**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**midrash on the *Parasha*:**

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**Parashat Ki Tetze:**

**No Peace Emerges from Quarrelsomeness**

**The command regarding lashes in the Torah and in Halakha**

In certain cases, a Jewish court of trained judges is commanded to administer the penalty of lashes after a person has been found guilty at trial. According to the plain sense of the verses, this law relates to people between whom there is a quarrel:

If there be a quarrel (*riv*) between men, and they come to judgment, the judges shall judge them, by vindicating the righteous and condemning the wicked.

Then it shall be, if the wicked man deserves to be struck, that the judge shall cast him down, and he shall strike him before him, according to the measure of his wickedness, by number. 

Forty times he may strike him, he shall not exceed; lest, if he should exceed, and strike him above these a great blow, then your brother would be dishonored before your eyes. (*Devarim* 25:1-3)

However, according to the Oral Law, lashes are administered as the punishment for anyone who has transgressed a negative commandment. One who transgresses a monetary prohibition (e.g., the prohibition of stealing) is not liable to lashes, because the stated remedy of repayment is considered to be the full extent of the penalty.[[1]](#footnote-1)

The Ramban in his commentary (ad loc.) notes the gap between the Halakha and the plain meaning of the text, and he explains the relationship of the law concerning conspiring witnesses (*eidim zomemim*)to the plain meaning of the verses:

"If there be a quarrel between men" — According to the received tradition of our Rabbis that lashes are administered to those who have violated a negative commandment, what is the connection to a quarrel between men? One who eats in his house of the carcass of an animal that has not been ritually slaughtered is flogged, and so too one who plants a mixture of species in his field or vineyard, and one who has intercourse with one of the women who are forbidden to him by a negative commandment, and [one who violates] any of the other negative commandments. And furthermore, what is the meaning of "vindicating the righteous"?

In his remarks, the Ramban raises a question regarding the wording, "by vindicating the righteous and condemning the wicked," which appears at the end of the first verse. In his answer, he relates to the two questions, while explaining the *derasha* of the Sages on the first two verses regarding the punishment of lashes that is imposed upon conspiring witnesses:

They therefore expounded it as referring to conspiring witnesses. The verse means to say that there may be a quarrel between two people who come to court, and the judges adjudicate on the basis of two witnesses as they are commanded; but afterwards they vindicate the righteous and condemn the wicked, which they had failed to do initially. Then it may be that the wicked man deserves to be lashed. This is true in a case in which we cannot fulfill with respect to him: "Then shall you do to him, as he had conspired to do to his brother" (*Devarim* 19:19). For example, this applies where they testified about a person that he is the son of a divorced woman [married to a priest] or a slave or a *mamzer*. The same applies if they testify about him that he has transgressed one of the negative commandments. In such a case, [each conspiring witness] is flogged with forty lashes.

*Chazal* focus the wording of the verse on a complex legal case involving conspiring witnesses. However, as the Ramban notes, the case of conspiring witnesses may involve testimony about the violation of a prohibition that is not related to a quarrel between two people, e.g., that a person planted mixed species in his field. Why then does the Torah open with "If there be a quarrel between men"?

It seems that it is owing to this difficulty that the Ramban adds:

It is possible that there may be a quarrel between people and one be liable for lashes, e.g., when one causes the other bodily injury less than the value of a *peruta* [the minimum monetary amount of halakhic value], or he curses the other invoking the name of God, or he takes a pledge from him of things that are used for food preparation, and the like. And the verse speaks of the usual case where one of the two brings the other to court, and because of that he is flogged.

Despite the rule that lashes are not administered if the defendant is liable to make payment, there are cases in which he is exempt from repayment, and therefore even in monetary cases there may be liability for lashes. These cases are alluded to by the wording: "If there be a quarrel between men."

**The opening *derasha***

As opposed to the halakhic *derashot* of these verses that are included in the *Sifrei*, the opening *derasha* in the *Sifrei* on this matter is a conceptual *derasha:*

"If there be a quarrel between men" (*Devarim* 25:1).

No peace emerges from quarrelsomeness (*meriva*).

And similarly it is stated:  
"And there was a quarrel (*riv*) between the herdsmen of Avram's cattle and the herdsmen of Lot's cattle" (*Bereishit* 13:7).

What is it that caused Lot to separate from that righteous man [Avram]?

Quarrelsomeness.

And similarly it is stated: "If there be a quarrel between men."

What causes this one to receive lashes?

Quarrelsomeness.

(*Sifrei, Ki Tetze* 286)[[2]](#footnote-2)

The *derasha* opens with a seemingly obvious sentence: “No peace emerges from quarrelsomeness." *Meriva* is a state of disharmony, failure to listen, and conflicting desires in which the channels of communication between the parties have become blocked. In this, it differs from an argument or a dispute, cases in which it is possible to find paths of dialogue and understanding between the parties. Therefore, quarrelsomeness is the antithesis of peace, which allows for understanding, compromise and consideration.[[3]](#footnote-3)

The example brought from Lot's separation from Avraham indicates that the separation was not necessary, and had they reached an agreement they would have remained together. That is to say, reaching a state of quarrelsomeness is a matter of a person's choosing, seeing that one always has the option of demonstrating flexibility and preventing divisiveness.

The commentator on the *Sifrei*, Rav David Pardo (18th-century Venice), points to the deterioration in Lot's situation, which begins with the quarrel: parting from Avraham, going to Sedom, being taken captive in war, resorting to living in cave with his daughters. This deterioration is typical of a person engaged in a quarrelsomeness:

Because of the quarreling, it will lead to one’s striking the other. Then, the other will bring witnesses that the first has struck him, and they will sentence the first to lashes; for example, when the injury is less than the value of a *peruta* so there is no payment, and therefore he is liable for lashes.

His interpretation is based on the wording of Rashi (ad loc.), who brings this *derasha* in the course of his explanation:

"If there be a quarrel” — they will in the end have to approach the judges.

You must then come to the conclusion that no peace emerges from quarrelsomeness.

What was it that caused Lot to leave the righteous man [Avraham]? You must say that it was quarrelsomeness.

This interpretation of the *derasha* also follows from an addition appearing in a Tannaitic parallel, in the *Mekhilta de-Rabbi Shimon bar Yochai*:

"If there be a quarrel between men."

Nothing good emerges from quarrelsomeness.

And similarly it is stated: "And there was a quarrel between the herdsmen of [Avram's] cattle [and the herdsmen of Lot's cattle]" (*Bereishit* 13:7).

What is it that caused Lot to separate from that righteous man?

Quarrelsomeness.

And it is stated: "If there be a quarrel between men, and they come to judgment, and the judges shall judge them" (*Devarim* 25:1).

What caused this one to receive lashes?

Quarrelsomeness.

At first they come to contention,

And subsequently they come to blows,

And ultimately they come to punishment.

(*Mekhilta de-Rashbi* *Shemot* 21:18)

According to the *derasha*, the verses relating to lashes should be read as one sequence, focusing on the beginning and the end — the quarreling and the lashes. In this way, the opening *derasha* completes the halakhic *midrashim*, which expound the Torah's wording in the middle.[[4]](#footnote-4)

**Great is peace**

Through the length of the *Sifrei* on *Parashiyot Re'eh* and *Shofetim*, there are almost no conceptual statements; nevertheless, the *derasha* under discussion appears once again in the *Sifrei* on *Ki Tetze*, expounding the following verses:

When men contend (*yinatzu*) one with another, and the wife of the one draws near to deliver her husband out of the hand of him that strikes him, and puts forth her hand, and takes him by the secrets. 

Then you shall cut off her hand, your eye shall have no pity. (*Devarim* 25:11-12)

"When men contend one with another."

No peace emerges from contentiousness (*nitzut*).

And similarly it is stated:

"And there was a quarrel between the herdsmen of Avram's cattle and the herdsmen of Lot's cattle."

What is it that caused Lot to separate from that righteous man?

Quarrelsomeness.

And it is stated: "If there be a quarrel between men."

What caused this one to receive lashes?

Quarrelsomeness.

(*Sifrei Ki Tetze* 292)

Peace is a central value in the world of the Tannaim, and it is given considerable attention in their works.[[5]](#footnote-5) It is possible that, due to its importance, it is dealt with twice in our *parasha*.[[6]](#footnote-6)

**Towards a new consciousness**

On the substantive level, the *derasha* presents the command regarding lashes as a necessity in our unfortunate reality, which would have been better had it not been necessary. We also noted the gap between the *derashot* of *Chazal* concerning the lashes that are administered by the court and the plain meaning of the biblical text, and the manner by way of which the opening *derasha* connects the beginning of the passage to its end, emphasizing the slippery slope facing one who participates in a quarrel. Is the connection between quarrelsomeness and the punishment of flogging only a circumstantial connection, or is there an essential connection between them?

Corporal punishment shatters a person's unique ownership of his body and places the person, by force, into another consciousness. In the harsh reality in which the person is trapped in mental rigidity — which finds expression in society when he reaches a state of quarrelsomeness that takes him to the doorstep of the court — the punishment of flogging comes and undermines the situation. What the person fails to do voluntarily within his inner soul, in confronting the elements of his personality, is done at some point by an external authority.

If so, the story of the quarrel is a story about the evil inclination within a person's heart, and the possibility of dealing with it. This idea is emphasized in the commentary of Rav Avraham ben Ya’akov Saba (15th-century) in *Tzeror Ha-mor*, who points to the administration of lashes as a means for a person's repair:

And this is immediately followed by: "If there be a quarrel between men… forty times he may strike him, he shall not exceed" to allude that "the inclination of man's heart is evil from his youth" (*Bereishit* 8:14). All day, man's desire causes him to sin in many ways. And a remedy is needed in this matter so that this wickedness not pervert man in his quarrelsomeness, arising and accusing, descending and leading astray. For this, the Torah offers a remedy, saying: “Then it shall be, if the wicked man deserves to be struck, that the judge shall cast him down, and he shall strike him before him, according to the measure of his wickedness, by number.”

In this way, he will no longer be accused of anything, because if judgment is passed below, it will not be passed above. After they flog him with the straps [made from the hides of] an ox and a donkey, which are two traits that join together to pervert a person in his quarrelsomeness, these passions are thus cooled, and he is not to be punished further.

Therefore he is flogged on his spine, because they already said that a person's spine becomes a serpent after seventy years. This is because of the primeval serpent. This is done in such a way that the decree is cancelled, all this by the mercy of Heaven.

Therefore it is stated "by number. Forty times," which teaches us that it is not actually forty [lashes], but rather thirty-nine. This is "because Your dew (*tal*) is the dew of lights" (*Yeshayahu* 26:19) [the numerical value of the letters being thirty-nine.]

This alludes to the fact that, previously, this man was cursed with the curse of the primeval serpent. This is like *lat* [the numerical value of which is thirty-nine], the Aramaic term for “cursed.” And now it turns into *tal —* by way of the mercy of Heaven! — after this man receives his punishment, as it is stated: “Then your brother would be dishonored before your eyes;" henceforth, he is precious and honorable in My eyes.

Thus it is stated regarding a penitent person: "Since you are precious in My sight, and honorable" by your own merits, therefore "I will give men in your place" (*Yeshayahu* 43:4). And *Chazal* said (Rabbi Elazar, BT *Berakhot* 62b): “Read not *adam* (man) but rather Edom” — that God places another person in his place to cool the passion of the angel of destruction [associated with Edom].

This same is true regarding lashes. *Chazal* derive that there should be thirty-nine lashes from: "Then your brother would be dishonored before your eyes," so that it amounts to thirty-nine. So too they derive that the straps should be from an ox and a donkey from the fact that the law is immediately followed by: "You shall not muzzle an ox in its threshing," and it is written: "You shall not plow with an ox and a donkey together" (*Devarim* 22:10).

This interpretation adds divine clemency as a result of the punishment of flogging.

In the late Midrash, we find an expansion upon our *derasha*, which explicitly connects it not only to dealing with the evil inclination, but to its cancellation:

Rabbi Shimon says:

Many warnings are written here.

As it is stated: "And if men quarrel, and one strikes the other" (*Shemot* 21:18).

Nothing good and no peace emerge from quarrelsomeness.

Kayin struck his brother only because of quarrelsomeness.

“And one strikes the other with a stone, or with his fist" (ibid.).

And God (*Elohim*)warns here,

as it is stated: "If he rise again, and walk" (ibid. v. 19).

Why is God's name (*Elohim*) written here in connection with each and every matter?

But human beings are carried away with the evil inclination,

as it is stated: "The inclination of man's heart is evil from his youth" (*Bereishit* 8:14).

If the Holy One, blessed be He, swallows up the evil inclination,

Everything comes under his wings and the Holy One, blessed be He, kills it.

You find that the evil inclination causes a person to sin, and he kills him.

As it is stated: "Their law and their majesty proceed from themselves" (*Chavakuk* 1:7).

Therefore, the Holy One, blessed be He, warns about all the judgments in the Torah,

As it is stated: "And these are the judgments."

(*Shemot Rabba* 30, 17)

This *derasha* relates to the following verses:

And if men quarrel, and one strikes the other with a stone, or with his fist, but he does not die and is bedridden; if he rise again, and walk abroad upon his staff, then him that strikes him shall be absolved; only he shall pay for the loss of his time, and shall cause him to be thoroughly healed. (*Shemot* 21:18-19)

The *derasha* is filled with ambiguities. Where does the word *Elohim* appear in these verses? What is the connection between the description, "if he rise again, and walk abroad," and the evil inclination? To whom does "and he kills him" refer: to man or to God?

It seems that the *darshan* reads the verse which describes the obligations falling upon one who causes another person bodily harm as a metaphor for the war against the evil inclination within man. Man's executing the judgments of God is critical for the eradication of the evil inclination, but the completion of the process depends on divine intervention.

The comparison between the two *derashot* adds another perspective on the *Sifrei*'s *derasha*. This *derasha* relates retrospectively to the situation that the command regarding lashes addresses, lamenting the path of self-destruction which a person sometimes follows. Woe to the man who finds himself in negative friction with the world; this situation can get complicated and deteriorate to the point that he has to experience humiliation and pain in order to see how he conducts his life. On the other hand, the late Midrash emphasizes the helplessness in which man finds himself in relation to the evil inclination, when salvation from it can come only from the hands of God. In this source, there is an aspiration to eliminate this inclination. There is no hint that such an aspiration exists in the *Sifrei*'s *derasha* discussed here. However, the basic premise that a person is responsible for his actions and for dealing with his impulses is found in both.

**“No peace emerges from quarrelsomeness” — is this true?**

According to what we have seen, the *derasha* "no peace emerges from quarrelsomeness," on the one hand, accords with the plain meaning of the verse; while on the other hand, it bears a significant educational-moral statement for the individual and for society.

Another question that arises from the *derasha* is whether in the end anything positive results from lashes, as the person does submit and he changes his consciousness. In the long run, it may be argued that there is indeed a positive dimension to the fact that the person undergoes a process, is broken and is then rebuilt, as a result of a truer and deeper acquaintance with his powers and their effect on reality. But how does this fit in with the categorical statement that "no peace emerges from quarrelsomeness”?

Does the *derasha* refer only to the short-term human point of view? Perhaps the *darshan* refers to all the suffering that a person causes himself over the course of his life, most of which could have been prevented had he not neglected the task of purifying his soul. The Rambam in his *Moreh Ha-nevukhim* points to man as the source of the vast majority of the suffering in the world. Is he echoing the position adopted by the *derasha*?

Another answer relates not to the person being punished himself, but to society as a whole. Even if, in the long run, the person undergoes a process of repair, society suffers from the presence of *meriva*. It undermines the general atmosphere, the norms that prevail and the bar of expectations and aspirations that create its horizons.[[7]](#footnote-7)

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Over the course of our *shiur*, we have noted the special place of the opening *derasha* among the *Sifrei*'s *derashot* concerning the mitzvaof lashes, with respect to the plain meaning of the text and from an educational-moral perspective. What may we learn from these things for our times? Many religiously observant people find it difficult to imagine a Jewish court which would manage the legal and public realms in accordance with Torah law. We have all become accustomed to a democratic and post-modern world, in which the areas in which a person must give a reckoning for his actions are extremely limited. What would happen if a court intervened in matters of personal freedom? What would happen if a court administered lashes?

(Translated by David Strauss)

1. In *Sifrei Ki Tetze* 286, ed. Finkelstein, p. 303:

   "By vindicating [the righteous and condemning the wicked]' (*Devarim* 25:1) — I might think that all the condemned receive lashes. Therefore, the verse states: “Then it shall be, if the wicked man deserves to be struck;” sometimes he receives lashes and sometimes not.

   But I still do not know who receive lashes. Therefore, the verse states: “You shall not muzzle an ox in its threshing” (v. 4). Just as muzzling is distinct in being a negative commandment, transgression of which renders one liable to lashes, so, all who transgress negative commandments are liable to lashes.

   I might then think that transgressors of all negative commandments linked to [remedial] positive commandments are [also] liable to lashes.

   It is, therefore, written: “You shall not muzzle an ox in its threshing.” Just as muzzling is distinct in being unlinked to a [remedial] positive commandment, transgression of which renders one liable to lashes, so transgression of all negative commandments unlinked to [remedial] positive commandments renders one liable to lashes.

   See *Midrash Tannaim* to *Devarim* 25:1, where this matter is derived in a different manner; BT *Ketubot* 33a; 46a; BT *Sanhedrin* 10a; BT *Makkot* 13b. [↑](#footnote-ref-1)
2. In the parallel to this *derasha* in *Midrash Tannaim* on our verse, a verse is brought from the passage dealing with conspiring witnesses:

   "If there be a quarrel between men” — no peace emerges from quarrelsomeness . This is what is stated: “Then both the men, between whom the quarrel is, shall stand” (*Devarim* 19:17).

   The verse from the passage relating to conspiring witnesses appears in all the versions of our *derasha* in *Sifrei Devarim*, but Finkelstein nevertheless chooses to use our verse as the principal text. It should be noted that the Vilna Gaon deletes the biblical citation, leaving the *derasha* without a verse in the middle. [↑](#footnote-ref-2)
3. See Ramban, *Shemot* 17:2. [↑](#footnote-ref-3)
4. From our discussion of the opening *derasha* connected to the passage dealing with the mitzvaof lashes, a question arises in relation to the role of the conceptual *derasha* in the *Sifrei.* Do such *derashot* come in places where the halakhic *derashot* are far from the plain meaning of the text? Is this true for certain *derashot* that appear precisely in a particular location (e.g., at the beginning of the *derashot* on a particular mitzva)? Regarding this question, compare the opening of the mitzva of lashes in *Midrash Tannaim* to *Devarim* 25:1. The conceptual *derasha* with which the *Sifrei* opens appears there after the halakhic *midrashim*, and it is possible that this proves that significance ought to be attached to the order of their appearance in the *Sifrei.* However, there are insufficient findings to establish the relationship between the halakhic *derashot* and the conceptual *derashot* in the *Sifrei.* [↑](#footnote-ref-4)
5. See Mishna, *Avot* 1:18; *Sifrei, Naso* 42 (Chapter of Peace); *Sifrei Zuta* 6, 26;Tractate *Derekh Eretz*, Chapter of Peace; BT *Berakhot* 64a. [↑](#footnote-ref-5)
6. Regarding the recurrence of the *derasha* here and on the verse "When men contend," Rav David Pardo explains that in our verse, we are dealing with monetary matters, whereas “When men contend" deals with verbal abuse. This *derasha* appears in the *Sifrei* anonymously, but the voice arising from it faithfully reflects the mood typical of the *Sifrei*, and of Rabbi Shimon bar Yochai in particular. See BT *Sanhedrin* 86a: "Unattributed [statements] in the *Sifrei* — Rabbi Shimon." We have shown in previous *shiurim* that the *derashot* in the *Sifrei* about peace are connected to Rabbi Shimon bar Yochai; see our *shiur* on *Parashat Naso*. [↑](#footnote-ref-6)
7. I have not found anyone who discusses these questions in the context of this *derasha*. I would appreciate any references to such a discussion. [↑](#footnote-ref-7)