

Parashat Emor 5781, 2021:

Rabbi David Etengoff

Ayin Tachat Ayin

Dedicated to the sacred memories of my mother, Miriam Tovah bat Aharon Hakohen, father-in-law, Levi ben Yitzhak, sister, Shulamit bat Menachem, sister-in-law, Ruchama Rivka Sondra bat Yechiel, Chana bat Shmuel, Yehonatan Binyamin ben Mordechai Meir Halevi, Shoshana Elka bat Avraham, Tikvah bat Rivka Perel, Peretz ben Chaim, Chaya Sarah bat Reb Yechezkel Shraga, Shmuel Yosef ben Reuven, the *Kedoshim* of Har Nof, Pittsburgh, and Jersey City, and the *refuah shlaimah* of Mordechai HaLevi ben Miriam Tovah, Moshe ben Itta Golda, Yocheved Dafneh bat Dinah Zehavah, Reuven Shmuel ben Leah, and the health and safety of our brothers and sisters in Israel and around the world.

One of the well-known *halachot* found in our *parasha* is the law of retributive justice (*lex talionis*), known popularly as “an eye for an eye and a tooth for a tooth (*ayin tachat ayin*):”

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 Vayikra* 24:19-20, this and all Tanach translations, *The Judaica Press Complete Tanach*)

This is the second time we have encountered this *halacha*, as it initially appears in Parashat Mishpatim: “But if there is a fatality, you shall give a life for a life, *ayin tachat ayin*, 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.” (*Sefer Shemot* 21:23-25) It seems that our four verses suggest that if the *mazik* (one who physically injures another) is to receive his just consequences, his punishment must consist of receiving the exact same injury he inflicted on the *nizak* (harmed individual), a practice known as “mirror punishment.” In fact, such an approach was followed in the ancient Mesopotamian Code of Hammurabi (approximately 1750 BCE).

A very different interpretation, however, is found within the Rabbinic tradition. One of the earliest of these texts to analyze our *pasukim* is the second century work, *Mechilta d'Rabbi Yishmael*, the halachic midrash on *Sefer Shemot*:

“*Ayin tachat ayin*”: Monetary compensation (*mammon*). You say it is *mammon*, yet perhaps the phrase is to be taken in a literal fashion! Rabbi Yisrael always explained this phrase in the following manner... [Based upon the analysis of various Torah passages, we learn that] just like injuries against an animal are redressed by monetary compensation (*tashlumin*), so, too, are damages against a person remedied by monetary compensation.” (*Mesechta d'Nezikin, Parasha VIII*, translation and brackets my own)

In sum, Rabbi Yishmael categorically rejects the concept of mirror punishment and asserts that the Torah champions monetary payment in its stead. Moreover, both he and Rabbi Shimon ben Yochai are quoted as maintaining this position in *Talmud Bavli, Baba Kama* 84a. This is the accepted *p'sak din* (halachic conclusion), as we find in the Rambam's (1135-1204) *Mishneh Torah, Hilchot Chovel u'Mazik* I:1-6:

What is meant by “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 marketplace 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 the Torah's phrase, “*ayin tachat ayin*.” The oral tradition interprets “*tachat*,” translated as “for,” as an indication that the verse requires financial recompense (*l'shalame mammon*). (1, all *Mishneh Torah* translations, Rabbi Eliyahu Touger)

The Rambam expands upon his understanding of *ayin tachat ayin* in the following fashion:

How do we know that the intent of the Torah's statement regarding the loss of a limb, “*ayin tachat ayin*,” is financial restitution? That same verse continues, “a wound *tachat* a wound.” And regarding the penalty for a giving a colleague a wound, it is explicitly stated: “When a man strikes his colleague with a stone or a fist... he should pay for his being idled and for his medical expenses.” (*Sefer Shemot* 21:18-19) Thus, we learn that the word *tachat* mentioned regarding a wound indicates the necessity for financial restitution, and so one can conclude that the meaning of the same word regarding an eye or another limb is also financial restitution. (5)

In addition, the Rambam utilizes *ayin tachat ayin* as a platform for expounding upon the inextricable link that obtains between the Written Law (*Torah She'Bichtav*) and the Oral Law (*Torah She'Ba'al Peh*):

Although these interpretations are obvious from the study of the Written Law, and they are explicitly mentioned in the Oral Tradition transmitted by Moshe from Mount Sinai, they are all regarded as halachot from Moshe. This is what our ancestors saw in the court of Yehoshua and in the court of Shmuel of Ramah, and in every single Jewish court that has functioned from the days of Moshe our teacher until the present age. (6)

The Rambam's first sentence is more or less what we would expect in reference to the connection between *Torah She'Bichtav* and *Torah She'Ba'al Peh*. What, however, does the phrase, "this is what our ancestors saw in the court of Yehoshua and in the court of Shmuel of Ramah..." add to this analysis? My *rebbe* and mentor, Rabbi Joseph B. Soloveitchik *zatzal* (1903-1993), known as "the Rav" by his students and followers, addresses this unusual formulation in his 1964 Yahrzeit *drasha* for his father, Rav Moshe Soloveitchik *zatzal*. The Rav calls this act of bearing witness, *massoret ha'ra'iyah*, a unique aspect of *Torah She'Ba'al Peh* that is acquired through having seen actual court cases and the decisions that were rendered. In our particular instance this refers to the countless *piskei din* (halachic decisions) that conclude that *ayin tachat ayin* must be understood as *mammon*.

How is this *massoret ha'ra'iyah* to be differentiated from other parts of *Torah She'Ba'al Peh*? The Rav notes that in almost all areas of Torah exegesis, it is acceptable to explain a verse according to its *peshat*, rather than according to the *drashot* found in Oral Law. In the case of *massoret ha'ra'iyah*, however, it is forbidden to follow such an approach:

But in reference to the interpretations of these verses that were accepted and bequeathed throughout the generations, when generation after generation saw the actions of the previous generation and the manner in which they comported themselves, for example regarding *ayin tachat ayin*, *etrog* and matters of a similar nature, in these cases they declared that the actual *peshat* of the text is in accord with the *massoret [ha'ra'iyah]*. As such, anyone who would interpret these verses in a different manner [regarding their halachic outcome] would be in the category of "megaleh panim b'Torah shelo k'halacha," one who reveals a heretical interpretation of the Torah that violates the Law, since the accepted *peshat* within the *massorah* (Tradition) in this matter is, in itself, *Torah She'Ba'al*

Peh. (Rabbi Herschel Schachter *shlita*, *Divrei HaRav*, page 101, translation, underlining and brackets my own)

The Rav's examination of the Rambam's words, "this is what our ancestors saw in the court of Yehoshua and in the court of Shmuel of Ramah..." is a conceptual tour de force, for, in so doing, he reveals to us a new aspect of *Torah She'Ba'al Peh* that brings us to a deeper level of understanding. While the phrase might seem to be a simple narrative assertion by the Rambam, the Rav teaches us that *massoret ha'ra'iyah* is emblematic of an entire class of statements within *Torah She'Ba'al Peh*, and serves as a crucial conceptual and halachic link between *Torah She'Bichtav* and *Torah She'Ba'al Peh*.

May our deeper appreciation of the multiple aspects of *Torah She'Ba'al Peh* and its unbreakable connection to *Torah She'Bichtav* bring us ever closer to the Almighty.
V'chane yihi ratzon.

Shabbat Shalom, and may Hashem in His infinite mercy remove the pandemic from *klal Yisrael* and all the nations of the world.

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 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* on the topics of *Tefilah* and *Tanach* may be found at: <http://tinyurl.com/8hsdpvd>

*** 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.