YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Talmudic *Aggadot***

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Shiur #22: The Tale of Nechunya the Ditch-Digger (Part III)

The Postscript of the *Mesakkel*

# Introduction

# In the previous two *shiurim*, we studied the story of Nechunya the Ditch-Digger in the context of the laws of *bor*, a pit or cistern. This time, we will examine an additional story in the same *sugya*, Tractate *Bava Kama* 50b in the Babylonian Talmud, and this will conclude our examination of the aggadic aspects of the topic of *bor*.

# The Story of the *Mesakkel*

1. Our Rabbis taught: A person should not remove rocks from one’s domain on to the public domain.
2. A certain person was removing rocks (*mesakkel*) from his domain on to the public domain.
3. When a pious man found him doing so, he said to him,
4. “Vacuous one, why do you remove rocks from a domain which is not yours to a domain which is yours?”
5. The man scoffed at him.
6. Some days later he had to sell his field,
7. And when he was walking in that public domain, he stumbled over those rocks.
8. He then said, “How well did that pious man say to me,
9. ‘Why do you remove rocks from a domain which is not yours to a domain which is yours?’”

(*Bava Kama* 50b)

**The Context in the *Sugya***

The first connection of the *mesakkel* to the *sugya* of *bor* seems less natural than that of the Nechunya narrative. In the sixth chapter of *Bava Kama*, the *bor* discussed is a classic *bor* – a pit, a cistern, or a hole in the ground that people or animals might fall into unwittingly. Other hazards in the public domain (which recall many of the characteristics of classic *bor*) occupy the first part of the third chapter of the tractate. Indeed, for the sake of comparison, consider that in the Tosefta, the issue of clearing stones appears among the list of hazards in the public domain. The sequence in the Tosefta[[1]](#footnote-1) flows logically, as the previous law deals with a *mesakkel* in the field or on the road, defining his legal status and liability:

Rocks may be removed by way of the public domain, according to R. Yehoshua…

If one removes rocks, one must bring them out to the sea, to a river or to a quarry…

One who removes rocks must take them from the middle and place them on the sides. If another comes by and is injured by them, the one who removed the rocks is liable, even though they said that this is like one who removes rocks from before animals and places them before people…

If one removes rocks by taking them from one’s field and putting them in the public domain, and another comes and is injured by them, the one who removed them is liable, even though they said that this is like one who removes rocks from that which is not one’s [property] to that which is one’s [property].

A certain person was removing rocks from his field on to the public domain. A pious man was pursuing him and said to him, “Why do you remove rocks from that which is not yours to that which is yours?” He laughed at him. Time passed, and that man found he had to sell his field, and he was walking in that place and tripped. He then said: “How well did that man say to me, ‘Look, you are removing rocks from that which is not yours to that which is yours!’”

The narrative in the Tosefta has an interpretative role. It explains the sentence that concludes the previous law: “even though they said that this is like one who removes rocks from that which is not one’s [property] to that which is one’s [property].” This line is extremely vague, as the law finds one who discards rocks in the public domain to be liable, and the public domain would appear to be an area that is not one’s property. In addition, the narrative in the Tosefta serves as an aggadic sign-off, as in the next chapter the Tosefta takes up a new topic: damages caused by one’s ox (*shor*). The topic of the tale of the *mesakkel* is identical to the previous topic in the preceding laws in the Tosefta; thus, the story is a fitting summation of this issue.

In the Babylonian Talmud, the story of the *mesakkel* does not conclude the topic of *bor*, the discussion of which continues through the following *sugyot*. In fact, the appropriateness of the narrative as a conclusion for the halakhic topic discussed prior is difficult to understand, since it does not deal with the exact same issue. The integration of the *baraita* with the story of the *mesakkel* in the *sugya* of *bor* requires some elucidation.

We may explain the connection between the *baraita* of the *mesakkel* and the *sugya* by way of a conceptualization of the tort of *bor*, of which all hazards in the public domain are subcategories. This conceptualization is mentioned in another chapter by the *stam* (anonymous layer) of the Gemara (see *Bava Kama* 3a-b), and it is possible that this reflects the position of the redactors of the tractate. On the other hand, the *baraita* of the *mesakkel* is the **only** mention of hazards in the public domain in all the *sugyot* analyzing the primary tort of *bor* in the fifth chapter.

**The Story of the *Mesakkel*: Literary Analysis**

From a chronological standpoint, the story of the *mesakkel* may clearly be split into two segments with a similar structure. The first part describes the removal of the stones and the rebuke (lines 1-5); the second part takes place some time later, as the one-time landowner stumbles over the stones and comes to his realization (lines 6-9).

The parallel between the two parts is emphasized by the way the *aggada* presents the *mesakkel*’s dawning realization, in which he quotes the words of the pious man verbatim.

In the first part, the pious man rebukes the *mesakkel* for taking stones from his field and placing them in the public domain, creating a hazard, while the *mesakkel* mocks the pious man. The derision on the part of the *mesakkel* emerges from the fact that the pious man’s statement seems to be an inversion of reality. At this stage, the reader as well may be perplexed, as the idea of the public domain’s belonging to the *mesakkel* while his own field is really another’s is confusing. Indeed, the logic of the pious man’s warning is revealed only in the second half of the story, once the reality has changed.

“Domain” (*reshut*) is a key term, appearing seven times in the story itself (as well as twice in the introduction), and thus we may see it as a leitmotif. The leitmotif *reshut* draws the reader’s attention to the relationship of the characters to the various domains as a central theme in the narrative.

The *mesakkel*’s derision teaches us that his conceptualization of the public domain is opposed to that of the pious man. He thinks of the public domain as an area that is not his at all. Although this view is not explicitly expressed, it is indirectly indicated by what the story tells us about him; casting stones into the road shows absolute indifference to that domain, even though it is apparently considered acceptable for even owners of private property to make use of the public thoroughfare. In this case, the *mesakkel* removes himself, at least in a symbolic manner, from the public thoroughfare and from the society of those who pass through it. If he had felt himself to be a member of the community and a partner in the public domain, he would not have impinged on it.

As stated above, the pious man expresses the *mesakkel*’s worldview in the following way: “Why do you remove **rocks from a domain which is not yours to a domain which is yours**?” This sentence presents the domains as diametrically opposed. The response of the *mesakkel* indicates, indirectly, the same concept, but with the poles reversed; in his view, it is the public thoroughfare that is decidedly not his property.

In the second part of the story, which is set apart from the first chronologically, two circles from the prior segment are closed: the circle of moral reprobation and the circle of oratory – namely, the pious man’s obscure statement. On the ethical plane, the *mesakkel* — who mocked the pious man’s rebuke and created a hazard in the public domain — finds himself injured by that very object, fulfilling the admonition of *Kohelet* (10:8), “Whoever digs a ditch shall fall in it.” For this purpose, it would have sufficed to briefly describe a scene in which the *mesakkel* is walking in the public domain, for whatever reason it might be, and stumbles over a rock. However, this narrative digs deeper. The *mesakkel* finds himself in dire financial straits and must sell his field, leaving him with no land that he can call his own, save the public domain itself. This turn of events justifies the pious man’s warning in the first part of the tale. The wheel of fortune has turned; now the property that he once considered an essential part of his identity is no longer his, while the domain he would not spare a thought for is now the only place to which he may still lay claim.

Thus, the pious man’s admonition displays, as it turns out, foresight and keen observation. This perception allows him to see that the connection between a piece of private property and its owner is more fleeting than we might think, as the land that is one’s possession for now may become another’s in the long term. The only domain that one can truly claim on a permanent basis is the public domain, as this is not based on one’s economic situation or proprietary right, but rather on one’s membership in the public. This status is inalienable, even if one may at times forget it, as the *mesakkel* indeed does.

The *gemara* tells the story of the reversal of fortune for the *mesakkel* and his resulting enlightenment with irony, as the one-time landowner falls over the very rocks he once cast into the public thoroughfare. This irony also allows the circle to be complete, as all the constituent elements of the story come together. The *mesakkel*, who was so dismissive in the first part, understands the irony in the second part; really, he was laughing at himself the whole time.

The pious man’s admonition includes a double message – a philosophical point and a resulting ethical point. On the philosophical plane, his declaration demands that people reconsider their relationship to their property as a temporary association that may be less stable than it appears at the moment. On the contrary, the more durable connection to the public domain, which a person of considerable means may perceive as weak, is in fact the link that stands the test of time.

On the ethical plane, the pious man’s words contain a message about the relationship between the individual and the collective, beyond any trivial statement about creating a hazard to public health and beyond any simple observation about retribution, as one who creates such a hazard will ultimately be injured by it in unforeseen circumstances. The individual’s position as part of the collective is a non-negotiable fact, even though the individual may sometimes forget this temporarily in an attempt to live a life apart from this connection to the community.

At the first stage, the pious man attempts to impart this message to the *mesakkel* through verbal rebuke. It is conceivable that the *mesakkel* could have saved himself from financial disaster had he listened to the admonition. However, he refuses, in a highhanded manner. Instead, he must learn the lesson the hard way, as the wheel of fortune turns and compels him to confront the reality that he is a member of the collective and the public domain is the only land that really belongs to him — or, to be more precise, he belongs to. As part of the collective he mocked and from which he disassociated himself, he stumbles over a rock, which he saw as imperiling only the general public, a group that he considered himself not be a member of.

**Comparison to the Parallel in the Tosefta**

The Tannaitic parallel in the Tosefta is very similar to the Babylonian Talmud’s version of the story. The differences are slight and fine; ostensibly, these deviations do not actually change the basic plot and structure. However, if we examine these precise details, particularly in the context of the *sugya* of *bor* in the *gemara*, we reveal that these distinctions are more than circumstantial variations. Some of the words that define the version of the Babylonian Talmud are prominent and central in the *sugya*. It appears that the narrative in the *sugya* has been lightly processed from the original version in the Tosefta — or another Tannaitic source with which the editors of the Babylonian Talmud were familiar — in order to modify it for the *sugya*, as we may see in the table below:

|  |  |
| --- | --- |
| **Tosefta *Bava Kama* 2:13** | **Babylonian Talmud, *Bava Kama* 50b** |
| A certain person was removing rocks from his field on to the public domain.  A pious man was pursing him and said to him, “Why do you remove rocks from that which is not yours to that which is yours?” He laughed at him.  Time passed, and that man found he had to sell his field, and he was walking in that **place** and tripped. He then said: “How well did that man say to me, ‘Look, you are removing rocks from that which is not yours to that which is yours!’” | Our Rabbis taught: A person should not remove rocks from one’s **domain** on to the public **domain**.    A certain person was removing rocks from his **domain** on to the public **domain.**  When a pious man found him doing so, he said to him, “Vacuous one, why do you remove rocks from a **domain** which is not yours to a **domain** which is yours?”  The man scoffed at him.  Some days later, he had to sell his field, and when he was walking in that public **domain**, he stumbled over those rocks. He then said, “How well did that pious man say to me, ‘Why do you remove rocks from a **domain** which is not yours to a **domain** which is yours?’” |

In the Talmud, it reads: “A certain person was removing rocks from his **domain** on to the public **domain**.” In the Tosefta, it reads: “A certain person was removing rocks from his field on to the public domain” (line 2). In the Talmud, we find, “Vacuous one, why do you remove rocks from a **domain** which is not yours to a **domain** which is yours?” (line 4). This formulation recalls the language of the *mishna*: “If one digs a pit in a private domain and opens it into the public domain…” Generally speaking, the matter of the two domains is stressed, which is the topic of the *sugya*. Later on as well, we find an emphasis on the domain: “when he was walking in **that public domain**, he stumbled **over those rocks**” (line 7) — this reinforces the aspects of *midda* *ke-neged* *midda*, a theme which also comes up in the previous tale, in the words of R. Chanina ben Dosa.

Moreover, we should note the variation in the verb used to describe the comeuppance of the *mesakkel*: “he stumbled (*nikhshal*) over those rocks” in the Talmud vs. “and he was walking in that place and tripped” in the Tosefta. This mirrors the concept of *midda* *ke-neged* *midda* in the previous tale: “I only said to myself: Shall his seed stumble (*yikashel*) over the thing to which that righteous man has devoted his labor?” Indeed, “tripped” would have been the more appropriate term for the Babylonian Talmud to use in Tractate *Bava Kama* for hazards in the public domain,[[2]](#footnote-2) and indeed this is what the Tosefta uses for the *mesakkel*, so we may assume that the use of the rarer “stumbled” in the former is not mere happenstance.

**Story of the *Mesakkel*: Relationship to the *Sugya***

As we saw above, the word “domain” occupies a central thematic role in our *mishna* and *gemara*, which is essentially interested in the status of a *bor* in various domains. The many appearances of this word in central points of the story of the *mesakkel*, from the introduction to the admonition of the pious man to the reprise at the conclusion, make it a keyword or leitmotif. Its presence, which characterizes the story in the *sugya* in the Babylonian Talmud, as opposed to its parallel in the Tosefta, links this narrative to the *mishna* and the *gemara* in a prominent manner.

Based on a literary analysis of the story, the matter of the domains and the reiterations of the term *reshut* form a strong connection between the story and the *sugya*, both in vocabulary and in content.

As mentioned above, the story of the *mesakkel* examines the connection of a person to various domains, in particular to the public domain. This question is central in the halakhic section of the *sugya* as well, in which it is considered in the legalistic plane. Ownership of a *bor* is one of the parameters for being liable for the damages it causes, so both the *mishna* and the *gemara* consider different cases of excavation in different domains. Some views in this halakhic debate find that the one who digs the *bor* is not liable for resulting damage, because the digger’s ownership over the *bor* is incomplete.

The story of the *mesakkel* relates to the *sugya* in another way, beyond the issue of domains. As stated above, there is a thematic and literary link to the story of Nechunya the ditch-digger, the immediately preceding story. In both of these tales, a pious man appears to highlight the theological or ethical principle or moral of the story. There is a thematic common denominator: a person being intimately harmed — either through his body or through his family — by his own handiwork. In the case of Nechunya, it is his daughter who falls into a *bor* he dug. She is saved due to considerations of *midda* *ke-neged* *midda*; it is inconceivable for harm to befall the offspring of such a virtuous man in a cistern, as he has dedicated his life to the *mitzva* of providing for the community by digging cisterns. Conversely, the yardstick of *midda* *ke-neged* *midda* demands that the *mesakkel*, who created a hazard in the public domain, ultimately be injured by the very obstacle he introduced.[[3]](#footnote-3)

**Conclusion**

To summarize, when we read this narrative in the context of the *sugya*, the literal connection to the term *reshut* combines with the thematic connection to the topic of domains, together contributing an ideological message to the *sugya*: emphasizing the ethical prohibition of creating a “*bor*” in the public domain, particularly in light of the problematic nature on the formal-legalistic plane of holding the creator of the *bor* liable for hazards in the public domain, due to the deficiencies in the element of ownership.

This ideological or ethical viewpoint that the narrative grants the *sugya* may have no practical halakhic ramifications. However, the discussion of this question expands and enriches the picture by confronting the reader with basic human truths and important moral messages that at times accompany the halakhic reality. Moreover, the narrative alludes to the fact that even one who is “exempt by human law” because the court cannot find him legally liable may still be punished by the Heavenly Court — as, indeed, happens to the *mesakkel*.

How does the story of the *mesakkel* relate to that of Nechunya, which precedes it? There is an obvious thematic and literal link, as we observed above. The *sugya* tells us that Nechunya would absolve himself of formal responsibility for every *bor* he dug by handing it over to the public. In light of the explanation given above to the story of the *mesakkel*, we might have read the story of Nechunya as his building another psychological barrier between him and the public. Indeed, like the *mesakkel* who stumbles over the stones he removed, the ditch-digger’s daughter falls into a *bor* of her father’s creation. However, unlike the *mesakkel*, the daughter is rescued.

The words of the pious R. Chanina ben Dosa explain this rescue as the result of Nechunya’s pure intentions and dedication to the public good. Unlike those of the *mesakkel*, the actions performed by Nechunya display no alienation from the public, but rather the opposite – acting on their behalf. The message that arises from the words of the pious man is that on the plane of divine retribution, which we become aware of in the narrative of the *mesakkel*, it is not the formal act or his legal status that saves Nechunya’s daughter, but the religious-moral intent of the actor and his relationship to the public.

Just as the exemption from payment for digging a *bor* in the public domain does not take away from that act its serious moral weight and does not save the digger from heavenly punishment, handing over the *bor* to the public in itself, which exempts the digger on a formal legalistic plane, does not suffice from a moral aspect. If after handing over the *bor* Nechunya had exhibited some alienation from the public, as the *mesakkel* displays, it is possible that his daughter would not have been saved after falling into one of his cisterns.

Translated by Yoseif Bloch

1. Tosefta, *Bava Kama* 2:12-13, p. 9 in the Lieberman edition. [↑](#footnote-ref-1)
2. See Mishna *Bava Kama* 3:1 and 3:4, as well as the *gemara* ad loc.; *gemara* 28b-29a, 48b, 50a. In contrast, “stumbled” appears only here and in the *derasha* on 16b. [↑](#footnote-ref-2)
3. The one exception to the rule of *midda* *ke-neged* *midda* in the *sugya* is Nechunya’s son, who dies of dehydration. This is considered quite perplexing, and a number of theological statements are presented in order to resolve this paradox, as we dealt with at length in the two previous *shiurim*. [↑](#footnote-ref-3)