



*This book would not have been possible without the support of the Legacy Heritage Fund Limited, a foundation devoted to honoring and perpetuating the priceless legacy of scholarship, Torah values, and learning that were the hallmarks of the lives of Bella and Harry Wexner, ז"ל.*

*Committed Jews and committed Zionists, both Wexners were descendants of Jews who lived, worked, and studied in the shtetls of the former Soviet Union, where they suffered pogroms and other hardships inflicted upon the Jews living there. These hardships forced members of both families to flee and find refuge in America at the turn of the 19<sup>th</sup> century.*

*Settling, eventually, in Columbus, Ohio, the Wexners opened a small retail store, which they ran themselves while raising their children and putting them through school, still finding time for involvement in the Jewish life of the community. After years of devotion to their business, enormous perseverance and unrelenting hard work, the Wexners achieved late in life their dream of creating one of the major retail conglomerates in the world*

*This success made possible the funding to perpetuate the legacies of scholarship, historical inquiry, and research that meant so much to both of them and with which they hoped to inspire in future generations.*



## TABLE OF CONTENTS

Preface	15
Chapter One	INTRODUCTION 17
Chapter Two	PENITENCE 27
Chapter Three	REMOVING THE MARK OF SHAME 85
Chapter Four	ENCOURAGING CRIMINALS TO REPENT 109
Chapter Five	LIMITING REINSTATEMENT OF OFFENDERS – THE SEVERITY OF THE OFFENCE 151
Chapter Six	LIMITING REINSTATEMENT OF OFFENDERS – THE NATURE OF THE POSITION 179
Chapter Seven	WAYS TO DEMONSTRATE PENITENCE AND RESTORE CONFIDENCE IN AN OFFENDER 307
Chapter Eight	CONCLUSIONS AND SUMMARY 487
Appendixes	497
Letters from Rabbis Z.N. Goldberg and A. Weiss	625
Indexes	633
English Abstract	vii



## *English Summary*

### Introduction

This study deals with the attitude of Jewish sources to a basic area of human rights—the rights of a criminal once he has undergone his punishment: Should the criminal be ostracized? Should society isolate him and keep him at arm's length? Or should we try to accept him back to society? Does the fact that a person has once been caught in a wrongdoing remain attached to him forever and seal his fate? Or, having “paid his debt to society,” is he entitled thereafter to engage in any calling he may, without the shadow of his past offense pursuing him?

The question has two aspects. The first concerns the legal right of the punished offender to take up his career once again, and be restored to his previous occupation and position. The second concerns the recording of information about convictions and dissemination of such information. Since dissemination can cause the person damage, affect his reputation, and deny him various opportunities (if not in point of law, at least in practice), we must ask who is entitled to receive this information, and what information may be transmitted.

Of course there are criminals whom the public should be warned about, and there are criminals who should be prevented from holding certain positions. This applies to criminals who have committed crimes owing to personal “weaknesses.” Such weaknesses might remain even

after the criminal has undergone punishment. How should such criminals be dealt with?

The problem of the rehabilitation of criminals is not new. Many European countries have regulated the matter since the 18th century. A review of these regulations shows that some prescribe rehabilitation for all offenses, and some for the less serious only. As for the means of effecting rehabilitation, in some countries it is an automatic right, by virtue of the law, and in some, the courts—or other governmental authorities—are empowered to decide the matter.

The recording of convictions has two main purposes—to serve judicial and penal needs, and to provide information to various bodies that must decide on qualification for certain tasks, granting of licenses and permits, and so on. Here also there is no uniform treatment. In some countries, the record is completely wiped out after a specified number of years; in others, the record is retained, but it is not open to inspection after a specified period. In both cases, the length of the period is generally dependent on the nature of the offense or penalty.

The recording of convictions has become the subject of debate in the U.S.A. with the drive to create a central data bank containing all known particulars about an individual. Uncontrolled utilization of the recorded facts may have extensive and serious repercussions and is likely to affect adversely not only individual privacy but in many cases real material interests as well.

In the last few decades, several countries have passed laws regarding collection of information about people convicted of sex crimes. The purpose of such databases is to facilitate tracking of sex criminals and to supply information for protecting groups of people who may be at risk due to proximity to sex criminals.

In Israel, the whole subject is governed by a statutory enactment of the Knesset that regulates the modes of providing information to others, and regulates to whom information may be given. This law is based on Jewish sources; thus, in order to understand the Israeli system, we must turn to the Jewish sources.

## Repentance

One of the fundamentals of Judaism is repentance, the opportunity that a person possesses to abandon his evil deeds and launch a new life, purged of the imperfections of the past.

The elements of repentance are found in Scripture. “And you shall return to the Lord, your God,” we are told in Deuteronomy 30, 2. Ezekiel, 33, 10-12, poses the idea of repentance, against the false view that a man who has erred cannot reform his life. “Therefore, son of man, say to the house of Israel: ‘Thus you speak saying: Our transgressions and our sins are upon us, and we pine away in them, and how can we live?’ Say to them: ‘As I live, says the Lord God, I have no pleasure in the death of the wicked, but that the wicked turn from his way and live: turn, turn from your evil ways, for why should you die, O house of Israel?’... The righteousness of the righteous shall not deliver him in the day of his transgression, and as for the wickedness of the wicked, he shall not stumble thereby in the day that he turns from his wickedness.”

R. Simon b. Yohai relied on this passage in his ruling, “Even if a man be completely wicked all his days, but repents at the end, he is not reminded of his wickedness, for it is said ‘And as for the wickedness of the wicked, he shall not stumble thereby in the day that he turns from his wickedness.’”

What is repentance? Maimonides explains it in the following manner. “He who abandons the wickedness he has wrought, and removes it from his heart, resolving firmly not to do it again... and also regrets his past... And God, who knows the secrets of man, will attest that he will never return to his wickedness.”

Indeed, there is a possibility that a malefactor, having received his punishment, will be regarded as having drawn a curtain over his past and begun a new stage in his life. This remarkable characteristic, the retroactive transformation of what has already been done—inverting the time axis, as it were—is the secret of repentance.

One would think that repentance also annuls the punishment that the court decrees for the sinner. But the Talmud says simply that repentance does not annul the punishment of the court. The reasons for

this are that (1) recognizing repentance in the judicial context might foil the deterrence of punishment, and (2) that the court has no way of ascertaining the sincerity of the repentance.

The rule that repentance does not annul punishment applies to normal punishment, meted out by standard law, in which the judge has no discretion to decide whether to impose punishment or how much to impose. However, regarding punishment meted out *ad hoc* for provisional reasons, the judge not only *can* take into account the fact that the criminal has repented, but he *should* do so, in order to encourage sinners to repent.

### The Effect of Punishment

The Mishnah in the tractate of Makkot speaks of the effect that *malkot* (flogging) has on the penalty of *karet* (excision), citing R. Hananiah b. Gamliel: “All [transgressors] who have incurred *karet*, obtain their remission... on being flogged, for it is said ‘... lest thy brother be dishonored in thine eyes’ (Deut. 25, 3). Since he has been flogged, he is like your brother.” The comment of Sifre, *ad loc*, is noteworthy. It draws attention to the different appellations of the offender: so long as he has not undergone his penalty, Scripture calls him “a wicked person”; thereafter he is called “your brother.” The transition from “a wicked person” to “your brother” occurs automatically once punishment is received. The Mishnah requires no further act, nor that we satisfy ourselves that the offender has indeed been remorseful and resolved to mend his ways.

### Rehabilitation of Penitents

The repentance of the offender must not be left to his own initiative. Society has the duty to encourage him and to assist him in his efforts. The Sages went even further, and made regulations to this end. A Mishnah tells that R. Yohanan b. Gudgada (end of 1st century C.E.)



said that "if one steals a beam and builds it into his house, he is allowed to make restitution for it in money, for the rehabilitation of penitents." There is no need for the house to be demolished and the actual beam restored, since (as Rashi explains), if we insist upon that, the offender will be prevented from repenting.

Clearly, this "penitents' regulation" does not apply solely to a beam and a house; it extends to all similar cases, as Maimonides expressly stresses.

To the same end, a further regulation was made with regard to the duty to return stolen articles: "If robbers and usurers wish to make restitution, it is not to be accepted from them, and he who does accept from them, displeases the Sages." The novelty of this regulation is explained in the Talmud, by the story recounted by R. Yohanan from the time of R. Yehudah haNasi: "It once happened with a certain man who desired to make restitution, that his wife said to him '*Rekah* (worthless man), if you are going to make restitution, even your girdle will not be your own!' and he refrained and made no restitution. At that time it was declared: If robbers and usurers wish to make restitution, it is not to be accepted from them, and he who accepts from them displeases the sages."

It should be noted that this regulation only concerns cases where the offender repents and wishes to make restitution, as Maimonides puts it: "Whoever steals from another the merest thing is considered as if he took his life from him... Nevertheless, where the stolen thing no longer exists, and the thief wishes to make repentance, and of his own volition offers to repay the value of the stolen thing, there is a regulation of the Sages that it should not be accepted from him, but we help and pardon him in order to bring penitents to the right path."

### Reasons for Reinstatement of an Offender

The consideration of encouraging offenders to reform is also a factor in determining the status of those who have mended their ways. An illuminating source in this regard is a responsum of Rabbenu Gershom on the question whether a *Cohen* (priest) who apostatized and then

returned to Judaism was fit to give the priestly benediction in the synagogue service and to be called first to biblical readings. Rabbenu Gershom replied that, although the man had sinned, he was fit give the benediction and might be called first to the biblical reading, since he had repented. The reasons Rabbenu Gershom gives are significant. First, after examining the relevant scriptural and mishnaic sources dealing with *Cohanim*, he concludes that there is nothing in these sources to disqualify this particular *Cohen*. Rabbenu Gershom then continues to show from other sources as well that the *Cohen* should not be disqualified. He cites the verse "...you shall not cheat one another" (Lev. 25:14), dealing with fraud. This verse, he points out, has been construed by the Sages also to mean that one should not insult another person (*ona'at devarim*). The Mishnah gives as an example of this prohibition, that an offender who has repented, may not be reminded of his criminal past. In reliance on this rule, Rabbenu Gershom argues that if this *Cohen* were prevented from giving the priestly benediction, there could be no greater insult. Second, Rabbenu Gershom argues that if an offender is prevented from making a new start, he may be discouraged from repenting. He finds support for this view in the talmudic dictum: "Whoever says that Menashe has no portion in the world to come, weakens the hands of penitents." The reference is to Menashe, king of Judea (cf. 2 Chronicles, 33:12-13), who succeeded Hezekiah, and "did that which was evil in the sight of the Lord," by reinstating the heathen altars his father had destroyed. According to Scripture, Menashe finally "humbled himself greatly before the God of his fathers," whom he entreated, and his supplications were heard.

### Penal Sanctions Against Those Who Remind Penitents of Their Past

The reasons given by Rabbenu Gershom help to explain the regulation, attributed to him, that imposes the penal sanction of *nidui* (the ban), on those who remind repentant offenders of their past errors. The prohibition is found in the Mishnah, but no penalty is provided. When

the regulation was made, it was especially important in the historical circumstances of the time to avoid anything that might impede the return of Jews who had apostatized.

The imposition of penal sanctions reappears in the later responsa literature. One case that may be mentioned is the case that figures in the 16th century responsa of “Binyamin Ze’ev” of Greece. The case involves Marranos of Spanish and other origins, whose tragic circumstances are graphically described. Anyone calling the Marranos apostates was to be put under ban, since calling the Marranos apostates would place obstacles in the path of their return to Judaism, apart from being in breach of the regulation of Rabbenu Gershom.

### Disclosure of an Offender’s Past and Prohibition of Defamation

Preventing disclosure of an offender’s past is connected with the protection of his reputation. This protection is given in Jewish Law under the laws of defamation (*lashon hara*).

The biblical source of these laws is Leviticus 19:16: “You shall not go as a tale-bearer among your people.” The rabbis regarded this as a very serious prohibition. Maimonides refers to it in the following manner: “The Sages have said: there are three sins for which a man must pay in this world and has no portion in the world to come—idolatry, incest, and manslaughter—but defamation exceeds them all. The Sages also said: Whoever utters defamation—it is as if he has denied the fundamentals of Judaism.”

The prohibition of defamation is not confined to the mere denigration of another person; it includes, according to Maimonides, disclosure of information that may damage another, in his person, or in his material possessions, and even when disclosure simply causes him anguish.

There are, however, limits to the prohibition, where the disclosure is necessary for a worthy purpose. For example, where two people contemplate going into partnership, and something is known about one of them, something that may cause the other loss by being in

partnership with him, a duty arises to disclose the facts. Similarly, it is a duty to inform a person who is about to engage a thief as an employee, of the prospective employee's character. In such cases, the duty to give information extends only to what is necessary for the purpose.

One further consideration in this area is the moral and social background of the whole question. Since the spread of defamation may seriously affect the victim, there is clearly no social duty to answer requests for information that may be defamatory. This is brought out clearly by R. Israel Meir HaCohen of Radin, whose work, *Hafetz Haim*, is the leading modern text on the subject. Additionally, since defamation also raises moral problems of the highest degree, when defamation comes into conflict with some other value, such as honoring one's parents, it sometimes overrules the other value. Thus, where a parent (or a teacher) seeks information that may involve defamation, the rule is that nothing may be said.

The question of moral duty arose in the Israeli case of *Ben-Gurion v. Appelbaum*. This was a libel case, concerning a publication that accused Amos Ben Gurion with corruption. The court held that "the moral or social duty is to bring the matter to the attention of the authorities, the police, or the attorney general, for the proper steps to be taken. There is no duty to publicize matters of this kind. On the contrary, the court could find no moral virtue in an act of which the positive effect was doubtful, and the ensuing harm certain. Bringing an offender to trial is a worthy end in itself, but the law has provided ways for that, and they are not to be abandoned. Publicizing accusations is not one such way. The harm is certain—shaming a person in public. If the accusation is proved baseless, there is no real remedy for the wrong done. Where, indeed, a person has erred, one should leave the imposition of the punishment to the competent body, and not prejudice the person and rob him of his good name...." "Although," the court went on to say, "we derive our tort law from England, we may breath into it a spirit of our own. That law, as received in Israel, grants the defense of qualified privilege for publication when one is under some legal, moral, or social duty to publish." What is the nature of this duty? The court answered: "There is only one answer. There is the duty that Israeli morality and the local

concepts of human behavior impels. Our moral principles are different from those of other peoples, to a certain extent. We possess a rich store of ethics inherited from our forebears; these ethics were partly characterized by Maimonides as follows: 'He who sees another person committing a wrong, or following a course which is evil, has an imperative to bring him back to the right path, to tell him that he is sinning against himself by his bad ways....' Since we may not humiliate a person in public, one must act cautiously."

So far as concerns us here, disclosure of the tainted past of a person cannot be justified by the mere wish of others to be told about it. Nor does the good intention, of the person who would disclose such information constitute any justification. The publicizing must have some useful purpose which can be achieved only thereby.

## Limits on the Reinstatement of Offenders

### *I. The Severity of the Offense*

To return to the question of the reinstatement of a wrongdoer who has borne his penalty: In the Mishnah, opinion is divided in the case of the unintentional murderer. He is banished to a city of refuge, and remains there until the high priest dies. What is to happen when, in the latter event, he returns home? R. Yehudah held that he is not reinstated to his previous office. R. Meir held the contrary. Maimonides adopts the ruling of R. Yehudah, emphasizing the serious nature of the criminal act committed. From the terminology used by Maimonides, there is reason to conclude that the prohibition against reinstatement is confined to homicide or to equally serious acts.

### *II. The Nature of the Position*

The Jerusalem Talmud rules that, where the president of the Sanhedrin has committed an offense and undergone his punishment, he is not to be restored to the presidency, lest he take vengeance on the court that convicted him! R. David b. Zimra explains the rule in another manner, in his effort to reconcile it with Maimonides' opinion (mentioned

above) that a sinner is not to be demoted, except where the offending act has been done in public. Radbaz suggests that every wrongful act of a president of the Sanhedrin is deemed to have been committed in public, and involves *hillul Hashem*, desecration of the Holy Name. Radbaz offers another interesting explanation—the president of the Sanhedrin takes the place of Moses, in keeping the people on the right path, and a post, the holder of which is required to set an example, cannot be held by one whose conduct prevents him from doing so. He bases this on the adage (in free translation) “practice what you preach,” which the Talmud derives from Zephania 2:1.

Reinstatement of a public leader and other civil servants should be examined according to the rules derived from the reasons given for the president of the Sanhedrin not being reinstated. What will be the standard regarding a person whose role involves responsibility for the material aspect of public life, and not for the spiritual aspect? On the one hand, because it is not the duty of such a person to teach the public desirable norms of moral behavior, we cannot demand of him “practice what you preach.” On the other hand, the considerations of *hilul hashem* and respect for the community may be weighty enough to prevent such a person’s returning to his position. To resolve these questions, one must consider carefully the likelihood that reinstatement will cause *hilul hashem* or disrespect for the community.

### *III. Restoration of Confidence in an Offender*

Another aspect of our subject is restoration of confidence in the offender. This can be a result only of his repentance. But repentance is a personal, internal act. How can we plumb the depths of a person’s heart? Even if a person’s external behavior seems to reflect a change of values, this behavior may be no more than a facade, feigned repentance.

The sages derive from Exodus 23:1—“Do not put thy hand with the wicked to be an unrighteous witness”—the rule that a wicked person is incompetent to give evidence. A “wicked person” is defined by Maimonides as anyone who commits an offense for which the penalty is flogging. Maimonides adds, however, that there are cases where a fine and not flogging is imposed, and yet because of the type of offense, the criminal becomes incompetent. Such is the case with regard

to thieves and robbers. For confidence to be restored to these criminals, full and manifest repentance must take place.

The Tosefta (tannaitic compilation of the second century) deals with the return to competence of certain individuals incompetent to testify. This return to competence, it seems, requires “complete return” that would indicate repentance and abandonment of previous acts: one who gambled with “cubes” (dice) must break his playing boards; a usurer must tear up his loan notes; one who engaged in pigeon racing must break his racing boards; and one who traded in produce of the sabbatical year must abstain from doing so in the next sabbatical year. Additionally, all these offenders must take upon themselves to abstain even from permitted activity related to their offense. Going to the opposite extreme may bring them to leave their previous path permanently.

What characterizes these offenders who are required to supply some tangible proof of repentance? Rabbenu Tam emphasizes the fact that their deeds were done publicly, involved much pleasure, and that they were deeds that people are not accustomed to abstain from. In Rabbenu Tam’s opinion, only such offenses require special acts of repentance, whereas other offenders need only normal repentance in order to be competent again. Rabbenu Tam further restricts the rule of the Tosefta, saying that it is sufficient for the offender to take upon himself to abandon his ways and perform complete repentance in the future. He is not required to actually do so before he becomes competent to testify.

According to R. Yosef Karo, the special requirements in the Tosefta apply only to offenses that involve coveting money, while for other offenders, normal repentance suffices. Rema makes a different distinction: that the Tosefta applies to offenders who repeatedly commit offenses, and not to one-time offenders.

Clearly, these acts of repentance must not be fraudulent. The Talmud tells of a *shohet* (ritual slaughterer) who was disqualified for passing unkosher meat as kosher meat. He thereupon went and let his hair and nails grow, as a sign of penitence. R. Nahman thought to reinstate him, but Raba dissuaded R. Nahman, since the *shohet* might only be pretending. The solution was to adopt the course suggested by R. Iddi bar Abin, and require the *shohet* to go to a place where he is unknown,

and have occasion to return an article of considerable value that has been lost, or to discard meat of considerable value belonging to himself, that he found unkosher.

What characterizes the case of the *shohet*, that can explain the especially strict requirements placed on him? Some commentators have singled out the aspect of coveting money, which requires that the offender prove that he has overcome his covetousness. This seems to be Rashi's approach.

Another approach is that the *shohet* has especially strict requirements because he *intentionally* fed people unkosher meat. If he had done the same unintentionally, only out of negligence, it would suffice for him to make a commitment not to do so in the future.

Still others understand the *shohet's* disqualification from his profession as a punishment, since he had a public duty, and many people depended on his integrity, and his fraud caused them to sin unintentionally.

Another approach is that the *shohet* is unique in that he was removed from his post and lost his income. We therefore suspect that his promise to act lawfully in the future is not sincere but was given only so that he will be returned to his livelihood.

There is also an approach that explains the requirements placed on the *shohet* by the fact that he stole money by selling unkosher meat in lieu of kosher meat, and therefore he must actually return what he stole.

Of course, the different reasons suggested for the special requirements placed on the *shohet* bring to different conclusions with regard to applying these requirements to other transgressors. Only those transgressions that involve the same severity as the *shohet's* acts (that severity being determined according to each distinct aforementioned approach) would entail the same requirements.

Centuries later, Rosh rejected, for possible deceit, the repentance, again, of a *shohet* who had been found guilty of perjury and was debarred for five years from acting as *shohet* or prayer leader in the area or Rosh's jurisdiction. The *shohet* claimed reinstatement as *shohet*, on the grounds that he had fasted for a whole year, on every Monday and Thursday. Repentance, said Rosh, must come from oneself, and not be undertaken because of the punishment imposed, and it must also



be for the nature of the offense. With regard to the *shohet's* acting as prayer leader, Rosh was more lenient, leaving it to the congregation.

R. Moses Sofer explains this requirement of some real act of repentance in one of his responsa involving a charity trustee who committed an offense and was removed from office. Asked what manner of repentance was necessary, R. Moses Sofer replied that, in principle, mental regret and oral confession were enough, but to prevent deception, we require some real external manifestation, such as that mentioned in the Talmud in connection with the *shohet* found guilty of passing unkosher meat.

Time also may play an important role in deciding whether there has been true repentance. R. Hai Gaon, who lived at the end of the 10th century, is reported as saying that, if considerable time has passed, and the person has not been seen to commit any improper act and appears to us to have mended his ways, he is to be taken back into the fold.

## Conclusions and Summary

The two questions with which we have dealt, have been (1) the status of the offender who has paid his debt to society and (2) dissemination of information concerning his wrongdoings. These questions seem to be interconnected.

Penitence can change the status of the person—his offense is expunged, and he can start life afresh. Yesterday he was dubbed an evil doer, today we call him “our brother.” Yesterday he was ostracized; today he is welcomed back into our homes. Hence, there is nothing to prevent him from resuming his previous position, and there is equally no justification for supplying anyone with information on his past transgressions. We may go further: there is no greater wrong than recalling the earlier wrongful acts of the penitent, and disclosing them to others is forbidden under the law of defamation.

Furthermore, if we remind the penitent criminal of his previous acts, he may consider himself an outcast and remain sinful. On the other hand, if we refrain from reminding him of his previous acts, and enable

him to return to his previous position, we will thus help and further the repentance of criminals.

Encouraging criminals to repent is based on sources in the Bible and the Prophets, as the Sages explained them. The way to repentance is very easy: a thought to repent suffices to change a wicked person into a righteous one. Repented sinners were even regarded as being on a level that even totally righteous people could not reach.

On the positive side, the reformation of the criminal is encouraged and assisted. His repentance is spurred on in Jewish law by legislative intervention, which makes the return of stolen goods easier and proscribes, with appropriate sanctions, dissemination of the details of his incrimination.

Notwithstanding the power of repentance, it has no influence on punishment decreed by court. Even if the criminal has repented, he must pay the price for his evil deeds. The reasons for this are that taking repentance into account might foil the deterrence of punishment; and that the court has no way of ascertaining the sincerity of the repentance. But this rule does not apply to punishment meted out by the court for provisional reasons rather than standard law. In this type of punishment, the judge may take into account the fact that the criminal has repented.

As to reinstatement of the criminal to his previous post, or appointing him to a new post, repentance is a necessary condition for his reinstatement or appointment but is not always adequate. Indeed, after the criminal suffers his punishment, he is considered our "brother." Nevertheless, sometimes this is not enough to permit reinstatement to his previous post. Reinstatement will depend on the nature of the offense, and of the office, and the confidence required for the particular function or task.

Jewish legal authorities differ over whether an unintentional murderer should be restored to his office after serving his punishment. We have seen that Maimonides takes a negative view, because of the gravity of the act of killing, even unintentionally. A similar rule would appear to obtain regarding other crimes, either serious in themselves, or in the circumstances under which they were committed.

As to the nature of the function or task, the Sanhedrin president who has sinned cannot be restored, because he might use his power to take

revenge against those who deposed him; or because, by reason of the eminence of the position, any misdeed committed by its occupant, is deemed to have been done *coram publico*, in desecration of the Divinity; or because the president must be able to set an example for the public at large.

Reinstatement of a person who has slipped might also offend the honor of the community. When we take into account public reactions to such reinstatement, we should reckon not only with logical reactions, based on justified and correct approaches, but even with reactions based on human weaknesses, reactions of the unforgetting and unforgiving, and even those of the most lowly members of society.

This principle need not necessarily be confined to the special instance of the president of the *Sanhedrin*. Reinstatement of a criminal to his public position should be examined according to the rules that derive from the reasons given for the president of the Sanhedrin not being allowed to return to his position. To the extent that these reasons hold true for other public positions, the criminal should not be reinstated even after he has repented and received his punishment.

Another kind of hurdle in the way of a person who has slipped, repented, and wants to return to his position, is the question of how he can prove that he has indeed returned to the straight path? How can he regain the trust in him that he lost by his sin? Here we are confronted by our own inability to ascertain a person's innermost thoughts.

A person accustomed of sinning, or who sinned because of a weakness such as covetousness, even if he sincerely desires to repent and overcome his weaknesses, his habit may cause him to revert to his sin. Such a person is required to do things that will uproot his habit or his weakness. As long as we do not see him doing things that show a change in his habits and his values, even if his acts indicate repentance, we may interpret these acts as fraud, meant only to deceive.

Some criminals will be required to perform a "complete return," going to the opposite extreme, in taking upon themselves to abstain even from permitted activity in the area of activity in which they sinned. For example, this is required of usurers and similar offenders. This applies to any person who transgresses publicly, or who commits

forbidden acts involving much pleasure, and which people are not accustomed to abstain from.

And some offenders will be required to show a far reaching expression of repentance: to go to a place where they are unknown, and have occasion to return an article of considerable value, that has been lost. This was required of a *shohet* found passing unkosher meat as kosher meat. Various explanations were given to explain the especially strict requirements placed on the *shohet*: the covetousness that caused him to sell unkosher meat in lieu of kosher meat; the fact that he intentionally fed people unkosher meat; the fact that he was relieved of his position, and we therefore suspect that his promise to act lawfully in the future is not sincere but was given only in order that he be returned to his position. Still others understand the *shohet's* disqualification from his profession as a punishment, since he had a public duty and many people transgressed because of him. Of course, the different reasons suggested for the special requirements placed on the *shohet* bring to different conclusions with regard to applying these requirements to other transgressors. Only those transgressions that involve the same severity as the *shohet's* acts (that severity being determined according to each distinct aforementioned approach) would entail the same requirements as those placed on the *shohet*.

It is important to note that even though the requirements to prove repentance on the part of a transgressor seem to be precise, some authorities interpreted them only as examples for possible ways to prove repentance, emphasizing that if the court is convinced that the transgressor has repented, he can be returned to his competence, even if he did not perform the requirements mentioned in connection to the *shohet*. Thus, “if a long time passed, and no improper thing was seen, neither openly nor covertly, and the heart believes that he repented—we accept him.”

(Where a post involved the element of confidence and trust, trust may be impaired as a result of the malefaction of the occupant, but there is a possibility of reinstatement upon proof of real and sincere reform, the features thereof depending on the particular circumstances of the case.)

The question of supplying information about a penitent criminal is relevant to restricting the possibility of his reinstatement and his

qualification to serve in his previous position. Although we have seen that disclosure of information about the past of a repentant criminal is prohibited, there are instances where such information is highly and importantly pertinent, and the record cannot be expunged. In such instances use of such information is restricted and controlled. The information may be given only to those intimately and significantly concerned, and then only where it serves the proper purpose. Apart from this, the broad rule applies, that the information must be kept secret.

### *Legislation*

In general, interpretation and legislation are the two main ways in which Jewish law develops. Thus, the rules regarding the status of a penitent criminal have been the subject of legislation as well as interpretation.

Some regulations were legislated in the time of the Talmud. Among these is the classic penitents' regulation (which served as a prototype for similar regulations), and the regulation that if robbers or usurers offer to return the stolen goods or the usury, we do not accept the offer.

Other regulations were legislated after the time of the Talmud. For example, Rabbenu Gershom, imposed a ban on whoever reminds a penitent sinner of his past.

### *Accepting Sinners—Imitating the Almighty*

A leading principle regarding the suitable attitude toward sinners who wish to repent, is the principle of following the ways of the Almighty. The talmudic sages who ruled that we should always accept penitent sinners, relied on the biblical passage in which the Almighty calls on sinners: "Return, my sons." One of the early halakhic authorities also used the commandment to follow in the ways of the Almighty as a basis for his decision (in a responsum) to accept penitent sinners.

Halachic authorities frequently quote biblical passages in which the Almighty calls on sinners to repent. When Rabbenu Gershom ruled that a *Cohen* who apostatized and repented could serve again as *Cohen*, he relied on the biblical passage in which the Almighty calls on sinners: "Return to me, and I will return to you."

*The Tendency to Ease Sinners' Return*

The tendency “not to close the door in the face of penitents” is the basis of many rulings that come to facilitate repentance. Rabbenu Gershom ruled not to embarrass a *Cohen* who had apostatized and then returned to Judaism—this in order not to weaken the resolve of penitents. The author of *Sefer Hasidim* prohibited making derogatory remarks about a robber who returned stolen goods, and in our own time, R. Ovadia Yosef has ruled not to reveal to a husband the identity of a man who committed adultery with his wife. Both of these rulings were based on the imperative “not to close the door in the face of penitents.”

The tendency to ease sinners' return finds expression also in the wide interpretation given to rules and sayings. The Mishnah declares, “At the moment the sinner is punished, he is considered your brother,” to explain the rule that flogging frees the sinner from the punishment of *karet*. Maimonides uses the same saying as basis for his ruling that the sinner returns to his competence to testify after serving his punishment, and as the basis for his responsum allowing a prayer leader who sinned and was punished, to be reinstated to his post. Rashba relies on the same saying to permit a *Cohen* who sinned and repented, to receive the priestly gifts, adding the Talmudic maxim: “All sinners who repent are accepted back into the fold.”

Because of this tendency to ease sinners' return, talmudic requirements that sinners prove their repentance were interpreted minimally, such that those requirements are not exclusive but rather leave other ways whereby the sinner will be accepted. For example, the strict requirement that a *shohet* who sold unkosher meat go to a place where he is unknown, and have occasion to return a lost article of considerable value was interpreted as not being exclusive. Moreover, in R. Solomon Luria's opinion, this requirement fell into disuse, since, as he said, “we have never heard” of authorities actually requiring this of a *shohet*.

The same is true of the rule that usurers and similar malefactors return to competence only by taking upon themselves to abstain even from permitted activity in the area of activity in which they sinned. Here too, there is an opinion that this is not required if it is clear to us that the sinner has repented.

Additionally, where there were differences of opinion as to the status of a penitent sinner, we find significant authorities who decided in favor of the lenient opinion “in order to ease the path of the penitents.”

On the other hand, we must note that, notwithstanding the tendency to ease sinners' return, the sages were very sensitive to possible social reactions, when dealing with the question of allowing a penitent sinner to return to a position of authority. Obviously, the higher the post, the greater such sensitivity. Therefore, one of the reasons that a president of the Sanhedrin who sinned and was punished is not allowed to return to his post, is that he must serve as an example to others. We therefore require him to “practice what he preaches.” The sensitivity to people's reactions is expressed also in the concept that dishonor to the community, desecration of God's name, and desecration of the Torah may be caused by reinstatement of penitent sinners to their posts or to their competence. It is expressed also in the tendency to refrain from rulings that may cause eyebrows to be raised in the community, or that seem to be foolish.

It should be noted that this sensitivity to public reaction is not only to reactions of enlightened people. It applies even to the reactions of society's lowliest members, to those who look for questionable halakhic rulings to attack.

In conclusion, the criminal's right to rehabilitation and to turn over a new leaf and expect a better future, purged of his past, is one of the fundamental human rights that must be defended and promoted by all possible means.

# תקציר באנגלית