

Parashat Emor, 5778, 2018:

*The Rambam Encounters Chazal*

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Dedicated to the sacred memories of my mother, Miriam Tovah bat Aharon Hakohen, father-in-law, Levi ben Yitzhak, sister-in-law, Ruchama Rivka Sondra bat Yechiel, sister, Shulamit bat Menachem, Chaim Mordechai Hakohen ben Natan Yitzchak, Yehonatan Binyamin ben Mordechai Meir Halevi, Avraham Yechezkel ben Yaakov Halevy, Shayna Yehudit bat Avraham Manes and Rivka, and HaRav Raphael ben HaRav Ephraim, the *refuah shlaimah* of Devorah bat Chana, Yitzhak Akiva ben Malka, Yekutiel Yehudah ben Pessel Lifsha, Yakir Ephraim ben Rachel Devorah and Shoshana Elka bat Etel Dina, and the safety of our brothers and sisters in Israel and around the world.

One of my professors, Rabbi Menachem M. Brayer, PhD *zatzal* 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) A telling example of such a parallel is found in the following two sources:

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*)

These passages are 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 such,

Rabbi Dr. Brayer's observation is particularly apropos regarding our texts. Hammurabi's Code represents straightforward retribution (*lex talionis*). In stark contrast, however, the verses from *Sefer Shemot* and our *parasha* do not entail any manner of physical revenge. Instead, our Sages understood them as referring to financial restitution. As such, the Rambam (Maimonides, 1135-1204) codifies the Torah's verses in the following manner:

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.

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. (*Mishneh Torah, Hilchot Chovale u'Mazik* 1:1 and 3, translation, Rabbi Eliyahu Touger, underlining my own)

The Rambam 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. 6, emendation and note my own)

The Rambam's 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 this body of 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 relying upon his own textual analysis and interpretation?”

Without a doubt, Maimonides was one of the most extraordinary thinkers of all time. Yet, he saw himself as operating within the context of the *Massorah*, instead of relying solely upon his own intellect. In other words, as cogent as his own analyses were, 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 embrace the authority of *Chazal* in order to serve our Creator in authenticity and truth.

Shabbat Shalom

Past *drashot* may be found at my blog-website: <http://reparashathashavuah.org> They may also be found on <http://www.yutorah.org/> using the search criteria of Etengoff and the parasha’s name.

The email 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 email <mailto:rdbe718@gmail.com>.

\*\*\* My audio *shiurim* for Women on the topics of *Tefilah* and *Tanach* may be found at: <http://tinyurl.com/8hsdpyd>

\*\*\* I have posted 164 of [Rabbi Soloveitchik’s](#) English language audio *shiurim* (MP3 format) spanning the years 1958-1984. Please click on the highlighted link.