

COVENANT AND CONVERSATION

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CHIEF RABBI

THOUGHTS ON THE WEEKLY PARSHA FROM THE CHIEF RABBI



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א אלול תש"ע

Rehabilitation of Offenders

The sages inferred the far wider principle that when the guilty has received the punishment his offence deserved, he is restored to his earlier status.

The stain on his character is temporary, not permanent. Offenders are to be rehabilitated.

flogged in his presence with the number of lashes his crime deserves, but he must not give him more than forty lashes. If he is flogged more than that, your brother will be degraded in your eyes. (Deut. 25: 1-3)

The passage is not straightforward, since in Jewish law lashes are not a form of punishment in civil cases as the verse seems to imply. However, our focus will be on the last phrase: "your brother will be degraded in your eyes".

The sages derived from this a fundamental principle, namely the rehabilitation of an offender once he has served his punishment. In the earlier part of the passage the offender is called ha-rasha, translated here as "the guilty" but which literally means "the wicked". At the end, however, he is called "your brother". From this, the sages (Sifre ad loc.) drew the conclusion that "once he has been beaten, he becomes [again] your brother".

This has both a specific and more general application. The specific rule applies to offences that carried with them the severe punishment of karet, literally "being cut off" from one's people. In many cases this was interpreted as a divine rather than human punishment; the human punishment was to receive lashes. The principle that "once he has been beaten, he becomes [again] your brother" was taken to mean that the human punishment cancels the divine punishment. Once the offender has been beaten, there is no residual guilt (Mishnah, Makkot 3: 15).

This week's sedra provides us with a fine example of the humanity of Jewish law - as well as the way the sages interpreted the Torah. Our point of departure is this passage:

When men have a dispute, they are to take it to court and the judges will decide the case, acquitting the innocent and condemning the guilty. If the guilty man deserves to be beaten, the judge shall make him lie down and have him

It is clear that from earliest times the sages tempered their concern for justice with a desire to help criminals and wrongdoers find their way back to honesty and society.

What mandated them to do so was the teaching of the prophet Ezekiel.

This led to a specific enactment by the sages, known as takkanat ha-shavim, a rule designed to remove obstacles to penitence. The Mishnah (Gittin 5:5) teaches that "If a beam which was acquired by robbery has been built into a building, restitution for it may be made in money so as not to put obstacles in the way of penitents."

The rule is that in the case of robbery, the guilty party must return what he has taken to its rightful owner ("He shall restore that which he took by robbery", Lev. 5: 23). This makes obvious sense. If a robber were allowed merely to make monetary compensation rather than return the stolen object, the law would, in effect, allow someone to acquire an object - albeit at a price - by violence. That must be wrong.

Yet this rule was suspended in a case where returning the object would involve massive loss on the part of the robber. The situation envisaged by the Mishnah is one where, having stolen a beam, the robber has used it to build a house. Restoring the beam would involve tearing down the house. A sense of guilt at the original crime might induce remorse in the robber and an effort on his part to return objects he has wrongly taken. If, however, this would involve disproportionate loss on his part - not just returning the stolen object, but also having to dismantle what he has built using it - he might decide that restitution was just too costly, and decide against giving the object back.

So what, one might say. The man is a robber. What matters is the right of the innocent - the original owner of the beam - not the right of the guilty. Surely the robber, by breaking the law, has forfeited any claim on the court's clemency. Yet Jewish law ruled otherwise. To be sure, the owner must be compensated for his loss. Without this, he will have suffered an injustice. But we must have concern for the offender also, in the sense that we must clear away any obstacles in the path of his return to law-abidingness. The sages fully understood that this was not part of Torah law. It required a positive enactment, takkanat ha-shavim, on their part. But the sages would not have made this enactment if they did not feel that it was in the spirit of Torah law.

They went further still. We find in the Talmud (Baba Kamma 94b) this remarkable principle: "If robbers or usurers [repent, and of their own accord] are prepared to restore what they have wrongly taken, it is not right to accept it from them, and one who does so is not acting with the approval of the sages." The Talmud explains how this teaching emerged from an actual case.

In the time of Rabbi Judah ha-Nasi, head of the Jewish community in the early third century, a robber decided to end his life of crime and restore everything he had wrongly taken to its owners. His wife said to him: "Fool. If you give back everything you have taken, you will not be left with even the belt you are wearing." The rule was then instituted those who had been robbed should not insist on the return of their property.

In addition, however, the sages inferred the far wider principle that when the guilty has received the punishment his offence deserved, he is restored to his earlier status. For example, he is permitted to be a witness, and his testimony is not invalidated by the fact that previously he had been found guilty of an offence. The stain on his character is temporary, not permanent. Offenders are to be rehabilitated.

Guilt, in Judaism, is about acts, not persons. It is the act, not the person, that is condemned. Once the criminal has served his punishment and repented of his crime, he becomes, once more, "your brother".

Needless to say, this does not apply to a robber who has been brought to court - only to one who has, without any prompting other than his own conscience, decided to confess his guilt and make amends. Nor does it apply if the robber still has the stolen objects in his possession. Nor is it a legal requirement. The rightful owner may still take the robber to court if he so chooses. Some go

so far as to say that this was never intended as a permanent enactment, for it is all too easily exploitable: robbers could steal and then pretend to be penitent (see Maggid Mishneh to Rambam, Hilkhoh Gezelah 1: 13). Yet despite all this, Maimonides writes: "Even though robbing someone is like taking their life . . . we must help [a robber who repents of his own accord] and pardon him in order to bring him back to the right path of penitents" (Hilkhoh Gezelah 1: 13).

Another principle the sages articulated - this time on the basis of a biblical command - was that one should not make reference to a penitent's past. One should not say to someone who committed a crime, but has now served his sentence and expressed remorse, "Remember the crime you committed". To do so is to be guilty to "verbal oppression", which is forbidden by the verse, "You shall not oppress one another, but you shall fear your God; I am the Lord your G-d" (Lev. 25: 17; Rambam, Hilkhoh Teshuvah 7: 8). In the tenth century, Rabbenu Gershom instituted a rule that one who made public mention of a penitent's earlier deeds was to be excommunicated (Teshuvot Chakhmei Tzorfat, 21).

The rules of rehabilitation are complex, and I make no attempt to summarise them here. Yet it is clear that from earliest times the sages tempered their concern for justice with a desire to help criminals and wrongdoers find their way back to honesty and society. What mandated them to do so was the teaching of the prophet Ezekiel:

"Son of man, say to the house of Israel: This is what you have been saying, 'Our offenses and sins weigh heavily on us, and we are sick at heart because of them. How can we survive?' Say to them, 'As surely as I live, declares the Sovereign Lord, I take no pleasure in the death of the wicked, but rather that they turn from their ways and live. Turn back, turn back from your evil ways, that you may not die, O house of Israel.'" (Ezekiel 33: 10-12)

Not only were these teachings many centuries ahead of their time. They also have much to teach us today. Retributive justice is not incompatible with a sense of human dignity and freedom. To the contrary, it is based on them. Jewish law is concerned not only to protect the rights of those who have been wronged, but also to help wrongdoers rebuild their future. Guilt, in Judaism, is about acts, not persons. It is the act, not the person, that is condemned. Once the criminal has served his punishment and repented of his crime, he becomes, once more, "your brother".

לא עליך
המלאכה
לגמר
ולא אתה
בן חורין
להבטל
ממנה

There is No Suffering from which Good Cannot Come

The Times – Credo – September 2002

What is it that gives some people the courage to wrestle with affliction, as did Jacob with the angel, saying, "I will not let you go until you bless me?"

ping, one of the strings broke in the first movement. Everyone waited to see what he would do. With astonishing virtuosity, he continued as if nothing had happened, playing through to the finale using only the remaining three strings. The applause, as the concerto ended, was tumultuous, not only for his performance but for his sang froid in continuing, undaunted. As the noise subsided, he was called on to say a few words to the audience. Sitting in his wheelchair, a living symbol of courage, he said just one sentence: "Our job is to make music with what remains."

An American friend told me a story about the great violinist Itzhak Perlman. Perlman suffered from polio as a child, and ever since has been in a wheelchair. On one occasion he was performing a violin concerto when, with an audible

What a remark! It made me think of the late Sue Burns, a member of our Anglo-Jewish community who suffered from a rare spinal condition that kept her bedridden for life, unable even to sit in a wheelchair. She had every reason to feel anger or self-pity but instead she asked how she could turn her curse into a blessing. By her bedside she had phones and a computer installed and set up a helpline for those similarly afflicted. She became their adviser, mentor, comfort, friend. Honoured by the Queen for her services, she became the first person to be carried in to Buckingham Palace to receive her award on a stretcher. Typically she said that the honour was not for her, but for all handicapped people and she was merely accepting it on her behalf. In the years I knew her - even when she told me she was about to die - I never saw her without a smile.

I think of the best selling author Dave Pelzer who survived a terrifying, abusive childhood not merely to become a success in several fields, but also to work with young offenders using his own experiences to give them strength. I think of the late Viktor Frankel, a survivor of Auschwitz, who made the trauma of those years the basis of a new school of psychotherapy (he called it Logotherapy), bringing healing to others by teaching them to find meaning in and through their pain. I think of the several hundred bereaved Israeli and Palestinian parents who, having lost children in the current violence in the Middle East, refused to turn their grief into hate and instead came together to bring a message of reconciliation to both sides.

Stories like these - and there are so many others - change lives, because they show us by living example that there is no suffering from which good cannot come, no evil that cannot be redeemed. Even Job in the Bible who loses everything for no reason - his wealth, his children, his health, his reputation in the eyes of his friends - by sheer tenacity comes to see G-d face to face. He receives no answers to his questions, no solace for his loss, but because he refuses to be defeated by fate, he meets G-d in the heart of darkness and there finds the strength to live.

What is it that gives some people the courage to wrestle with affliction, as did Jacob with the angel, saying, "I will not let you go until you bless me?" I wish I knew. But in such lives we catch a glimpse of the sheer power of the human spirit when we are able to say, "Our job is to make music with what remains."

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