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D'var Torah on Emor [Leviticus 21:1-24:23]

An eye for an eye

Today's Torah portion is Emor, in the Book of Leviticus. Buried in the middle of ancient rules for priestly purity and details of Jewish holy days, of lighting the Tabernacle and punishing blasphemers, is a short injunction known by just about everybody in the world, Jewish or not, religious or not:

Sheber tachat sheber, ayin tachat ayin, shen tachat shen; ka-asher yiten mum ba-adam, ken yinaten bo. [Lev. 24:20.]

Translation: A fracture for a fracture, an eye for an eye, a tooth for a tooth. Just as he inflicted an injury upon a person, so shall it be given to him.

This injunction was also previously found in Exodus:

...You shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe. [Ex. 21:23-5]

It will be repeated yet again later in Deuteronomy:

And you [shall have no] pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot. [Deut. 19:21]

Over the centuries, antisemites, critics of Jews and Israel, and plain misinformed people have had a field day talking about our cruelty, our lack of compassion, our lust for revenge allegedly embodied in that law. Indeed, it seems to say: If someone puts out your eye, go ahead and put out HIS eye. Give him a dose of his own medicine.

There is only one problem with this criticism: There is no record of Judaism ever sanctioning doing this. In fact, if we Jews wasted time hating those who have wronged us in the past and seeking retaliation in kind, we would not have time for anything else, and could not have contributed to the betterment of humankind as much as we have. As is well known, hate eventually destroys the haters.

Yet the meaning of the text seems plain enough: "Do unto others as they did unto you". But the rabbis did not interpret it that way. The Oral Law says that the injunction refers exclusively to financial compensation. Its purpose is to set a limit to it: Do not ask for more than the value of an eye for the loss of an eye. The penalty must be proportional to the offense, not higher than the offense. The arguments are quite clever. Rather than paraphrase, let's hear directly what the Mishna says. The Mishna is the Oral Law, which our tradition says was revealed to Moses at the same time as the written law, the Torah. Here is the Mishna in Tractate Bava Kamma:

One who injures another becomes liable for five things: damages, pain, medical expenses, incapacitation, and mental anguish.

-Damages: If he put out his eye, cut off his arm or broke his leg, the injured person is considered as if he were a slave being sold in the market place, and one must calculate how much he was worth before the injury and how much he is worth after the injury; [the difference is the damages to be paid]

-Pain: One must calculate how much a man of equal standing would require to be paid to undergo such pain.

-Medical expenses: If he has struck another, he is under obligation to pay medical expenses... If the wound was healed but reopened, healed again but reopened, he would still be under obligation to heal him. If, however, the wound had completely healed [even though it may have reopened much later] he would no longer be under obligation to heal him.

-Incapacitation: The wages lost during the period of illness must be reimbursed.

-Mental anguish: Must be calculated in accordance with the status of the offender and the offended. [Talmud, Baba Kamma 83b]

The Gemara which follows this Mishna in the Talmud [Baba Kamma 83b-84a, paraphrased] launches into a long discussion of how this interpretation actually follows logically from the Torah injunction, "An eye for an eye..."

Why pay compensation, the Talmud asks. Does the Torah not say 'An eye for an eye'? Why not take this literally? If he put out his eye, the offender's eye should be put out, or if he cut off his arm, the offender's arm should be cut off, or again if he broke his leg, the offender's leg should be broken.

Let this not enter your mind. [Here's why.]

-It says in Leviticus: 'He who kills a beast shall make it good; beast for beast.' [Lev. 24:18]. All agree that 'beast for beast' means monetary compensation; so it is for 'eye for eye'.

-It says in Numbers: You shall not take monetary compensation from a murderer -- he must be put to death [Num. 35:31]. This implies that it is only from a murderer that you may not take compensation, whereas you may take compensation for other offenses, such as loss of body parts.

-R. Dosthai b. Yehudah says: It does not mean actual retaliation, because if the eye of one was big and the eye of the other small, one weak and one strong, they would not be equivalent, and the Torah says in Leviticus,

You shall have only one standard of law, for you, for your countrymen, and for the stranger... [Lev. 24:22]

Justice must be evenly applied -- so monetary compensation is implied. Money is the great equalizer.

-R. Shim'on bar Yochai says: 'Eye for eye' means monetary compensation. If it really meant retaliation, what would you do if a blind man put out the eye of another man, or if a person missing both hands cut off the hand of another, or if a person missing both legs broke the leg of another? You could not physically retaliate in kind. Yet the Torah says, 'You shall have only one standard of law', which implies that the law should be applied the same way to all. So it means monetary compensation.

-The School of R. Ishmael taught: The Torah says in Leviticus: 'Just as he inflicted an injury upon a person, so shall it be given to him.' The word 'given' can apply only to monetary compensation.

-The School of R. Hiyya taught: The Torah says in Deuteronomy, 'Hand for hand', meaning something that is given from hand to hand, that is, money.

-Abbaye said [in the name of the School of Hezekiah]: It says in Exodus: 'life for life, eye for eye'. It does not say 'life *and eye* for eye'. If one retaliated in kind, it could happen that the offender would die while he is being blinded. This would be unfair, and cannot be predicted or prevented, so monetary compensation is meant.

-R. Zebid said in the name of Raba: It says in Exodus, 'Wound for wound'. If retaliation were meant, a person who is delicate would suffer more pain than a person who is not delicate. This would be unfair, so monetary compensation is meant.

-R. Papa said in the name of Raba: It says in Exodus:

"If men quarrel together, and one strikes another with a stone, or with his fist, and he does not die, but keeps to his bed;...then shall he who struck him ... shall pay for the loss of his time, and shall cause him to be thoroughly healed." [Ex. 21:18-19]

This explicitly refers to monetary compensation ('shall pay') and does not even mention retaliation. Further, there are people whose flesh heals fast and others whose flesh does not heal fast, so retaliation would be unfair, and monetary compensation is meant.

-R. Ashi said: It says in Exodus:

...If one man's ox [kills] another man's ox, ...he shall surely pay ox for ox... [Ex. 21:35-6]

The word 'for' in 'he shall pay ox for ox' is the same as in 'eye for eye'. [Namely, 'Tachat']. So just as in the first monetary compensation is implied ('he shall pay'), so it is in the second.

-Rabbi Eliezer (the lone dissenter) said: 'Eye for eye' literally refers to putting out the eye of the offender. Literally, you say? Could R. Eliezer be against all those [great rabbis listed above]?

Rabbi Eliezer had a habit of dissenting with the majority opinion and refusing to accept it as halachah. For this, he was eventually placed under cherem and banned from the debates, even though he was a great scholar.

By the way, this notion of evaluating the monetary value of injuries by referring to the slave trade did not sit well with everybody, even 2000 years ago. The Talmud recounts this story:

An ass once bit off the hand of a child. The case was brought before Rabbi Papa b. Shmuel. He said, 'Go and find out the value the child as if he were a slave.' But the father of the child thereupon said, 'I do not want this

method of valuation, because this procedure is degrading.' However, they said to him, 'What right do you have to deprive the child of the payment that rightfully belongs to him?' He replied, 'When he comes of age I will reimburse him out of my own pocket.'

One might counter that these arguments are not airtight. In the case of murder, financial compensation is not allowed, even though it is possible to ascertain the value of the victim in the slave market. Also, if the offender is rich, compensating the victim does not inconvenience him much, but if the offender is poor, compensating the victim is a huge burden. It is not fair to treat them equally.

However, these arguments are quickly refuted when you realize that the aim of Jewish justice is not so much punishment of the guilty as restoration of the victim. Putting out the eye of the offender does not help the victim one bit, but financial compensation does. Whether the offender is rich or poor is a secondary matter and immaterial to the victim. And in the case of murder, no restoration of the victim is possible, so a different resolution is necessary.

So there you have it. A marvelous example of Jewish wisdom and the power of proper interpretation of Torah through logical thinking. Funny, just about everyone in the world retaliates in kind, except us, yet we are the ones blamed for introducing the principle of retaliation in kind and applying it right and left. So what else is new? Shabbat shalom.