Parsha Halacha – Parshat Ki Teitzei

The 39 Lashes and the 39 Days to Yom Kippur

Sponsored by Ahron and Shifra Gellman in memory of Yaakov ben Dov Ber, Elisheva Batya bas Meyer Zalman, Yoel Dovid ben Aryeh Lev, and Rifka bas Zev. May their Neshamos have and Aliyah!

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One of the many mitzvot in the Torah portion of Ki Teitzei is that of giving lashes to sinners, as the Torah says,[1] וְהָיָה אִם בִּן הַכּוֹת הָרָשָׁע וְהִפִּילוֹ הַשֹּׁפֵט וְהִכָּהוּ לְפָנָיו כְּדֵי רִשְׁעָתוֹ בְּמִסְפָּר. אַרְבָּעִים יַכֶּנּוּ לֹא יֹסִיף פֶּן יֹסִיף לְהַכֹּתוֹ עַל אֵלֶּה מַכָּה רַבָּה וְנִקְלָה אָחִיךָ לְעֵינֶיךָ: - "Should the wicked one deserve flogging, the judge shall bow him and have him flogged before him in the number befitting his crime. Forty he shall have him flogged, he may not add; lest he additionally flog him over these, a great flogging, then your brother will be slighted before you."

Why 40?

According to the Ramban (based on Bamidbar Rabbah 5:4), the reason a sinner is punished with 40 lashes is because he transgressed the Torah, which was given in 40 days,[2] and caused the (spiritual) death of a human being (himself), who was formed (into a fetus) in 40 days.[3]

The Midrash (Bamidbar Rabbah, ibid) adds that just as Adam HaRishon brought 40 curses to the world by sinning with the Tree of Knowledge yet through those curses he was spared from (immediate) death, so, too, when a sinner receives the 40 lashes proscribed by the Torah, he is saved from death.

40 Curses

[1] Deut. 25:2 and 3
[2] See Deut. 9:11
[3] See Bechorot 21b and in many places. See here as to how to reconcile this with modern science.

The 40 curses mentioned above were dispensed as follows: 10 to Adam, 10 to Chava (Eve), 10 to the snake, and 10 (or 9, see below) to the earth.[4] The Midrash (Pirkei DeRabi Eliezer 14) enumerates the curses as follows:

- **The 10 for Adam** (and his male descendants) were:

1) He was weakened[5]
2) He was shortened[6]
3) The impurity of *Zav*
4) The impurity of *Keri* (unintended ejaculation)
5) The impurity from intimacy[7]
6) When he plants wheat, thorns grow[8]
7) He eats grass (i.e., raw vegetables) like animals[9]
8) He worries about his food/income[10]
9) He has to toil for his sustenance[11]
10) Death

- **The 10 for Chava** and her (female) descendants were as follows:

1) The pain of childbirth[12]
2) The pain of losing her virginity[13]
3) The pain of pregnancy[14]
4) The difficulties of child-rearing[15]
5) She must cover her head like a mourner[16]

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[4] See Velo Od Elah by Rabbi Eliyahu Ha'itamiri (of 17th/18th Century Izmir, Turkey) on Pirkei DeRabi Eliezer that each curse in every group of 10 corresponds to the other curses in the resepctive groups of 10.
[5] See Bereishit Rabbh 16:1 that "When Adam was still innocent vis-a-vis his Creator (i.e., before he sinned), he could unleash the water of four riverheads with a single spade."
[6] See Chagigah 12a that, originally, Adam's stature reached the heavens but that, after he sinned "G-d placed his hand upon him and minimized him."
[7] The impurity of *keri* is considered more obvious as it refers to an accidental ejaculation. The impurity of intimacy is an additional curse in that it applies even to a natural and expected act (Radal).
[8] See Gen. 3:18 that "It (the earth) will grow thorns and thistles for you." See also Jeremiah 12:13 and Job 31:40.
[9] See Gen. ibid. "And you will eat the herbs of the field." Originally, Adam's diet consisted only of fruit. See ibid 2:16 "You may eat from all the trees of the garden."
See also Pesachim 118a "we (sometimes) eat the grass of the field" (in the form of vegetables and leaves).
[10] See Gen. 3:17 - בְּעִצָּבוֹן תֹּאכְלֶנָּה כֹּל יְמֵי חַיֶּיךָ which can mean "With worries you will eat, all the days of your life."
[11] See Pesachim 118a that the toil of earning a livelihood is twice as painful as giving birth to a child.
[12] See Gen. 3:16 - בְּעֶצֶב תֵּלְדִי בָנִים – "With difficulty you will bear children."
[13] See Eruvin 100b that the words הַרְבָּה אַרְבֶּה – "I will greatly increase" (Gen. 3:16) refers to the blood of Niddah and virginity.
[14] See Gen. ibid, הַרְבָּה אַרְבֶּה עִצְּבוֹנֵךְ וְהֵרֹנֵךְ – I will greatly increase (the pain of) your… pregnancy.
[15] See Rashi on ibid "עצבונך. זֶה צַעַר גִּדּוּל בָּנִים" – "Your pain — refers to the trouble of rearing children."
[16] See Yoreh De'ah Siman 386

6) She only shaves her head if she is suspected of promiscuity[17]
7) Her ears are pierced as if she were an indentured servant[18]
8) She serves her husband like a maidservant[19]
9) She is not believed as a witness in a Beit Din[20]
10) Death

- **The 10 for the snake** (and all future snakes) were:

1) The angel Samech-Mem (the spiritual force behind the snake) was deposed from his holy position in heaven[21]
2) Its feet were cut off[22]
3) The gestation period for snakes is longer than that of a domestic or wild animal[23]
4) It lost the ability to speak[24]
5) It sheds his skin every seven years with great pain[25]
6) It slithers on his belly[26]
7) Everything it eats tastes like dust[27]
8) It has poison in his mouth
9) There's hatred between it and mankind and man seeks to crush its head[28]
10) Death

- **The curses of the earth** were:[29]

1) That it needs rain and doesn't have (enough) of its own moisture
2) Its fruit are (often) blighted
3) As are its crops
4) Thorns and thistles grow from it

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[17] The meaning of this curse isn't clear. Some versions of the Midrash read "She grows long hair like Lilith but doesn't uncover it except at night" (Pirush Maharzu).
[18] See Exodus 21:6
[19] See Gen. 3:16 "And he will dominate you."
[20] See Choshen Misphat 35:14 and Rambam, Laws of Edut 9:2
[21] See Pirkei DeRabi Eliezer 13:2 that the angel *Samech Mem* was riding the snake like a camel.
[22] See ibid "the snake was like a camel." See also Bereishit Rabbah 20:5 "When the Holy One blessed be He said to the snake, 'On your belly you shall go' the ministering angels descended and severed its arms and its legs, and its voice carried from the end of the world to its end."
[23] See Bechorot 8a that a snake's gestation period lasts 7 years.
[24] See Radal that this curse isn't counted in some of the sources. Instead, the previous curse counts for two. I.e., that the snake's gestation is longer than both a 1) domestic 2) and a wild animal.
[25] See Pirkei DeRabi Eliezer 34:4 that the snake cries in pain when it sheds it's skin.
[26] See Gen. 3:14 – "On your belly you shall crawl"
[27] See ibid – "And dust you shall eat all the days of your life."
See also Yoma 75a "Even if the serpent eats all the delicacies in the world, they will still taste like dust."
[28] See Gen. 3:15 "I will put hostility between you and the woman, and between your offspring and her offspring. He shall strike you on the head…"
[29] This list isn't found in the Pirkei DeRabi Eliezer but is found in the Pirush HaRadal, based on other Midrashim. He only lists nine curses although the Midrash Rabbah (ibid) says there were 10. See below.

5) It has mountains and rocks
6) People dig in the earth with metal implements
7) Those killed on it will not be (automatically) covered (it is thus defiled by their impurities)
8) When the people are undeserving, they will harvest a little even if they plant a lot[30]
9) The earth will become "worn out" in the Messianic Era[31]

39 Instead of 40

Our sages taught that a sinner would only receive 39 lashes despite the fact that the verse says "Forty he shall be flogged."[32] Various explanations are given by the commentaries as to how the sages came to this conclusion:

- **The Number Approaching 40**

The Talmud[33] understands that the last word of verse 2 should be read as part of the next verse, as follows; בְּמִסְפָּר אַרְבָּעִים יַכֶּנּוּ. This can mean "You shall flog him in the number that approaches 40" i.e., 39. Rashi and Rabbeinu Bachye add that the vowels of the word בְּמִסְפָּר (*bemispar*) indicates that it should be read this way as if it weren't connected to the next verse the correct vowelization would be בַּמִּסְפָּר (*bamispar*).

- **To Protect from Error**

According to the Rambam,[34] the sages instituted that we should deduct one lash from the amount proscribed by the Torah in order to ensure that the sinner not (mistakenly) receive an extra lash. In his words; "Therefore our Sages said: that even a very healthy person is given only 39 lashes. For if accidentally an extra blow is administered, he will still not have been given more than the 40 which he was required to receive."

Why 39?

Several reasons are given by the commentaries as to why a sinner receives 39 lashes.

- **G-d, the Torah, and the Jewish Soul**

The Kli Yakar says that the 39 lashes represent that the sinner repudiated the one G-d (אחד/one is the numerical value of 13), the Torah (which is expounded in 13 manners), and his G-dly soul

[30] See Deut. 28:38
[31] See Isaiah 51:6.
[32] The Targum Yonatan writes אַרְבָּעִין יַצֵּלִיף וְחָסִיר חַד יְלָקִינֵיהּ which can be understood to mean "You should aim 40 lashes at him but only lash him one less than that." See Benei Yissachar, Chodesh Tishrei, Mamar 8:5 who explains this.
[33] Makot 22a as quoted in Rashi on the verse.
[34] Laws of Sanhedrin and the Punishments within their Jurisdiction17:1.

which he received when he turned 13 (or when a women entered her 13th year).[35] These numbers equal 39.

- **Lacking Wisdom**

According to our sages, it takes 40 years to achieve wisdom.[36] As such, the number 39 indicates a lack of wisdom, and so we give the sinner 39 lashes to remind the sinner that his sin indicates a lapse in his wisdom.[37]

- **The Dew of the Resurrection**

One who sins against G-d deserves to die. By receiving the punishment of lashes as proscribed by the Torah, one is saved from this fate and is thus considered to be resurrected. This is why 39 lashes were administered, as ל"ט (39) is the numerical value of the word טל – dew, which alludes to the dew with which G-d will resurrect the dead[38] in the Future Time.[39]

- **Corresponding to the 39 Curses**

According to Rabbi Menachem Rikanati[40] and the Arizal,[41] the 39 lashes correspond to the 39 curses visited on this world that were mentioned above (10 for Adam, 10 for Chava, 10 for the snake, and 9 for the earth). This is why, according to the Jerusalem Talmud, the lashes were given in four groups. 10 on the spine corresponding to the snake, 10 on the right side corresponding to Adam who was created from the right side (*chessed*), 10 on the left side for Chava who was created from the left side (*gevurah*) and 9 on the belly corresponding to the earth which is compared to the stomach (as it's in the center of the universe as the stomach is in the center of the body).

The 39 *Melachot* of Shabbat

The Shela points out[42] that the Mishnah[43] refers to the 39 forbidden labors of Shabbat as "40 minus one" alludes to the fact that these labors correspond to the lashes which the Torah refers to as numbering 40 but are in fact 39. These in turn correspond to the 39 curses mentioned above. This means that by laboring in these 39 types of work during the week in a

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[35] Along similar lines, Rabbeinu Bachaye points out that the 39 lashes were divided into three groups of 13 each. As such, each one of the groups can correspond to one of the abovementioned items (G-d, the Torah and the Jewish soul).
[36] Avot 5:21
[37] Kli Yakar
[38] See Isaiah 26:19 and Jerusalem Talmud Ta'anit 1:5
[39] Rabbeinu Bachaye
[40] Parshat Bereishit
[41] Sefer HaLikutim, Parshat Toldot, D.H. Vatomer Lo Imo Alai Kilelet'cha Beni
[42] Asseret HaDibrot, Shabbat, Positive Mitzvah 146, D.H. Vehinei Noda Ki Vav
[43] Shabbat 73a

holy manner and according to the Torah, one can fix the abovementioned 39 curses. On Shabbat we may not perform these labors since on Shabbat the world is elevated to the level it was prior to the sin and therefore doesn't need rectification.

39 Days

Rabbi Pinchos Friedman explains[44] that, just as the 39 curses were rectified by 39 lashes, so too we can rectify these curses by doing Teshuvah during the 39 days from the first day of Rosh Chodesh Elul until Erev Yom Kippur. Symbolically we receive 39 lashes on Erev Yom Kippur[45] to indicate that after these 39 days we are like one who received 39 lashes and thus cleansed of all our sins.

In this Merit, May We Be Blessed with a Good Sweet Year Among All of Israel, May the Hostages Be Swiftly and Safely Returned, and the Soldiers Be Protected from Harm!

Wishing you a Shabbat Shalom Umevorach!

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[44] Shevilei Pinchas 5774, Parshat Ki Teitze
[45] See Orach Chaim 606:4v