

## *Thieves and Robbers: The Ganav and Gazlan in Jewish Law*

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The Torah and Jewish Law treat the *ganav*<sup>1</sup> (generally translated as “thief”) and *gazlan*<sup>2</sup> (translated as “robber”) very differently. The *ganav* is fined for his offense, paying double the amount he has stolen. Should he steal a sheep and slaughter or sell it, he pays four times the amount and should he steal an ox and do the same, he is to pay five times the value. But the *gazlan* is only obligated in restitution and an additional fine of one-fifth the value (*chomesh*).<sup>3</sup> This distinction is explicit in the Torah,<sup>4</sup> but when we study the details of these laws more closely, we realize just how profound and extensive the differences between the two are.

### **Coddling the *Gazlan***

Most significantly, the punishment of the *ganav* is only for when his crime is discovered and witnesses testify to his guilt.<sup>5</sup> Should he confess on his own, then he is, in fact, free of any punishment, as is standard for fines.<sup>6</sup> The exact opposite is true for the *gazlan*. He is only liable to pay the *chomesh* fine when he admits his guilt, and only if he had originally sworn falsely in denial of his offense.<sup>7</sup> Together with his payment, he brings an *asham* sacrifice.<sup>8</sup> But should he be found guilty by witnesses, even after swearing falsely in denial of his crime, then he is obligated in no more than the restitution of the stolen object. One opinion in the Talmud, though not accepted *l'halachah*, argues that upon swearing and

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<sup>1</sup> גנב.

<sup>2</sup> גזולן.

<sup>3</sup> A חומש and is actually 25% as we count לבר, i.e., a total of the whole payment.

<sup>4</sup> See *Shemos* 21:37–22:3, *Vayikra* 5:20–26.

<sup>5</sup> *Hilchos Geneivah* 1:4–5.

<sup>6</sup> מודה בקנס פטור.

<sup>7</sup> *Hilchos Gezeilah* 7:1–2, 8.

<sup>8</sup> קרבן אשם.

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then later being contradicted by the witnesses, one is exempt from even making restitution. It *darshens*<sup>9</sup> וּלְקַח בְּעֵלְיוֹ וְלֹא יִשְׁלֵם, that the accuser accepts the oath in place of payment. How puzzling. What kind of justice system can function effectively with such types of laws?

### Persecuting the *Ganav*

By contrast, in the *Sefer HaMitzvos*<sup>10</sup> Rambam explains the full dimension of the harshness of the punishment for *geneivah*. The positive command associated with *geneivah* consists of a definition of the punishment. Besides the fines mentioned above, should the *ganav* not be able to pay, he is to be sold into slavery for six years. In addition, there is the possibility of a pseudo death sentence in the case of one who breaks and enters,<sup>11</sup> *ba b'machteres*, who is caught in the act.

This categorization by Rambam of the treatment of a *ba b'machteres* as one of the details of the punishment of a *ganav* makes clear that this law is not merely granting permission to kill the thief because he is a type of *rodef*<sup>12</sup> threatening the life of the homeowner, but rather we actually view him as subject to the death penalty at the time of his entry. Thus, should he break objects in the course of his crime, he is free from paying for the damage, for at that time he was subject to the death penalty.<sup>13</sup> A seemingly outlandish position, which is in fact not accepted *l'halachah*, is that should he escape he be allowed to keep the stolen object because “he has purchased it with his blood”<sup>14</sup>—meaning that it would be double jeopardy to impose both a death penalty and payment for the same offense. A careful reading of Rambam also yields that whereas in the case of a *rodef*, one is liable for murder for killing him when he could have been stopped by merely injuring him, in the case of the *ba b'machteres* there is no such law. One who finds the thief during the break-in may kill him without careful thought; in the midst of performing the crime his punishment is the death penalty.<sup>15</sup>

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<sup>9</sup> *Sbemos* 22:6, *TB Bava Kamma* 105b.

<sup>10</sup> *Mitzvas Aseh* 239.

<sup>11</sup> בא במחותרת.

<sup>12</sup> רודף—One who pursues another with the intent of killing him is to be killed to save the life of the threatened party. However, Rambam’s language is that he is כְּרוּדֵף—“like” a רודף but not identical.

<sup>13</sup> *Hilchos Geneivah* 9:13.

<sup>14</sup> בדמים קננהו See *TB Sanhedrin* 72a.

<sup>15</sup> See *Hilchos Geneivah* 9:7 and in *Mekoros v'Tzinyunim* in the Frankel edition.

Rambam's conceptualization of the killing of the *ba b'machteres* as punishment for his thievery, and his treatment of it as part of one *mitzvah* alongside all other punishments inflicted on the *ganav* is novel, but borne out by the *masorah*. The Torah reads:

**כא:לו** כִּי יִגְנֹב אִישׁ שׁוֹר אוֹ-אֶשֶׁה, וַיִּטְבְּחוּ אוֹ מְכָרוֹ--הַמִּשָּׁה בְּקָר, יִשְׁלֹם תַּחַת הַשׁוֹר, וְאַרְבַּע-צֹאן, תַּחַת הָאֶשֶׁה. **כב:א** אִם-בַּמְחֻתָּרִת יִמָּצֵא הַגֵּנֵב, וְהָפָה וְמַת--אִין לוֹ, דָּמִים. **ב** אִם-נִרְחָה הַשָּׁמֶשׁ עָלָיו, דָּמִים לוֹ: שְׁלֹם יִשְׁלֹם--אִם-אִין לוֹ, וְנִמְכַר בַּגֵּנֵבְתוֹ. **ג** אִם-הִמָּצָא תִמְצָא כִידּוֹ הַגֵּנֵבָה, מִשׁוֹר עַד-חֲמֹר עַד-אֶשֶׁה--חַיִּים: שְׁנַיִם, יִשְׁלֹם. (שמות כא:לו)

**21:37** If a man steal an ox, or a sheep, and kill it, or sell it, he shall pay five oxen for an ox, and four sheep for a sheep. **22:1** If a thief be found breaking in, and be smitten so that he dieth, there shall be no bloodguiltiness for him. **2** If the sun be risen upon him, there shall be bloodguiltiness for him—he shall make restitution; if he have nothing, then he shall be sold for his theft. **3** If the theft be found in his hand alive, whether it be ox, or ass, or sheep, he shall pay double. (*Shemos* 21:37–22:3)

The Christians considered the case of *ba b'machteres* as the beginning of a new topic and thus began a new chapter (*perek* 22) with it. But the *masorah* places a 'ט before and after this four-verse grouping. The payment of paying four or five times the value for rustling is followed by the punishment of the house-breaker and then the punishment of selling into slavery and concluding with the more standard punishment of double. All this constitutes the *mitzvah* of punishing the *ganav*.

### Returning the Stolen Object—*V'Heishiv es HaGezeilah*<sup>16</sup>

The thief transgresses the *lav*<sup>17</sup> of *Lo Signoru*<sup>18</sup> and is subject to a positive *mitzvah* that defines his punishment. Similarly, the *gazlan* transgresses a *lav* and is subject to a positive command. The *lav* is *Lo Sigzol*<sup>19</sup> and the positive command is “*V'Heishiv es HaGezeilah asher gazal*—Return the object you have robbed,”<sup>20</sup> and Rambam in the *Sefer HaMitzvos* includes paying the *chomesh* as part of this *mitzvah*.<sup>21</sup> He explains further that the

<sup>16</sup> והשיב את הגזלה.

<sup>17</sup> Prohibition — לאו.

<sup>18</sup> “Do not steal”—*Vayikra* 19:11, *Sefer HaMitzvos lav* 244. The *lav* of לא תגנוב in the עשרת הדברות is associated with kidnapping.

<sup>19</sup> “Do not rob”—*Vayikra* 19:13.

<sup>20</sup> והשיב את הגזלה אשר גזל.

<sup>21</sup> *Sefer HaMitzvos, Aseh* 194.

*mitzvah* consists of returning the stolen object itself when it still exists and in payment when it does not.<sup>22</sup> With regard to *Geneivah*, the returning of the stolen object is not presented as a fundamental characteristic of the *mitzvah*. By *ganav* he writes in the very first *halachah*<sup>23</sup> that there is no corporal punishment of lashes—*malkos*<sup>24</sup>—because the transgression is “subject to payment,<sup>25</sup> for the Torah obligated in payment.” With regard to *gazlan*, he writes in the first *halachah* that:

ואין לוקין על לאו זה, שהרי הכתוב ניתקו לעשה: שאם גזל, חייב להחזיר--  
שנאמר "והשיב את הגזילה אשר גזל" (ויקרא ה,כג), זו מצות עשה. ואפילו  
שרף הגזילה--אינו לוקה, שהרי הוא חייב לשלם דמיה, וכל לאו שניתן  
לתשלומין, אין לוקין עליו. (הל' גזלה א:א)

One receives no lashes for this transgression because the text connects it with a positive command, for if one robbed he must return the object, as it says, ‘Return the object that was robbed’ (*Vayikera* 5:23). This is a positive command, and even if one burned the object he is not lashed, for he is required to pay its value, and any *lav* that is subject to payment receives no lashes. (*Hilchos Gezeilab* 1:1)

Here the primary obligation is return and not payment. “Connected to a positive command—*ניתק לעשה*” is generally understood as “corrected by the positive *mitzvah*,”<sup>26</sup> thus we should understand that the return undoes the sin itself. Whereas the commentaries do not seem to take note of it, there is no *mitzvah* of *V’Heishiv es HaGeneivah*—returning the “stolen” object. The object is returned because it belongs to the original owner,<sup>27</sup> not because of an associated positive command on the *ganav*. From the perspective of the *ganav*, the payment is imposed upon him, just as slavery is imposed if he cannot pay. In fact, the *mikra* for the *mitzvah* of *Hashavas Gezeilab* is replete with a list of auxiliary forms of stealing.

והשיב את-הגזולה אשר גזל או את-העשק אשר עשק, או את-הפקדון אשר הפקד  
אתו; או את-האבדה, אשר מצא. כד או מכל אשר-ישבע עליו, לשקר--ושלם  
אתו בראשו, ותמשתיו יסף עליו (ויקרא ה:כג)

<sup>22</sup> *Hilchos Gezeilab* 2:1–2, 1:1.

<sup>23</sup> *Hilchos Gezeilab* 1:1.

<sup>24</sup> מלקות.

<sup>25</sup> ניתן לתשלומין.

<sup>26</sup> See Rashi, *TB Makkos* 14b.

<sup>27</sup> *Hilchos Geneivah* 1:12.

Then it shall be, if he hath sinned, and is guilty, that he shall restore that which he took by *gezailah*, or the thing which he hath gotten by oppression, or the deposit which was deposited with him, or the lost thing which he found. (*Vayikra* 5:23)

Conspicuously missing from this list is *geneivah*, and thus when the object was attained via *geneivah* there is no *mitzvah* of returning it.<sup>28</sup> When the object is not present, then the *ganav* pays for the original object in the same manner that all damages are paid, and in addition pays the attendant fines. Thus, Rambam introduces *Hilchos Geneivah*<sup>29</sup> by explaining that there are no lashes since the object is subject to payment, rather than first stating, as he does with *gezailah*, that the *mitzvah* is connected to and meant to be corrected by the *mitzvah* of *hashavah*.

### Categorizing Thieves and Robbers in *Mishneh Torah*

Rambam also shows how differently he perceives these two crimes by how he categorizes them in *Mishneh Torah*. The *Baal HaTanya* in *Shulchan Aruch HaRav* creates one category titled *Hilchos Geneivah u'Gezailah*, and we would in fact consider this a very likely coupling. Rambam not only separates them but, somewhat startlingly, after listing *Hilchos Geneivah* as the second topic in the *Sefer Nezikin* he introduces the category of *Hilchos Gezailah v'Aveidah*. Not only does he not feel that *geneivah u'gezailah* constitute one category, he feels that *gezailah* is more closely related to *aveidah*<sup>30</sup>—the laws dealing with a lost object, and seemingly a non-criminal topic. Indeed, we can discern the connection to the laws of *aveidah*, as not only is there a *mitzvah* to return the lost object,<sup>31</sup> but a *lav* in ignoring it: “Do not see [the lost object] and ignore it.”<sup>32</sup> Should the finder keep the object rather than return it, he transgresses the *lav* of

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<sup>28</sup> In fact, in the context of this *mikra*, if there was a false oath, then *TB Kesuvos* 42b does include the גנב in the law of חומש, but in the standard case of merely stealing he is not included. There are many details of a very significant nature that will not be addressed in this essay. I hope to write two other essays on this topic—one dealing with the details of Rambam's *shittah*, and another focusing on the contrast between Rambam's understanding and that of other *Rishonim* and of the lack of sufficient attention given to these distinctions by the commentaries.

<sup>29</sup> *Hilchos Geneivah* 1:1.

<sup>30</sup> אבדה.

<sup>31</sup> השב תשיבם (דברים כב:א).

<sup>32</sup> לא תראה...והתעלמת מהם (דברים כב:א).

*gezeilah*.<sup>33</sup> But still, this transgression is obviously much less serious than *geneivah* and Rambam's categorizing it together with *gezeilah* is in harmony with the *mikra* and *halachah* where we see the punishment for a *gazlan* is so much milder than that for a *ganav*. Based on the lenient punishment, it would logically follow that the crime itself is viewed as being less serious.<sup>34</sup>

### The Elusive Definition of *Gazlan*

Yet, this downgrading of *gezeilah* to lump it together with one who does not return a lost object seems counter-intuitive. Even the very law that one who takes a lost object for himself transgresses *Lo Sigzol*, seems to defy the definition of that *lav*. A *gazlan* is defined<sup>35</sup> as one who physically takes the object from the victim by force while a *ganav* is one who steals unbeknownst to the victim.<sup>36</sup> Thus, one who keeps an *aveidah* should be categorized as a *ganav* who transgresses *Lo Signovu*. On the other hand, in refining the definition, the Talmud decides, as Rambam catalogues,<sup>37</sup> that an armed robber (*listis mezuyan*)<sup>38</sup> is rather a *ganav* than a *gazlan*, because he hides from people and this is sufficient for one to be classified as a *ganav*. The categorizing principles are somewhat vague, and after first broadening the definition of *ganav* to include *listis mezuyan*, the Talmud then proceeds to contrast *ganav* to *gazlan* based on a verse in *Sefer Shmuel*:

כיון דקא מטמרי מנייהו גנב הוא ואלא גזולן היכי דמי אמר ר' אבהו כגון בניהו בן יהודע שנאמר (שמואל ב כג) ויגזל את החנית מיד המצרי ויהרגוהו בחניתו

Since he hides from them, he is a *ganav*. So who is a *gazlan*? Rabbi Avahu says, like Benayahu the son of Yehoyada, as it says (*Shmuel* 2:23): 'And he stole the spear from the hand of the *Mitzri* and killed him with the spear.' (*TB Bava Kamma* 79b)

<sup>33</sup> לא תגזול: *Hilchos Gezeilah v'Aveidah* 11:2.

<sup>34</sup> See the article of Dr. Lawrence Kaplan in *Hakirah* 19 responding to the article by Prof. Haym Soloveitchik. There, the focus is on why *Hilchos Aveidah* is in *Sefer Nezikin*. I believe the more serious question is the joining of *Gezeilah v'Aveidah*. As we will see, answering this question, in turn, answers their question.

<sup>35</sup> *Hilchos Gezeilah* 1:3, *TB Bava Kamma* 79b, *Hilchos Geneivah* 1:3.

<sup>36</sup> Ibid.

<sup>37</sup> *Hilchos Geneivah*, *ibid*. In fact, there is question about the *girsah*, but the manuscript evidence as well as statements by Rambam elsewhere in *Mishneh Torah* confirm this *girsah*. See *shinui nuschaos* in the Frankel ed.

<sup>38</sup> ליסטים מזוין.

This verse would seem to be a strange source. It tells a story of a hero who defeats another in battle, and would hardly seem to give us a sense of how we view a *gazlan*.

At the beginning of *Hilchos Gezeilah* (1:3), Rambam defines the *gazlan* as one who takes by force and gives several examples. Later (3:11) he adds that a *shomer* who uses the object he is meant to guard<sup>39</sup> is also guilty of *Lo Sigzol*, even though, like *aveidah*, it is a case where the act is done unbeknownst to the owner. Also (3:14) one who denies he has an object he was assigned to guard<sup>40</sup> becomes a *gazlan*. Here no act of force was done—the object was handed over willingly. Perhaps the most surprising case of *gezeilah* Rambam brings, and one disputed by other *Rishonim*, is when a lender seizes an object as security<sup>41</sup> when, in fact, he is rightly owed the value of the object. This illegal act of taking what is coming to him is still an act of *gezeilah*. One who borrows an object without permission<sup>42</sup> is also a *gazlan*. On the other extreme, a tax collector who operates ruthlessly and arbitrarily<sup>43</sup> is also a *gazlan*. Rambam finds other cases of *gazlan* outside of *Hilchos Gezeilah*. In *Hilchos Zechiyah*,<sup>44</sup> he tells us that even though rustlers of domestic animals are *ganavim*, the poachers of privately owned animals of the wild are *gazlanim*. What exactly makes one a *gazlan* and why do we deal with him so gently?

### Two Types of Punishment for Two Different Types of People

The Talmud and Rambam both raise the issue of the disparity in punishment between robbers and thieves. Rambam<sup>45</sup> does not quote the Talmud's reason but rather explains that, as a general rule, the Torah metes out the most extreme punishments for what is most common. The main reason for punishment is deterrence and since *geneivah* is a common threat it requires the deterrent of a stiff fine. Cattle and sheep rustling are a more serious problem and thus the higher fines for these crimes, and four vs. five is based on the greater need of deterrence for cattle theft. *Gezeil*, on the other hand, in its classic mode, is uncommon and difficult to commit, and since the robber is known, his likelihood of getting away with his crime is small. As we have noted, even *chomesh* is

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<sup>39</sup> שולח יד בפקדון.

<sup>40</sup> כופר בפקדון.

<sup>41</sup> משכון.

<sup>42</sup> שואל שלא מדעת.

<sup>43</sup> מוכס שאין לו קצבה.

<sup>44</sup> *Hilchos Zechiyah U'Matanah* 1:2.

<sup>45</sup> *Moreh Nevuchim* 3:41.

only for cases where the robber turns himself in after having denied under oath,<sup>46</sup> and Rambam explains that in fact the purpose of retribution in these cases is specifically for the benefit of the perpetrator—that he be granted atonement—*kapparah*.<sup>47</sup> As we have noted, for a *gazlan* who is found guilty due to witnesses, there is no punishment at all, merely the requirement that he return the object. Only when he admits his guilt is atonement possible. Still, even if the Torah did not feel a need for strong deterrence, this lack of any real punishment is startling and calls for explanation.<sup>48</sup>

The Talmud, famously, gives a different reason than that of Rambam for the disparity in punishment:

שאלו תלמידיו את רבן יוחנן בן זכאי מפני מה החמירה תורה בגנב יותר מגזלן אמר להן זה השווה כבוד עבד לכבוד קונו וזה לא השווה כבוד עבד לכבוד קונו כביכול עשה עין של מטה כאילו אינה רואה ואוזן של מטה כאילו אינה שומעת שנאמר (ישעיהו כט) הוי המעמיקים מה' לסתיר עצה והיה במחשך מעשיהם וגו' וכתוב (תהילים צד) ויאמרו לא יראה קה ולא יבין אלקי יעקב וכתוב (יחזקאל ט) כי [אמרן] עזב ה' את הארץ ואין ה' רואה <תניא> אמר ר' מאיר משלו משל משום רבן גמליאל למה הדבר דומה לשני בני אדם שהיו בעיר ועשו משתה אחד זימן את בני העיר ולא זימן את בני המלך ואחד לא זימן את בני העיר ולא זימן את בני המלך איזה מהן עונשו מרובה הוי אומר זה שזימן את בני העיר ולא זימן את בני המלך. (ב"ק עט)

The students of Rav Yochanan ben Zakai asked him, “Why was the Torah more stringent with the *ganav* than the *gazlan*?” He told them, “The *gazlan* equated the honor of the servant to the honor of the owner and the *ganav* did not. He has dealt with the eye below as if it could not see and the ear below as if it could not hear.... as is written ‘They said G-d will not see and the G-d of Yaakov will not understand’ (*Tehillim* 94) and as it is written, ‘They said G-d has left the earth and G-d does not see.’” <We learnt in a *braisa*>: Rabi Meir said that they quote a parable in the name of Rav Gamliel: ‘It is comparable to two men who lived in a city and made a party. One invited the townspeople but not the family of the king, and one did not invite the townspeople or the family of the king. Who will be

<sup>46</sup> In such a case, in fact, where the victim recognized the גנב but there were no witnesses, and he forced him to swear, the guilty גנב would also only be subject to חומש. We will refer to this later.

<sup>47</sup> כפרה.

<sup>48</sup> Moreover, since the גנב וגזלן who swear falsely and then confess are both subject to כפרת חומש ואשם, we need to answer why the *mikra* presents them so differently, presenting completely different streams of treatment for each.



punished more severely? He who invited the townspeople and not the children of the king. (TB *Bava Kamma* 79b)

It would seem that this passage provides only one explanation and that Rav Gamliel's insight is being used by Rabi Meir to explain Rav Yochanan's meaning. Rav Yochanan focuses on the psyche of the *ganav*. He fears the justice of man, but of G-d he believes, "G-d has left the earth." He is a non-believer, who will not be plagued by his conscience and is not expected to confess—thus the only way to deal with him is to deter him from crime. He only fears the justice of man and thus the hand of man must deal harshly with him and deter those like him from crime. Rambam's explanation for the punishment of the *ganav*—the need for deterrence—would in fact conform with Rav Yochanan's statement. But what of the *gazlan*, who has equal disrespect for man and G-d? At first glance, he would seem to be one who denies G-d's Providence—*Hashgachah*<sup>49</sup>—to the point that he does not expect retribution from man either, but if this is so it remains difficult that he is not to be punished at all. He seems to be a bigger threat to society than a *ganav*. Should he not at least be deterred?

Rav Gamliel gives a parable. The *ganav* is like a person who invites the townsfolk but not the king and his entourage to share in his joys. This is consistent with Rav Yochanan. He does not believe that the Creator has any interest in this world, and he has no connection with G-d. But he values men and can make connections and friendships with them. He can welcome them into his house—but his life comes first and he will take advantage of those he can deceive and steal from. The *gazlan*, says Rav Gamliel, is like a person who makes a party to which he invites no one, neither the king nor his neighbors—seemingly a very strange person! He seeks to define the psyche of the *gazlan* and does not see in it the denial of the presence of G-d and His *Hashgachah*. He does not deny the presence of G-d any more than he could possibly deny the presence and ability of the community to take him to task for his actions. He merely does not have a bond with either of them. He is a believer, but in his inner world he is detached both from G-d and society. Still, who exactly is he?

### **The Gazlan's Path**

Rambam does not define the psyche of the *gazlan* in *Moreh Nevuchim*, but in *Mishneh Torah*, in the first chapter of *Hilchos Gezeilah v'Aveidah*, he

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<sup>49</sup> השגחה.

does. This remarkable chapter incorporates other prohibitions—prohibitions that are part of the *aseres hadibros*, prohibitions pertaining to character that we might have expected to be categorized in *Hilchos De-os*—but which in Rambam’s conceptual organization are keys to understanding *Sefer Nezikin*.

ט כל החומד עבדו או אמתו או ביתו וכליו של חברו, או כל דבר שאפשר לו שיקנהו ממנו, והכביד עליו בריעים והפציר בו עד שלקחו ממנו--אף על פי שנתן לו דמים רבים--הרי זה עובר בלא תעשה, שנאמר "לא תחמוד" (שמות כ, יג; דברים ה, יז). ואין לוקין על לאו זה, מפני שאין בו מעשה. ואינו עובר בלאו זה, עד שייקח החפץ שחמד, כעניין שנאמר "לא תחמוד כסף וזהב עליהם, ולקחת לך" (דברים ז, כה), חימוד שיש בו מעשה.

י כל המתאוהו ביתו או אשתו וכליו של חברו, וכל כיוצא בהן משאר דברים שאפשר לו לקנותן ממנו--כיון שחשב בליבו היאך יקנה ממנו דבר זה, ונפתה ליבו בדבר--עבר בלא תעשה, שנאמר "לא תתאוה" (דברים ה, יז); ואין תאוה אלא בלב בלבד.

יא התאוה מביאה לידי חימוד, והחימוד מביא לידי גזל: שאם לא רצו הבעלים למכור, אף על פי שהרבה להם בדמים והפציר בריעים--יבוא לידי גזל, שנאמר "והמדו בתים וגזלו" (מיכה ב, ב). ואם עמדו הבעלים בפניו להציל ממונם או מנעוהו לגזול, יבוא לידי שפיכות דמים. צא ולמד ממעשה אהאב ונבות.

יב הא למדת שהמתאוה עובר בלאו אחד, והקונה דבר שהתאוה בהפציר שהפציר בבעלים או בבקשה מהן עובר בשני לאוין; לכך נאמר "לא תחמוד" (שמות כ, יג; דברים ה, יז), "ולא תתאוה" (דברים ה, יז). ואם גזל, עבר בשלושה לאוין.

Anyone who covets a servant, a maidservant, a house or utensils that belong to a colleague, or any other article that he can purchase from him, and pressures him with friends and requests until he agrees to sell it to him, violates a negative commandment, even though he pays much money for it, as it (*Shemos* 20:14) states: “Do not covet.” The violation of this commandment is not punished by lashes, because it does not involve a deed. One does not violate this commandment until one actually takes the article he covets, as reflected by the verse (*Devarim* 7:25): “Do not covet the gold and silver on these statues and take it for yourself.” Implied is that the Hebrew *tachmod* refers to coveting accompanied by a deed.

Anyone who desires a home, a wife, utensils, or anything else belonging to a colleague that he can acquire from him, violates a negative commandment at the time he thinks in his heart, “How is it possible to acquire this from him?” and his heart is aroused by the matter, as it (*Devarim* 5:18) states: “Do not desire....” Desire refers to feelings in the heart alone.

Desire leads to coveting and coveting leads to robbery. For if the owners do not desire to sell despite the offer of much money and

many supplications by friends, the person motivated by desire will be moved to robbery, as it (*Michab* 2:2) states: “They coveted houses and stole.” And if the owner stands up against them to save his property, or in another way prevents the person motivated by desire from robbing, he will be moved to murder. Take, for example, the narrative of Ach’av and Navot.

Thus, we see that a person who desires another person’s property violates one negative commandment. One who purchases an object he desires after pressuring the owners and repeatedly asking them, violates two negative commandments. For that reason, the Torah prohibits both desiring and coveting. If he takes the article by robbery, he violates three negative commandments. (*Hilchos Gezeilah v’Aveidah* 1:9–11)

Rambam describes here the progression that begins with giving in to one’s desires.<sup>50</sup> The *gazlan* is the person who has become consumed by his desires. He is one step short of being capable of murder. But he has not yet crossed the line—and he can still be saved.

### The *Ganav* and the *Gazlan*

Whereas the sin of the *ganav* is rooted in lack of belief, that of the *gazlan* is rooted in loss of control of his passions.<sup>51</sup> In the obsession with self comes both the devaluation of others and an avoidance of G-d. He does not deny the existence of G-d any more than he does his fellow man, but his desires overshadow all and he turns a blind eye to both. The *gazlan*, Rav Gamliel tells us, parties alone.

For the *ganav* who is a non-believer and who has chosen thievery as his profession and a way of life, for whom the physical world is all that matters, the punishment is in the hands of man. Mankind must be protected from him and he is subject to stiff fines. The Torah does not concern itself with the soul of this criminal.<sup>52</sup> He is a non-believer and among those who go so far as to deny the fundamentals of our faith—

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<sup>50</sup> תאווה.

<sup>51</sup> Note that Rambam includes a warning against both of these drives in one *lav*: לא תתורו אחרי לבבכם זו מינות ואחרי עינים זו זנות. See *Hilchos Avodah Zarah*, chapter 2.

<sup>52</sup> Of course, the Torah more broadly is concerned with his soul and seeks his *teshuvah* as well, as the גנב is a “man,” not only a גנב, and we will note this later, but in distilling the concept of גנבה the Torah focuses on the deterrence of the crime, not on the person of the offender. In fact, should the גנב repent, he is free of קנס as מודה בקנס פטור.

whether he explicitly states it or not. When he breaks in at night, we assume he came “ready to commit murder.” He has already reached a level of corruption that makes him indistinguishable from the murderer. But for the sinner who is driven by his desires, the Torah’s main concern is for his repentance.

### Rehabilitating the *Gazlan*

Rambam ends this fundamental chapter in *Hilchos Gezeilab v’Aveidah* with a truly startling *halachah*:

כל הגוזל את חברו שווה פרוטה--כאילו נטל נשמתו ממנו, שנאמר "כן--אורחות, כל בוצע בצע; את נפש בעליו, ייקח" (משלי א, יט). ואף על פי כן, אם לא הייתה הגזילה קיימת, ורצה הגזולן לעשות תשובה, ובא מאליו והחזיר דמי הגזילה--תקנת חכמים היא שאין מקבלין ממנו, אלא עוזרין אותו ומוחלין לו כדי לקרב הדרך הישרה על השבים. וכל המקבל ממנו דמי הגזילה, אין רוח חכמים נוחה הימנו.

Whenever a person robs a colleague of even a *perutah*’s worth, he is considered as if he took his very soul, as it (*Mishlei* 1:19) states: “Such are the ways of those who are greedy. They take away the soul of the owner.”

Notwithstanding the severity of this sin, if the article that was taken by robbery no longer exists, and a robber seeks to repent and comes of his own volition to return the value of the article he obtained by robbery, our Sages ordained that one should not accept it. Instead, the robber should be helped and forgiven, to make the path of repentance more accessible to those who wish to return. Our Sages did not look favorably on anyone who accepts payment for an article that was taken from him through robbery. (*Hilchos Gezeilab* 1:13)

After emphasizing how harmful this act is, and how much pain it causes the victim, reinforcing what he has just said that this person is close to being a murderer, we push aside our concern for the victim and concentrate on the rehabilitation of this criminal—to stop him from becoming the type of person who could commit murder. While most *Rishonim* assume that this law applies equally for a *ganav*, nowhere does Rambam make such a statement. *Takanas HaShavim* was a Rabbinic decree instituted only for the *gazlan* for whom the Torah itself was concerned primarily for his repentance, not his deterrence. Even the victim must make every effort to facilitate his *teshuvah*. *Rishonim* generally find this *halachah* of *Takanas HaShavim* troubling, and list the many Talmudic

cases where the thief is indeed brought to justice. Thus, some limit the *takanah* to a particular time period in history.<sup>53</sup> Rambam limits it to a *gazlan* (not *ganav*) who no longer has the object(s) he has stolen, and this Rabbinic law is in perfect harmony with the Torah's treatment of and attitude toward the *gazlan*.

Still, though we have gained insight into the psyche of the *gazlan*, we still have not fully defined exactly who he is, and we must connect the technical *gazlan* to the psyche we have identified. I believe that the *halachah* of *Takanas HaShavim* will ease the way to understanding technically how we define what constitutes *gezeilah* and understanding exactly who the prototypical *gazlan* of the Torah is. Whereas *Takanas HaShavim* was not legislated for the *ganav*, it was not restricted to the *gazlan* alone. *Chazal* stated this principle with regard to “*gazlanim* and lenders on interest (*malvin b'ribis*)”<sup>54</sup> and thus saw a similarity between these two types of crime. For the *malveh b'ribis* as well, our primary concern is for his repentance. Exploring this analogy will better help us understand the nature of *gezeilah*. In addition, we must keep in mind that *Chazal* made their statement of the devastating effect of theft on the victim—“it is as if he took his soul”—only by *gazlan*, not by *ganav*, so the clarification of the nature of this crime should also clarify why this is so. To gain this understanding, let us turn to the first line of the first *halachah* of *Hilchos Gezeilah*.

### The Teshuvah of the Gazlan

כל הגוזל את חברו שווה פרוטה--עובר בלא תעשה, שנאמר "לא תגזול" (ויקרא יט, ג) (הל' גזלה א:א).

One who robs his friend of the value of a *perutah* transgresses a *lav* as it says “Do not rob.”

In contrast, *Hilchos Geneivah* starts as follows:

כל הגונב ממון משווה פרוטה ומעלה--עובר על לא תעשה, שנאמר "לא, תגנבו" (ויקרא יט, יא) (הל' גנבה א:א).

One who steals the money of his friend, from the value of a *perutah* and up, transgresses a *lav*, as it says, “Do not steal.”

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<sup>53</sup> See *Tosafos Bava Kamma* 94b s.v. *Biyme* who lists cases of *ganav* in his evidence. See also *Maggid Mishneh*, *ibid*.

<sup>54</sup> גזלנים ומלוי ריבית *TB Bava Kamma* 94b.

Some commentaries focus on the difference between "משווה פרוטה" and "שווה פרוטה" <sup>55</sup> but the more significant difference is that in *gezailah* one is "גוזל את חברו", i.e., "robs his **friend**," and in *geneivah* he is "גונב ממון" i.e., he "steals **money**." This is easily understood, as *gezailah* is an act of taking from the hand of the victim. The *ganav*, on the other hand, does his best to avoid any contact with the victim and to conceal his crime from him.

אין התשובה ולא יום הכיפורים מכפרין אלא עבירות שבין אדם למקום, כגון מי שאכל דבר אסור או בעל בעילה אסורה וכיוצא בהן. אבל עבירות שבין אדם לחברו, כגון חובל חברו או המקלל את חברו או גוזלו וכיוצא בהן--אינו נמחל לו לעולם, עד שייתן לחברו מה שהוא חייב לו, וירצהו. אף על פי שהחזיר לו ממון שהוא חייב לו, צריך לרצותו ולשאול ממנו שימחול לו; ואפילו לא הקניט את חברו אלא בדברים, צריך לפייסו ולפגוע בו עד שימחול לו. לא רצה חברו למחול לו--מביא לו שורה של שלושה בני אדם מריעיו, ופוגעין בו ומבקשין ממנו. לא נתרצה להן, מביא לו שנייה ושלישית. לא רצה, מניחו והולך לו; וזה שלא מחל, הוא החוטא. (הל' תשובה ב:ט)

*Teshuvah* and Yom Kippur only atone for sins between man and G-d; for example, a person who ate a forbidden food or engaged in forbidden sexual relations, and the like. However, sins between man and man—for example, someone who injures a colleague, curses a colleague, steals from him, or the like—will never be forgiven until he gives his colleague what he owes him and appeases him. [It must be emphasized that] even if a person restores the money that he owes [to the person he wronged], he must appease him and ask him to forgive him. Even if a person only upset a colleague by saying [certain] things, he must appease him and approach him [repeatedly] until he forgives him. If his colleague does not desire to forgive him, he should bring a group of three of his friends and approach him with them and request [forgiveness]. If [the wronged party] is not appeased, he should repeat the process a second and third time. If he [still] does not want [to forgive him],

<sup>55</sup> There is certainly validity to this question as well. The "Brisker" approach is that in *gezailah* there is a separate מעשה גזלה with each *perutah*. In my understanding, the language is chosen to express that in *gezailah* the crime is enacted on the person and there is no difference as to how much money was taken as long as it is a *perutah*'s worth. In *geneivah*, the severity of the crime is directly related to how much was taken. There is also another simple reason why Rambam states by *geneivah* as there are two types of *geneivah*—that of stealing money and that stated in the *aseres hadibros*—kidnapping. Nevertheless, Rambam should have equally stated גוזל ממון and in any event, without the *diyuk* the distinction is valid, and actually obvious.

he may let him alone and need not pursue [the matter further]. On the contrary, the person who refuses to grant forgiveness is the one considered as the sinner. (*Hilchos Teshuvah* 2:9)

In order to repent for wronging another, one must not only compensate him monetarily for any damage he has done, but must appease him. Yet, *Lechem Mishneh* (ibid.) points out that this famous law is apparently contradicted by Rambam himself in *Hilchos Chovel u'Mazik*. There Rambam writes:

אינו דומה מזיק חברו בגופו, למזיק ממנו: שהמזיק ממון חברו--כיון ששילם מה שהוא חייב לשלם, נתכפר לו. אבל חובל בחברו--אף על פי שנתן לו חמישה דברים, אין מתכפר לו; ואפילו הקריב כל אילי נביות, אין מתכפר לו, ולא נמחל עונו, עד שיבקש מן הנחבל וימחול לו. (הלכות חובל ה:ט)

Damaging a friend is not comparable to damaging his money, as one who damages the money of his friend is atoned once he pays what he is responsible for. But one who injures his friend is not atoned even though he pays the five types of payments. Even if he sacrificed all the rams of Navayot he is not atoned, nor is his sin forgiven until he beseeches the injured party and he forgives him.

The requirement for seeking forgiveness does not apply to monetary loss, but only to inflicting bodily harm. Indeed, the *mishnah* upon which Rambam bases his *halachah* only speaks of injuring another.<sup>56</sup> Thus the *Lechem Mishneh* asks: “Why does Rambam include *gezel* as well?” But according to what we have deduced, the answer is simple. *Gezel* is an offense against the body of the victim. It is one who “robs his friend.” Just as cursing<sup>57</sup> and injuring<sup>58</sup> are personal attacks directed at the identity of that very individual, so, too, *gezeilah* is directed at a unique person, because of who he is—it is done to his face. Thus, it is here that Rambam quotes, it is “as if he took his soul from him,” and it is only in these cases that it is necessary to get the forgiveness of the person at whom the attack was directed. In damage of property and in *geneivah* as well, the aggression is not directed at the person and we assume that it is not directed at his identity, and the impersonal offense does not need the forgiveness of the victim in order to gain *kapparah*.

(It is worth noting that this point was apparently missed by the *Kessef Mishneh*. Earlier in *Hilchos Teshuvah*, Rambam makes another statement

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<sup>56</sup> TB Bava Kamma, Pereh HaChovel.

<sup>57</sup> מקלל.

<sup>58</sup> חובל.

about the requirement for repentance regarding sins against one's fellow man.<sup>59</sup>

וכן החובל בחברו או המזיק ממונו--אף על פי ששילם לו מה שהוא חייב לו--אין מתכפר לו, עד שיתודה וישוב מלעשות כזה לעולם. (תשובה א: ד)

And so too one who injured his friend or destroys his money, even though he paid what he was responsible for, is not atoned until he does *viduy* and repents from doing this forever. (*Hilchos Teshuvah* 1:4)

*Kesef Mishneh* (ibid.) attributes this *halachah* to the aforementioned *mishnah* in *Bava Kamma* that requires forgiveness in the case of personal injury. But while this *mishnah* was the source for the *halachos* we just discussed, the source for this *halachah* is the *Sifrei Zuta* quoted in the *Sefer HaMitzvos*, for here the issue is *viduy*<sup>60</sup>—confession before G-d—with the point being that even though the sin is against a person, still the confession and repentance must be before G-d. Even damaging and stealing money require *viduy*, but not the request of forgiveness from the victim as is the case by injuring, cursing, and *gezeilah*.<sup>61</sup>)

### The Robber and the Moneylender

On the other hand, despite this extra dimension to his crime, the *gazlan*, along with the moneylender, is to be excused of restitution if he decides to repent. With regard to a *malveh b'ribis*, we are perhaps inclined to understand *Chazal's* thinking. He may very well be a respectable and trusted businessman. Whereas according to Jewish Law he is a criminal, according to worldly standards there is nothing wrong with what he is doing. People sought him out and borrowed his money at interest willingly. So when he is ready to repent and live up to the standards of the Torah, we do not demand that he bankrupt himself, but rather ease his path to *teshuvah*. But is the *gazlan* at all similar to him? The *Gemara* (TB BM 62a) actually suggests that the reading should be “What do I mean by *gazlanim*, moneylenders—גזלנים מאי ניהו מלוי ריבת,” thus excluding the standard robber. Yet, on the other hand, this reading itself suggests that there

<sup>59</sup> מצוות בין אדם לחבירו.

<sup>60</sup> וודוי.

<sup>61</sup> I make this point, because this is one of many examples where insufficient *diyuk* into Rambam's words cause most *meforshim* to ignore his pointed distinctions between *ganav* and *gazlan*. I hope to deal with this in greater depth in a future essay.



is a shared identity between the robber and moneylender. Moreover, the famous *Amora*, Rava, apparently felt that the cases were similar.

אמר רבא למה לי דכתב רחמנא לאו ברבית לאו בגזל לאו באונאה צריכי דאי כתב רחמנא לאו ברבית משום דחידוש הוא דאפילו בלוח אסרה רחמנא ואי כתב רחמנא לאו בגזל משום דבעל כרחיה אבל אונאה אימא לא ואי כתב רחמנא לאו באונאה משום דלא ידע דמחיל חדא מחדא לא אתיא תיתי חדא מתרתי וכו' וחזר הדין לא ראי זה כראי זה ולא ראי זה כראי זה הצד השווה שבהן שכן גוזלו אף אני אביא גזל אמרי הכי נמי אלא לאו בגזל למה לי לכובש שכר שכיר כובש שכר שכיר בהדיא כתיב ביה (דברים כד) לא תעשוק שכיר עני ואביון לעבור עליו בשני לאוין (ב"מ סא.:

Rava says: Why did the Torah write a *lav* of *ribis*, a *lav* for *gezel*, a *lav* for *onaab* (overcharging)? It was necessary, for if it had written it only by *ribis*, I would have said that this is a very novel idea, as we even prohibit the borrower from doing so. And if the Torah had written the *lav* by *gezel*, it is because the act was done by force, but *onaab* would be thought to be permitted. And if the Torah wrote the *lav* by *onaab*, it would have been interpreted that it is because he does not know of the overcharge that he might forgive it... but the common denominator does exist that they are all forms of *gezeilah* and thus why need *gezeilah* be stated? Indeed, it is unnecessary and it is stated to include the case of one who suppresses the payment of the hired worker. Even though it is explicitly stated, this is to add a second *lav* for it. (TB BM 61ab)

In fact, this *sugya* is bizarre. What is the *gemara* suggesting—that *gezel*, *ribis*, and *onaab* not have distinct *lavim*? They are distinct laws with very different characteristics and logically must be counted separately. Yet Rava seemingly concludes that *Lo Sigzol* is not in fact necessary to teach me standard cases of *gezeilah*, for this can be extracted from the prohibitions of overcharging and taking interest. The verse is only needed to state an additional *lav* for denying wages to the hired laborer. A total explication of this *sugya* would be a lengthy matter and would include much speculation. Yet, the fact that *Chazal* compare *gezel* with *ribis* and *onaab* demonstrates that this is a crime that is performed in a business setting.

### The Concept of *Gezeilah*

Whereas some *Rishonim*<sup>62</sup> read the *gemara's* conclusion as establishing that *lo sigzol* is in fact redundant and merely adds a second *lav* for deny-

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<sup>62</sup> See commentaries on this *gemara* and *Lechem Mishneh Hil. Gezeilah* 1:3.

ing the worker's wages, Rambam counts *lo sigzol* as the source for the *lavin* of *gezeilab*,<sup>63</sup> but he does not ignore the conclusion of the *sugya*, rather he interprets it as follows:

כל הכובש שכר שכיר--כאילו נטל את נפשו ממנו, שנאמר "ואליו, הוא נושא את נפשו" (דברים כד, טו). ועובר בארבע אזהרות, ועשה: משום בל תעשוק, ומשום בל תגזול, ומשום "לא תלין פעולת שכיר" (ויקרא יט, ג), ומשום "לא תבוא עליו השמש" (דברים כד, טו), ומשום "ביומו תיתן שכרו" (שם). (שכירות יא:ב)

Anyone who denies the wages of the hired worker, it is as if he took his soul from him, as it says “for to it (his wages) he raises his soul” (*Devarim* 24:15) and he transgresses four *lavin* and a positive command: “*Lo Saashok*,” “*Lo Sigzol*,” “Do not hold back the wages of the laborer” and “The sun should not set upon him” and “On that day you should give him his wages.” (*Hilchos Sechirus* 11:2)

Rambam often takes the statements of *Chazal* conferring multiple *lavin* to a particular case as violations of individual textual statements, but not unique *lavin* in the 613 *taryag mitzvos*. Here, certainly with regard to this specific case of withholding money that is owed the worker, Rambam has logically categorized our case as *עושק*,<sup>64</sup> as no object has been taken by force, yet conceptually<sup>65</sup> *Chazal* view this also as an example of *Lo Sigzol*. Note, how he characterizes the harm as “if he had taken his soul” just as he has characterized *gezeilab* itself. It is the element of the personal offense carried out to the face of the victim that is particularly painful to him. Rava is explaining to us that the Torah needed to define a unique concept of *gezeilab*<sup>66</sup> and make it a separate category centered around a conceptual element that differs from any other form of stealing—the quality of “taking away the soul of the victim—נטל את נפשו.”

I believe that when the *gemara* proffered arguments that classical *gezeilab* could be learned from *onaah* and *ribis*, it chose these two *lavin* because they are the prototypical acts of the greedy, unethical businessman. He sees nothing really wrong—these are business practices en-

<sup>63</sup> Rambam's source for so doing is the *Sifra*. See *Lechem Mishneh* (ibid.) who questions why he does not follow the *gemara*.

<sup>64</sup> See *Maggid Mishneh* and *Lechem Mishneh*, *Hil. Gezeilab* 1:3 who raise the difficulties presented by when a case is *עושק* and when *גזל*.

<sup>65</sup> Just as Rambam says with regard to taking an *aveidah*.

<sup>66</sup> שם גזלה.

gaged in as standard practice by the larger community of men.<sup>67</sup> But in the Jewish world they are acts of uncontrolled desire (חמדה ותאוה) and thus Rava asks, Why do we need to create a unique *lav* for the *gazlan*, since the classical *gazlan* is also a businessman who cannot control his greed? His act is not something he can do regularly. He needs to pick his spots, and perhaps he is one who has rationalized his act—a *moreh heter*,<sup>68</sup> just as those doing the other *lavin* have. He argues that the other party has been cheating him and outsmarting him time after time, and perhaps in this case there was a dispute that led to him taking the law into his own hands. As we have noted, he is not a criminal, but a person whose oath we accept in court, and the Torah implies that the expectation is that the imposition of an oath before G-d will cause him to admit and back down.

As we have noted, even a tax collector who acts without standard rules<sup>69</sup> is another common case of *gazlan*. He operates within society and perhaps with the consent of the gentile government. He views himself as a decent person, and is a believing Jew. But as Rambam explains, it is, in fact, the forces of *chemdah v'taavah* that motivate him.<sup>70</sup> The person who does not return the *aveidah* is also in this category, not in that of a *ganav*. So too the watchman who uses or denies possession of the object placed in his care. And when a lender seizes an object as security for a debt he is owed, or a basically honest man borrows an object without permission, he too becomes a *gazlan*. These are not common criminals but people who have lost their way—whom the Torah instructs us to save.

<sup>67</sup> In one case, *ribis*, the law is branded as a *chiddush*, an unexpected prohibition, and the other, *onaah*, is likewise merely “the normal form of business.”

<sup>68</sup> מורה היתר.

<sup>69</sup> מוכס שאין לו קצבה.

<sup>70</sup> The *Gemara* presents a case that supports this viewpoint of a גזלן.

ואמר רב נחמן האי מאן דאזויף פשיטי מחבריה ואשכח ביה טופיינא אי בכדי שהדעת טועה מיחייב לאהדוריה ליה ואי לאו מתנה בעלמא הוא דיהיב ליה היכי דמי בכדי שהדעת טועה אמר רב אחא בריה דרב יוסף בעישורייתא וחומשייתא א"ל רב אחא בריה דרבא לרב אשי ואי איניש תקיפא הוא דלא יהיב מתנה מאי א"ל דלמא מיגזל גזליה ואבלע ליה בחשבון דתניא הגוזל את חברו והבליע לו בחשבון יצא ואי איניש דאתי מעלמא דלא שקיל וטרי בהדיה מאי א"ל דלמא איניש אחרינא גזליה וא"ל כי יזיף פלוני פשיטי מינך אבלע ליה בחשבון (ב"מ סג:–סד.)

The persona of this גזלן is hardly that of a purse snatcher. It is of one that the גזלן typically does business with, and after the גזלה, he continues to do business with him. He is an איניש תקיפא דלא יהיב מתנה, but on the other hand we suspect that he is returning what he took surreptitiously, apparently with a feeling of guilt, but not willing to admit guilt.

### The “Fence”

Even when *ganav* and *gazlan* have similar *halachos*, because of their underlying conceptual difference Rambam consistently distinguishes between them—often in subtle ways. I will give one example that demonstrates our point. When Rambam speaks of the prohibition of buying from a *ganav*, he writes:

אסור לקנות מן הגנב החפץ שגנב, ועוון גדול הוא: שהרי מחזיק ידי עוברי עבירה, וגורם לו לגנוב גניבות אחרות, שאם לא ימצא לוקח, אינו גונב; ועל זה נאמר "חולק עם גנב, שונא נפשו" (משלי כט, כד).

It is prohibited to buy from a *ganav*, and it is a great sin, for he strengthens the hand of the sinner and causes him to commit more thefts, for if he would not find a buyer, he would not steal. And of this it says “He who divides with the *ganav* hates his soul.” (*Hilchos Geneivah* 5:1)

The whole issue is aiding crime and the buyer attains the criminal status of a “fence” since the thief must hide his crime and without the fence, there would be no thieves. The Talmud points this out by stating: “It is not the mouse who steals, but the mouse hole.” Our concern is with the harm to society as is always the case when dealing with the *ganav*.

But by *gazlan*, Rambam writes:

אסור לקנות דבר הגזול מן הגזול...שכל העושה דברים אלו וכיוצא בהן—מחזיק ידי עוברי עבירה, ועובר על "ולפני עיוור, לא תיתן מכשול" (ויקרא יט, יד).

It is prohibited to buy a robbed object from the *gazlan*, ...for in so doing he strengthens the hand of the sinner and he transgresses on “do not put a stumbling block before the blind man” (*Hilchos Gezeilah* 5:1).

Our concern is primarily for the one blinded by his greed, the *gazlan*, whom the purchaser may help lead astray. Rambam elaborates on *Lifnei Iver* elsewhere:

וכן כל המכשיל עיוור בדבר, והשיאו עצה שאינה הוגנת, או שחזיק ידי עוברי עבירה שהוא עיוור ואינו רואה דרך האמת מפני תאוות ליבו--הרי זה עובר בלא תעשה, שנאמר "ולפני עיוור, לא תיתן מכשול" (ויקרא יט, יד). (רוצה: יב: יד)

So too anyone who causes one who is blind on a matter to stumble, and gives him bad advice or strengthened the hand of the sinner who is blinded and does not see the true path because of the desires of his heart, he transgresses a *lav*, as it says “Do not put a stumbling block before a blind man.” (*Hilchos Rotze'ach* 12:14)

While this prohibition of *Lifnei Iver* applies to any criminal, by *gazlan* the emphasis is on this element while by *ganav* it is on the harm to society.

### The *Parashah* of *Kapparah*

As we have noted early in this essay, the laws of a *ganav* are introduced in *Parashas Mishpatim*, firmly ensconced within the *halachos* of damages and injustice of man to man. But the laws pertaining to a *gazlan* do not appear until *Sefer Vayikra*. At the end of the listing of all the types of sacrifices in *Parashas Vayikra*, the Torah ends with the *Asbam* sacrifice. After the listing of the other cases of *Asbam* finally comes the law of *Asbam Gezeilos*.<sup>71</sup>

נֶפֶשׁ כִּי תִחַטָּא, וּמַעֲלָה מֵעַל בָּהּ; וְכֹחֵשׁ בְּעֵמִיתוֹ בְּפִקְדוֹן, אוֹ-בִתְשׁוּמַת יָד אוֹ בְגָזֵל, אוֹ עֵשֶׂק אֶת-עֵמִיתוֹ. אוֹ-מִצָּא אֲבֹדָה וְכֹחֵשׁ בָּהּ, וְנִשְׁבַּע עַל-שֹׁקֵר; עַל-אַחַת, מִכֹּל אֲשֶׁר-יַעֲשֶׂה הָאָדָם--לְחַטָּא בָהּ, כִּג וְהִיָּה, כִּי-יִחַטָּא וְאָשָׁם--וְהָשִׁיב אֶת-הַגְּזוּלָה אֲשֶׁר גָּזַל אוֹ אֶת-הַעֵשֶׂק אֲשֶׁר עֵשָׂה, אוֹ אֶת-הַפִּקְדוֹן אֲשֶׁר הִפְקִיד אֹתוֹ; אוֹ אֶת-הָאֲבֹדָה, אֲשֶׁר מִצָּא, כִּד אוֹ מִכֹּל אֲשֶׁר-יִשְׁבַּע עָלָיו, לְשֹׁקֵר--וְשָׁלַם אֹתוֹ בְּרֵאשׁוֹ, וְחִמְשָׁתָיו יֹסֵף עָלָיו: לְאֲשֶׁר הוּא לוֹ יִתְּנֶנּוּ, בְּיוֹם אִשְׁמָתוֹ, כֹּה וְאֶת-אֲשָׁמוֹ יָבִיא, לָהּ, אֵיל תְּמִים מִן-הַצֹּאן בְּעֶרְכָּהּ לְאָשָׁם, אֶל-הַכֹּהֵן. כֹּו וְכִפֶּר עָלָיו הַכֹּהֵן לִפְנֵי ה', וְנִסְלַח לוֹ, עַל-אַחַת מִכֹּל אֲשֶׁר-יַעֲשֶׂה, לְאִשְׁמָה בָּהּ. (ויקרא ה:כב)

**21** If anyone sin, and commit a trespass against the L-rd, and deal falsely with his neighbor in a matter of deposit, or of pledge, or of robbery, or have oppressed his neighbor; **22** or have found that which was lost, and deal falsely therein, and swear to a lie; in any of all these that a man doeth, sinning therein; **23** then it shall be, if he hath sinned, and is guilty, that he shall restore that which he took by robbery, or the thing which he hath gotten by oppression, or the deposit which was deposited with him, or the lost thing which he found, **24** or anything about which he hath sworn falsely, he shall even restore it in full, and shall add the fifth part more thereto; unto him to whom it appertaineth shall he give it, in the day of his being guilty. **25** And he shall bring his forfeit unto the L-rd, a ram without blemish out of the flock, according to thy valuation, for a guilt-offering, unto the priest. **26** And the priest shall make atonement for him before the L-rd, and he shall be forgiven, concerning whatsoever he doeth so as to be guilty thereby. (*Vayikra* 5:21)

In fact, the *parashah* does not address the sin of *gezel* alone, but combines it with *osbek* and even *aveidah*, within the context of a false oath of denial. As Rambam notes, however, the sacrifice is always referred to by

<sup>71</sup> אשם גולות.

*Chazal* as *asham gezeilos*—אשם גזלות. As with all the sin offerings<sup>72</sup> that have been discussed before it, the *parashah* ends with *kapparah*. “The *Kohen* should atone for him before G-d and gain his forgiveness— וכפר עליו והכהן לפני ה' ונסלח לו.” The *parashah* of *gezeilah* is an explanation of how to attain *kapparah* for *gezel* when the robber has sworn falsely and is then stirred to repent.<sup>73</sup>

The famous *halachah* that the thief must first return the object, even a *perutah*'s worth, by pursuing the victim to *Madai*,<sup>74</sup> only applies if the false oath has been taken. Rambam writes that only in this case has the victim given up on retrieving it.<sup>75</sup> We would add by way of explanation, that until this point the sin has not been sealed. Only when the thief has locked both man and G-d out of his domain is there the need for this full repentance. The sin must be both against G-d and man— מעל בה' וכחש בעמיתו. On the theft alone there was perhaps *moreh heter*, but by sealing the lie with a false oath one concretizes the act and it is clear that all control has been lost. To recover from this state, he must repair the harm to his own soul with a full act of restitution and repentance.

### The *Parashah* of *Gezel HaGer*

Our point that the repentance of the *gazlan* is the Torah's key concern is brought home even more clearly by the *parashah* known as *gezel hager*.<sup>76</sup> In *Parashas Naso*, after the dedicatory sacrifices for the *Mishkan* have been brought by the *Kohanim*, and the *nesi'im* are about to bring their own dedicatory offerings, the Torah interjects an addendum to the obligations of the *Kohanim* in the *Mikdash*. They are to offer the sacrifices of the jealous husband;<sup>77</sup> they are to perform a purifying process with the sacrifices of the *Nazir*, and they are to conform a blessing on the community.<sup>78</sup> These new laws are preceded by a repetition of the last of the sacrifices that was detailed in *Parashas Vayikra*—that of *asham gezeilos*.

<sup>72</sup> חטאות ואשמות.

<sup>73</sup> We should also note that missing from the list of methods by which one acquired the object he denies is that of *geneivah*. In fact, the *gemara* and Rambam do add it to the list, but it is not in the *mikra* as it is not relevant to the concept that the Torah is promoting here. See *TB Kesuvos* 42b quoted in *Hilchos Gezeilah* 7:2.

<sup>74</sup> The ends of the earth.

<sup>75</sup> *Hilchos Gezeilah* 8:9.

<sup>76</sup> גזל הגר.

<sup>77</sup> The *parashah* of סוטה.

<sup>78</sup> ברכת כהנים.

Technically, we can view this repetition as a connection to *Parashas Vayikra*—with the Torah then detailing the final sacrifices and functions which the *Mikdash* serves.

איש או-אשה כי יעשו מכל-חטאת האדם, למעל מעל בה; ואשמה, הנפש ההוא.  
ז והתנדו, את-חטאתם אשר עשו, והשיב את-אשמו בראשו, וקמישתו יסף עליו;  
ונתן, לאשר אשם לו. ח ואם-אין לאיש גאל, להשיב האשם אליו--האשם המושב  
לה, לכהן: מלבד, איל הפפרים, אשר יכפר-בו, עליו (במדבר ה:ו-ח)

When a man or woman shall commit any sin that men commit, to commit a trespass against the L-rd, and that soul be guilty; 7 then they shall confess their sin which they have done; and he shall make restitution for his guilt in full, and add unto it the fifth part thereof, and give it unto him in respect of whom he hath been guilty. 8 But if the man have no kinsman to whom restitution may be made for the guilt, the restitution for guilt which is made shall be the L-rd's, even the priest's; besides the ram of the atonement, whereby atonement shall be made for him.

Whereas this is an abbreviated restatement of *parashas gezeilah*, it adds the new concept of stealing from a convert who subsequently dies without any heirs.<sup>79</sup> In this case the restitution is made to the *Kohanim* and the *mikra* states and *Chazal* explain that in fact the restitution is to G-d himself who awards it to the priests לכהן לה, המושב לה. The restitution to the *Kohanim* is itself viewed as a sacrifice and thus cannot be done at night, just as sacrifices cannot be brought at night.<sup>80</sup> This *halachah* makes clear that the essential element is not restoring the object to the victim, but the repentance of the *gazlan*. And here the Torah's language makes clear that an act of *teshuvah* is at the heart of this process: "They must confess the sins that they did — את-חטאתם אשר עשו."

### The *Gazlan* and the Torah's Call to *Teshuvah*

In *Sefer HaMitzvos* and in *Hilchos Teshuvah*<sup>81</sup> Rambam brings the *Sifrei Zuta* on this *parashah* as the source for the very *mitzvah* of *teshuvah/viduy*. Thus the Torah defines the central *mitzvah* of *teshuvah* in conjunction with *gezeilah*. The *gazlan* is the prototypical sinner to whom the Torah directs its call for repentance. But it is only after he has sworn falsely that this pro-

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<sup>79</sup> All Jews have heirs as we trace their lineage back to Yaakov, i.e., anyone who has Jewish ancestors has heirs.

<sup>80</sup> *Hilchos Gezeilah* 8:6.

<sup>81</sup> See *SHM Mitzvas Aseh* 73 and *Hilchos Teshuvah* 1:1 and in the *Kessef Mishneh* and in the *Hasagos* on the *Kessef Mishneh* in the Frankel edition.

cess is set in motion. Only then is he the persona that *Chazal* say makes a party and does not invite either man or G-d to attend. His celebrations and joy in life are only in the fulfillment of his desires. He cares not for the pain of others and simultaneously blots out the knowledge of G-d. Rambam tells us that whereas forgiveness of sins is granted on Yom Kippur even without repentance, this does not apply to serious sins, which are those punished by *kares* and one other—a false oath *שבועת שקר*.<sup>82</sup>

### Closing Words

The major conceptual differences between *ganav* and *gazlan* bring Rambam to categorize them separately and even to join *gazlan* with the laws of *hashavas aveidab*—a seeming non-crime. The Torah's profoundly different presentations of the punishment for these two crimes lead *Chazal* to legislate many halachic differences between the two cases. In this essay, we have noted how Rambam presents several of these differences. In a future essay,<sup>83</sup> I hope to delineate many other differences that Rambam makes, and to use this case to explore how, as Rav Meir Simchah states: "One spirit permeates all of our Rabbi's (Rambam) works—רוח" "אחת לרבינו בכל ספריו". Rambam's philosophical grasp of the issues that the Torah lays out and that *Chazal* grapple with lead him to sense halachic nuances that other *meforshei haShas* and *Poskim* do not notice. ❧

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<sup>82</sup> *Hilchos Teshuvah* 1:2.

<sup>83</sup> Perhaps essays.