

Parashat Emor, 5770, 2010:

How to Serve Hashem

Rabbi David Etengoff

Dedicated to the sacred memory of my sister-in-law, Ruchama Rivka Sondra, and the *refuah shlaimah* of Sarah bat Rachel, Yosef Shmuel ben Miriam, and Sheva bat Sarah Rivka.

If a man put out the eye of another man, his eye shall be put out. If he break another man's bone, his bone shall be broken. (*Hammurabi's Code of Laws*, Numbers 196-197, translation, L. W. King)

An eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot, a burn for a burn, a wound for a wound, a bruise for a bruise... And a man who inflicts an injury upon his fellow man just as he did, so shall be done to him [namely,] fracture for fracture, eye for eye, tooth for tooth. Just as he inflicted an injury upon a person, so shall it be inflicted upon him. (*Sefer Shemot* 21:24-25 and *Sefer Vayikra* 24:19-20, these and all Bible translations, *The Judaica Press Complete Tanach*)

The above-found passages appear to be strikingly parallel in both subject matter and content. This is particularly fascinating since Hammurabi died in 1750 B.C.E. – approximately 500 years before the Exodus and Hashem's gift of the Torah to our ancestors at Mount Sinai. As one of my professors, Rabbi Menachem M. Brayer, PhD *zatzal*, however, once noted: "We should not be surprised by the similarities between Judaism and the surrounding cultures. After all, they were in the same geographic area and essentially faced the same daily challenges. What we should focus upon, however, are the differences rather than the similarities." (My paraphrase from a lecture)

Rabbi Dr. Brayer's observation is particularly apropos regarding our passages. Hammurabi's Code represents straightforward retribution (*lex talionis*). In stark contrast, the verses from *Sefer Shemot* and our *parasha* (*Sefer Vayikra*) do not entail any manner or kind of physical revenge whatsoever. Instead, our Sages understood them as referring to financial restitution. By way of example, Maimonides (Hebrew: Rambam, 1135-1204) codifies this interpretation in the following *halachot* (laws):

When a person injures a colleague, he is liable to compensate him in five ways: the damages, his pain, his medical treatment, his loss of employment and the embarrassment he suffered. All these five assessments must be paid from the highest quality of property that he owns, as is the law with regard to payment for damages.

What is meant by "the damages"? If a person cuts off the hand or the foot of a colleague, we theoretically consider the injured colleague as a servant being sold in the market place and evaluate his value before the injury and his value afterwards. The person who caused the injury must pay the depreciation in value. This is alluded to in Exodus 21:24: "An eye for an eye." The oral tradition interprets תחת (*tachat*), translated as "for," as an indication that the verse requires financial recompense.

The Torah's statement Leviticus 24:20: "Just as he caused an injury to his fellowman, so too, an injury should be caused to him," should not be interpreted in a literal sense. It does not mean that the person who caused the injury should actually be subjected to a similar physical punishment. Instead, the intent is that he deserves to lose a limb or to be injured in the same manner as his colleague was, and therefore he should make financial restitution to him.

How do we know that the intent of the Torah's statement with regard to the loss of a limb, "An eye for an eye," is financial restitution? That same verse continues "a blow for a blow." And with regard to the penalty for a giving a colleague a blow, it is explicitly stated Exodus 21:18-19: "When a man strikes his colleague with a stone or a fist... he should pay for his being idled and for his medical expenses." Thus, we learn that the word תחת (*tachat*) mentioned with regard to a blow indicates the necessity for financial restitution, and so one can conclude that the meaning of the same word with regard to an eye or another limb is also financial restitution. (*Mishneh Torah, Hilchot Chovale u'Mazik* 1:1-3 and 5, translation, Rabbi Eliyahu Touger, underlining my own)

The above-stated passage from the *Mishneh Torah* is unusual to say the least. It reveals a different side of Maimonides than that which is normally presented in this or his other

writings. Suddenly, the Rambam appears in the guise of an exegete, an interpreter of the Torah text - in addition to his standard role as codifier. I believe he does this in this instance so that he can unequivocally demonstrate the veracity of the Rabbinic interpretation of “An eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot, a burn for a burn, a wound for a wound, a bruise for a bruise” as referring to monetary compensation instead of physical harm in kind. In this manner, Maimonides totally repudiates any possibility of a literal interpretation of our phrase.

The Rambam, however, deems the exegetical analysis of our passages to be a necessary but insufficient refutation of any Torah-based notion of physical retribution. Therefore, he strengthens his position by invoking *Massorah* (the accepted body of received and revered opinion) and case law as the final conclusive proof for how we ought to understand “An eye for an eye...”

Although these interpretations are obvious from the study of the Written Law, and they are explicitly mentioned in the Oral Tradition transmitted by Moses from Mount Sinai, they are all regarded as actual halachic practice (*halacha l'maaseh* – see Rabbi Shabbetai Frankel's edition). This is what our ancestors saw in the court of Joshua and in the court of Samuel of Ramah, and in every single Jewish court that has functioned from the days of Moses our teacher until the present age.” (Ibid. *halacha* 6, emendation and note my own)

Maimonides' suggestion of *halacha l'maaseh* as the final arbiter for understanding our verse is completely unprecedented in the *Mishneh Torah* – especially since this is the only reference to this expression in the entire work! Beyond question, something unique has taken place in these *halachot* (laws). Therefore, we must ask, “What is the Rambam communicating to us by calling upon *Massorah* and employing the phrase ‘*halacha l'maaseh*,’ rather than just relying upon his own textual analysis and interpretation?”

Without a doubt, Maimonides was one of the most prodigious thinkers of all time. Yet, beyond question, he saw himself as operating within the context of the *Massorah* instead of relying solely upon his own intellect. In other words, as cogent and convincing as his own exegetical analysis might very well have been, he nonetheless accepted *Chazal* (our Sages of blessed memory) as the ultimate decisors of truth. Given this notion, it is little wonder that the Rambam began the *Mishneh Torah* with a restatement of the chain of Torah transmission from the ever-sounding Voice at Sinai until his own time. The message is clear: We are free to critically research and examine every aspect of the halachic universe. Yet, when it comes to *halacha l'maaseh*, we must bend our will to *Chazal* in order to authentically serve our Creator.

Our world today is rife with “authorities” of all stripes, and from all parts of the greater Jewish community, who claim to speak in the name of the Torah and *Massorah*. Unfortunately, however, many of these so-called leaders are self-serving and interested in pursuing their own agendas. With G-d’s help, may we be *zocheh* (merit) to have “eyes that see and ears that hear” so that we can discern and embrace the truth emanating from *Har Sinai* (Mount Sinai) as interpreted by our Sages of blessed memory. In that way, may we truly become His servants. *V’chane yihi ratzon*.

Shabbat Shalom

Past drashot may be found at my website:

http://home.mindspring.com/~rdbe/parashat_hashavuah/index.html .

Do you have questions, comments, ideas, or thoughts about this *drasha*? Would you like to share them? My blog is located at: tefilahandtorah.blogspot.com .

The E-mail list, *b'chasdei Hashem*, has expanded to hundreds of people. I am always happy to add more members to the list. If you have family or friends you would like to have added please do not hesitate to contact me via E-mail rdbe718@gmail.com.