



Hilkhot Teshuva 1:2
The *Se'ir Ha-mishtalei'ach* – the Yom Kippur "Scapegoat"
By David Silverberg

In our previous installment, we explored Maimonides' comments in the opening passage of Hilkhot Teshuva where he asserts the indispensability of *teshuva* in attaining expiation for sin. Even when the Torah imposes other punitive measures, such as a sacrifice, court-administered punishment or monetary payment, a violator achieves full atonement only through the process of repentance.

In *halakha* 2, Maimonides points to a jarring exception to this rule of the indispensability of *teshuva* as a means of atonement. He speaks here of the *se'ir ha-mishtalei'ach*, the goat upon which the *kohen gadol* confesses all the nation's sins as part of the yearly Yom Kippur service in the *Mikdash*. This goat is sent into the wilderness outside Jerusalem where it is killed, symbolic of the elimination of the nation's sins (Vayikra 16:21). In stark contrast to his comments in *halakha* 1, Maimonides acknowledges the power of this goat to atone even in the absence of *teshuva*. He writes, "The *se'ir ha-mishtalei'ach* atones for all sins in the Torah, both slight and severe [transgressions]...provided that he [the sinner] performed *teshuva*. But if he had not performed *teshuva*, then the goat atones only for the slight [transgressions]." Maimonides proceeds to define *chamurot* ("severe transgressions") as sins for which one is liable to death or *karet* (eternal excision from the Jewish people), as well as false or meaningless vows. All other violations of Torah law are classified as *kalot*, or "slight" transgressions (to whatever extent the violation of divine law can be described as "slight"). According to Maimonides, an unrepentant violator of one of the *kalot* earns atonement through the *se'ir ha-mishtalei'ach* ritual; even if he feels no remorse and does not verbally confess his sin, he is granted expiation through the *se'ir ha-mishtalei'ach*.

The *Se'ir Ha-mishtalei'ach* in the Talmud

Many later writers have noted that Maimonides' ruling in this regard appears to directly conflict with the Talmud's conclusion. The Mishna in Masekhet Shavuot (2b) establishes that the *se'ir ha-mishtalei'ach* earns atonement for all transgressions and lists all the categories of sins to emphasize the unique effects of this ritual in achieving expiation. As the Gemara (12b) notes, the Mishna includes in its list of categories *mitzvat aseï*, the neglect of affirmative commands, which is generally treated more leniently than the transgression of the Torah's prohibitions. The Gemara wonders why the Mishna would include this category, given the Rabbinic tradition that one who violates a *mitzvat aseï* is granted atonement immediately upon performing *teshuva*; no further means of atonement are necessary. Why does the Mishna include *mitzvat aseï*

among the sins for which the Yom Kippur goat atones, thereby implying that a penitent violator of a *mitzvat aseï* must wait until Yom Kippur before achieving atonement?

The Gemara responds that the Mishna follows the startling position of Rabbi Yehuda Ha-nasi (or "Judah the Prince," redactor of the Mishna), who held that the Yom Kippur service in the *Mikdash* earned atonement for all sins regardless of whether or not one repents. When the Mishna speaks of the *se'ir ha-mishtalei'ach* achieving atonement for all transgressions, it refers even to unrepentant sinners, who, despite feeling no remorse for their misdeeds, are cleansed of their sins through the *se'ir ha-mishtalei'ach*. The Mishna therefore included *mitzvot aseï* in its list of sins for which the Yom Kippur goat atones. True, one who performs *teshuva* after neglecting an affirmative command earns atonement even before Yom Kippur; the Mishna, however, refers even to impenitent violators, who are also granted expiation, but only through the Yom Kippur service.

It thus emerges that the *Tanna'im* debated the question of whether the *se'ir ha-mishtalei'ach* earns atonement for violations that are not followed by repentance. Whereas Rabbi Yehuda Ha-nasi extended the efficacy of this ritual to even unremorseful sinners, a view embraced by the Mishna towards the beginning of Masekhet Shavuot, the majority position held that only penitent violators have access to the atonement "powers" of the Yom Kippur goat. Elsewhere in the Talmud (Pesachim 27a), the Gemara establishes the fundamental rule that where Rabbi Yehuda Ha-nasi disagrees with the other *Tanna'im*, Halakha follows the majority view. Seemingly, then, we should conclude on the basis of the Gemara's discussion in Masekhet Shavuot that the Yom Kippur goat offers atonement only to repentant sinners, as only the minority view of Rabbi Yehuda Ha-nasi recognizes the power of this service to cleanse the sins of even the impenitent among the nation.

Maimonides, of course, reached a much different conclusion, distinguishing between the two different categories of sins – *kalot* and *chamurot*. In his view, the *se'ir ha-mishtalei'ach* has the capacity to atone for *kalot* even in the absence of repentance, whereas *chamurot* are forgiven only through *teshuva*. How can Maimonides' position be reconciled with the Talmud's discussion in Masekhet Shavuot?

Rabbi Yosef Kapach, in his commentary to *Mishneh Torah*, contends that the perceived discrepancy between Maimonides' ruling and the Gemara's discussion results from a mistaken assumption concerning Maimonides' understanding of this Talmudic passage. In his view, the scholars who noted this seeming contradiction presumed Rashi's interpretation of the Gemara, from which it emerges that Rabbi Yehuda and the other *Tanna'im* debate the possibility of earning atonement without repentance. (We likewise presumed this reading in paraphrasing the Talmud's discussion.) Rabbi Kapach contends that the Gemara's formulation lends itself to a different reading. The Gemara speaks of a case of *omed be-mirdo*, one who "remains in his state of rebellion." This term could be understood as a reference to somebody who not merely fails to repent, but also denies the value of the Yom Kippur rituals. This individual feels no remorse for his misdeed but, even worse, rejects the institution of Yom Kippur and the *se'ir ha-mishtalei'ach* as a means of earning forgiveness, and for this reason he is, according to the majority view, excluded from the atonement of the *se'ir ha-mishtalei'ach*.

Accordingly, Rabbi Kapach contends, we may reconcile Maimonides' ruling with the Talmud's discussion. The Talmud excludes from the atonement of the Yom Kippur goat only those who brazenly deny the significance of this ritual; it says nothing of those who recognize the value of the Yom Kippur service but, for whatever reason, fail to repent for their wrongdoing. Hence, Maimonides' ruling granting atonement for even unrepentant violators of *kalot* in no way conflicts with the Gemara's discussion of the topic.

The View of the Talmud Yerushalmi

Many others, however, suggested that Maimonides' ruling can be understood in light of a passage in the corresponding discussion in the Talmud Yerushalmi, in Masekhet Shavuot (1:6). Without making reference to the debate between Rabbi Yehuda Ha-nasi and the other Sages, the Yerushalmi draws a distinction between *mitzvot asei* (affirmative commands) and *mitzvot lo ta'aseh* (prohibitions) with regard to the possibility of atonement without repentance. Yom Kippur provides atonement for the neglect of affirmative commands even in the absence of *teshuva*, whereas the transgression of the Torah's prohibitions can be atoned for only with an accompanying process of repentance. As opposed to the Talmud Bavli, which understood that Rabbi Yehuda allowed for the atonement of all sins even without repentance, whereas the other Sages denied such a possibility altogether, the Yerushalmi distinguishes in this regard between *mitzvot asei* and *mitzvot lo ta'aseh*.

The basis of the Yerushalmi's distinction is a debate cited by the Gemara in Masekhet Yoma (86a) regarding the classification of Torah violations as either *kalot* or *chamurot*. One view, which, as we saw, Maimonides follows in Hilkhot Teshuva, classifies as *chamurot* only violations of laws punishable by death or *karet*; according to this position, all other Torah violations are deemed *kalot* (with the exception of false or meaningless oaths, which, for reasons that lie beyond the scope of our discussion, are deemed more severe). Another view, however, includes under the category of *chamurot* all *mitzvot lo ta'aseh*, even those that are not punishable with death or *karet*. The Talmud Yerushalmi, presumably, followed the second view, classifying all *mitzvot lo ta'aseh* under the category of *chamurot*. It further held – in contrast to the Bavli – that repentance can be achieved through the Yom Kippur service without repentance only for *kalot*, whereas *chamurot* can be atoned only through *teshuva*. As opposed to the Bavli, which treats all transgressions equally with respect to the possibility of atonement without *teshuva* – a possibility that hinges on the debate between Rabbi Yehuda and the other Sages – the Yerushalmi distinguished in this regard between *kalot* and *chamurot*.

If, indeed, the Yerushalmi reached a different conclusion on this issue than the Bavli, then we have no need to try reconciling Maimonides' ruling with the Bavli's discussion in Masekhet Shavuot. Instead, we can simply assert that Maimonides, for whatever reason, sided with the Yerushalmi's position, that a violator of *kalot* earns atonement on Yom Kippur even without repenting. Of course, Maimonides does not accept the Yerushalmi's definition of *kalot*, as including only the neglect of *mitzvot asei*. He follows the other view recorded in Masekhet Yoma, that the category of *kalot*

includes as well *mitzvot lo ta'aseh* (with the exception of false or meaningless oaths). With regard, however, to the more fundamental issue of whether the Yom Kippur service can provide atonement for *kalot* without repentance, Maimonides prefers the position of the Yerushalmi over that of the Bavli. Accordingly, he maintains that *kalot* violators indeed earn atonement through the *se'ir ha-mishtalei'ach* even if they fail to repent.

A Source from the Talmud Bavli

Rabbi Katriel Sapatkin, in his *Keter Ha-melekh* commentary to *Mishneh Torah* (published in Warsaw, 5656), advances the approach described above but adds that Maimonides' view perhaps has basis in the Talmud Bavli, as well, in a passage in *Masekhet Keritut* (26a). The Gemara there addresses the case of a person who transgressed a *mitzvat lo ta'aseh*, which is punishable by *malkot* (lashes), but the court could not administer punishment until after Yom Kippur. The Gemara establishes that the occurrence of Yom Kippur in the interim does not absolve the transgressor from *malkot*, but it initially entertained the possibility that as Yom Kippur atones for his violation, he is no longer liable to punishment.

The *Keter Ha-melekh* observes that such a notion can be considered only on the assumption that Yom Kippur atones for *lo ta'aseh* violations even in the absence of *teshuva*. If repentance were indispensable for achieving atonement on Yom Kippur, and atonement were effective in canceling *malkot*, then the courts would have to determine in every such case whether or not the violator repented. Since proper repentance would absolve the sinner, the court could not administer punishment until it determines that the sinner remains unrepentant. Clearly, *Halakha* would not hinge a violator's punishment on the court's subjective assessment of his current standing and attitude towards his misdeed. *Teshuva* is not a process that can be definitively identified by parties other than the violator himself. Hence, if the Gemara raised the possibility that the Yom Kippur atonement can absolve a sinner from court-administered punishment, it must have assumed that Yom Kippur can atone for a *mitzvat lo ta'aseh* even without repentance.

Thus, the *Keter Ha-melekh* contends, this passage in *Masekhet Keritut* might serve as a compelling basis for Maimonides' position, that Yom Kippur provides atonement for *mitzvot lo ta'aseh* that do involve death or *karet* even in the absence of *teshuva*.

Can There be Atonement Without Repentance?

Having addressed the possible Talmudic basis for Maimonides' ruling, let us now proceed to perhaps the more vexing issue: its underlying rationale. In *halakha* 1, as discussed in our previous installment, Maimonides strongly emphasized the indispensability of repentance as a means of expiation. Regardless of whichever other measures the Torah imposes upon a sinner for the purpose of absolving or "rectifying" the given misdeed, such as sacrifices or corporal punishment, he cannot achieve atonement without repenting. Why, then, does the Yom Kippur scapegoat bring

atonement even without *teshuva*? What "power" does this ritual possess that enables it to wash away the guilt of even unremorseful violators?

Rabbi Menachem Meiri (France, 1249-1315), in his composition on repentance (*Chibbur Ha-Teshuva*, 2:13), dismisses the possibility of earning atonement without repentance. Without making explicit reference to Maimonides, he cites sources that allow for atonement without repentance for "minor" transgressions, and insists that these sources cannot possibly refer to an unremorseful sinner. Rather, he explains, they speak of a sinner who fails to achieve "full repentance," who feels regretful over what he has done but has fallen short of purging himself of the spiritual flaws and negative tendencies that gave rise to the misdeed. It is to such a person that the halakhic works refer when they allow for the possibility of achieving expiation without *teshuva*.

Clearly, however, it seems difficult to ascribe such a view to Maimonides, who speaks of atonement for *kalot* "whether he repented or whether he did not repent." Furthermore, one might question the logic underlying the Meiri's theory. If incomplete *teshuva* does not suffice for earning atonement, then what is added by the *se'ir ha-mishtalei'ach* that enables the sinner to achieve expiation? And if this level of repentance is sufficient, then why is the Yom Kippur scapegoat necessary for atonement?

Rabbi Yosef Dov Soloveitchik devoted one of his lectures to elucidating Maimonides' ruling concerning the atonement achieved through the Yom Kippur scapegoat, as recorded in Pinchas Peli's *On Repentance* (pp. 97-125, esp. 97-109). In essence, Rabbi Soloveitchik understood Maimonides' ruling on the basis of a clear distinction between individual and communal atonement. Undoubtedly, individual atonement cannot be achieved in the absence of sincere repentance; a person's culpability for his actions cannot be erased through any ritual if it does not inspire a process of introspection and self-improvement. The *se'ir ha-mishtalei'ach*, however, serves as atonement not for the individual members of *Am Yisrael*, but rather for the Jewish people as a collective entity. A sin committed by a Jew casts guilt both upon himself as an individual, as well as upon *Am Yisrael* as an aggregate whole. While his personal guilt can directly be absolved only through *teshuva*, the nation's collective responsibility is atoned for through the *se'ir ha-mishtalei'ach*, even if not every violator repents. This communal atonement is then effective in atoning for individuals who identify with the community, who rightfully consider themselves members of the Jewish people. Even though unrepentant sinners cannot earn atonement individually, their sins can be absolved through their identification with *Am Yisrael* as a nation, which collectively earns unconditional atonement through the Yom Kippur scapegoat.

Rabbi Soloveitchik elaborated in this context on the halakhic distinction between a *korban ha-tzibur*, a public sacrificial offering, and a *korban ha-shutafin*, a sacrifice brought jointly by a group of individuals. At first glance, a *korban ha-tzibur*, the offerings brought on behalf of the nation at large, such as the daily *tamid* offering, is but an extreme manifestation of a *korban ha-shutafin* – a sacrifice brought jointly by several partners. In the case of a *korban ha-tzibur*, one might claim, the sacrifice is offered by thousands or millions of "partners" – all members of the Jewish people. In truth, however, this is entirely incorrect. A *korban ha-tzibur*, which is purchased from the public funds of the Temple treasury, is offered on behalf of the Jewish people as single

entity, not on behalf of a large a group of individuals. As Rabbi Soloveitchik explains, "The community as a whole owns the offering and the individual is represented by it insofar as he identifies himself wholly, without any reservations, to the main body of Israel." Individual Jews are not "partners" in these offerings; they rather combine to constitute a separate entity of *Kenesset Yisrael* that earns atonement through this sacrifice.

Here in Hilkhot Teshuva, where Maimonides discusses the atonement afforded through the ritual of the Yom Kippur scapegoat, he begins by establishing that "since the *se'ir ha-mishtalei'ach* atones for all Israel, the *kohen gadol* [high priest] confesses upon it in the name of all Israel, as it says (Vayikra 16:21), 'he shall confess upon it all the iniquities of the Israelites'." Rabbi Soloveitchik explained that Maimonides here provides the basis for his subsequent remark, that the *se'ir ha-mishtalei'ach* has the capacity to atone even without repentance. Maimonides emphasizes that the goat is sent into the wilderness "in the name of all Israel," on behalf of the entity of *Am Yisrael*, as opposed to all the individuals. For this reason, it is capable of achieving atonement even without repentance. Normally, a sacrificial offering must be accompanied by *teshuva* because otherwise it is deemed a *zevach resha'im*, an offering of a sinner, which God deems abominable (Mishlei 21:27). However, when it comes to the Yom Kippur scapegoat, Rabbi Soloveitchik claimed, "the owner of the offering is not any particular person but the community, *Knesset Israel*, which possesses its own independent personality and can never be considered so corrupt as to cause it to be termed an 'offering of the wicked'." The intrinsic nature of the collective entity of the Jewish people is such that its offerings can be accepted even without repentance.

Unrepentant sinners thus earn atonement through the scapegoat only by virtue of what Rabbi Soloveitchik described as "the pipelines of the community," their membership in the Jewish nation. Since the nation as a whole is granted expiation even without repentance, members of the nation reap the benefits of this sacrifice regardless of whether or not they undergo the internal process of *teshuva*.

This explains the distinction Maimonides' draws between the *kalot* – the "light" transgressions – and *chamurot* – the more severe violations. As mentioned, the category of *chamurot*, in his view, consists of prohibitions for which one is liable to either death or *karet* – eternal excision from the Jewish people. These violators, Rabbi Soloveitchik explained, "have done something which banishes them from the community of Israel." What excludes these sinners from the atonement of the *se'ir ha-mishtalei'ach* is not the gravity of their act per se, but rather their dissociation from the Jewish people that results from the given act. Violators of these sins must earn their way back into the community of Israel through the process of *teshuva*; until then, they remain excluded from the nation's communal offerings.

It thus emerges that atonement can be achieved without repentance only by force of the sinner's wholehearted, unreserved and unconditional association with *Am Yisrael*. The exceptional "power" of the *se'ir ha-mishtalei'ach* to achieve atonement in the absence of *teshuva* in truth is but a reflection of the power of the singular entity that is the Jewish nation, and its special status before God. Although individuals among the nation can be deemed sinners whose sacrificial offerings are despised by the Almighty, the

nation at large can never be collectively categorized as "wicked." It is this eternal quality of *Am Yisrael* that allows its public offerings to earn divine acceptance even without the entire nation's repentance, thus conferring atonement upon all its individual members, provided that they can rightfully proclaim their association and identification with the Jewish people.