

When does restitution become vengeance?

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Source 1: The story of Reish Lakish and Rabbi Yohanan

Babylonian Talmud, Bava Metzia 84a (Koren – Steinsaltz interpretive translation)

This text, which crystallized in the 7th century, describes fourth-century rabbis.

Ultimately, Reish Lakish died. Rabbi Yohanan was sorely pained over losing him. The Rabbis said: Who will go to calm Rabbi Yohanan's mind and comfort him over his loss? They said: Let Rabbi Elazar ben Pedat go, as his statements are sharp, i.e., he is clever and will be able to serve as a substitute for Reish Lakish.

נח נפשיה דרב רבי שמעון בן
לקיש, והוה קא מצטער רבי
יוחנן בתריה טובא. אמרו
רבנן: מאן ליזיל ליתביה
לדעתיה? ניזיל רבי אלעזר בן
פדת, דמתדיין שמעתיה.

Rabbi Elazar ben Pedat went and sat before Rabbi Yohanan. With regard to every matter that Rabbi Yohanan would say, Rabbi Elazar ben Pedat would say to him: There is a ruling which is taught in a baraita that supports your opinion. Rabbi Yohanan said to him: Are you comparable to the son of Lakish? In my discussions with the son of Lakish, when I would state a matter, he would raise twenty-four difficulties against me in an attempt to disprove my claim, and I would answer him with twenty-four answers, and the halakha by itself would become broadened and clarified. And yet you say to me: There is a ruling which is taught in a baraita that supports your opinion. Do I not know that what I say is good? Being rebutted by Reish Lakish served a purpose; your bringing proof to my statements does not.

אזל יתיב קמיה. כל מילתא
דהוה אמר רבי יוחנן אמר
ליה: תניא דמסייעא לך.
אמר: את כבר לקישא? בר
לקישא, כי הוה אמינא
מילתא, הוה מקושי לי עשרין
וארבע קושיותא, ומפרקינא
ליה עשרין וארבעה פרוקי,
וממילא רווחא שמעתא. ואף
אמרתי: "תניא דמסייע לך",
אטו לא ידענא דשפיר
קאמינא?

- In your own words, what is the plot of this story?
- Why doesn't Rabbi Elazar calm Rabbi Yohanan? What does Rabbi Yohanan miss about Reish Lakish?
- According to the text, what is the value of a chavruta? What makes someone a good chavruta?

Source 2: *Mishneh Torah, Robbery and Lost Property 1:5*

Author: Moses Maimonides (1138–1204). Translator: Eliyahu Touger

Whoever robs is obligated to return the article that he obtained by robbery itself, as it is written: “And he shall return the article he obtained by robbery.” If this article was lost or underwent a change, the robber must pay its value. Whether he admits the robbery himself, or witnesses come and testify that he committed robbery, he is required to pay only the principal that he obtained by robbery.

כָּל הַגִּזְלָה חַיֵּב לְהַחְזִיר הַגִּזְלָה
עֲצָמָה שֶׁנֶּאֱמַר (וַיִּקְרָא ה' כג)
”וְהָשִׁיב אֶת הַגִּזְלָה אֲשֶׁר גָּזַל”.
וְאִם אֶבְדָּה אוֹ נִשְׁתַּנִּית מִשְׁלֵם
דָּמֶיהָ. בֵּין שֶׁהוֹדָה מִפִּי עֲצָמוֹ בֵּין
שֶׁבָּאוּ עָלָיו עֵדִים שֶׁגִּזְלָה הָרִי זֶה
חַיֵּב לִשְׁלֹם הַקָּרוֹן בְּלִבָּד.

- In your own words, what is the standard for restitution for stolen items?
- Do you think it's fair that if an item is lost or changed it no longer needs to be returned? What items do you think this is reasonable for? What items do you think this is unreasonable for?

Source 3: *Babylonian Talmud, Gittin 55a* (trans. David Freidenreich)

These are third-century texts discussing first-century schools of thought.

Regarding the stolen beam with which one built a building, the rightful owner can claim the beam's value...

וְעַל הַמָּרִישׁ הַגִּזְלוֹ שֶׁבָּנָא בְּבִירָה, שִׁיטוֹל אֶת דָּמָיו...

The Rabbis taught: If one stole a beam and built a building with it — the School of Shammai says, “Destroy the entire building and return the beam to its owner,” while the School of Hillel says, “The rightful owner can claim nothing but the value of the beam. This rule exists for the sake of those who need to make things right.”

תִּנּוּ רַבָּנָן: גִּזְלָה מָרִישׁ וּבָנָא בְּבִירָה —
בֵּית שְׁמַאי אוֹמְרִים: מְקַעֲקַע כָּל
הַבִּירָה כּוֹלָה וּמַחְזִיר מָרִישׁ
לְבַעְלָיו; וּבֵית הִלֵּל אוֹמְרִים: אֵין
לוֹ אֶלָּא דָּמֵי מָרִישׁ בְּלִבָּד, מִשּׁוּם
תַּקְנַת הַשָּׁבִין.

- Why do you think the School of Shammai is willing to destroy an entire house to return a stolen beam? Are they going too far?
- Can you think of an example in your own life when a Shammai-like approach felt warranted?
- Why do you think the School of Hillel cared about “those who need to make things right”? Are they being too lenient?
- Can you think of an example in your own life when a Hillel-like approach felt warranted?

Source 4: *Mishneh Torah*, Robbery and Lost Property 1:13

The term “do *teshuvah*” means to engage in the act of making things right.

Anyone who robs another of an item worth one *peruta* (the smallest unit of standard currency) is considered as though he takes his soul from him, as it is stated: “So are the ways of every one that is greedy for profit; it takes away the life of the owner thereof” (Proverbs 1:19). Even so, (despite the severity we just described of even a small theft), if the object is no longer available and the thief wants to do *teshuvah* (repentance/repair) and comes of his own initiative to return the value of the theft, the sages instituted a regulation that we do not accept this from him. Rather, we should help him and forgive him, all in order to make the straight path accessible to penitents.

כָּל הַגּוֹזֵל אֶת חֵבְרוֹ שְׁוֵה פְּרוּטָה
כְּאִלּוּ גִזַּל נֶשְׁמָתוֹ מִמֶּנּוּ שְׁנֵאֲמַר
(מְשָׁלִי א יט) "כֵּן אַרְחוֹת כָּל
בָּצַע בָּצַע אֶת נַפְשׁוֹ" וְגו'. וְאַף עַל
פִּי כֵן אִם לֹא הָיְתָה הַגְּזֵלָה קִיּוּמָה
וְרָצָה הַגְּזֵלָן לַעֲשׂוֹת תְּשׁוּבָה וּבָא
מֵאֲלָיו וְהִתְחַזֵּיר דְּמֵי הַגְּזֵלָה. תִּקְנַת
חֲכָמִים הִיא שְׂאִין מִקְבָּלִין מִמֶּנּוּ
אֲלֵא עוֹזְרִין אוֹתוֹ וּמוֹחְלִין לוֹ כְּדֵי
לְקַרֵּב הַדֶּרֶךְ הַיְשָׁרָה עַל הַשֹּׁבִים.

- Do you think it's too extreme to say that when you steal something from someone you've taken his soul? If so, why? If not, why not?
- Why do you think the sages say that we shouldn't accept the value of the theft from a robber who comes to do *teshuvah*? Do you agree with this? Have you ever experienced this in your own life?

Source 5: Rabbi Sharon Brous, Rosh Hashanah Sermon 5778 (2017)

Rabbi Brous is the spiritual leader of Ikar in Los Angeles

There is 2,000-year-old rabbinic dispute over what ought to be done if a palace is built on the foundation of a stolen beam. One rabbi, Shammai, argues that the whole structure must be torn down, the beam retrieved and returned to its rightful owner. No home can flourish on a foundation built illegally and immorally. Another rabbi, Hillel, offers a different take: What sense does it make to demolish it? Let the thief pay for the beam, considering its full value as the foundation of what is now a beautiful home. Neither argues that you can pretend, year after year, generation after generation, that the beam wasn't stolen. Neither suggests that time rights the wrong. Both understand that the theft, unaddressed, threatens the legitimacy of the whole enterprise. Something must be done to rectify the original injury. [...]

Our country was built on a stolen beam. More accurately, several million stolen beams. Only they weren't beams. They were human beings. The palace they built was magnificent, but they have never been compensated for their labor. [...]

According to Biblical law (Lev 5:21-24), stolen property *itself* must be returned, along with punitive damages. So how can Hillel, knowing that the beam at the heart of the palace is stolen, not insist that the whole house be taken down?

Hillel is a pragmatist, and he's almost always right. His argument is *mishum takanat hashavin* — *for the sake of those who need to make things right*. If you don't create the possibility of teshuvah after something precious is stolen, you will ensure an unrepentant and unforgiving society in which cruelty is heaped on cruelty with no end in sight. Strict adherence to Biblical principle here would disincentivize anyone from ever admitting wrongdoing, ensuring that everyone loses.

Remember, between Shammai (the extremist) and Hillel (the pragmatist) neither said that you can pretend, generation after generation, that the beam wasn't stolen, continuing to reap profit off the criminal act at the foundation of what's been built. That would be willful ignorance. No, that beam is the elephant in the palace. To refuse to acknowledge its presence is to engage in a dangerous game of denialism, which ultimately threatens the legitimacy of the whole house. [...]

- What jumps out to you in this sermon? Anything striking, surprising, inspiring, or uncomfortable?
- How does Rabbi Brous understand the application of Gittin 55a in a contemporary context? Why does she think that reparations are the answer to America's "stolen beam"?
- Does Brous advocate for a Hillel or a Shammai approach? What is her reasoning? Do you agree with her, or would you suggest a different model from the texts we've examined?
- If you could respond to Rabbi Brous, what would you say?

Source 6: Danielle Sered, “Why America’s crime victims seek restorative justice, not more punishment” (2016)

A decade ago, I began asking: what would it look like to build a criminal justice system where the greatest possible portion of crime survivors experienced justice and safety when they were harmed?

I don’t think that’s a radical question. It’s not a leftist question or an anti-law enforcement one. But when I asked it honestly — and asked it of survivors — one of the most consistent responses I heard was not a demand for longer punishments, not even a demand for more police — it was a demand for more alternatives to incarceration, and for restorative justice in particular.

Survivors need certain things to heal: to ask why, to have their questions answered, to express their pain and have it acknowledged (ideally by the person who harmed them), to have their safety assured, and to believe no one else will go through the pain they experienced. Our criminal justice system as we know it fails to deliver virtually all of that — survivors have no access to the people who harmed them to face them and get the answers and recognition they deserve, the system fails to address the underlying conditions that made them unsafe in the first place, and as recidivism rates prove time and time again, incarceration fails miserably to deliver any of us the safety we deserve. In Common Justice’s experience working with survivors, we have learned what people doing this work across the country also know: that survivors want the people who harmed them held meaningfully accountable, and for many, the criminal justice system as we know it — and incarceration in particular — can be inadequate or counterproductive to that end. When we rely exclusively on incarceration to address serious crime, it is crime survivors who lose out.

- *In your own words, what is a restorative justice model trying to achieve? How does it understand the relationship between restitution and vengeance?*
- *How might Hillel, Shammai, or the text of the Mishneh Torah respond to Sered? Do you think any of them would advocate for restorative justice? If yes, which ones and why. If not, why not?*