

Who is Liable?

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As we begin to read the book of Leviticus, it is fitting to honor the memory of Jacob Milgrom z"l (1923–2010), a distinguished alumnus of the JTS Rabbinical and Kekst Graduate schools. Professor Milgrom's contribution to the understanding of Leviticus peaked with his massive 3-volume Anchor Bible commentary on the book, a remarkable synthesis of traditional learning and critical scholarship.

The opening parashah of Leviticus comprises regulations for the performance of sacrifices. Of these, the most complicated are the *hattat* and the *asham* offerings, discussed in chapters 4 and 5. As James Watts observes in the best English-language commentary to appear since Milgrom's,ⁱ these chapters have been "the subject of an especially contentious history of interpretation." The reason is the ambiguity of the biblical text, with its conjoining of "sin" and "guilt," and the absence of a clear distinction between actual (objective) guilt and (subjective) guilty feelings. One of Milgrom's lasting contributions is his emphasis on the psychological aspect, the feelings of guilt that motivate sacrifice.

The term *asham* is typically translated as "guilt offering," the cognate noun *ashmah* as "guilt," and the cognate verb *ashem* as "to be guilty." Commentators have long recognized the inadequacy of those renderings. Milgrom famously proposed "reparation offering" for *asham*. It has the advantage of diminishing the emphasis on sin and guilt, but Watts reasonably objects that the translation obscures the function of the offering. I prefer "liability offering," the word "liability" variously connoting an *actual* obligation, a *possible* obligation, or a *feeling* of obligation depending on the circumstances.

In Mishnah Zevachim 5:5, included in the siddur among the preliminary readings for the morning service (*Shaharit*), the rabbis divide the *asham* into six categories, nicely summarized [here](#).ⁱⁱ Five of them are related to specific offenses or ritual procedures. The exception is the *asham taluy*, which I translate as "contingent liability offering," required when it is uncertain if a sin has been committed or not and whether there is actual guilt demanding expiation. Joseph Bekhor Shor remarks that people tend to be lenient with themselves when there is doubt, but that the Torah is strict.

The classic case is Leviticus 5:17–19, which begins:

וְאִם־נִפְשׁוֹ כִּי תִחַטָּא וְעָשְׂתָה אַחַת מִכָּל־מִצְוֹת ה' אֲשֶׁר לֹא תַעֲשֶׂינָהּ
וְלֹא־יָדַע וְאִשָּׁם וְנִשְׂא עוֹנוֹ:

If anyone sins unknowingly by violating a divine commandment, they are liable and bear the weight of their transgression.

The weight is the psychological and possibly cultic burden of not knowing whether a sin has been committed or not (see Ibn Ezra ad loc.: "the majority opinion is that he does not know if he did it or not"). The prescribed offering in verse 18 relieves the burden, and the Torah summarizes the case emphatically in verse 19, 'אִשָּׁם הוּא אִשָּׁם אֲשֶׁם לָהּ', "It is a liability offering: they hold themselves liable to YHWH." Samuel David Luzzatto (Shadal; 1860–1865) translates the *asham* here as a "sacrifice of repentance, for the offeror is in doubt and does not know whether he sinned or not."ⁱⁱⁱ Liability ensues even if the wrong committed was accidental or inadvertent, even if there is merely *suspicion* of wrongdoing.

The Bible's descriptions of liability raise important issues about the community's leaders and the people who follow them. The first occurrence of *ashmah* in the parashah is in Leviticus 4:3:

אם הכהן המשיח יחטא לאשמת העם והקריב על חטאתו אֶשֶׁר
חטא פֶּר בְּדֹבְקוֹ תַמִּים לֹה' לְחַטָּאת:

If the anointed priest should sin, holding the people liable, he must offer for his sin that he sinned an unblemished bull to YHWH as compensation.

Why should the people incur liability because of the priest's sin? Rashi, adducing a midrashic interpretation, says that it is because the people depend on the priest for prayer and expiation, and if he has become corrupted by sin, he is unfit to perform his essential service. Bekhor Shor states more simply, שוה אשמתו לאשמת כל העם, "[the priest's] liability is equivalent to the liability of the entire people.

The implication of Bekhor Shor's interpretation—that the leader's sin contaminates the people he is supposed to serve—finds fuller expression in Shadal's commentary. He acknowledges Rashi's comment, but goes on to state, "the nation bears the guilt of its leaders and is punished because of them In truth, a leader's corruption causes many disasters for his people, but the ancients believed that the nation was punished directly for the sin of the leader." Most salient is Shadal's replacement of the biblical "priest" (*kohen*) with the generic "leader" (*manhig*), asserting the continuing relevance of the biblical stricture for post-Temple times and

non-cultic contexts. It does not require a leap of the imagination to recognize the many ways that people suffer for the transgressions of their leaders.

Equally striking is the complementary law that begins in 4:13:

וְאִם כָּל־עַדְתֵּי יִשְׂרָאֵל יִשְׁגּוּ וְנִעְלַם דְבַר מֵעֵינֵי הַקֹּהֵן. . . וְאָשְׁמוּ

And if the entire community of Israel should err and the matter is concealed from the collective . . . they are liable.

The rabbis in the midrash (*Sifra*; also Rashi) recoil from the implication of the opening, interpreting the "entire community" to refer to a rabbinical court that commits an error in judgement. But Shadal rejects that interpretation, rightly in my view, stating that "the entire community" is to be taken literally. "According to the plain meaning," he writes, "it would make no difference if the error resulted from a court order or an instruction of the high priest or the king, or if it occurred without any instructor." The following verses (14–21) describe the expiatory offering that is required for the community to attain forgiveness.

Just as the corrupt leaders who lead the people astray are culpable, so are the people who follow those leaders or act corruptly on their own. There are no Temple sacrifices to provide rectification anymore. But individuals and communities remain liable for the wrongs that they permit and commit, and as the Torah teaches, they must exercise their obligation to right them.

ⁱ James W. Watts, *Leviticus 1-10* (Leuven: Peeters, 2013), pp. 303-316. Also *idem*, [Leviticus' Rhetorical Presentation of the Sin and Guilt Offerings - TheTorah.com](#).

ⁱⁱ [Korban Asham: The Sacrifice for Sacrilege \(and other Sins\) | The Lehrhaus](#).

ⁱⁱⁱ Quoting the excellent translation by Daniel A. Klein, *Samuel David Luzzatto's Interpretation of the Book of Vayikra* (N.Y.: Kodesh Press, 2021), p. 62.