

**NEHAMA LEIBOWITZ**

**STUDIES IN BAMIDBAR (Numbers)**

Translated and adapted from the Hebrew  
by

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GUILT-OFFERING FOR ROBBERY

דַּבֵּר אֶל-בְּנֵי יִשְׂרָאֵל  
 אִישׁ אוֹ-אִשָּׁה כִּי יַעֲשׂוּ מִכָּל-חַטָּאת הָאֵלֶּם  
 לַמַּעַל מֵעַל בְּה'  
 וְאָשָׁמָה הִנָּפֵשׁ הַהוּא:  
 וְהִתְוַדוּ אֶת-חַטָּאתָם אֲשֶׁר עָשׂוּ  
 וְהָשִׁיב אֶת-אֲשָׁמוֹ בְּרֹאשׁוֹ  
 וְחָמִישְׁתּוֹ יִסֹּף עָלָיו  
 וְנָסַן לְאִשָּׁר אָשָׁם לוֹ:

Speak unto the children of Israel;  
 When a man or woman shall commit any sin that men  
 commit,  
 to commit a trespass against the Lord,  
 and that soul shall be guilty;  
 then they shall confess their sin which they have done;  
 and shall make restitution for his guilt in full,  
 and add unto to it the fifth part thereof,  
 and give it unto him in respect of whom he hath been guilty.  
 (5, 6—7)

Let us first examine the grammatical structure of the above passage. We have a conditional sentence with its introductory clause or protasis and the consequent main clause or apodosis. But where does the protasis end and the apodosis or main clause begin? Usually, the consequent main clause following the condition does not

begin with a conjunctive "and" (*vav* — in the English version the first *vav* is translated "and": *ve-'ashma* "and that soul be guilty"; the second *vav* — *ve-hitvadu* "then they shall confess" and the subsequent *vavs* by "and"). Here, however, all the clauses following the introductory condition begin with a *vav* — "and that soul shall be guilty . . ." (The English rendering of the *vav* here is "then" — see previous parenthesis); "and they shall confess . . . and he shall make restitution"; "and he shall give". In other words, the question to be decided here is which of all these *vavs* is to be translated by "then", marking the turn of the sentence and the beginning of the consequent clause or apodosis and which of them are merely additional clauses continuing the protasis? Is the phrase "that soul shall be guilty" part of the protasis or the beginning of the apodosis? Let us compare a parallel passage in Leviticus (5, 21, 23). Perhaps it will throw light on our problem:

נָפֵשׁ כִּי חִטָּא וּמַעַלָה מֵעַל בְּה'  
 וְכַחֵשׁ בְּעַמִּיתוֹ . . . וְהִיָּה כִּי-יִחַטָּא וְאָשָׁם  
 וְהָשִׁיב אֶת-הַגּוֹלָה אֲשֶׁר גָּנָל  
 אוֹ אֶת-הַלְעָשֶׁק אֲשֶׁר עָשָׂק

If any one sin and commit a trespass against the Lord,  
 and deal falsely with his neighbour . . .  
 then it shall be, if he hath sinned and is guilty,  
 that he shall restore the thing he took by robbery  
 or the thing which he hath gotten by oppression.

Here the Hebrew rendering clearly indicates that the guilt phrase belongs to the protasis *ve-haya ki yeḥeta ve-ashem* "then it shall be, if he hath sinned and is guilty . . ." and is not part of the consequence. That is also how Rashi understands it: "When the offender himself realizes the need to make amends and know and confess". The text speaks of the man who himself first acknowledged his guilt and repented of his robbery and wished to make amends. It is he who has

to bring, in addition to the restitution of the theft, a fifth part thereof and an offering of a ram of atonement.

Let us continue the study of the passage:

וְהִתְנַחֲמוּ אֶת־חַטֹּאתֵיהֶם

**Then they shall confess their sin**

This clause begins the rulings that apply to the man who committed the trespass, who is guilty and acknowledges his guilt. The first step in making amends after acknowledging his guilt is confession — oral confession. This confession is obligatory on all transgressors.

Regarding every command of the Torah, whether positive or negative, a man who has transgressed any one of them, deliberately or inadvertently, when he makes amends and turns away from his sin, is obliged to confess before the Lord blessed is He, as it is stated: "When a man or woman shall commit any sin . . . then they shall confess". Oral confession is implied and this confession is a positive command.

(Maimonides, Code, Teshuvah 1)

The reason for this command is explained as follows in the *Sefer Ha-hinukh*:

The verbal confession of guilt provides an indication that the sinner truly believes that all his deeds are revealed and known to thee Lord blessed is He, and he will not deny the omnipresence of the All-seeing. Again, by verbally specifying the sin and regretting it, he will be more careful in the future not to stumble thereon. After he has said with his mouth: I did such and such a thing and was foolish in my actions, he will, as a result, become reconciled with His maker. The good God who desires the welfare of His creatures guided them in this path through which they would gain merit.

Note also the reflexive or *Hitpael* form of the Hebrew verb "to confess" *hitvadeh*. Hirsch pointed out that this indicates that the

confession consists of man speaking to himself, admonishing his conscience. King David advocated a similar course in his Psalms of repentance "when Nathan the prophet came unto him, after he had gone in to Bathsheba":

כִּי־פָשַׁעִי אָנִי אֶדְעַ וְחַטֹּאתַי נִגְדִי חִמִּיד:

**For I know my transgressions; and my sin is ever before me.**  
(Ps. 51, 5)

The next step is the practical making amends

וְהָשֵׁב אֶת־אֲשָׁמוֹ בְּרֵאשׁוֹ וְחִמִּישְׁתּוֹ יִסֵּף עָלָיו . . . מִלֶּבֶד אֵיל הַכִּפָּרִים  
אֲשֶׁר יִכְפֹּר בּוֹ עָלָיו:

**And shall make restitution for his guilt in full, and add unto it the fifth part thereof . . . beside the ram of atonement with which to atone for him on its account.**  
(5, 7—8)

Here is the legal formulation of the Biblical ruling in Maimonides' Code (*Gezelah Va-avedah*):

Whoever owes money to his fellow Jew and denies it and swears falsely is obliged to return him the amount he denied and an addition of a fifth. He is also liable for an offering called *asham gezelot* ("the guilt offering of robberies").

The one who perjures himself to deny a monetary debt is only liable to pay a fifth part when he himself confesses his guilt, but if witnesses came and he still persists in his denial, he pays the principal only on the evidence of witnesses and not the fifth part.

Why, we may ask should the repentant sinner who confesses his guilt, on his own accord, be penalised by having to bring, in addition to the principal, a fifth and an offering, whereas the one who

attempts to cover up his crime, only admitting because witnesses showed up and revealed his perjury is only liable to pay back the principal? Should the sinner be rewarded? But the explanation is quite clear if we bear in mind that the fifth part and the offering are not penalties or fines for the act of robbery and subsequent perjury but atonement.

The guilt offering atones only for the truly repentant, but the one who spurns it is not atoned through it.

(Maimonides, Code)

Without any change of heart or indication by word of mouth or deed, on the part of the wrongdoer, the offering is valueless and so is the payment of the fifth. These instructions only apply to the repentant, helping him to atone for his deeds.

The text we are studying ends with the phrase:

וְנָתַן לְאִשֶּׁר אָשָׁם לוֹ :

**And give it unto him in respect of whom he hath been guilty.**

This phrase comprises four Hebrew words and the object of the giving is not at all clear from them, in spite of our unambiguous English translation. First the text has already implied that he has to make restitution: "And shall make full restitution and add unto the fifth part thereof". Rashi explains the closing phrase to refer "to the one whom he owes". It is difficult to understand what Rashi meant to indicate by this piece of information, since that is already implied in the previous part of the verse. What did Rashi see in the significance of the additional words *ve-natan la-asher asham lo*?

Two supercommentators on Rashi, Mizrahi and Gur Aryeh, give the following interpretations. First Mizrahi's explanation:

If A from whom the money had been stolen owed B money, the restitution should be made not to A but to B. This emerges from Rashi's wording "to

the one whom he owes it". If Rashi had meant A, he should have written "to the one from whom he had stolen it". The Talmud states the same principle: "Whence that if A owes B money and B owes C that we may directly transfer the repayment from A to C? The Torah states: *ve-natan la-asher asham lo*. Our text is interpreted to imply that the thief can sometimes be required to make restitution not to the victim but to the victim's creditor, based on the use of the word *asham* instead of *gazel*. He is required to return it not always to the one from whom he had stolen it but to the one to whom it is owing.

**Gur Aryeh has a different approach:**

Rashi wished to emphasise that the word *asham* in the context has not the meaning of guilt it has in the other contexts, as in "that soul shall be guilty". If that were the case the phrase would imply that the robber has to make restitution to the Almighty, "to him in respect of which he is guilty". That cannot be so since the text explicitly states that only where the man has no redeemer to whom to make restitution, only then has it to be made to the Lord, through the priest. But if the victim has a redeemer or an heir it has to be given him. We must therefore conclude that the word *asham* here has the implication of "owing".

In other words, the robber cannot make amends by dedicating the proceeds of his wrongdoing and even over and above this to a sacred cause. But he must seek out the victim of his robbery, restore it to him and add a fifth. This is the source of the ruling that "he who robs his fellow of even a *peruta's* worth and denies it on oath must go after the owner even as far as Media.<sup>1</sup> He shall not give it to the victim's son or his agent . . ." Rashi comments that, in such a case, when he denies it on oath and ultimately confesses his guilt, the robber can only achieve atonement by personally returning it to the owner.

#### Questions for Further Study

1. Compare our text with the parallel one in Leviticus 5, 20—26. Here is the Sifrei's observation on the two texts.

“And the Lord spoke unto Moses, Speak unto the children of Israel, When a man or woman shall commit any sin that men commit”. What was the need for this passage when the following has already been stated “If any one sin . . . and deal falsely . . . then it shall be, if he hath sinned and is guilty, that he shall restore that which he took by robbery . . . and add the fifth part thereof” (Lev. 5, 20)? But we have not been informed of the rule applying to the robbery of a proselyte (*ger* — who on adoption of Judaism is like a new born babe. All his previous blood ties cease to exist). The Torah comes therefore to teach us that “when a man or woman shall commit any sin that men commit” referring to the one who robs a proselyte and denies it on oath and that if the proselyte dies the robber must make restitution of the principal and a fifth part thereof to the priests and a guilt-offering to the altar. This is the pattern followed by the Torah. Where there are two similar passages, one of them comes to teach us something omitted in the other.

- (a) Indicate why we must presume that our sidra refers to robbery of a proselyte.
  - (b) Try to suggest a reason why the case of robbery from a proselyte was reserved for the passage in our sidra.
2. In what way does the text of Genesis 31, 50 help us to understand Rabbi Akiva's dictum cited in the sidra above?
  3. “‘And they confess their sin’ (Num. 5, 7) — whichever of them it will be, man or woman” (Ibn Ezra). What did Ibn Ezra find difficult in our text which warranted his comment?

NOTE

<sup>1</sup> See previous chapter, p. 41.

LAWS OF THE NAZIRITE

This sidra contains a strange chapter dealing with the laws of the Nazirite which have excited the attention and interest of many commentators.

וַיְדַבֵּר ה' אֶל מֹשֶׁה לֵאמֹר:  
 דַּבֵּר אֶל-בְּנֵי-יִשְׂרָאֵל וְאָמַרְתָּ אֲלֵהֶם  
 אִישׁ אוֹ-אִשָּׁה כִּי יִפְלֵא לְנָזִיר נָזִיר לְהִזִּיר לַה':  
 מִיַּיִן וְשֵׁכָר בַּיַּיִן חֹמֶץ בַּיַּיִן וְחֹמֶץ שֵׁכָר לֹא יִשְׁתֶּה  
 וְכֹל-מִשְׁרַת עֲנָבִים לֹא יִשְׁתֶּה וְעֲנָבִים לְחִים וְיֵבֶשִׁים לֹא יֵאָכֵל: . . .  
 כֹּל-יַיִם נָזִיר נֹזֵר לֹא יַעֲבֹר עַל-רֵאשׁוֹ  
 עַד-מְלֵאת הַיָּמִם אֲשֶׁר יִזִּיר לַה' קֹדֶשׁ יִהְיֶה  
 גְּדֵל פְּרַע שְׁעֵר רֵאשׁוֹ: . . . כֹּל יַיִם נֹזֵר קֹדֶשׁ הוּא לַה': וְכִי יָמוּת מֵת  
 עָלָיו בְּפֶתַע פְּתָאֵם וְטָמֵא רֵאשׁ נֹזֵר . . . וּבַיּוֹם הַשְּׁמִינִי יָבֵא שְׁתֵּי חֲרִים אוֹ  
 שְׁנֵי בָּנֵי יוֹנָה . . . וְעָשָׂה הַפֶּהֶן אֶחָד לְחִטָּאת וְאֶחָד לְעֹלָה וְכַפֵּר עָלָיו  
 מִזֶּשֶׁר חָטָא עַל-הַנָּזִיט

And the Lord spoke unto Moses saying,  
 Speak unto the children of Israel, and say unto them,  
 When either man or woman shall separate themselves to vow a  
 vow of a Nazirite to separate themselves unto the Lord  
 He shall separate himself from wine and strong drink, and  
 shall drink no vinegar of wine, or vinegar of strong drink,  
 neither shall he drink any liquor of grapes, nor eat moist  
 grapes, or dried . . .