

MORASHAH
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 811 Palisade Ave., Teaneck, NJ 07666
www.utj.org 201.801.0707

Rabbi Seth D. Gordon

Parashat HaShavuah Series

Mishpatim -- משפטים

From time to time, whether reacting to Israel's military response against its attackers or whether in classrooms or theological exchanges, a commentator, celebrity, or student will decry "an eye for an eye" policy or teaching. The pejorative implication is that Jews, influenced by Torah language and thinking, gravitate to perverted and unenlightened responses, i.e., petty revenge. This thinking is at best uninformed and at worst anti-Semitic, a product of years of distortion, whether willful or innocent.

The Torah words "an eye for an eye" first appear in this week's *parashah*, ***Mishpatim***. ***Mishpatim*** means "laws," often civil law; this week's reading addresses civil law first and foremost. In ***Mishpatim***, "an eye for an eye" comes in the context of the case of a pregnant woman who happens to be in the area where two men are fighting. Inadvertently, she is hit and suffers a miscarriage, but no other harm to her results. Torah law adjudicates that the compensation is monetary. The Torah continues:

"וּאִם אִסּוּן יִהְיֶה וּנְתַתָּה נֶפֶשׁ תַּחַת נֶפֶשׁ עֵין תַּחַת עֵין שֵׁן תַּחַת שֵׁן יָד תַּחַת יָד רֶגֶל תַּחַת רֶגֶל..." – "If other damage should ensue, the penalty shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise."

The phraseology is rhythmic (and therefore memorable), direct, and fairly broad - from life to bruise. Modern scholars have learned that similar language appeared in Hammurabi's Code from Mesopotamia (modern day Iraq), several centuries before the time of Moses: Hammurabi's Code was written in Akkadian on an eight-foot high black stele (large stone tablet) and discovered in 1902; it now sits in the Louvre in Paris. One law reads: "If a seignior has destroyed the eye of a member of the aristocracy, they shall destroy his eye." In Hammurabi's laws, physical punishment was exacted for bodily injury, sometimes vicariously - that is, if "X" injured the son of "Y", the same physical damage was done to "X"'s son. Although the language may have been borrowed from Hammurabi, the Torah's meaning, and the explicit teaching of our Sages, was vastly different.

The Talmud preserves the views of numerous Sages, generation after generation, stating that "an eye for an eye" meant monetary compensation

Rabbi Seth Gordon is rabbi of Traditional Congregation, St. Louis, MO.

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(Baba Kamma 84b-85a). In fact, the Talmud records the arguments of our Sages attempting to prove that the phrase meant financial compensation, and counter-arguments that the proof was not persuasive. What is not in dispute is that Rabbinic understanding of “an eye for an eye” is monetary.

In *Mishpatim*, “an eye for an eye” is embedded among laws that address injury with financial compensation. The concept of financial compensation and its practical judicial directive reach their zenith in the poetry of this too-often maligned phrase. Therefore, it can be reasonably inferred that the intent of the Torah was to transform the cruel law of Hammurabi into the humane law of financial compensation. Not only do the teachings of our Sages confirm this, but through other legislation, they enact specific applications, including payments for (a) injury, (b) medical expenses, (c) time lost from work, (d) pain, and (e) relative standing in the community.

In truth, it is others who are likely to justify, and in some cases glorify petty revenge, whereas Jewish thinking and legislation about criminal penalty and civil recompense is directed to humane justice. As we are taught, “צדק צדק תרדף למען תחיה וירשת את הארץ אשר ה' אלקיך נתן לך” – “Justice, justice shall you pursue that you may live long in the land which the Lord your God is giving you” (D'varim 16:20) and “ויגל כמים משפט וצדקה כנחל איתן” – “Let justice well up like water, righteousness like an unfailing stream.” (Amos 5:24)

Shabbat Shalom!

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