produce were added to these prohibitions:

- '**Teruma**' - This is given to the *kohanim* (priests) who must be pure when they eat it, it is considered holy and a non-priest who eats it receives 'Karet'. No amount is specified in Torah, however, Rabbinically 1/40 is gracious 1/50 is average and 1/60 is "stingy".

- '**Ma'aser Rishon**' (first tithe) - This goes to the levites, it is not considered holy and only has monetary value. Although as long as it contains '*Terumat Ma'aser*', a non priest who eats of it receives 'Karet'.

- '**Terumat Ma'aser**' - After the Levites receive their tithe, they in turn give a tithe to the priests, this tithe has the status of '*Teruma*'.

- '**Ma'aser Sheni**', (second tithe) - On years 1,2,4 and 5 of the seven year '*Shemittah*' cycle, a tithe is set aside to be taken to, and eaten in, Jerusalem. This also must be eaten while pure. Once the tithe has entered Jerusalem there is a rabbinic prohibition upon taking it out of the city. If the tithe is too large to be taken to Jerusalem, its monetary equivalent is taken to Jerusalem, and can only be used to purchase food items.

- 'Ma'aser Sheni' (Poor tithe) On years 3 and 6 of the 'Shemita' cycle, a tithe is given to the poor. This tithe has no sanctity. הרב יוסף דוויד | רב הראשי

Daf 13

MISHNA

A selection of transgressions that are punishable by lashes are listed.

R' Shimon holds that regarding the prohibition of eating crops before the proper tithes are removed, a person can be flogged for having eaten any amount.

Hakhamim require that the volume equivalent to an olive — *kazayit* — be eaten in order to be culpable.

GEMARA

Whose opinion does the Mishna follow?

The gemara suggests that the mishna follows the opinion of R'Akiva, as he holds that one cannot receive lashes for a transgression that is punishable by death and the mishna only lists such transgressions.

Rabbi Akiva is one of three varying approaches:

- R' Yishmael- Shows from nuances in the torah that he gets lashes as well as capital punishment.
- R' Akiva – A person gets lashes "like his evil" (Devarim. 25,2), in the singular, so he can only receive one punishment, death, not lashes. He can however get lashes as well as 'Karet'.
- R' Yitzhak – Even 'Karet' cannot be accompanied by lashes.

The following scholars give different reasons why - according to R'Akiva who says a person can only get one punishment per crime - a person can get 'Karet' as well as lashes:

- R' Abhu: Nuance in the verses
- R' Shemuel: when R' Akiva says you can only punish for a single evil, he is referring to punishments that a human court can administer.
- Raba: Both R"A and R"Yishmael agree: if the transgressor was 'warned' that he could be killed, he may not be lashed. Their point of contention is: if while committing a crime punishable by death, he was 'warned' that the authorities may lash him: R"Y says he is lashed and R"A says he is not (wrong 'warning'). But if it were a crime punishable by 'Karet', R"A agrees that he is lashed because there is no warning for 'Karet', therefore the 'warning' for lashes is considered proper.
- Ravina: if he were to repent, he would not get 'Karet', it is not a punishment set in stone.

Daf 14

R' Yitzchak's opinion is reviewed, and his understanding of the verses explained.

In order for a transgression to be punishable, it must be repeated twice, whether explicitly or encoded, one for warning, the other to enact punishment.

The punishment for an impure person who eats holy food is clearly stated.

R' Yochanan and Reish Lakish debate the source of the prohibition.



Daf 15

It is stated in the name of R' Yohanan that a negative commandment that is preceded by a positive one is considered a full negative commandment and its transgressor is liable for lashes.

- In a case of rape it is stated "...and to him (the rapist) *she shall be a wife* (with consent), *he may not divorce her all his days*" (Deut. 22, 19). The commandment for him to marry precedes that he may not divorce her, yet the authorities write that if he divorces her, he is to remarry her and not receive lashes!
 - The answer given to this is that when it says "all his days" (after the negative commandment), it means that all his days *after divorce* he has the commandment of remarrying, rendering the negative commandment one that can be rectified by a positive one.

The issue of a negative commandment that can be rectified by doing a positive one (and not receive lashes) is discussed:

- R' Yochanan:
 - Only when the positive commandment comes after the negative.
 - The negative commandment does not stand on its own, rather it is enacted by not completing the positive one that follows, and there are no lashes until then.
 - Because it is unclear from the time of the crime that he will be charged with lashes, contingent 'warning' must be binding.
- Reish Lakish:
 - Whether the positive commandment comes before or after the negative one.
 - The negative commandment obligates lashes on its own, and may be given any time after the crime. The fulfilment of the positive one rids him of the charge.
 - The reason R"L states the above is because he is of the opinion that contingent 'warning' is not binding.

Consistent ruling of R"Y and R"L:

A person vows to eat a loaf of bread by the end of the day and does not fulfil his vow:

Both agree that he is not lashed, for conflicting reasoning:

Daf 16

- R"Y – It is a negative commandment with no action (#3)
- R"L – It requires contingent 'warning' (whenever during the day he would be warned he still has the option of eating before the end of the day).

They each bring sources for their opinions.

A mishna is brought that presents sending away a mother bird *after* taking her eggs as the rectifying positive commandment for the preceding negative commandment of taking the eggs in the presence of the mother (this is the majority opinion).



Using R' Yohanan's logic that not performing the positive commandment activates the negative one, it is almost impossible to be flogged for this type of transgression, because there is always a possibility to fulfil the positive commandment thus avoiding lashes.

The 'egg case' brought by the mishna is a rare exception: if the mother bird is killed then the transgressor loses the option of fulfilling the positive commandment and is therefore, immediately subject to lashes.

R' Yohanan claims that there is only one other such case.
Which one?

- The case of rape mentioned on Daf 15, is entertained, with the rapist divorcing (transgression), and making a publicly inclusive vow (a type that can't normally be undone) against marrying her, effectively restricting him from fulfilling the positive commandment.
 - This is cast aside however, because the albeit powerful public vow can be undone for the purpose of a mitzvah.
- A case of tithes for the poor, meant to be left as wheat stalks in a field is discussed. If one didn't leave it in the field (transgression) he may leave at any point after (positive commandment), but, after the wheat turns to bread and is eaten, there is no way to rectify, and he is subject to lashes.

The gemara deals with the transgression of eating insects, the fact that eating small amounts of them may involve many transgressions, and borrowing "Do not do what is disgusting to yourselves" from the insect verses to prohibit things that are inhumane and found by most humans to be disgusting.

The gemara discusses the prohibition of eating wheat and other produce before separating the required tithes for the priest/poor (among others). Rab states that unless absolutely all the tithes have been removed, eating of the food is grounds for lashes. His statement is upheld.

Daf 17

Discussion about the argument between R' Shimon in the mishna with Hakhamim over the amount of produce one is culpable for eating.

Proof is brought that R' Shimon maintains his view that any amount is enough to be flogged, not only on whole entities (i.e. full wheat kernel) but even if it were processed (i.e. flour).

MISHNA

More transgressions are listed, among them:

- Prohibition against eating *Bikurim* - the first fruits of a person's harvest that he brings to the holy temple - before reading the proper passages.
- Eating the 'second tithe' outside the walls of Jerusalem.
- Breaking a bone of the Pascal lamb.
- Taking the eggs of a bird before sending away the mother.

GEMARA

Whose opinion does the mishna follow?

The gemara states that our mishna is the opinion of R' Akiva and R' Shimon, since they hold that one is lashed if he eats of the *Bikurim* before their appropriate passages are recited.

However, according to Hakhamim, to fulfil the mitzvah it is enough to bring the *Bikurim* to the temple and lay them before the alter - at this point someone who eats of them is not lashed - even though the passages are only recited after.

R' Shimon brings a verse as his source, his ruling however is not written explicitly, and must be derived:

- An elegantly crafted presentation of the verse is brought (that shows how this verse is the source of many prohibitions), that uses the logical device 'lenient and stringent' ("if it is so in a lenient case, all the more so in a stringent one") (Upon hearing this pleasing explanation Raba exclaims that a pregnant woman should wish that her child be like R' Shimon!).
 - However, it is agreed that we cannot learn prohibitions using the 'lenient and stringent' principle.
- Rather, the verse brought is superfluous as it is a repetition of a previous verse, and can therefore be interpreted beyond its simple meaning.

Daf 18

While discussing the verse brought by R' Shimon, Raba also stated an interesting case in the name of R' Shimon:

If a (1)non-priest were to eat of an (2)'olah' sacrifice (3)before its blood was thrown to the alter, outside not only of the (4)temple walls but of (5)jerusalem, he gets lashed for all five penalties (as they are separate prohibitions).

The gemara brings additional prohibitions that are violated in this case. The five brought by Raba are specifically ones that R' Shimon derives from the verse he uses for *Bikurim*.

Debate on the mannerisms and prohibitions of eating from sacrifices.

The possibility that a 'negative commandment implied by a positive commandment' is grounds for lashes is entertained, and quickly dismissed.

Daf 19

- The prohibition of eating the *Bikurim* is only punishable by lashes, from when the *Bikurim* enter the walls of Jerusalem (Hakhamim hold not until it is placed before the alter. R'Shimon, until the requisite the passages are read) .

Rav Sheshat reiterates the opinion of Hakhamim, and tries to show how it is also the opinion of R' Yossei in the name of R' Yishmael.

His proof is not sustained. However in the process of his proof, it is mentioned that 'just as the law by a *Bekhor* (first born kosher domesticated animal) only applies when the temple stands, so to by the 'second tithe' the law applies specifically when there is a temple'.

There is discussion regarding the ambiguity of the statement, and Ravina clears it up as follows:

- The same way the blood of a *bekhor* can only be thrown on the alter when there is a Temple, its meat can only be eaten (in Jerusalem) when there is a Temple.
- The same way that a *bekhor* can only be eaten when there is a Temple, the 'second tithe' may only be eaten (in Jerusalem) when the Temple stands. This is learned from the juxtaposition of the two in the Torah.

The gemara notices that the prohibition of eating from the 'second tithe' is written twice in the mishna (once on Daf 13 and once on Daf 17).

The gemara proceeds to explain that the first instance is referring to an impure person who eats of the 'second tithe' even in Jerusalem, and the second is referring to a pure person who eats, but outside of Jerusalem.

Proof that it is prohibited for an impure person to eat from the 'second tithe' is brought from a verse.

Regarding transferring the holiness of the 'second tithe' to money:

"... and you will not be able to **bear** it (the 'second tithe').." (Devarim. 14, 24)

The gemara learns from the specific language of שאת *Se'et* - 'bear' - which can mean either to carry or eat, (as opposed to *litol* specifically to carry, or *le'echol* specifically to eat), that the sanctity of the 'second tithe' may be transferred to money:

- 1) either if it is **outside of Jerusalem** (even a step away),
- 2) or even in Jerusalem, but not able to be **eaten** because it has become impure.

R' Yohanan states that the penalty of lashes for eating of the 'second tithe' (while pure outside of Jerusalem) is only when it has both entered and exited the walls of Jerusalem.

A Tanaic source is brought that questions the validity of R"Y's statement. The source implies that someone outside of Jerusalem would get lashes for eating the 'second tithe', seemingly even if it never entered Jerusalem.

Two answers are given.