



Maimonides Moot Court Competition Sourcebook

SPRING 2021

Judaism is unusual in that virtually all its canonical texts are woven through with arguments. In the Bible, Abraham, Moses, Jeremiah, and Job all argue extensively with God. In Midrash, rabbis argue with one another on the basis of the principle that there are seventy “faces,” or interpretations, of every text. In the Mishnah the rabbis argue about Jewish law, and in the Gemara they argue about the arguments of the Mishnah.

Every later text comes with its commentaries and counter-commentaries. In the twelfth century, Moses Maimonides did the most daring thing of all: he wrote a code of law with all of the arguments removed. This generated more arguments than any other text for the next eight hundred years until today. Other people have conversations. Jews have arguments.

—Rabbi Lord Jonathan Sacks (1948 - 2020)
יהי זכרו ברוך MAY HIS MEMORY BE FOR A BLESSING



MAIMONIDES FUND



MAIMONIDES
MOOT COURT COMPETITION

CONTENTS

1	Introduction
3	The Case
6	Unit 1: Is Transformation Possible?
21	Unit 2: Moving Beyond a Crime
35	Unit 3: Relating to the Past
55	Appendix of Contemporary Legal Material
61	Recommended Supplemental Reading
62	Student Leadership

Introduction

WHAT IS THE MAIMONIDES MOOT COURT COMPETITION?

The Maimonides Moot Court Competition is the premier program for students to grapple with contemporary ethics using Jewish legal wisdom. Our competitions are structured around a detailed case alongside a sourcebook of traditional and modern Jewish texts. Students construct arguments from the curated texts to address the questions presented by the case. Cases in recent years have addressed timely issues including tainted money, #MeToo, and artificial intelligence.

Maimonides Moot Court Competition is powered by the Hadar Institute, which builds egalitarian Jewish communities around Torah study, Jewish practice, and the values of kindness and compassion.

WHAT IS A BEIT DIN?

A *beit din* is a Jewish court of law that makes rulings in accordance with the *halakhic* system. *Halakha* is the collective body of Jewish law, including biblical law and rabbinic law, as well as customs and traditions. It is derived from the Hebrew root that means “to go” or “to walk”.

A typical *beit din* is comprised of three people with expertise in *halakha*. The role of the *beit din* is to apply *halakhic* precedent to the particular circumstances of the case to reach a ruling. A verdict is reached based on the majority opinion.

In the Maimonides Moot Court Competition, your team represents a *beit din* and you will be presented with a specific case. You will study the provided texts in the sourcebook to explore how Jewish tradition has approached the legal and ethical issues presented by the case. The aim is to study, discuss and defend a position—there is not one correct answer.

BEIT DIN CONSIDERATIONS

A foundation of the *halakhic* system is being able to hold multiple truths. As the Talmud writes about the conflicting opinions of the great rabbinic sages Hillel and Shammai, “these and those are the words of the living God.” (Talmud Bavli, Eiruv 13b)

There is a hierarchy of sources, with earlier sources carrying more weight. Sources from the Written Torah (also referred to as Tanakh) are the most authoritative. Within Tanakh, the five books of Moses—the contents of a Torah scroll—are most authoritative. Typically, later sources elucidate rather than dispute earlier resources. The power of later authorities stems from interpreting, clarifying and applying earlier texts, much as your team will be doing. Collectively, these post-biblical teachings and traditions are known as the Oral Torah.

This sourcebook contains texts spanning the full breadth of Jewish tradition; ancient and medieval texts are juxtaposed with contemporary perspectives from our present moment. A strong argument will engage these sources and bring them into conversation with one another. There are elements of the case that may inspire you to look beyond the texts in this sourcebook, and you are encouraged to support your argument with supplemental research.

1 “Thinking ‘beyond the box’: The use of criminal records in college admissions.”
Brooking Institution.
September 28, 2017

A NOTE ON SECOND CHANCES

Who deserves a second chance? This simple and timeless question deserves a closer look as it plays out in our modern lives in fascinating new ways. In an online culture in which information spreads virally and one’s digital footprint lasts forever, it behooves us to consider the significance of second chances—and the implications of a world in which they may no longer exist. How should we determine whether someone who did something wrong—or even criminal—deserves a chance at a fresh beginning?

This question arises in both personal and broader contexts: should we allow a person who betrayed our trust to regain it? What should the consequences be for an authority figure who speaks or acts inappropriately? Should someone who has been convicted of a crime have the opportunity to reclaim their integrity? When should the damage to someone’s reputation or employment be permanent?

The case this year addresses a particular type of second chance—for those with a criminal record who seek to enroll in a university. It is a question with far ranging implications around the globe. In the United States alone, research suggests that 120,000 student applicants each year have a criminal felony on their records¹. Should prospective students be required to disclose their past convictions in the application process, and if so, how should the university admissions committee evaluate their records?

The issue at stake is a fundamental moral question: to what extent should someone’s past wrongdoing dictate which doors remain open to them? Do we all deserve the opportunity to reclaim a clean slate, or can our behavior jeopardize that right? Does our responsibility to others require us to indefinitely hold people accountable for their wrongdoings?

In essential ways, Jewish legal and ethical tradition has been addressing questions around *teshuvah* (repentance) and second chances for many centuries. Approaching this moral dilemma through a lens of Jewish law and ethics can offer unique insight. We invite you to engage in the challenge of applying these texts to the realities of the 21st century.

Sincerely,

Yitzhak Bronstein

Director of Maimonides Moot Court Competition

1 “Education Department Pushes for Alternatives to Criminal History Questions in College Admissions.” Ed.Gov. May 9, 2016

2 The “box” refers to a check box on job applications that is to be marked if the applicant has a criminal record.

3 President Christopher Eisgruber of Princeton University as quoted in The Daily Princetonian on December 10, 2018.
[“CPUC addresses discipline proposals, Ban the Box again”](#)

The Case

“We believe in second chances and we believe in fairness.” U.S. Secretary of Education John King Jr. said the following when announcing an initiative in 2016 called “Beyond the Box,” which urged American colleges and universities “to remove barriers that can prevent the estimated 70 million citizens with criminal records from pursuing higher education.”¹ The initiative was inspired by the “Ban the Box”² campaign, a movement that advocates for the removal of questions around a candidate’s criminal history from job applications.

This question is highly relevant for university admissions committees, which routinely make decisions that can have a major effect on the trajectory of a person’s life. For those with a criminal record, a college degree can offer the rare opportunity for a fresh start. Numerous studies indicate that higher education reduces the rate of recidivism, decreasing the likelihood that a person will return to prison.

However, some universities stress the importance of knowing about applicants’ criminal histories and disciplinary backgrounds for safety reasons. As a university president explained: “we hold people accountable for the actions that they have taken... where there are possibilities that people may have engaged in serious kinds of wrongs, we’re not simply going to ignore that evidence.”³

For the most part, universities do not have blanket policies. Instead, they may take a number of factors into account, such as the severity of the crime, or the program to which a prospective student is applying. For example, the Criminal Records Review Act of British Columbia requires schools to collect criminal histories from students taking practicum courses where they will come into contact with children or vulnerable adults. The amount of time that has passed since a conviction is another factor that universities use to evaluate the criminal records of applicants.

Many universities utilize standardized applications such as the Common App platform, which is used by more than one million applicants in the United States each year. After a review process in 2017, Common App announced that it would retain its question about applicants’ criminal backgrounds, as well as the following question regarding disciplinary records:

“Have you ever been found responsible for a disciplinary violation at any educational institution you have attended from the 9th grade (or the international equivalent) forward, whether related to academic misconduct or behavioral misconduct, that resulted in a disciplinary action? These actions could include, but are not limited to: probation, suspension, removal, dismissal, or expulsion from the institution.”⁵

5 If one answers “yes”, then answering a second question is required:

“Please give the approximate date(s) of each incident, explain the circumstances and reflect on what you learned from the experience. (400 words)”

6 “‘Ban the Box’ Goes to College.” *The Atlantic*. June 4, 2016

Yet it reversed course the following year, deciding that while individual schools “will continue to be able to collect criminal history information on their individual member screens if they so choose,” the collection of criminal history information will be removed from the ‘common’ portion of the Common App. This new policy went into effect for the 2019-2020 application cycle.

Activists who argue for the removal of these questions highlight that requesting this type of information disproportionately holds back minority students. “Students of color are the most likely to be harmed by putting these questions on the application,” said Natalie Sokoloff, professor emerita of sociology at John Jay College of Criminal Justice. “These kinds of practices really are de facto forms of race-based discrimination, because people of color are disproportionately impacted by these policies.”⁶

This conversation around the appropriateness of these questions on university applications raises fundamental questions about criminal justice and the right of an individual to start anew after their sentence has been carried out. It also raises questions about whether societies have a responsibility to help such a person reintegrate into society, and whether restrictive policies can close the door on a person’s rehabilitation. Should a person who has committed a crime and served their punishment be seen as possessing a clean slate? How should a university weigh this value against other admissions criteria, such as campus safety? Ultimately, what is the significance of a disciplinary or criminal record, and how does it relate to the ethics of second chances?

The question up for debate this year is how—and whether—universities should consider the disciplinary backgrounds and criminal records of applicants during the admissions process.

The Question

Should prospective students be required to disclose information on their university applications about their disciplinary and/or criminal records? If so, how would you advise universities to phrase question(s) on this issue in line with Jewish legal and ethical tradition?



Source Sheets

Beyond the Box

UNIT 1 *Teshuvah: Is Transformation Possible?*

SESSION 1 *Teshuvah As a Pillar of the World*



MAIMONIDES
MOOT COURT COMPETITION

TESHUVAH IS AN ESSENTIAL PILLAR OF JEWISH LIFE. ALTHOUGH OFTEN TRANSLATED AS “repentance,” the Hebrew root of *teshuvah* signifies a process of *returning*. The Oxford dictionary defines repentance as to “feel or express sincere regret or remorse about one’s wrongdoing or sin.” These texts will explore the concept of *teshuvah*, and help us appreciate why it is better understood in its literal sense—as a process of *returning*. We will see how *teshuvah* has always been a core element of Jewish life, and how its significance has been understood over the course of many centuries. In doing so, we will consider how this impacts our understanding of criminal justice and how we relate to individuals who have been convicted of crimes.

1. Before looking at any of the sources, how might you understand *teshuvah* as a type of returning?
2. Contrast the literal meaning of *teshuvah* (returning) with the Oxford definition of “repentance.” How might these two words signify different processes or lead a person to different outcomes?
3. How might your answer to the question above impact the way we treat a person who is attempting to correct their mistakes?

PART I: THE NECESSITY OF TESHUVAH: WE ALL MAKE MISTAKES

In our exploration of *teshuvah*, we will first turn to Biblical texts and then proceed chronologically through Jewish history. Our first source is a fiery prophecy from Ezekiel which offers us a Biblical perspective on *teshuvah*.

SOURCE #1

יחזקאל יח:כ-כג

²⁰הַנֶּפֶשׁ הַחַטָּאת הִיא תָמוּת בָּהּ

לֹא יִשָּׂא אָבִיכָם אֶת חַטֹּאתֵיכֶם וְאִם לֹא

יִשָּׂא בָעֵינֶיךָ הַיָּשָׁר צְדָקָתְךָ הַצַּדִּיק

עָלָיו תִּהְיֶה וְרָשָׁעַת רָשָׁע

[הָרָשָׁע] עָלָיו תִּהְיֶה: (ס)

²¹וְהָרָשָׁע כִּי יָשׁוּב מִכָּל־חַטָּאתוֹ

Ezekiel 18:20-23

²⁰The person who transgresses, he alone shall die. A child

shall not share the burden of a parent’s guilt, nor shall a

parent share the burden of a child’s guilt; the righteousness

of the righteous shall be accounted to him alone, and the

wickedness of the wicked shall be accounted to him alone.

²¹Moreover, if the wicked one returns from the

o Ecclesiastes

Traditionally attributed to King Solomon, the book of Ecclesiastes (Kohelet) questions and explores the meaning of life. Kohelet is read in synagogues on the festival of Sukkot.

חַטָּאתָיו] אֲשֶׁר עָשָׂה וְשָׁמַר	<i>transgressions that he committed and keeps</i>
אֶת־כָּל־חֻקֹּתַי וְעָשָׂה מִשְׁפָּט	<i>all My laws and does what is just and right,</i>
וַיִּדְגֶּה חַיָּה וַיָּחֵה לֹא יָמוּת:	<i>he shall live; he shall not die. ²²None of</i>
כָּל־פְּשָׁעָיו אֲשֶׁר עָשָׂה לֹא ²²	<i>the transgressions he committed shall be</i>
יִזְכְּרוּ לוֹ בְּצַדִּיקָתוֹ	<i>remembered against him; because of the</i>
אֲשֶׁר־עָשָׂה יִחְיֶה:	<i>righteousness he has practiced, he shall live.</i>
הֲחִפְּץְךָ אֶחָפֶץ מוֹת רָשָׁע ²³	<i>²³ Is it my desire that a wicked person shall</i>
נָאֻם אֱדוּשֵׁם ה' הֲלוֹא בְּשׁוּבוֹ	<i>die?—says God. It is rather that he shall turn</i>
מִדְרָכָיו וַיִּחְיֶה:	<i>back from his ways and live.</i>

Explanation of Source #1

In this prophecy, Ezekiel explains that each person will be held accountable for their own behavior. Moreover, the possibility of *teshuvah* is not only present but *desirable* from God's perspective. God hopes that we perform *teshuvah* so that our transgressions will not be remembered or held against us.

Questions for Further Discussion

1. How would you describe the *teshuvah* process based on this text?
2. What does it mean in verse 22 that “none of the transgressions he committed shall be remembered against him?”
3. Are there crimes which do deserve to be remembered against the perpetrator?

The next source offers a Biblical perspective on human nature, which directly relates to our attitude towards *teshuvah* and second chances.

SOURCE #2

קֹהֶלֶת ז:כ	<i>Ecclesiastes 7:20^o</i>
²⁰ כִּי אָדָם אֵין צַדִּיק בְּאֶרֶץ אֲשֶׁר יַעֲשֶׂה־	<i>²⁰For there is no righteous person on earth</i>
טוֹב וְלֹא יַחֲטִיא:	<i>who does only good and never transgresses.</i>

◦ **Agaddic**

Agaddah refers to the non-legal portions of the Talmud, which includes folklore and historical anecdotes. *Agaddah* is in contrast to the sections of *halakha* (legal matter) in Rabbinic literature.

◦ **Baraita**

A *baraita* refers to teachings from the same time period as the Mishnah (approximately 0-200 CE) that were not included in the Mishnah. They are often cited in the Talmud to support or challenge a given position.

◦ **Gehinnom**

While the exact meaning of Gehinnom is unclear and a matter of dispute, many understand it is as a place of punishment parallel to the bliss of the Garden of Eden.

◦ **Throne Of Glory**

A vision of God sitting on a Throne of Glory is described by several Biblical prophets, such as in the opening chapter of Ezekiel,

Questions for Further Discussion

This verse in Kohelet (Ecclesiastes) suggests that human beings are inherently imperfect. We all make mistakes; we all break the rules at some point, according to this verse.

1. *Does this align with your own experience? Is this how you relate to yourself, or to others?*
2. *Should this impact how we treat someone who has committed a crime, and if so, how?*

The next text is an *agaddic*[◦] portion of the Talmud, which describes the creation of several phenomena before the world came into existence. The inclusion of *teshuvah* on this list will have ramifications for how we understand its place in the world.

*SOURCE #3

תלמוד בבלי נדרים דף לט עמוד ב

תניא שבעה דברים

נבראו קודם שנברא

העולם אלו הן תורה

ותשובה גן עדן וגיהנם

כסא הכבוד ובית

המקדש ושמו של משיח

Talmud Bavli Nedarim 39b

It is taught in a baraita:[◦] Seven phenomena

were created before the world was created,

and they are: Torah, and teshuvah, the Garden

of Eden, and Gehinnom,[◦] the Throne of Glory,

and the Holy Temple (beit ha'mikdash), and

the name of the Messiah.

Questions for Further Discussion

In this intriguing Talmudic passage, there are seven phenomena described as being created before the world. Notably for our purposes, *teshuvah* is included on this list.

1. *What do you think the Talmud means when it says there were phenomena created before the world?*
2. *What does it imply about teshuvah that it is included on this list?*

Summary: Part I

In Part I, we have seen *teshuvah* presented as a fact of life. The Talmud went so far as to describe *teshuvah* as being in existence before the world, implying that any understanding of what it means to be a human being must take *teshuvah* into account. In the next section, we will explore a medieval understanding of *teshuvah* through the position of Maimonides.

which plays an important role in the development of Jewish mysticism.

○ Guide For The Perplexed

Rambam (Maimonides) is an acronym for Rabbi Moses ben Maimon who lived in Spain and Egypt (1135-1204). His two most significant works are (1) *Mishneh Torah*, a comprehensive codification of Jewish law from the Talmud, and (2) *The Guide to the Perplexed*, one of the most influential works of Jewish philosophy ever written. The Guide's ongoing relevance to Jewish life is reflected in the next source, a modern commentary on the book written by Israeli philosopher Dr. Micah Goodman, which was a bestselling book in Israel upon publication.

PART II: TESHUVAH AND FREE CHOICE

This next passage, from Maimonides' *Guide for the Perplexed*, explores the significance of *teshuvah* and its relationship with free choice.

SOURCE #4

מורה נבוכים, חלק ג:לו
ומבואר הוא שה"תשובה" גם
כן מזה הכלל – רצוני לומר
מן הדעות אשר לא יסודר
מציאות אנשי התורה אלא
בהאמין אותם – שאי אפשר
לשום אדם שלא יחטא ויפשע
אם שיסכול בדעת שיבחרהו
או מדה והיא בלתי נבחרת
באמת או לתגבורת תאוה או
כעס; ולו האמין האדם שלא
יוכל לתקן זה המעות לעולם
היה מתמיד על טעותו ואפשר
שהיה מוסיף במריו אחר
שלא נשארה לו תחבולה;
אך עם אמונת התשובה
יתקן וישוב לטוב שבענינים
ויותר שלם ממה שהיה קודם
שיחטא.

Guide for the Perplexed^o 3:36 (Maimonides)

It should be understood that teshuvah also belongs in this group of ideas without which followers of the Torah cannot be well-grounded, unless one believes in them. For it is impossible for any person not to sin, either through ignorance—by professing an opinion or a moral quality that is not preferable in truth—or else because he is overcome by desire and anger. If then the individual believed that the fracture can never be repaired, he would persist in his error, and perhaps disobey even more because of the fact that no tool remains at his disposal. If, however, he believes in teshuvah, he can correct himself and return to a better and more complete state than the one he was in before he sinned.

Explanation of Source #4

Rambam, echoing the verse above from *Kohelet*, writes that it is inevitable that human beings will make mistakes. The belief in *teshuvah* is what motivates a person to learn from their errors and correct oneself. For Rambam, it is the *belief* in the ability to right one's wrongs that leads a person to change their ways. Even more

boldly, Rambam states that an individual will become even more *shalem* (whole, complete) after having done *teshuvah* than one was before having sinned.

Questions for Further Discussion

1. *How might the belief in teshuvah motivate a person to correct their wrongs?*
2. *Why do you think the Rambam claims that one reaches a “better and more complete state” after the process of teshuvah than before one sins?*
3. *What steps do you think are necessary for the teshuvah process to bring someone to a higher level than before they sinned?*

The following paragraph comes from Dr. Micah Goodman’s recent book on *The Guide for the Perplexed*. He comments on the selection above, offering an important insight about its placement in the Guide.

SOURCE #5

Dr. Micah Goodman, *Maimonides and the Book That Changed Judaism* (2015)

*Another belief that the Torah attempted to entrench in human consciousness was faith in human beings. The Torah teaches that human beings have free choice. People do not merely chart their own course in life; they also mold their own personalities. We are not entrapped by our habits or by life’s circumstances. Instead, we have the power to free ourselves from all of these and create ourselves anew. In Jewish tradition, this power is called **teshuvah**. A condition for doing **teshuvah**, according to the Rambam, is belief in **teshuvah**. Someone who does not believe that he can change his basic patterns of behavior or the structure of his personality will never succeed in doing so.*

*The Rambam locates his discussion of the **mitzvah** of **teshuvah** in the *Guide* in a surprising place: next to those commandments that he describes in the “Laws of Foundations of the Torah” (the first section of *Mishneh Torah*). That is to say, besides all of the theological claims that we are meant to believe in relation to God, **teshuvah** is the vital belief that we need to have about the potential for improvement and repair in relation to man. Faith in **Teshuvah** is also established not merely by words and declarations, but through ceremonies and deeds.*

Questions for Further Discussion

Dr. Micah Goodman notes that Maimonides includes *teshuvah* adjacent to his discussion of Judaism's most important theological claims. In doing so, Maimonides is making a strong statement about the importance of *teshuvah* as a fundamental pillar of Jewish belief.

1. *Why do you think Maimonides considers teshuvah to be of such great importance?*
2. *Have you ever felt transformed by the teshuvah process? If not, what have been some obstacles towards achieving "better and more complete state" as Maimonides described?*

Summary: Part II

In this section, we have seen how *teshuvah* occupies a key place in the philosophy of Maimonides. For Maimonides, the belief in *teshuvah* is inseparable from believing in free choice and an indispensable pillar of Judaism.

○ Take a Step Back ○

1. *After learning these texts, what is the significance of understanding teshuvah as a process of returning?*
2. *What teaching around the idea of teshuvah was most compelling to you? Was there anything challenging to accept?*
3. *Given this understanding of teshuvah, does it impact the way in which you think college admissions committees should take someone's criminal record into account? If so, how?*

Beyond the Box



MAIMONIDES
MOOT COURT COMPETITION

UNIT 1 *Teshuvah: Is Transformation Possible?*

SESSION 2 *Teshuvah As Human Imperative*

○ Emulate God

As the opening verse in parashat Kedoshim states, “You shall be holy, since I, your God, am holy.” (Leviticus 19:2)

דְּבַר אֱלֹהִים-כָּל-עֵדוּת
בְּיַיִשְׂרָאֵל וְאִמְרַת
אֱלֹהִים קְדוֹשִׁים תִּהְיֶה
כִּי קְדוֹשׁ אֲנִי ה'
אֱלֹהֵיכֶם
(ויקרא י"ט:ב')

○ “I Will Adorn [God]”

In his commentary on this passage, Rashi explains that Abba Shaul reads the word ואנוהו (I will adorn Him) as two distinct words והוא אני (I and God). From here, Abba Shaul derives that one must cling to God's ways.

IN THE PREVIOUS SOURCES, WE EXPLORED *TESHUVAH* AS SOMETHING which is built into the fabric of the world. However, *teshuvah* does not only take place internally, or between an individual and God. A core idea in the Torah is that we should emulate God.^o Given the imperative of imitating God's ways, these sources will explore what type of responsibility, if any, we have to those who are on the path of *teshuvah*.

1. What might it mean to emulate God when it comes to *teshuvah*?
2. Should *teshuvah* always be accepted? Are there situations where *teshuvah* should not be granted?

These sources make a connection between the imperative to imitate God and how we should approach granting *teshuvah* to those who have wronged us. In this opening passage from the Talmud, Abba Shaul sheds light on what it means to walk in God's ways.

SOURCE #1

תלמוד בבלי שבת דף קלג
עמוד ב

אבא שאול אומר

ואנוהו הוי דומה לו מה

הוא חנון ורחום אף

אתה היה חנון ורחום

Talmud Bavli Shabbat 133b

Abba Shaul says: “I will adorn [God]”^o

(Exodus 15:2). Be similar to God: Just as God

is compassionate and merciful, so too should

you be compassionate and merciful.

Explanation of Source #1

Abba Shaul teaches us that walking in God's path means emulating God's characteristics. First and foremost, this calls for us to treat others with compassion and mercy, just as God does.

Questions for Further Discussion

1. How does this imperative to be compassionate and merciful relate to accepting someone's teshuvah?
2. Should there be limits to one's compassion and mercy? If so, when?

In light of the Talmudic passage above in which we are called to emulate God's mercy, we will turn to another passage from the Talmud. In reading the story, try to understand the anecdote about Rabbi Meir through a lens of imitating God.

SOURCE #2

תלמוד בבלי ברכות דף י עמוד א
הנהו בריוני דהו בִּשְׁבֻּתִּיה דְּרַבִּי
מֵאִיר וְהוּא קָא מְצַעְרוּ לֵיה טוּבָא.
הָהּ קָא בְּעֵי רַבִּי מֵאִיר רַחֲמֵי
עֲלוֹהֵהוּ כִּי הִכִּי דְלִימוּתוֹ. אָמְרָה
לֵיה בְּרוּרְיָא דְּבִיתָהּ: מַאי דַּעְתָּךְ
— מִשּׁוּם דְּכָתִיב "יִתְמוּ חַטָּאִים",
מִי כָתִיב "חֹטְאִים"? "חַטָּאִים"
כָּתִיב. וְעוֹד, שְׁפִיל לְסִיפִיה דְּקָרָא
"וְרָשָׁעִים עוֹד אֵינָם", כִּיּוֹן דְּ"יִתְמוּ
חַטָּאִים" "וְרָשָׁעִים עוֹד אֵינָם"?
אֵלָּא בְּעֵי רַחֲמֵי עֲלוֹהֵהוּ דְּלִהְדָּרוּ
בְּתִשּׁוּבָה, "וְרָשָׁעִים עוֹד אֵינָם".
בְּעָא רַחֲמֵי עֲלוֹהֵהוּ, וְהָדְרוּ
בְּתִשּׁוּבָה.

Talmud Bavli Berakhot 10a

There were hooligans in Rabbi Meir's neighborhood who caused him a great deal of anguish. Rabbi Meir prayed for God to have mercy on him, that they should die. Berurya, Rabbi Meir's wife, said to him: What were you thinking? If you base yourself on the verse: "Let sins cease from the land" (Psalms 104:35)—is it written, let sinners cease?" Let sins cease, it is written! Moreover, go to the end of the verse, where it says: "And the wicked will be no more." If, as you suggest, "sins shall cease" refers to the demise of the evildoers, how is it possible that "the wicked will be no more"? Rather, pray for God to have mercy on them, that they should repent, and then "the wicked will be no more." Rabbi Meir prayed for God to have mercy on them, and they did teshuvah.

Explanation of Source #2

While Rabbi Meir initially prays for the demise of those who were antagonizing him, Berurya corrects his behavior and instructs Rabbi Meir to instead pray for God to have mercy on their behalf.

Questions for Further Discussion

1. How would you describe Berurya's criticism of Rabbi Meir? Do you agree with it?

Left Hand

In rabbinic literature, the right hand is a symbol of strength and the left hand is a symbol of weakness.

Mishneh

Torah, Laws of Repentance

Mishneh Torah is a comprehensive codification of Jewish law from the Talmud. Interestingly, there is no tractate in the Talmud which organizes the passages on the theme of Teshuvah. As such, these Laws of Repentance are considered a foundational Jewish text and are the subject of many commentaries. Some have the custom to study these ten chapters of the Mishneh Torah to prepare oneself for the High Holy Days.

2. Beyond prayer on their behalf, are there other ways one can express mercy on those who are acting inappropriately?
3. Are there situations in which this type of mercy is unwarranted?

The following ruling in the Talmud further explores the relationship between mercy and *teshuvah*

SOURCE #3

תלמוד בבלי סנהדרין

דף קז עמוד ב

תנו רבנן לעולם תהא

שמאל דוחה וימין

מקרבת

Talmud Bavli Sanhedrin 107b

The Sages taught: Always have the left hand^o

push [sinners] away and the right hand draw

them close.

Explanation of Source #3

In confronting someone behaving inappropriately, we may feel a conflicting tendency: part of us may want to bring the person closer, and another part of us may want to push them away. The Sages acknowledge that while we may feel this tension, our primary energy (our right hand) should be used to pull people closer to us.

Questions for Further Discussion

1. Does this teaching relate to the story of Rabbi Meir and Berurya above? If so, how?
2. Have you ever felt this tension between wanting to bring someone close while simultaneously wanting to push them away?
3. How might it relate to punishing someone who committed a crime?

Our final source is from a key section in Maimonides' Laws of Repentance. In this passage, Maimonides concretizes some of the themes above into guidelines around accepting *teshuvah* from someone who seeks forgiveness.

SOURCE #4

משנה תורה, הלכות תשובה ב:י

אסור לאדם להיות אכזרי

ולא יתפייס אלא יתא נוח

Mishneh Torah, Laws of Repentance 2:10^o

It is forbidden for a person to be cruel and refuse

to be appeased. Rather, one should be easily

לְרִצּוֹת וְקוֹשָׁה לְכַעַס וּבִשְׂעָה שְׂמִיבִקֵּשׁ מִמֶּנּוּ הַחוּטָא לְמַחֵל מוֹחֵל בְּלֵב שָׁלֵם וּבִנְפֹשׁ חֲפִצָּה. וְאַפְלוּ הֵצִיר לוֹ וְחָטָא לוֹ הִרְבֵּה לֹא יָקָם וְלֹא יִטֹּר. וְזֶהוּ דֶּרֶכָם שֶׁל יִרְעֵי יִשְׂרָאֵל וְלִבָּם הַנָּכוֹן. אֲבָל הָעוֹבְדֵי כּוֹכָבִים עָרְלִי לֵב אֵינָן כֵּן אֵלָּא (וְעִבְרָתוֹ) [וְעִבְרָתוֹ] שְׂמָרָה נֶצַח.	<i>pacified, but hard to anger. When the person who wronged him asks for forgiveness, he should forgive him with a complete heart and a willing spirit. Even if he aggravated and wronged him severely, he should not seek revenge or bear a grudge. This is the path of the seed of Israel and their upright spirit. In contrast, the idolaters do not act in this manner. Rather, their wrath is held onto forever.</i>
---	---

Explanation of Source #4

According to Maimonides, it is considered cruel to refuse to forgive someone who asks for forgiveness. He sees this willingness to forgive others as a defining characteristic of the Jewish people as described in the Torah, in contrast to their Biblical foes who bore a grudge and refused to be appeased.

Questions for Further Discussion

1. *Why does Maimonides place the willingness to forgive a person on such a high pedestal?*
2. *In your own experience, is this a realistic expectation? What is most challenging about this requirement?*
3. *What does it mean to truly forgive someone “with a complete heart and a willing spirit?” Have you ever done so?*

Take a Step Back

In this section, we have discussed the Talmudic principle which calls on us to emulate God, particularly with respect to God’s mercy and compassion. In this vein, just as God is forgiving, so too we are called to be forgiving. Maimonides sees this as a defining feature of Jewish character.

1. *What is most challenging about embodying mercy and compassion to grant someone forgiveness?*
2. *How do these sources relate to how we view criminal justice? To what extent should we apply these guidelines to be merciful and compassionate after someone has been convicted of a crime?*
3. *How may this relate to our case around criminal records and university admissions?*

Beyond the Box



MAIMONIDES
MOOT COURT COMPETITION

UNIT 1 *Teshuvah: Is Transformation Possible?*
SESSION 3 *Is It Ever Too Late?*

◦ **Yom Kippur**
Will Atone

The verse in Leviticus describes the observance of Yom Kippur as follows:
“For on this day God shall atone for you, to purify you. Before God, you shall be cleansed from all your sins.”
(Leviticus 16:30)

כִּי־בַיּוֹם הַזֶּה
יִכָּפֵר עֲלֵיכֶם
לְטָהֵר אֶתְכֶם
מִכָּל חַטָּאתֵיכֶם
לִפְנֵי ה' תִּטְהָרוּ:
(ויקרא ט"ז:ל)

IN THE FIRST TWO SECTIONS, WE EXPLORED THE SIGNIFICANCE OF *TESHUVAH* and the importance of receiving second chances. However, it is crucial to raise a question about the potential limits of *teshuvah*: is it ever too late? Is there a point where *teshuvah* is no longer possible and receiving a fresh start is no longer in the cards? If so, when?

Before moving on to the sources, take a few minutes to consider the following questions: Are there potential risks in affording everyone a second chance? What factors do you think should be considered when deciding whether or not someone should restart with a completely clean slate after performing *teshuvah*?

The sources below will discuss these questions in relation to two factors. The first section deals with the *intention* of the person who commits the transgression, and will explore whether the individual's perspective when committing a transgression affects their *teshuvah* process. The second section deals with the *severity* of the transgression and explores whether certain crimes result in permanent consequences.

PART I: SINNING WITH THE INTENTION TO REPENT

Our first source begins with describing two instances where *teshuvah* is not possible, relating to the person's intention while committing their transgressions.

SOURCE #1

משנה יומא ח:ט	<i>Mishnah Yoma 8:9</i>
הָאוֹמֵר, אֶחָטָא וְאָשׁוּב, אֶחָטָא	One who says, “I shall sin and repent,
וְאָשׁוּב, אֵין מִסְפִּיקִין בְּיָדוֹ	sin and repent,” does not have the
לַעֲשׂוֹת תְּשׁוּבָה. אֶחָטָא וַיּוֹם	opportunity to repent. “I shall sin and
הַכִּפּוּרִים מְכַפֵּר, אֵין יוֹם	Yom Kippur will atone ^o for me,” Yom
הַכִּפּוּרִים מְכַפֵּר.	Kippur does not atone.

City of Refuge

The Torah in the book of Bamidbar (Numbers 35) details the mitzvah to establish six “Cities of Refuge.” If a person kills someone else unintentionally, they can seek asylum in a city of refuge. Outside of these cities, the relatives of the deceased had the legal authority to take vengeance on the killer. Upon the death of the High Priest (Kohen Gadol), the killer is allowed to move out of the City of Refuge and reintegrate into society without fear of reprisal.

Questions for Further Discussion

1. Why is teshuvah not possible for someone who says “I shall sin and repent?”
2. What does the mishnah mean that the individual “does not have the opportunity to repent?”
3. How can we understand this mishnah in light of earlier sources we have explored which emphasized that teshuvah is seemingly always possible?

In the source above, we discussed how the intention of the person committing the transgression can affect the *teshuvah* process. Now, we will explore whether the severity of the transgression must also be taken into account before a person can receive a clean slate.

PART II: RETURNING TO A POSITION OF AUTHORITY

The following mishnah describes what happens to an accidental killer upon their return from a City of Refuge.⁹ In particular, it will cite a dispute whether this individual, upon moving back home, is able to return to a position of authority which they previously held.

SOURCE #2

משנה מכות ב:ח	Mishnah Makkot 2:8
רוצח שגלה לעיר	An accidental killer who went to his city of his
מקלטו... וחזר לשורה	refuge... upon his return home, he returns to
שורה בה, דברי רבי מאיר.	the office he formerly held, according to Rabbi
רבי יהודה אומר, לא הנה	Meir. Rabbi Yehudah says: “He does not return
חזר לשורה שורה בה:	to the office he formerly held.”

Explanation of Source #2

This mishnah cites a disagreement (*mahloket*) between Rabbi Meir and Rabbi Yehudah about whether this person can return to their previous position. This dispute raises very important questions about whether there are limitations to receiving a clean slate after committing certain serious transgressions.

Questions for Further Discussion

1. What do you think underlies this mahloket between Rabbi Meir and Rabbi Yehudah? Why does Rabbi Yehudah draw a red line about returning to a position of authority after returning from the City of Refuge?

○ Ritva

Rabbi Yom Tov ibn Asevilla (13th-14th century), known by the Hebrew acronym “Ritva,” was a rabbi and head of a Beit Din in Spain. In addition to his popular commentaries on the Talmud which are frequently studied in yeshivas throughout the world, Ritva also explored philosophical works such as Maimonides’ The Guide to the Perplexed.

2. *This mahloket refers to an instance where somebody killed someone else unintentionally. What do you think Rabbi Meir and Rabbi Yehudah would each say if the person had committed a less serious crime? What about a more serious crime?*

The dispute above is essential to our discussion but is somewhat ambiguous. The following source is a commentary which clarifies the nature of this dispute between Rabbi Meir and Rabbi Yehudah. *Ritva* will explain that this dispute is limited to a particular type of case.

*SOURCE #3

ריטב"א על מכות יג.	<i>Ritva^o on Makkot 13a</i>
ודכולי עלמא אם לא	<i>Everyone [both Rabbi Meir and Rabbi Yehudah] agrees</i>
הוחזק הוא ולא אבותיו	<i>that if the individual did not have an established</i>
אין מחזיקין אותו עתה	<i>position, then now [upon returning from the city of</i>
אפילו למנוייה ריש	<i>refuge], we would not even appoint the person to be</i>
גרגותא ואע"פ שהרג	<i>an irrigation manager. And this, even though he had</i>
בשוגג וכ"ש שאין	<i>killed someone accidentally. Certainly if he had killed</i>
ממנין בשום מינוי למי	<i>someone intentionally, we would not appoint the</i>
שהרג במזי."	<i>person to any position of authority.</i>

Explanation of Source #3

Ritva explains that the dispute above between Rabbi Meir and Rabbi Yehudah involves a case with two criteria. One, it only relates to whether a person can be *reinstated* to a certain position they held before the accidental murder. However, such a person would never receive a *new* position of authority they had not previously held. Second, this discussion only applies to an accidental murder. In a case of an intentional murder, they can no longer receive any type of appointment under any circumstances.

Questions for Further Discussion

1. *Do you agree with Ritva’s reading of the mahloket between Rabbi Meir and Rabbi Yehudah? Is this how you understood their disagreement?*
2. *What is the significance of whether it is a new position of authority, or a position previously held by the person?*
3. *Would you consider being accepted into a prestigious university to be a position of authority? Why or why not?*

In the final source, Maimonides rules on this dispute between Rabbi Meir and Rabbi Yehudah.

SOURCE #4

משנה תורה, הלכות רוצח ושמירת
נפש ז:יג-יד

¹³רוצח ששב לעירו אחר מות
הכהן הגדול. הרי הוא כשאר כל
אדם...

Mishneh Torah, Murder and the Preservation of Life
7:13-14

¹³An unintentional killer who returned to his town, after
the death of the high priest should be regarded as any
other person...

¹⁴אף על פי שנתכפר לו אינו חוזר

לשפירה שהיה בה לעולם. אלא
הרי הוא מורד מגדלתו כל ימיו
הואיל ובאה תקלה זו הגדולה על
ידו:

¹⁴Even though he had obtained atonement, he could
never come back to a public office held by him previously.
He is lowered from his stature for the remainder of his
life, because such a significant failing occurred through
him.

Explanation of Source #4

Maimonides rules that this individual, upon returning to their home from the City of Refuge, should be treated “as any other person.” On the other hand, Maimonides rules that the person cannot return to their position of authority, as Rabbi Yehudah ruled in the mishnah above.

Questions for Further Discussion

1. How would you describe this balance that Maimonides is suggesting? Do you think it is fair?
2. Should this discussion only apply only to cases of accidental murder, or should it be applied to other transgressions as well? If we extend this principle to other transgressions, how should we decide whether a person can receive a position of authority after having served their punishment?
3. Does this balance between being “regarded as any other person” while at the same time being disallowed from positions of authority relate to our case?

Reflection: Unit 1

In the opening three sessions of the course, we have studied a number of texts on the theme of *teshuvah*. We have seen how *teshuvah* has been built into the fabric of the world and is an essential pillar of Jewish life. Furthermore, we have seen that *teshuvah* is not only something in the hands of God, but something we as human beings are instructed to emulate. Lastly, we have seen that there are limitations, at least when it comes to certain serious actions, regarding a person’s ability to regain the status they had before committing the offense.

Take a Step Back

In reflecting on the unit as a whole, let us return to our original questions.

1. *How would you articulate the meaning of teshuvah as a process of returning?*
2. *Are there tangible ways in which this should impact how we relate to someone who has been convicted of a crime?*
3. *How do these texts inform whether we should go “beyond the box” and remove the question about criminal histories from college applications?*

Beyond the Box



MAIMONIDES
MOOT COURT COMPETITION

UNIT 2 Rehabilitation: Moving Beyond Crime

SESSION 4 The Case of the Stolen Beam (תקנת השבין)

◦ Leviticus 5:23

The verse in full reads as follows: "It shall be, when he has sinned and is guilty, that he shall return the article which he had robbed, or the funds which he had withheld, or the item which had been deposited with him, or the article which he had found."

והיה כִּי־יחטא
ואשם והשיב
את־הגזלה אשר
גזל או את־העשק
אשר עשק או את־
הפקדון אשר הפקד
אתו או את־האבדה
אשר מצא

◦ Beit Shammai and Beit Hillel

Hillel and Shammai were two of the leading sages who lived during the last century BCE and the early 1st century CE. Beit Shammai and Beit Hillel (the "houses" of Shammai and Hillel) were two schools of thought

THE FOLLOWING UNIT EXPLORES THE REHABILITATION PROCESS AFTER one has committed various types of transgressions, crimes, or untrustworthy behavior. How should we view the process of reintegrating such a person into society? How can they regain our trust? What factors must be considered before offering such an individual a second chance? The upcoming three sections will explore these questions and more, as we develop a framework for understanding what rehabilitation is all about and who it involves.

We will examine a number of ways in which halakhic authorities prioritized making the rehabilitation process as smooth as possible. However, we will also see instances in which stringencies were put in place before accepting certain individuals back into a community or a particular role. In this vein, the first two sources below deal with a thief who later seeks to repent, and the third source involves a priest (*kohen*) who seeks to reintegrate into his Jewish community after converting to Christianity.

PART I: RETURNING THE STOLEN BEAM

If one steals an item and later wants to make amends, then according to Biblical law (Leviticus 5:23^o) one must return the stolen item to the person from which it was stolen. The following dispute between Beit Shammai and Beit Hillel^o discusses a situation where, due to a later action taken by the thief, the process of returning the stolen item would be very costly. What happens in such circumstances? Does the actual stolen item still need to be returned?

SOURCE #1

תלמוד בבלי גיטין	<i>Talmud Bavli Gittin 55a</i>
דף נה עמוד א	
תנו רבנן גזל מריש ובנאו	<i>The Sages taught: If one stole a beam and</i>
בבירה ב"ש אומרים	<i>built it into a building, Beit Shammai say: He</i>
מקעקע כל הבירה כולה	<i>must destroy the entire building and return</i>

named after the sages. The Talmud records hundreds of disputes between their schools. While Hillel is known for his gentleness and concern for humanity, Shammai is associated with strictness and the firm letter of the law; the passage below is an illustration of this norm. Typically, the halakha was decided according to the view of Hillel.

In Pirkei Avot (5:17), the disputes between Hillel and Shammai are regarded as the paradigmatic examples of "disputes for the sake of heaven" which are destined to endure.

ומחזיר מריש לבעליו	<i>the beam to its owner. Beit Hillel say: The injured</i>
וב"ה אומרים אין לו	<i>party receives only the value of the beam but not</i>
אלא דמי מריש בלבד	<i>the beam itself, due to an ordinance instituted for</i>
משום תקנת השבין.	<i>those doing teshuvah.</i>

Explanation of Source #1

In the above case, a person stole a beam and subsequently built it into a building—and now this person wants to repent. Beit Shammai says they are required to dismantle the building and return the beam, presumably based on the verse in Leviticus cited above which states that the stolen item must be returned. However, Beit Hillel is lenient on the individual who stole the beam, and rules that it is sufficient to return the *value* of the beam. Their explanation is that this decree is intended for the sake of those doing *teshuvah*.

Questions for Further Discussion

1. *What do you think underlies the dispute between Beit Shammai and Beit Hillel? What values are they each prioritizing?*
2. *What does Beit Hillel mean by making this ruling for the sake of those doing teshuvah?*
3. *Are there situations other than theft where applying an ordinance for the sake of teshuvah could apply? If so, where?*

...explanation continues

The Mishnah (Gittin 5:5) rules in accordance with Beit Hillel, that it is sufficient to return the value of the beam. Even though on some level the stolen beam itself *should* be returned, doing so would make the *teshuvah* process more difficult and therefore less likely. Seemingly, underlying this position is a desire to make the *teshuvah* process less onerous. This compels us to consider where else this sensibility towards lightening the potential burdens of *teshuvah* could be applied.

The following text is another instance in the Talmud where a decree for the sake of those performing *teshuvah* is utilized. Whereas the text above dealt with lessening the burden on the one who *stole*, the following text will address how the person who was robbed from is called upon to make the *teshuvah* process more feasible—even at their own expense.

○ Usurers

The prohibition against charging interest on loans appears multiple times in Torah. For example, see Exodus 22:24, Leviticus 25:36, and Deuteronomy 23:20. The severity of the prohibition is reflected in the way this passage links one who charges interest with one who steals.

SOURCE #2

תלמוד בבלי בבא קמא דף צד עמוד ב

תנו רבנן הגזלנין ומלווי
ברבית שהחזירו אין
מקבלין מהן והמקבל
מהן אין רוח חכמים נוחה
הימנו אמר רבי יוחנן
בימי רבי נשנית משנה זו
דתניא מעשה באדם אחד
שבקש לעשות תשובה
א"ל אשתו ריקה אם
אתה עושה תשובה אפילו
אבנט אינו שלך ונמנע ולא
עשה תשובה באותה שעה
אמרו הגזלנין ומלווי רביות
שהחזירו אין מקבלין מהם
והמקבל מהם אין רוח
חכמים נוחה הימנו.

Talmud Bavli Bava Kamma 94b

The Sages taught: With regard to robbers or usurers^o that seek to return [the stolen item or the interest], one should not accept it from them. With regard to one who does accept it from them, the Sages are displeased with him. Rabbi Yohanan says: it was taught in the days of Rabbi Yehudah HaNasi: There was an incident regarding one who desired to repent. His wife said to him: "Empty one, if you repent then even the belt that you are wearing is not yours." He refrained and did not repent. At that time, the Sages said: With regard to robbers or usurers that seek to return [the stolen item or the interest], one should not accept it from them. Concerning one who does accept it from them, the Sages are displeased with him.

Explanation of Source #2

The Talmud rules that when an individual aims to return a stolen object or ill-gotten money they received from charging interest, the other person should not accept it back. In stating how this ruling came to be, the Talmud tells a story of an individual who stopped doing *teshuvah* after realizing that the cost of returning all of his stolen possessions would be prohibitively expensive. Consequently, the Sages ruled that one should not accept back ill-gotten interest or stolen goods, so that the perpetrator will be more likely to do *teshuvah*.

Questions for Further Discussion

1. *Why do the Sages rule that one should not accept a stolen item which a thief seeks to return?*

○ Rebbeinu Gershom

Gershom ben Judah (c. 960 -1040) was a leading halakhic authority for the Jews of Mainz, as Ashkenazi Jewish life became more independent from the Jewish communities in Spain and Babylonia. Rabbeinu Gershom lived during a time of severe Jewish persecution. He ruled leniently regarding individuals who converted to Christianity who afterwards sought to return to Jewish life, as we will see in the following responsa.

○ First Aliyah

Traditionally a kohen is called up for the first blessing when the Torah is read in synagogues.

○ Furthermore

Rabbeinu Gershom brings an additional support for his position that the Kohen should be accepted based on the principle of "oppressive language" (אונאת דברים) which will be discussed more thoroughly later in the sourcebook. This prohibition

2. How does this passage relate to the case of the stolen beam? What value(s) underlie both texts?
3. Why is the Talmud interested in making the teshuvah process easier on the perpetrator?

The third and final text is a responsum of Rabbeinu Gershom.^o The question posed to him is about a *kohen* (priest) who converted to Christianity and later performed *teshuvah*. The *kohen* now seeks to reintegrate into the Jewish community. Is such a person allowed to perform priestly rituals and receive the honors granted to a *kohen*? While reading Rabbeinu Gershom's reply, consider how it relates to the two Talmudic passages

SOURCE #3

מתחזר ויטרי, הלכות שבת קכ"ה

ותשובה לשואלי על עסק
כהן שנשתמד ועשה תשובה.
אם ראוי לישא כפיו.
ולקרות בתורה תחילה או לא:

כך דעתי נוטה...כיון

שעשה תשובה ראוי לעלות

לדוכן ולישא את כפיו

ואע"ג דכת' "וקדשתו"

...כיון שחזר חזרה בו

קדושתו... "שובו אלי

ואשובה אליכם." וכיון

ששב קבלו המקום

ומסכים על ידו בברכתו...

ועוד נמצאת אתה מרפה

ידיהם של בעלי תשובה. ולא

נכון לעשות כן. דא"ר יוחנן

Mahzor Vitry, Laws of Shabbat 125

My answer to the one who asked whether a priest
(*kohen*) who apostatized and then repented is fit to
perform the priestly blessing or to be called up to the
Torah for the first *aliyah*,^o or not.

My opinion is... since he performed *teshuvah* it

is proper that he be called up for the priestly

blessing, even though the verse says that

such a person needs to be "sanctified."...Since

he returned [to Jewish practice], he is to be

considered sanctified...As the verse states:

"Return to me and I will return to you" (Malachi

3:7). Since he has done *teshuvah*, God accepts

him and offers blessing through him...

Furthermore^o [were he not to resume his priestly

roles] we would be discouraging him from performing

teshuvah. And it is not proper to do this. As Rabbi

against certain types of hurtful language includes reminding a person of their past sins.

Menashe

This is referencing the Talmud Bavli (Sanhedrin 103a). Menashe is a king of Judah described in the book of Kings as an idolater. He later repents. Rabbi Yohanan's teaching was that one should not say Menashe lost his portion in the World to Come, since this would discourage others from doing teshuvah. The concern of Rabbi Yohanan is that people would be less likely to do teshuvah if they felt their low spiritual standing could not be remedied.

כל האומר מנשה (חטא)	Yohanan taught, “whoever says Menashe ^o has no
אין לו חלק לעולם הבא...	portion in the world to come [will discourage others from
ואם תאמר לא יעלה לדוכן	performing teshuvah]”... If you will say that he cannot
ולא יקרא בתורה תחילה	perform the priestly blessing or get called up to the Torah
מהרהר בלבו לשמרו.	for the first portion, he may rethink his decision. He
ואו' אוי לה לאותה בוש.	will say, “Woe is to me for this embarrassment, woe is
אוי לה לאותה כלימה.	to me for this shame.” This will prevent him from doing
וימנע מעשות תשובה	teshuvah.

Explanation of Source #3

In replying to the question about a *kohen* who had converted to Christianity and later performed *teshuvah*, Rabbeinu Gershom ruled that the community should accept him wholeheartedly as a full-fledged *kohen*—even though the Torah requires a high level of sanctity for the *kohen*'s role. In addition to bringing support from Torah verses about the efficacy of *teshuvah*, a key part of his reasoning is that if he was disallowed from serving as a *kohen*, the future embarrassment of being excluded would prevent the *kohen* from doing *teshuvah*. In other words, Rabbeinu Gershom reasoned that this person would be less likely to perform *teshuvah* if he knew that his *kohen* status was permanently lost. In order to avoid an outcome where this *kohen* would be discouraged from performing *teshuvah*, Rabbeinu Gershom ruled that the community should accept him with open arms and grant him *kohen* status.

Questions for Further Discussion

1. What value(s) seem to be motivating Rabbeinu Gershom's position?
2. How does this ruling relate to the Talmudic ordinances about the stolen beam or accepting ill-gotten interest?

Take a Step Back

1. In all three cases, we can note a desire to help facilitate someone's teshuvah. What do you think is motivating this desire?
2. The cases above deal with theft, charging illicit interest, and apostasy. Are there situations where we should be more/less forgiving than these texts suggest? If so, when?
3. Does this precedent to help facilitate someone's teshuvah impact the way a university should evaluate a student's criminal record? If so, how?

Beyond the Box



MAIMONIDES
MOOT COURT COMPETITION

UNIT 2 Rehabilitation: Moving Beyond Crime

SESSION 5 The Lying Butcher: Regaining Lost Trust

○ *Tereifa*

The prohibition against eating a *tereifa* (literally: a "torn" animal) is Biblical and one of the foundations of kashrut. A *tereifa* is an animal which is mortally wounded, or has certain physical defects which will soon lead to its death. The prohibition against eating a *tereifa* is rooted in the following verse:

"You shall be holy people to Me: you must not eat flesh torn by beasts in the field; you shall cast it to the dogs."

(Exodus 22:30)

ואנשי־קֹדֶשׁ תִּהְיוּ
לִי וּבֶשֶׂר בְּשָׂדֶה
טֶרֶפָה לֹא תֹאכְלוּ
לְגִלְבַּת תִּשְׁלַכְנוּ אֹתוֹ:

(שמות כ"ב:ל)

The Yiddish term "treif" refers generally to any type of non kosher food.

A KEY ASPECT OF THE REHABILITATION PROCESS AFTER ONE HAS committed a crime is regaining the trust of the community. In the previous section, we explored how the rabbis instituted an "ordinance for those doing *teshuvah*" (תקנת השבין) to remove barriers that may prevent a person from performing *teshuvah*. In this section, we will add an important dimension to this conversation—how does the person performing *teshuvah* regain the trust of those who have been let down?

While elsewhere in the sourcebook we established that *teshuvah* is an essential pillar of Jewish life, we will now explore crucial related questions: how can the community determine when an individual who has betrayed their trust has performed genuine *teshuvah*? What must a person do in order for their *teshuvah* to be accepted by the community? How can such a person demonstrate their sincerity?

We will explore two situations in which individuals who betrayed the trust of their community subsequently attempt to regain their integrity.

PART I: THE LYING BUTCHER: REGAINING LOST TRUST

The opening text is a Talmudic passage that deals with a butcher who was found to be selling non-kosher meat. In the passage, the rabbis discuss what the *teshuvah* process for this butcher must entail before the community can once again rely on his meat.

SOURCE #1

תלמוד בבלי סנהדרין דף כה עמוד א

ההוא טבחא דאישתכח דנפקא

טריפתא מתותי ידיה פסליה רב נחמן

ועבריה אזל רבי מזיה וטופריה סבר

רב נחמן לאכשוריה א"ל רבא דילמא

Talmud Bavli Sanhedrin 25a

There was a butcher about whom it

was discovered that a tereifa ○

emerged from his possession. Rav

Nahman disqualified him and

איערומי קא מערים אלא	<i>removed him from his position. The butcher went and</i>
מאי תקנתיה כדרב אידי בר	<i>grew his fingernails and his hair. Rav Nahman thought to</i>
אבין דאמר רב אידי בר אבין	<i>restore his status. Rava said to Rav Nahman: Perhaps he is</i>
החשוד על הטריפות אין לו	<i>being deceitful. Rather, how can he repair his status? It is</i>
תקנה עד שילך למקום שאין	<i>in accordance with Rav Idi bar Avin, who says: One who is</i>
מכירין אותו ויחזיר אבידה	<i>suspected of selling tereifot to others has no remedy until</i>
בדבר חשוב או שיוציא	<i>he goes to a locale where they do not recognize him and</i>
טריפה מתחת ידו בדבר	<i>he returns a lost item of substantial value that he finds, or</i>
חשוב משלו	<i>removes tereifa meat of significant value from his possession.</i>

רש"י על סנהדרין דף כה עמוד א	Rashi on Sanhedrin 25a
ויחזיר אבידה – אם ימצא אבידת חברו	<i>And he returns a lost item [of significant value]: If he</i>
דכיון דמחזיר אבידה הוא ודאי הדר ביה	<i>finds the lost object of his friend, since by returning it,</i>
מחמדת ממון	<i>he demonstrates he has overcome his lust for money.</i>

Explanation of Source #1

In the case above, there is a dispute between Rav Nahman and Rava about what is required for this butcher to regain the trust of the community after fraudulently selling non-kosher meat. In Rav Nahman's view, it is sufficient that the butcher displayed external signs of remorse. However, Rava was concerned that this was insufficient and required a significantly higher standard, based on a teaching from Rav Idi bar Avin. In the second text, Rashi explains that this higher standard requiring him to return a costly object or remove expensive non-kosher meat serves to demonstrate that he has overcome his unhealthy desire for wealth.

Questions for Further Discussion

1. What is the nature of the dispute between Rav Nahman and Rava/Rav Idi bar Avin? What are they disagreeing about?
2. How do Rav Nahman and Rava/Rav Idi bar Avin each understand the connection between the butcher's transgression and the way in which he must perform teshuvah?
3. For Rav Idi bar Avin, what is the significance of moving to a new location in order to demonstrate that one has performed teshuvah? Why can't a person perform teshuvah while remaining in the same place?

○ R. Nissim of Gerona

A leading Spanish talmudist who also served as a physician, R. Nissim of Gerona (1320 - 1376) was an influential scholar and halakhic authority. His stature is reflected in the many hundreds of halakhic queries he received from Jewish communities throughout the world.

In the following commentary on this passage, R. Nissim of Gerona (RaN) questions why Rava/Rav Idi bar Avin ruled that the butcher requires such a high standard of *teshuvah* in order for him to regain the community's trust. The passage below begins with RaN offering two possibilities: one answer is quoted in the name of Ramban (Nahmanides), while the other is quoted in the name of Ramban's student.

SOURCE #2

חידושי הר"ן מסכת סנהדרין דף כה עמוד ב ותירץ הרמב"ן ז"ל	R. Nissim of Gerona^o (RaN) on Sanhedrin 25b
שלפי שהיה טבח זה	<i>Ramban (Nahmanides) answered that since the butcher was appointed in a public role,</i>
ממונה לרבים ורבים היו	<i>and the public was reliant on him, they were</i>
סומכים עליו החמירו	<i>strict upon him not to give him another</i>
עליו שלא למנותו עוד	<i>appointment on this matter and were</i>
על הדבר וחששו שהיה	<i>suspicious that he was deceiving them...We</i>
מעררים...ולא מצינו כן על	<i>don't find these [high standards] about other</i>
שאר החשודין...	<i>people suspected [of transgressions.]</i>
והר"ר דוד תלמידו	<i>Rabbeinu David, the student of Ramban,</i>
ז"ל הוסיף טעם אחר	<i>added another reason why there was a</i>
דהיינו טעמא שחששו	<i>suspicion that the butcher may be deceitful.</i>
דאערומי קא מערים	<i>Since they removed him from his position</i>
לפי שהעבירוהו ממנויו	<i>[as a butcher], there is a suspicion that his</i>
וחששו שקבלתו אינה	<i>acceptance [of the need to perform teshuvah]</i>
מלב ונפש אלא כדי	<i>is not truthful, but rather is in order to return</i>
שיחזירוהו למנויו...	<i>to his position.</i>

Explanation of Source #2

In this text, RaN cites two possibilities as to why the Talmud applies a strict standard for the butcher before he can return to his position. Ramban suggests it is due to the public reliance on his role as a butcher; Rabbeinu David suggests it is because we have reason to be suspicious of his ulterior motives.

○ Rav Hai Gaon

Rav Hai Gaon (939-1038) was head of the Babylonian academy of Pumbedita. Founded in the third century, the yeshiva of Pumbedita (modern day Iraq), was a leading spiritual center of Jewish life for nearly 800 years. It is in this period that the Babylonian Talmud became the central text of rabbinic Judaism.

Questions for Further Discussion

1. According to Ramban, why is it significant that the public is reliant on his role as a butcher? Based on this, how would Ramban perceive the teshuvah process differently in a situation where the public was not dependent on the individual in question?
2. According to Rabbeinu David, what is unique about the situation of the butcher which leads to Rava requiring a higher standard?
3. How does this case of the butcher relate to our general question of criminal records and university admissions? Is there a parallel to be drawn? If so, what is the connection between the two cases?

PART II: DOES TIME HEAL EVERYTHING?

In the first section, we explored a disagreement regarding what the butcher must do before he can regain our trust. The following text will introduce another factor that is important to the rehabilitation process: *time*.

The question posed to Rav Hai Gaon is about a cantor (שליח צבור) about whom there was suspicion that he committed adultery. As a result, his congregation removed him from his role. The cantor then took on public signs of remorse such as fasting, and after some time, the congregation was unsure whether to reappoint this individual as their cantor. They addressed Rav Hai Gaon with this query.

SOURCE #3

ספר כלבו סימן קמז	<i>Sefer Kol Bo 147 Rav Hai Gaon^o</i>
תשובה שורת הדין שאין	<i>Response: The letter of the law is that there is</i>
לך דבר שעומד בפני	<i>nothing which stands in the way of teshuvah;</i>
תשובה אלא כל השבים	<i>rather, anyone who does teshuvah, God</i>
שהקדוש ברוך הוא יודע	<i>knows that they have remorse from their</i>
כי נתחרטו על מה שעברו	<i>ugly behavior. When they direct their hearts</i>
מן הכעור וכי שמו אל	<i>that they will not return to it, God forgives</i>
לבם שלא ישובו עוד	<i>them. For human beings—even though they</i>
לכמוהו הוא מוחל להם,	<i>cannot know what it is hidden [i.e. a person's</i>
ובני אדם אף על פי שאינן	<i>feelings] and can only know what is revealed</i>
יודעין הנסתרות ואין להם	<i>outwardly—when a significant amount of time</i>
אלא הנגלות כשעבר זמן	<i>has passed, and it does not appear that the</i>

הרבה ואין נראה עליו לא בגלוי ולא בסתר	<i>person has acted inappropriately in public or</i>
דבר שלא כהוגן והלב מאמין בו כי חזר	<i>in private, and one's heart believes that he has</i>
מקבלין אותו	<i>done teshuvah, then we accept him.</i>

Explanation of Source #3

In response to the question posed by the congregation, Rav Hai Gaon ruled that if a significant amount of time has passed since the cantor had acted in a suspicious manner, and if it seems that the cantor has turned a new leaf, then they should accept him back into their congregation.

Questions for Further Discussion

1. *What is the significance of time in the teshuvah process? Why does Rav Hai Gaon consider it to be an important factor in this case?*
2. *How much time would you consider to be “significant” in this context before the congregation should place their trust in the cantor again?*
3. *How would you compare this ruling from Rav Hai Gaon with the text from Rabbeinu Gerhsom in the previous section where he ruled that the kohen who had converted to Christianity should be welcomed back into the community?*
4. *How can this relationship between time and teshuvah relate to the impact of an individual's criminal records on their future?*

Take a Step Back

In this section, we explored two texts that deal with individuals who had betrayed the trust of their community.

1. *How do these sources help us navigate the question of how someone can regain lost trust?*
2. *Are there factors which should be considered before someone's past transgressions are overlooked? If so, what are they?*
3. *How can these texts help us reflect on “Beyond the Box” regarding how universities should weigh an applicant's past behavior when making admissions decisions?*

Beyond the Box

UNIT 2 Rehabilitation: Moving Beyond Crime SESSION 6 Transforming Sins To Merits



MAIMONIDES
MOOT COURT COMPETITION

IN THIS FINAL SECTION ON THE SUBJECT OF REHABILITATION, WE WILL EXPLORE THREE Talmudic texts which discuss a person's standing after completing the *teshuvah* process.

Before reading any of the sources, consider the following questions. How would you describe the status of a person who has performed *teshuvah* in relation to who they were before they had sinned? Are they right back where they started? Are they at a higher level, or a lower level? Should there be permanent consequences to their spiritual standing?

In exploring these questions, we will consider how these texts understand the rehabilitation process and where it leads an individual.

The first source deals with the question of one's standing after having performed *teshuvah*. How does such a person compare to someone who has never sinned to begin with? The following passage will cite a dispute between two sages about this very question.

SOURCE #1

תלמוד בבלי ברכות דף לד עמוד ב

דאמר רבי אבהו: מקום שבעלי

תשובה עומדין—צדיקים

גמורים אינם עומדין, שנאמר:

"שלום שלום לרחוק ולקרוב."

"לרחוק" ברישא, והדר

"לקרוב". ורבי יוחנן אמר לה:

מאי "רחוק"—שהיה רחוק

מדבר עבירה מעיקרא. ומאי

"קרוב"—שהיה קרוב לדבר

עבירה, ונתרחק ממנו הנשוא.

Talmud Bavli Berakhot 34b

Rabbi Abbahu said: In the place where those who have

done teshuvah stand, even the completely righteous do

not stand, as it is stated: "Peace, peace upon those who

are far and near." Those who are "far" come first, and then

those are "close." Rabbi Yohanan would reply: What is the

meaning of one who is "far?" This refers to the completely

righteous who were distant from sin from the outset.

What is meant by one who is "near?" This refers to one

who was close to transgression and now has distanced

themselves from it.

Reish Lakish

Shimon ben Lakish (Reish Lakish) was one of the most prominent sages of his generation (3rd century). An important biographical note to this text is that elsewhere in the Talmud (Bava Metzia 84a), we learn that Reish Lakish was a bandit in his youth. After an encounter with Rabbi Yohanan, Reish Lakish repents and devotes himself to Torah study. When reading this passage from Reish Lakish, it is important to keep in mind that *teshuvah* was an essential part of his life journey.

Explanation of Source #1

In this passage, Rabbi Abbahu and Rabbi Yohanan disagree about who is at a higher level: one who sinned and then performed *teshuvah* (Rabbi Abbahu) or one who has distanced themselves from sin from the outset (Rabbi Yohanan). The dispute is centered around how to read a verse in Isaiah which implies that those who are “far” will be redeemed before those who are “near.” Rabbi Abbahu reads “far” as people who had sinned and then performed *teshuvah*; Rabbi Yohanan reads “far” to describe people who have always been far from sin.

Questions for Further Discussion

1. *How do you understand the debate between Rabbi Abbahu and Rabbi Yohanan? How might each of them understand the process of teshuvah and rehabilitation differently?*
2. *Which position is more intuitive to you? Does it depend on the situation?*
3. *Can you think of an individual whose transgressions—followed by a process of heartfelt teshuvah—led them to a high spiritual standing?*

The next Talmudic passage addresses a similar theme: what is the status of one’s transgressions after performing *teshuvah*? According to Reish Lakish, it depends not just on whether one does *teshuvah*, but on the primary motivation behind the *teshuvah* process.

*SOURCE #2

תלמוד בבלי יומא דף פו עמוד ב

אמר ריש לקיש גדולה
תשובה שזדונות נעשות
לו כשגגות... איני והאמר
ריש לקיש גדולה תשובה
שזדונות נעשות לו
כזכויות... לא קשיא כאן
מאהבה כאן מיראה

Talmud Bavli Yoma 86b

Reish Lakish^o said: Great is *teshuvah*, as the person’s intentional sins are counted as unintentional sins...But didn’t Reish Lakish himself say: Great is *teshuvah*, as one’s intentional sins are counted as merits?...This is not difficult: Here it refers to *teshuvah* through love; there it refers to *teshuvah* from fear.

Explanation of Source #2

The Talmud attempts to reconcile two statements from Reish Lakish: in one statement, he states that after *teshuvah* one’s transgressions are regarded as unintentional

transgressions; in another he states that they are considered to be *merits*. In solving this seeming contradiction, the Talmud suggests that one refers to *teshuvah* motivated by love, and the other refers to *teshuvah* motivated by fear. These two processes lead a person to two different outcomes.

Questions for Further Discussion

1. What does it mean to do *teshuvah* from love as opposed to *teshuvah* from fear? Can you give an example of each?
2. Which form of *teshuvah* belongs on a higher level? Why?
3. What might it mean for a transgression to become a merit or an unintentional sin? Is there an experience in your life to which you can apply this teaching?

The final source addresses *teshuvah* and rehabilitation in relationship to time. How do we regard someone who performs *teshuvah* at the very end of their lives? Likewise, how do we regard someone who was righteous for most of their lives, and then rebels?

SOURCE #3

תלמוד בבלי קידושין דף מ עמוד ב

ר"ש בן יוחי אומר אפילו

צדיק גמור כל ימיו ומרד

באחרונה איבד את הראשונות

שנאמר (יחזקאל לג, יב)

צדקת הצדיק לא תצילנו ביום

פשעו ואפילו רשע גמור כל

ימיו ועשה תשובה באחרונה

אין מזכירים לו שוב רשעו

שנאמר (יחזקאל לג, יב)

ורשעת הרשע לא יכשל בה

ביום שובו מרשעו

Talmud Bavli Kiddushin 40b

Rabbi Shimon ben Yohai says: Even if one was

completely righteous all their life and then rebelled

by sinning at the end, their early merits are lost, as

it is written: "The righteousness of the righteous

shall not save one on the day of their transgression"

(Ezekiel 33:12). And even if one was completely

wicked all of one's life and did *teshuvah* at the end,

we do not recall their wickedness any longer, as it is

written: "And as for the wickedness of the wicked,

he shall not stumble over it on the day that he turns

from his wickedness."

Explanation of Source #3

In this passage, Rabbi Shimon ben Yohai teaches that when one is judged in the heavenly courts, one's past deeds—whether acts of righteousness or transgressions—do not determine a person's fate. It only matters who the person is *today*.

Questions for Further Discussion

1. *Do you think this is a fair way of judging a person? Why or why not?*
2. *Is this reflected in your own experience? Is this how you relate to your past self?*
3. *Should certain actions lead to permanent consequences even if the individual does teshuvah?*

Summary: Unit 2

In this unit on rehabilitation, we have explored a number of ways in which the rabbis prioritized making the rehabilitation process less onerous. For example, one who stole a beam need not dismantle their building in order to return the beam to its owner. However, in the case of the butcher found to be fraudulently selling non-kosher meat, we saw how the rabbis required a higher standard before the community could place their trust in him. We have also explored how *time* comes into the conversation in a number of ways, such as when Rav Hai Gaon ruled that a cantor could resume his role after a significant amount of time had passed since his last known transgression. In this final section, we have seen texts navigate the question of one's spiritual standing at the conclusion of the rehabilitation process—and how one's transgressions can potentially become a source of merit.

Take a Step Back

1. *Reflecting on the unit as a whole, what values underlie the rehabilitation process? Do they ever come into conflict with other values?*
2. *Which text resonated most with you? Which source did you find most challenging to accept?*
3. *After exploring these texts, how does this approach towards rehabilitation influence your understanding of "Beyond the Box?"*

Beyond the Box

UNIT 3 Relating To The Past

SESSION 7 Innocent After Proven Guilty



MAIMONIDES
MOOT COURT COMPETITION

o Pirkei Avot

Pirkei Avot ("Ethics of the Fathers") is a compilation of wisdom and ethics included in the mishnah. It is the only tractate of the mishnah which is primarily concerned with morality and wisdom, in contrast with most tracts that address primarily legal matters.

o In Court

Commentaries on this mishnah offer multiple explanations of how to understand this phrase. One possibility is that it refers to a judge inappropriately offering advice to one of the litigants. Another possibility is that it refers to a judge acting arrogantly and perceiving themselves as excessively great.

THE PREVIOUS TWO UNITS EXPLORED THE FOUNDATIONS OF *TESHUVAH* along with various questions which arise during the rehabilitation process after one has committed a transgression. In this unit, we will turn our attention to a related set of questions regarding the relationship between the past and the future. For example, is it ever appropriate to bring up someone's past offenses? How should we relate to an individual who has been through the criminal justice system? Should we offer individuals the benefit of the doubt over their past actions?

PART I: INNOCENT AFTER PROVEN GUILTY?

The presumption of innocence is a key foundation of our modern criminal justice systems. In the eyes of the court, we are each innocent until proven guilty. The following mishnah in Pirkei Avot^o will offer what may be a different perspective—relating to how litigants should be perceived during and after court proceedings.

SOURCE #1

משנה אבות א:ח	Pirkei Avot 1:8
יהודה בן טבאי אומר,	Yehudah ben Tabbai said, do not make
אל תעש עצמך כעורך דיני	yourself an advocate in court. ^o When
הדיינים. וכשיהיו בעלי	the litigants are standing before you [in
דין עומדים לפניך,	court], they should appear in your eyes
יהיו בעיניך כרשעים.	as if they were both guilty; and when
וכשנפטרם מלפניך, יהיו	they leave your presence, look upon
בעיניך כזכאים, כשקבלו	them as if they were both innocent, as
עליהם את הדין.	they have accepted the judgement.

○ Bartenura

Rabbi Ovadiah ben Abraham of Bartenura (1455 - 1520) was a key spiritual leader of the Jewish communities of Italy and later in Israel. His most enduring work is his commentary on the mishnah, which to this day remains one of its most popular commentaries.

Questions for Further Discussion

1. Why does Yehudah ben Tabbai teach to view both parties in the courtroom as guilty?
2. Why should one view both litigants as innocent once the proceedings have concluded?
3. What does it mean to view someone convicted of a crime as innocent upon leaving the courtroom?

In his commentary on this mishnah, Rabbi Obadiah ben Abraham of Bartenura offers an explanation of Yehudah ben Tabbai's teaching.

SOURCE #2

ברטנורא על משנה אבות א:ח

יִהְיוּ בְּעֵינֶיךָ כְּרָשָׁעִים.

שְׁלֹא יִטֶּה לִבְךָ לְאַחַד מֵהֶם

לֵאמֹר אִישׁ פְּלוֹנִי חָשׁוּב

הוּא וְלֹא יִטְעֵן טַעֲנַת שֶׁקֶר.

שָׂאֵם אֶתָּה אוֹמֵר כֵּן, אֵין

אֶתָּה רוֹאֶה לוֹ חֹבָה:

Bartenura^o on Pirkei Avot 1:8

Look upon them as if they were both guilty:

so that your heart should not lean towards

one of them, saying, "Such and such is a

distinguished person and would not make a

false claim." Since if you say this, you will not be

able to see them as guilty.

כְּשֶׁקִבְּלוּ עֲלֵיהֶם אֶת

הַדִּין. שְׁלֹא תַחֲשֹׁד הַחַיִּב

לֵאמֹר גִּזְלוֹן הִיָּה זֶה, אֶלֶּא

תֵּאמַר שָׂמָא טוֹעָה הִיָּה

וְלֹא נִתְכַּוֵּן לְגַזֹּל. אִי נָמִי,

נִתְחַיֵּב אֶחָד מֵהֶם שְׁבוּעָה

וְנִשְׁבַּע, לֹא תֵאמַר לְשֶׁקֶר

בְּשִׁבְעִי:

As they have accepted the judgment: Such

that you should not suspect the obligated party

by saying "This one is a thief." Rather say,

"maybe he was mistaken and did not intend

to steal." Alternatively: if one of them became

obligated to make an oath [to testify in court]

and subsequently made the oath, do not say, "he

made a false oath."

Explanation of Source #2

In his commentary, Rabbi Bartenura suggests that the reason one should view both parties as guilty in the courtroom is to ensure that the judge will view the situation objectively, rather than allowing a litigant's reputation to cloud their

o Lashes

Lashes are generally the punishment for transgressions for which no other punishment is specifically mentioned. The Talmud goes into great detail specifying the transgressions which warrant lashes; the rabbis also reduce the maximum number of lashes one can receive from 40 to 39. (Makkot 22a)

judgement. Likewise, after a guilty verdict has been delivered, one should aim to see both parties in a positive light, even if one of them was found to owe the other party.

Questions for Further Discussion

1. *Why should one offer the guilty party the benefit of the doubt, even after the court proceedings?*
2. *Are there times when the guilty party should not be offered this opportunity to be seen in a positive light?*

Summary: Part 1

The presumption of innocence is widely regarded today as a basic human right. In this mishnah, we see a concern not only with a litigant's standing *during* a court proceeding—but after its conclusion as well. The next section will present another situation where there is concern expressed for how a convicted person should be perceived.

PART II: WHAT HAPPENS AFTER A SENTENCE IS CARRIED OUT?

The following verses in Deuteronomy describe the process of a person being sentenced to lashes^o after being convicted of wrongdoing in court. As you read these verses, try to pay particular attention to how the Torah refers to the two parties at various points of the judgement process.

SOURCE #3

דברים כה:א-ג

¹ כִּי־יִהְיֶה רִיב בֵּין אָנָשִׁים

וַנֵּגֶשׁוּ אֶל־הַמִּשְׁפָּט

וְשֹׁפֵטוֹם וְהַצְדִּיקוֹ אֶת־

הַצְדִּיק וְהַרְשִׁיעוֹ אֶת־

הַרָשָׁע: ² וְהָיָה אִם־כֶּן

הַכּוֹת הַרָשָׁע וְהַפִּילוֹ הַשֹּׁפֵט

וְהִכָּהוּ לִפְנֵי כֹהֵן רִשְׁעוֹ

בְּמִסְפָּר: ³ אַרְבָּעִים יִכּוּ

לֹא יִסִּיף פֶּן־יִסִּיף לְהַכֹּתוֹ

עַל־אַלְה מַכָּה רַבָּה וְנִקְלָה

אֲחִידָה לְעֵינֶיךָ: (ס)

Deuteronomy 25:1-3

¹When there is a dispute between people

and they go to the tribunal, and they judge

them, acquitting the innocent one and

condemning the guilty one, ²if the guilty

one is to be flogged, the judge shall have

him lean over and be given lashes in his

presence, as his guilt warrants, by number.

³He may be given up to forty lashes, but

not more, lest he give him a more severe

flogging than these, and your brother would

be degraded before your eyes.

○ Sifrei Devarim

Sifrei is a midrash on the book of Deuteronomy. Compiled around the third century, the Sifrei is associated with the academy of Rabbi Akiva, the great sage frequently cited in the mishnah. For Rabbi Akiva, each and every letter in the Torah could potentially be a source of derivation for its laws.

Explanation of Source #3

These verses describe court proceedings between two parties, which conclude with lashes being carried out against the guilty party. The following midrash comments on these verses, particularly taking notice of a shift in language in how the Torah refers to the guilty party.

SOURCE #4

ספרי דברים רפז:יד	<i>Sifrei Devarim</i> ^o 286:14
ר' חנניה בן גמליאל אומר, כל	<i>Rabbi Hanania ben Gamliel says: Throughout</i>
היום קורא אותו הכתוב "רשע",	<i>the day [in court], the verse refers to him as</i>
שנאמר והיה אם בן הכות הרשע;	<i>"guilty," as it says: "if the guilty one is to be</i>
אבל כשלקה, הכתוב קורא	<i>flogged." But once he has been flogged, the</i>
"אחיד", שנאמר ונקלה אחיד.	<i>verse refers to him as "your brother."</i>

Explanation of Source #4

This midrash notes a significant shift in how the Torah describes the person convicted of wrongdoing. During the court proceedings (verse 2), he is called "guilty." However, once the sentence has been carried out (verse 3), the Torah now refers to this individual as "your brother."

Questions for Further Discussion

1. What is the significance of this shift in language? What does it mean to view the person as "your brother" after the sentence is carried out?
2. How does this relate to the teaching of Yehudah ben Tabbaï in the mishnah cited above?
3. What can be challenging about seeing a guilty individual in this manner? What can prevent us from doing so?

○ Take a Step Back ○

The mishnah in Pirkei Avot, as well as the midrash on the opening verses in Deuteronomy 25, stress the importance of seeing individuals in a positive light, despite being found guilty in court.

1. What are some benefits and potential pitfalls of seeing individuals who have been convicted of wrongdoing in this manner?
2. What is a tangible way to apply the mishnah or midrash to our modern criminal justice systems?
3. Regarding the particular question of university admissions, how might one view a student applicant who has been found guilty of an offense in a way that these texts suggest?

Beyond the Box

UNIT 3 Relating to the Past
SESSION 8 Ona'at Devarim: The Prohibition of Oppressive Language



IN THE PREVIOUS SECTION, WE ENCOUNTERED TEXTS WHICH EMPHASIZED THE IMPORTANCE of seeing people in a positive light, even after they have been convicted in court. In this section, we will explore a related theme: the prohibition of “oppressive language” (אוֹנָאָת דְּבָרִים) which includes not reminding an individual of their past if it will cause them pain.

Halakha is deeply concerned with the power of words, and oppressive language is one of several commandments related to forbidden forms of speech. In this section, we will trace the concept of oppressive language from the Torah through the mishnah and gemara, as well as a later interpretation from a 13th century rabbi.

The text below is the Biblical source of the prohibition of oppressive language. Although the specific prohibitions are not specified in the verse, Rashi parses the particular meaning of its words.

SOURCE #1

שמות כב:כ-כב

וְגֵר לֹא-תוֹנֶה וְלֹא תִלְחָצֶנּוּ כִּי-גֵרִים

הָיִיתֶם בְּאֶרֶץ מִצְרַיִם: ²¹ כָּל-אֶלְמָנָה

וְיָתוֹם לֹא תַעֲנוּן:

²² אִם-עָנָה תַעֲנֶנָּה אֲתוֹ כִּי אִם-צָעַק

יִצְעַק אֵלַי שְׁמַע אֲשַׁמַּע צָעַקְתּוּ:

Exodus 22:20-22

²⁰A stranger you shall not oppress nor shall you

subjugate, for you were strangers in the land of

Egypt. ²¹You shall not oppress a widow or orphan.

²²If you oppress them, as soon as they cry out to

Me, I will heed their outcry.

רש"י על שמות כב:כ-א-ב

וְגֵר לֹא תוֹנֶה. אוֹנָאָת דְּבָרִים

וְלֹא תִלְחָצֶנּוּ. בְּגִזְלַת מָמוֹן

Rashi on Exodus 22:20

You shall not oppress: with oppressive language.

Nor shall you subjugate: with theft of money.

Commentary

Rashi quotes Mekhilta d'Rabbi Yishmael, which is a midrash halakha—a form of biblical interpretation focused on expounding the legal parameters of the mitzvot (commandments). It was composed in the 2nd century CE.

Buying and Selling

The principle of exploitation (אונאה) prohibits one from taking advantage of the other person in a financial transaction. For example, the mishnah (Bava Metzia 4:3) rules that overcharging someone by one-sixth or more of a product's market value constitutes exploitation (אונאה) and is prohibited.

Explanation of Source #1

Rashi's commentary^o is our first indication of the connection between oppressive language and outright theft.

Questions for Further Discussion

1. What is the relationship between harming someone through words and with money?
2. Why does the Torah warn us about these two prohibitions particularly with regards to the stranger, widow, and orphan?

The mishnah will further delineate the prohibition of “oppression” mentioned in Exodus 22:20. In particular, we will focus on the prohibition of oppressive language and its relationship to economic exploitation.

SOURCE #2

משנה בבא מציעא ד:	Mishnah Bava Metzia 4:10
כִּשְׁם שְׁאוֹנְאָה בְּמִקָּח וּבְמִמְכָּר,	Just as the laws of oppression apply to buying
כִּף אוֹנְאָה בְּדִבְרִים. לֹא	and selling, ^o they also apply to oppressive
יֹאמַר לוֹ בְּכֶמֶה חֲפֵץ זֶה, וְהוּא	language. One may not say, “How much is
אֵינוֹ רוֹצֶה לְקַח. אִם הָיָה	this object?” if he does not wish to buy it. If
בְּעַל תְּשׁוּבָה, לֹא יֹאמַר לוֹ	one had repented, another should not say to
זָכֹר מַעֲשֵׂיךָ הָרָאשׁוֹנִים. אִם	him, “Remember your earlier deeds.” If one
הוּא בֶן גֵּרִים, לֹא יֹאמַר לוֹ	descends from proselytes, another should
זָכֹר מַעֲשֵׂה אֲבוֹתֶיךָ, שְׁנֵאמַר	not say to him, “Remember the deeds of your
(שְׁמוֹת כב) וְגֵר לֹא תוֹנֶה	ancestors.” For it is said, “A stranger you shall
וְלֹא תִלְחָצְנוּ:	not wrong or oppress.”

Explanation of Source #2

Here, the mishnah further clarifies the prohibition of “oppressive language” by listing a number of examples which would fall under this rubric. The mishnah roots this prohibition in the verse from Exodus cited above.

○ “And You Shall Fear Your God”

This is referring to the following verse: Do not wrong one another, but fear your God; for I am the Lord, your God. (Leviticus 25:17)

וְלֹא תוֹנוּ אִישׁ
אֶת-עֲמִיתוֹ
וְיִרְאתֶם מֵאֱלֹהֵיךְ
כִּי אֲנִי ה' אֱלֹהֵיכֶם:
(ויקרא כ"ה:י"ז)

Questions for Further Discussion

1. The mishnah cites a number of examples of oppressive language. What is the common denominator among them? How would you articulate the prohibition of oppressive language based on these examples in the mishnah?
2. The mishnah compares monetary harm to verbal harm. In what way is harm inflicted verbally similar or different to harm inflicted monetarily?

While the mishnah above compares oppressive language to its financial parallel, the Talmud will take this comparison a step further. In the passage below, several sages advance the view that oppressive language should be regarded as a more severe offense. To support their claim, they will base themselves on Scriptural clues as well as logical comparisons between the two instances.

SOURCE #3

**תלמוד בבלי בבא מציעא
דף נח עמוד ב**
א"ר יוחנן משום ר"ש בן

**יוחאי גדול אונאת דברים
מאונאת ממון שזה נאמר
בו (ויקרא כה, יז) ויראת
מאלהיך וזה לא נאמר
בו ויראת מאלהיך ור'
אלעזר אומר זה בגופו
וזה בממונו רבי שמואל
בר נחמני אמר זה ניתן
להישבון וזה לא ניתן
להישבון תני תנא קמיה
דרב נחמן בר יצחק כל
המלבין פני חבריו ברבים
כאילו שופך דמים א"ל
שפיר קא אמרת דחזינא
ליה דאזיל סומקא ואתי
חוורא**

Talmud Bavli Bava Metzia 58b

Rabbi Yohanan says in the name of Rabbi Shimon ben Yohai: Greater is the transgression of oppressive language than the transgression of monetary oppression, as with regard to the latter it says: “And you shall fear your God.” But with regard to monetary oppression, it is not stated: “And you shall fear your God.”^ו And Rabbi Elazar said: Verbal oppression affects the person’s body; but monetary oppression [only] affects one’s money. Rabbi Shmuel bar Nahmani says: [the consequences of] monetary oppression can be undone; but verbal oppression cannot be undone. It was taught before Rav Nahman bar Yitzhak: Anyone who humiliates another person in public, it is as though he spilled their blood. Rav Nahman bar Yitzhak said to him: You have spoken well, as we see [when a person is humiliated] the red leaves their face and they become pale.

Sefer HaHinukh

This work systematically discusses the 613 mitzvot. In addition to describing the parameters of each mitzvah, the author also delves into the “roots” of each mitzvah, offering an understanding of its deeper purpose. It was published anonymously in 13th century Spain.

Explanation of Source #3

In this passage, we see how the rabbis perceived the transgression of oppressive language as being particularly severe. Unlike financial exploitation, the rabbis suggest that verbal abuse affects one’s physical self and can never be repaired—even comparing the humiliation of someone through words to murder.

Questions for Further Discussion

1. *Why do the rabbis of the Talmud treat verbal abuse with such severity?*
2. *Based on their rationales for the severity of this prohibition, would the transgression also apply beyond verbal exchanges and include written communication?*
3. *How might this prohibition relate to the university admissions process regarding a student applicant with a criminal record? Does the concept of oppressive language (אוֹנָאָת דְּבָרִים) apply?*

The final source is from Sefer HaHinukh.⁹ Excerpted from a longer passage which describes this transgression in detail, the selection below deals with the *purpose* of the mitzvah. According to Sefer HaHinukh, observing the mitzvah of oppressive language is conducive to a more blessed world.

*SOURCE #4

ספר החינוך שלח:א-ה	Sefer HaHinukh 338
שרש מצוה זו ידוע כי הוא	<i>The root of this commandment is understood,</i>
לתת שלום בין הבריות,	<i>for it is to give peace between people. Great is</i>
וגדול השלום שבו הברכה	<i>peace, for through it blessing becomes found</i>
מצויה בעולם, וקשה	<i>in the world; and difficult is argument—</i>
המחלקת כמה קללות וכמה	<i>for many curses and many tragedies are</i>
תקלות תלויות בה.	<i>dependent upon it.</i>

Explanation of Source #4

The author of the Sefer HaHinukh suggests that the root of the mitzvah to avoid oppressive language is to make the world more peaceful.

Questions for Further Discussion

1. *How does observance of this mitzvah help promote peace?*
2. *What does the author mean that many tragedies result from argument (mahloket)?*

○ **Take a Step Back** ○

In this section, we explored the prohibition against verbal oppression and the severity with which it was treated by the *halakhic* tradition. Consider how this prohibition may relate to our case:

1. *How would you articulate the prohibition of oppressive language?*
2. *Regarding the specific example of reminding someone of their past sins, how would this relate to the way a university admissions committee evaluates a student's criminal record? Should it impact the way that they require and/or utilize such records?*
3. *When should it not be considered oppressive language—if ever—to bring up an individual's past offenses?*

Beyond the Box

UNIT 3 Relating To The Past SESSION 9 The Responsibility to Intervene



IN THE PREVIOUS SECTION WE EXPLORED THE CONCEPT OF OPPRESSIVE LANGUAGE (אֲנָחַת דְּבָרִים), which includes a prohibition against embarrassing an individual by bringing up their past sins. In this section, we'll test the limits of this prohibition by asking an important question from the opposing perspective: is there ever a responsibility to *speak up* regarding someone's past actions if they may present a danger to someone else?

We will first explore this through a lens of the Biblical injunction not to “stand by the blood of your fellow.” We will trace this verse through the Talmud and midrash, reflecting on one's responsibilities and obligations as a bystander.

PART I: “DO NOT STAND BY THE BLOOD OF YOUR FELLOW”

The core Jewish value not to ignore the plight of someone in need is rooted in the following verse. This verse will serve as the foundation for our learning today and in the following section.

SOURCE #1

וִיקְרָא יִטְטֵז לֹא־תֵלֵךְ רִכִּיל בְּעַמֶּיךָ לֹא תַעֲמֹד עַל־דַּם רֵעֶךָ אֲנִי ה'	Leviticus 19:16 <i>Do not go around as a gossip amongst your people; do not stand by the blood of your fellow: I am the Lord.</i>
--	---

Questions for Further Discussion

1. We will focus now on the latter half of the verse. What does it mean to not “stand by the blood of your fellow?” (In the upcoming and final section, we will explore the relationship between the first half and the second half of the verse.)
2. From the Biblical verse alone, what would you suggest is included in this prohibition?

The next text is a passage from the Talmud which further delineates the prohibition of “standing by” when someone else is in need. As you read the passage, reflect on how the Talmud understands the phrase not to “stand by.”

SOURCE #2

תלמוד בבלי סנהדרין דף עג
עמוד א

גופא מניין לרואה את חברו

שהוא טובע בנהר או חיה

גוררתו או לסטין באין עליו

שהוא חייב להצילו ת"ל לא

תעמוד על דם רעך

Talmud Bavli Sanhedrin 73a

From where is it derived that one who sees another

drowning in a river, or being dragged away by a wild

animal, or being attacked by bandits, that one is

obligated to save them? The verse states: "Do not stand

by the blood of your fellow."

והא מהכא נפקא מהתם

נפקא אבדת

גופו מניין

ת"ל

והשבותו לו אי

מהתם הוה אמינא

ה"מ בנפשיה

אבל מיטרח ומיגר

אגורי אימא

לא קמ"ל

But is it really derived from here? It is derived from

there. [As the Talmud asks:] From where do we know

[that if someone will suffer bodily harm that one must

intervene on their behalf?] From the verse: "And you

shall restore it to him." If one only had the latter verse,

I would have thought this applies only to saving the

person in danger by oneself. But to exert and hire

workers, one might have thought that was unnecessary.

Therefore, the verse "Do not stand by the blood of your

fellow" teaches us that one must even hire workers.

Explanation of Source #2

The Talmud states in unambiguous terms that one has an obligation to intervene on behalf of someone whose life is at risk. In other words, according to the Talmud there is no category of "innocent bystander." If one is able to intervene, then one *must* intervene. In the latter half of this passage, the Talmud derives from Leviticus 19:16 that one is even obligated to spend their own money (i.e. to hire workers) on behalf of someone whose life is in danger. Without this verse, the Talmud suggests that one would not have intuited this obligation.

Questions for Further Discussion

1. From the examples above, how would you define this obligation to "not stand by the blood of your fellow?"
2. In what way is the Talmud's categorization of this mitzvah more expansive than the plain meaning of the verse?

○ Sifra

Sifra is a midrash on the book of Leviticus. It is midrash halakha, which is a form of biblical interpretation focused on expounding the parameters of the mitzvot (commandments). It is also known as Torat Kohanim ("The Torah of the Priests"). It was composed in the 2nd-3rd century CE and cited in many Talmudic passages.

The following text is from the Sifra.⁹ It further explains the nature of this mitzvah not to stand idly by someone in need. While reading the Sifra, compare the examples it lists with the examples cited in the Talmudic passage above.

SOURCE #3

ספרא, קדושים, פרק ד:ח	Sifra, Kedoshim, Chapter 4:8
ומנין שאם אתה יודע לו	<i>From where is it derived that if you have</i>
עדות שאין אתה רשאי	<i>information to testify on behalf of someone,</i>
לשתוק עליו? תלמוד לומר	<i>that you are not permitted to remain silent?</i>
"לא תעמוד על דם רעך".	<i>The verse teaches: "Do not stand by the blood</i>
ומנין אם ראית טובע בנהר	<i>of your fellow." From where is it derived that</i>
או לסטים באים עליו או	<i>if you see someone drowning in the river or</i>
חיה רעה באה עליו, חייב	<i>threatened by robbers or attacked by a wild</i>
אתה להצילו בנפשו?	<i>animal, that one is obligated to rescue him?</i>
תלמוד לומר "לא תעמוד על	<i>The verse teaches: "Do not stand by the blood</i>
דם רעך"	<i>of your fellow."</i>

Explanation of Source #3

In this passage explaining Leviticus 19:16, the Midrash includes additional examples beyond those cited in the Talmud. The first instance listed is one where one remains silent while in possession of information that pertains to a court case.

Questions for Further Discussion

1. Why is failing to speak up included in the prohibition of "do not stand by the blood of your fellow?"
2. Compare and contrast this case of failing to speak up with our case: a university admissions committee that must evaluate a student's application.

Do the members of the committee have an obligation to ensure that they do not accept someone who may pose a threat to others? Is there a parallel obligation to speak up? Why or why not?

Summary: Part I

In this section, we explored the mitzvah "not to stand by the blood of your fellow." We saw in the Talmud and in the Midrash that there is a clear obligation to intervene

if one is able to offer assistance to one in need, and that this intervention may include the responsibility to speak up if someone else is potentially in danger. In the next section, we will explore another situation where standing on the sidelines is not an option: when one sees another person transgressing the Torah.

PART II: THE OBLIGATION TO PROTEST

Immediately following Leviticus 19:16 which prohibits standing idly when someone is in need, the Torah warns us once more against inaction.

*SOURCE #4

ויקרא יט:יז	Leviticus 19:17
לֹא-תִשְׂנֵא אֶת-אָחִיךָ בְּלִבְּךָ הוֹכֵחַ	<i>You shall not hate your brother in your heart. Rebuke,</i>
תּוֹכִיחַ אֶת-עֲמִיתְךָ וְלֹא-תִשָּׂא	<i>rebuke your brother, but you shall not bear a</i>
עָלָיו חֲטָא:	<i>sin on his account.</i>

Explanation of Source #4

Just like one cannot stand idly by when someone is in danger, there is also an obligation to provide rebuke to someone who is violating the Torah. In both cases, the Torah warns us not to stand on the sidelines. We cannot simply be bystanders; we must intervene in both situations.

Question for Further Discussion

1. What is the connection between not standing idly by when someone is in need (verse 16) and the mitzvah to give rebuke (verse 17)?

The final passage is from the Talmud and speaks of the obligation to protest against transgressions which one possesses the power to help prevent.

SOURCE #5

תלמוד בבלי שבת דף נד עמוד ב	Talmud Bavli Shabbat 54b
רב ורבי חנינא ור' יוחנן	<i>Rav and Rav Hanina and Rabbi Yohanan and Rabbi Habiba</i>
ורב חביבא מתנו... כל מי	<i>taught...Whoever can protest their household [from</i>
שאפשר למחות לאנשי ביתו	<i>performing an improper action] but does not protest,</i>
ולא מיחה נתפס על אנשי	<i>is seized for [the actions of] their household. [If he can</i>
ביתו באנשי עירו נתפס על	<i>protest] the people of his city [and does not], he is seized</i>

אנשי עירו בכל העולם כולו	<i>for [the actions of] the people of his city; if the whole world,</i>
נתפס על כל העולם כולו	<i>he is seized for [the actions of] the whole world.</i>

Explanation of Source #5

In this striking Talmudic passage, the rabbis suggest that whoever has the ability to protest—and doesn’t—is complicit in the offense and ultimately held responsible. It is not sufficient to stand on the sidelines; if one is able to help prevent a harmful action from occurring, then one must do everything in their power to do so.

Questions for Further Discussion

1. *Why is one held responsible for the actions of others?*
2. *Does this form of responsibility apply to an admissions committee regarding the acceptance of a student with a questionable past?*
3. *Should the members of the committee bear responsibility if they do not speak up in protest about accepting a student who then goes on to commit an offense while on campus?*

Summary: Part II

In this section, we explored two texts which explore the responsibility to *speak up*: the first is a biblical mitzvah to offer rebuke, and the second is a Talmudic passage about how silence can become equivalent to complicity.

Take a Step Back

In responding to the “Beyond the Box” campaign which seeks to remove questions about criminal records from university applications, some administrators have claimed that they need access to these records in order to keep campuses safe. Evaluate this position based on the texts above.

1. *Does the obligation not to “stand by the blood of your fellow” apply to accepting a potentially dangerous student?*
2. *What about the obligation to rebuke or protest if one can prevent a harmful action from taking place?*

Beyond the Box

UNIT 3 Relating To The Past

SESSION 10 Gossip and Evil Speech



MAIMONIDES
MOOT COURT COMPETITION

Human Dispositions

This is a section of Mishneh Torah that addresses general ethical behavior and character development.

OUR FINAL SECTION EXPLORES THE TRANSGRESSIONS OF GOSSIP (רכילות) and evil speech (לשון הרע). Previously we encountered a number of prohibitions related to forms of speech. The categories of gossip and evil speech add important dimensions to this conversation. Notably, the prohibition of gossip is rooted in the same verse we explored in the previous section.

SOURCE #1

ויקרא יט:טז	<i>Leviticus 19:16</i>
לֹא־תֵלֵךְ רִכִּיל בְּעַמֶּיךָ	<i>Do not go around as a gossip amidst your</i>
לֹא תַעֲמֹד עַל־דַּם רֵעֶךָ	<i>people; do not stand by the blood of your</i>
אֲנִי ה'	<i>fellow: I am the Lord.</i>

Maimonides, in the seventh chapter of the laws of human dispositions^o (הלכות דעות), delineates the prohibition of gossip. We will explore the opening passages of this chapter. In the first passage, Maimonides addresses the connection between the two prohibitions in the verse above.

SOURCE #2

משנה תורה, הלכות דעות ז:א	<i>Mishneh Torah, Human Dispositions 7:1</i>
הַמְרַגֵּל בְּחֵבְרוֹ עוֹבֵר בְּלֹא	<i>One who shares gossip against his fellow</i>
תַּעֲשֶׂה שְׁנֵאֲמַר (ויקרא יט טז)	<i>violates a negative commandment,</i>
"לֹא תֵלֵךְ רִכִּיל בְּעַמֶּיךָ". וְאִם	<i>as it is written: "Do not go around as</i>
עַל פִּי שְׂאִין לֹדֵקִין עַל דָּבָר	<i>a gossip amidst your people"; and</i>
זֶה עוֹן גָּדוֹל הוּא וְגוֹרָם לְהִרְגָּ	<i>although the punishment of flogging is</i>
נִפְשׁוֹת רַבּוֹת מִיִּשְׂרָאֵל. לְכֹד	<i>not inflicted for violating this charge, it</i>

נִסְמָךְ לוֹ (וּיקרא יט טז) *is a grave sin, and is the cause of the deaths of many souls in Israel; for this*
 "וְלֹא תֵעָמֵד עַל דַּם רֵעֶךָ." *reason it is written adjacent to: "Do not stand by the blood of your fellow."*

Explanation of Source #2

In the previous section, we saw the latter of half of this verse used as a source for the obligation to *speak up* when someone is in need of assistance. For example, the Sifra stated that one has an obligation to offer testimony if they have pertinent information which could be offered on someone's behalf. Here, we see the first half of this verse teaching us that in certain circumstances, it can be equally critical to *remain silent*. Violating either clause in the verse—and speaking up or remaining silent in an inappropriate fashion—can lead to destructive outcomes.

Question for Further Discussion

1. According to Maimonides, why does the prohibition of gossip precede the warning against “standing by the blood of your fellow?”

In the next passage, Maimonides parses the difference between gossip (רכילות), evil speech (לשון הרע), and defamation (שם רע). As you read, pay attention to how Maimonides distinguishes between these forms of speech.

SOURCE #3

<p>משנה תורה, הלכות דעות ז:ב-ג</p> <p>² אִי זֶהוּ רֹכִיל. זֶה שְׁטוּעַן דְּבָרִים וְהוֹלִיךְ מִזֶּה לָזֶה וְאוֹמֵר כֹּךְ אָמַר פְּלוֹנִי כֹךְ וְכֹךְ שָׁמַעְתִּי עַל פְּלוֹנִי. אַף עַל פִּי שֶׁהוּא אֱמֶת הֲרִי זֶה מַחְרִיב אֶת הָעוֹלָם. יֵשׁ עוֹן גָּדוֹל מִזֶּה עַד מָאֵד וְהוּא בִּכְלָל לֹא זֶה וְהוּא לְשׁוֹן הָרַע. וְהוּא הַמְסִפֵּר בְּגִנּוּת חֲבֵירוֹ אַף עַל פִּי שֶׁאֵינוֹ אֱמֶת.</p> <p>אָבֵל הָאוֹמֵר שֶׁקֶר נִקְרָא מוֹצִיא שֵׁם רַע עַל חֲבֵירוֹ. אָבֵל בַּעַל לְשׁוֹן</p>	<p>Mishneh Torah, Human Dispositions 7:2-3</p> <p>² Who is a gossip? One who makes claims, and goes from this person to that person, saying, so-and-so said this, and I heard that from so-and-so. Even though it is true, this is destructive for the world. There is an even worse transgression which is included [within gossip], and that is evil speech, one who spreads disgrace about his fellow even though he is telling the truth.</p> <p>But if he is lying, that is called defaming his fellow. One who speaks evil speech is one who sits and says</p>
---	--

הָרַע זֶה שִׁיּוֹשֵׁב וְאוֹמֵר כֹּךְ וְכֹךְ עָשָׂה פְּלוֹנִי וְכֹךְ וְכֹךְ הָיוּ אֲבוֹתָיו וְכֹךְ וְכֹךְ שָׁמַעְתִּי עָלֵיו וְאָמַר דְּבָרִים שֶׁל גִּנְאִי. עַל זֶה אָמַר הַפֶּתוּב (תהילים יב ד) "יִכָּרֵת ה' כָּל שִׁפְתֵי חֲלָקוֹת לִשׁוֹן מְדַבֶּרֶת גְּדֻלוֹת":	so-and-so did this, and his parents were such- and-such and I heard this about them, and says words of disgrace. About this the verse says: "May God cut off all flattering lips, the tongue that speaks proud things."
³ אָמְרוּ חֲכָמִים שְׁלֹשׁ עֲבֵרוֹת נִפְרָעִין מִן הָאָדָם בְּעוֹלָם הַזֶּה וְאֵין לוֹ חֵלֶק לְעוֹלָם הַבָּא. עֲבוֹדַת כּוֹכָבִים וְגִלּוֹי עֲרִיּוֹת וְשִׁפְיָכוֹת דָּמִים. וְלִשׁוֹן הָרַע כְּנֶגֶד כָּלם. וְעוֹד אָמְרוּ חֲכָמִים כָּל הַמְסַפֵּר בְּלִשׁוֹן הָרַע כְּאֵלוֹ כּוֹפֵר בְּעֶקֶר.	³ The sages said: "There are three transgressions for which retribution is exacted from a person in this world, and denies the person a portion in the world to come. They are: idolatry, adultery, and murder; And evil speech is parallel to all of these." Furthermore the sages said: "One who tells evil speech is like one who denies [God] entirely."

Explanation of Source #3

In this passage, Maimonides explains that the prohibitions of gossip and evil speech refer to a situation in which the content of the speech is actually true. Yet, these forms of speech are prohibited as they lead to destructive outcomes. Maimonides explains this is the reason that the Biblical prohibition of gossip appears adjacent to the prohibition of standing by the blood of your fellow. Moreover, Maimonides writes of these prohibitions in extremely severe terms, comparing them to Judaism's most serious transgressions.

Questions for Further Discussion

1. Why does evil speech warrant such harsh language?
2. Based on how Maimonides explains the prohibitions of gossip (רכילות) and evil speech (לשון הרע), would this apply to a university admissions committee discussing a student applicant's questionable past? Why or why not?

The final text comes from *Hafetz Haim* (חפץ חיים), an important late 19th century work that is viewed authoritatively regarding the ethics and laws of speech. In this passage, the author writes that it is permissible to share negative information about someone if it will prevent harm from taking place. However, in order to do so, several criteria must be met before sharing this negative information.

○ Hafetz Haim

Written by Rabbi Yisrael Meir Kagan (Belarus, 1838 - 1933), Chofetz Chaim (literally: "one who desires life") is viewed authoritatively on matters of speech to this day. Its title comes from a verse in the book of Psalms: "Who is the man who desires life, who loves days to see goodness? Guard your tongue from evil and your lips from speaking deceitfully." (Psalms 34:13-14). In addition to this work, the Chofetz Chaim—as he is still known—published enduring works on halakha, most notably his Mishnah Berurah commentary on the Shulhan Aruch.

*SOURCE #4

**חפץ חיים, חלק שני: הלכות
איסורי רכילות, כלל ט**

אם אֶחָד רוֹאֶה, שְׁחִבְרוּ רוֹצֶה
לְהִשְׁתַּתֵּף בְּאִיזָה דְּבָר עִם אֶחָד,
וְהוּא מְשַׁעַר, שְׁבֻדָּאֵי יִסְבֵּב לוֹ
עַל יְדֵי זֶה עֲנִין רַע, צָרִיד לְהִגִּיד
לוֹ כִּדִּי לְהַצִּילוֹ מִן הָעֲנִין הָרַע
הַהוּא, אֲדָּ צָרִיד לָזֶה חֲמִשָּׁה
פְּרָטִים שְׁאֵבְאָרֵם בְּסֻמוֹד.

¹ וְאֵלּוּ הֵן: יִזְהַר מְאֹד, שֶׁלֹּא
יַחְלִיט תִּכְרָף אֶת הָעֲנִין בְּדַעְתּוֹ
לְעֲנִין רַע, רַק יִתְבּוֹנֵן הֵיטֵב
מִתְחִלָּה, אִם הוּא בְּעֶצֶם רַע.

² שֶׁלֹּא יַגְדִּיל בְּסִפּוּרוֹ אֶת הָעֲנִין
לְרַע יוֹתֵר מִמָּה שֶׁהוּא.

³ שְׂיִכּוֹן רַק לְתוֹעֵלָת, דִּהְיִנּוּ,
לְסִלֵּק הַנִּזְקִין מִזֶּה, וְלֹא מִצַּד
שִׂנְאָה עַל הַשִּׂנְאָה.

⁴ (וּבְזֶה הַפֶּרֶט הֵג' נִכְלָל גַּם כֵּן
עוֹד עֲנִין אַחֵר, שְׁמִלְכָד הַכּוֹנֶה,
שְׂיִכּוֹן לְתוֹעֵלָת, וְלֹא מִצַּד שִׂנְאָה,
יִתְבּוֹנֵן מִתְחִלָּה, אִם תְּבוֹא מִזֶּה
תוֹעֵלָת, לְאַפּוּקֵי מִמָּה שְׂמִצּוֹי
כְּמָה פְּעָמִים, שְׁאֵפְלוּ אִם יֵאמָר
לוֹ, לֹא יִשְׁמַע לוֹ, וְיִשְׁתַּתֵּף עִמוֹ,

**Hafetz Haim,^o Part Two, The Laws of the Prohibition
of Gossip, Principle 9**

If one sees that his friend wishes to
enter into partnership with someone,
and he feels that he will undoubtedly
be harmed by this, he must tell him to
rescue him from that harm, but
the following five conditions must
be met:

¹ He must be careful not to immediately
conclude that harm will result, but must
reflect carefully from the beginning to
see if the result will, indeed, be harmful.

² He must not exaggerate the matter to
be worse than it actually is.

³ His intent must be for benefit only; that
is, to remove the harm from the first, and
not because he hates the other.

⁴ And in this third condition, we shall
include yet another matter—that aside
from his intending benefit and not being
motivated by hatred, he must first reflect
as to whether benefit will actually sprout
from this—as opposed to what happens
very often, that even if tells him, he will

ואחר כך כְּשֶׁיִּרְגִּיזוּ חֲבֵירוֹ בְּאִיזָה
דָּבָר, אוֹמֵר לוֹ: יָפָה אָמַר עָלֶיךָ פְּלוֹנִי,
שֶׁאִין רְאוּי לְהִשְׁתַּתֵּף עִמָּךְ, וְכִיּוֹצֵא
בָּזֶה, לְאַנְשִׁים כָּאלוֹ שֶׁהוּא מְכִירָם,
שֶׁיֵּשׁ לָהֶם מִדָּה רָעָה זוֹ דְּרִכִּילוּת, לֹא
יֵצִיר שׁוּם הֵתֵר, כִּי הוּא מְכַשִּׁיל אֶת
הַעֲוִרִים הַלָּלוּ בְּלֹא תַעֲשֶׂה גְמוּלָה
דְּרִכִּילוּת).

not listen to him, but will enter into partnership
with him, and afterwards, when his partner angers
him with something, he will tell him: "He was right
when he told me not to become your partner," and
the like. For such people, whom he recognizes to
possess this evil trait of gossip, no permission [to
speak up] is conceivable, for it makes these stumble
in the absolute transgression of gossip.

⁵ אם הוא יכול לסבב את התועלת
הזו, מבלי שיצטרף לגלות לפניו
עניניו לרע, אין לספר עליו.

⁵ If he can accomplish the goal without having to
speak badly of the other, he should do so.

כֹּל זֶה אֵינוֹ מֵתֵר, רַק אִם לֹא יִסְבֵּב עַל
יְדֵי הַסְּפוּר רָעָה מִמֶּשׁ לְנִדּוֹן, דְּהִינּוּ,
שֶׁלֹּא יִרְעוּ עִמּוֹ מִמֶּשׁ, רַק שְׁתּוּסֵר
מִמֶּנּוּ עַל יְדֵי זֶה הַטּוֹבָה, שֶׁהִיא עוֹשֶׂה
עִמּוֹ הַשְׁכָּנָה, אִף דְּמִמִּילָא דְּבָר זֶה
הוּא רָעָה לוֹ, מִכָּל מְקוֹם מֵתֵר. אָבֵל
אִם יִגִּיעַ לוֹ עַל יְדֵי סְפוּרוֹ רָעָה מִמֶּשׁ,
אָסוּר לְסַפֵּר עָלָיו, כִּי יִצְטָרֵךְ לָזֶה עוֹד
פְּרָטִים...

All this is permitted only if absolute harm will not
come to the one spoken of because of what is said
about him. That is, they are not permitted to do
him any positive harm, but only to deprive him of
the good that might have come to him from the
partnership. Even though [even] this is bad for him,
in any event it is permitted. But if absolute harm
comes to him because of what is said about him, it is
forbidden to speak about him; for this would require
other conditions...

Questions for Further Discussion

In this passage, the *Hafetz Haim* details the criteria which must be met before one can share negative information to save their friend from a potentially harmful partnership. Evaluate these criteria through a lens of our case this year:

1. *Is an admissions committee permitted to investigate and discuss the wrongdoings of a student applicant?*
2. *How would you advise the committee to proceed based on this passage?*

Summary: Unit 3

In this unit we explored a number of issues related to how one's past should dictate our relationship with them in the present. First we discussed a mishnah and midrash related to how to perceive a person after they have been convicted in court. In addition, we explored the transgression of oppressive speech (אונאת דברים) regarding inappropriate ways of bringing up someone's past. We then discussed the obligation to intervene and not stand by when someone is in need of assistance. Lastly, we approached this question through a lens of gossip and evil speech, reflecting on when it is appropriate to sound the alarm by sharing information about someone's past.

Take a Step Back

Reflecting on this unit as a whole:

1. *How does it inform whether or not a university admissions committee should require students to disclose information about their past wrongdoings when applying?*
2. *How should such information be utilized and by whom?*



Appendix

Contemporary Legal Material

SOURCE 1

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

(“The Beijing Rules”)

Adopted by General Assembly resolution 40/33 of 29 November 1985

8. Protection of privacy

8.1 The juvenile’s right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

Rule 8 stresses the importance of the protection of the juvenile’s right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as “delinquent” or “criminal”.

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle.

21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the 13 interests of the juvenile offender. “Other duly authorized persons” would generally include, among others, researchers.

SOURCE 2

Governor Larry Hogan of Maryland Vetoes “Ban the Box” Bill Passed by State Legislature (May 26, 2017)

Dear Mr. President and Mr. Speaker:

In accordance with Article 11, Section 17 of the Maryland Constitution, I have vetoed Senate Bill 543/House Bill 694 - Higher Education — Admissions Process — Criminal History (Maryland fair Access to Education Act of 2017).

This legislation prohibits colleges and universities from using an admissions application containing questions about a prospective student’s criminal history -- no matter how violent or lengthy that criminal history may be. Additionally, Senate Bill 543/House Bill 694 limits how a college can use a prospective or incoming student’s criminal history information, curtailing its ability to ensure a safe campus environment.

Protecting our citizens must be a top priority of any government and Maryland’s colleges and universities must be safe communities where students are free to learn and grow. When families send their children to college, they know they will be exposed to exciting new opportunities and challenges, but also to new dangers. In this, parents have an expectation that the school to which they entrust their child will do everything possible to keep its students safe.

Senate Bill 543/House Bill 694 jeopardizes student safety by dictating how and when schools can ask about and use criminal history information about potential students. This could lead to situations where a school unknowingly admits a student with a violent past or feels it must accept a student with a criminal history for fear of running afoul of the law.

Most alarmingly, the legislation does little to differentiate between those with a violent felony, such as a sexual assault conviction, and those with a nonviolent misdemeanor on their record.

Legislation barring colleges and universities from using admissions applications containing questions about misdemeanor or nonviolent convictions while still allowing questions about violent felonies would better balance opportunity with public safety.

Our laws must balance the opportunity for second chances with our most important duty of ensuring public safety. I have championed policies that recognize the innate potential of each and every Marylander no matter their criminal history. In 2015, I was proud to sign the Second Chance Act and provide individuals a clean slate by shielding from public knowledge certain low-level criminal offenses. Last year, together with your leadership, we were able to pass the Justice Reinvestment Act which lowers penalties for nonviolent drug offenders, emphasizes treatment and rehabilitation, and contains one of the largest expansions of expungement opportunities in recent history.

However, while measures like the Second Chance Act and Justice Reinvestment Act strike this crucial balance, Senate Bill 543/House Bill 694 tips the scales to the detriment of public safety. While individuals of all criminal backgrounds should be given educational, employment, and growth opportunities, colleges and universities must have the ability to know who they are accepting onto their campuses. We should not encourage schools to turn a blind eye to a prospective student's potentially violent criminal background.

For these reasons, I have vetoed Senate Bill 543 and House Bill 694.

SOURCE 3

Louisiana House Bill 688 (2017)

Summary: In 2017, Louisiana became the first state to “ban the box” on college applications, while also allowing for certain exceptions. The full text of the bill can be found [here](#) and a press release summarizing the bill can be found [here](#).

Bill Title: Prohibits a public postsecondary education institution from inquiring about a prospective student's criminal history, except for history pertaining to specified offenses, prior to his acceptance for admission.

- » Proposed law prohibits a public postsecondary education institution from inquiring on an initial application form about a prospective student's criminal history until after the prospective student has been given an opportunity to interview for acceptance for admission or, if no such interview is to be conducted, until after the prospective student has been given a conditional offer of acceptance for admission.
- » Proposed law prohibits the inclusion on the common application of questions pertaining to criminal history.
- » Proposed law provides, however, that a public postsecondary education institution may consider the criminal history of a prospective student in making the final determination of whether to accept the person for admission.
- » Proposed law authorizes the institution to consider the nature and gravity of the criminal conduct, the time that has passed since the occurrence, and the specific parameters of the institution or the prospective student's course of study and the bearing, if any, that the criminal conduct will have on the ability of the prospective student to meet these requirements.
- » Proposed law allows institutions that offer a teacher preparation programs to consider criminal conviction history if information pertaining to such history is provided on certain applications or forms if such information is provided on the professional conduct form developed by the state Dept. of Education for use in the teacher certification process to offer counseling.

- » Proposed law allows LSU Health Sciences Centers (New Orleans and Shreveport), the LSU vet school, and other public postsecondary education institutions to consider criminal conviction history if such information is provided on certain applications or forms that is designed by a national application service, tailored for admission to a specific degree program, and used by postsecondary education institutions in multiple states.

SOURCE 4

Rehabilitation of Criminals in Jewish Law, Nahum Rakover (2007)

Nahum Rakover is a professor emeritus at Bar-Ilan University and a former deputy attorney general of Israel. This selection is from the abstract of his 2007 book, which deals with Jewish legal approaches to criminal rehabilitation.

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.

Recommended Supplemental Reading

ENGLISH

1. [Rehabilitation of Criminals in Jewish Law \(English abstract\)](#)
Nahum Rakover, The Jewish Legal Heritage Society. 2007.
2. [Second Chances, Social Forgiveness, and the Internet](#)
Amitai Etzioni, The American Scholar. Mar. 1, 2009.
3. [From Prison to Ph.D.: The Redemption and Rejection of Michelle Jones.](#)
Eli Hager, The New York Times. Sept. 13, 2017.
4. [Common App Drops Criminal History Question](#)
Scott Jaschik, Inside Higher Ed. Aug. 13, 2018.
5. [When Banning One Kind of Discrimination Results in Another](#)
Alana Semuels, The Atlantic. Aug. 4, 2016
6. [“Ban the Box” does more harm than good](#)
Jennifer L. Doleac, Brookings. May 31, 2016.
7. [Thinking “beyond the box”: The use of criminal records in college admissions](#)
Judith Scott-Clayton, Brookings. Sept. 28, 2017.
8. [How Can We Improve Ban the Box Policies?](#)
Christina Stacy, Urban Institute. 2017
9. [Beyond the Box: Increasing Access to Higher Education for Justice-Involved](#)
John B. King, Jr, Department of Education. May 9, 2016
10. [Criminal History Screening and College Application Attrition](#)
Center for Community Alternatives. November 1, 2019

HEBREW

11. [חוק המרשם הפלילי ותקנת השבים, תשמ"א](#)

MMCC Student Leadership

Drew Perkoski, Washington University in St. Louis, *Student Director*.

Abraham Wasserstein, Princeton University, *Founder & Former Student Director*.

Alexa Rudley, Stony Brook University

Andy Ebbin, Brookly College

Brooke Getter, Rutgers University

Fruma Landa, Yeshiva University

Jonathan Banai, University of Florida

Kellie-Anne Goldberg, University of Victoria

Liza Rynkiewicz, Hebrew University

Michael Rahbar, Stony Brook University

Netanel Yomtov, Binghamton University

Sam Hirschhorn, UCLA

Sara Verschleisser, Yeshiva University

Temmi Lattin, Yeshiva University

Theo Scheiner, Hofstra University

Zachary Harris, Brown University