

How Can Humans Uphold Divine Justice?

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The smoke hasn't yet cleared from the mountain. God's holy and un-behold-able Presence is still descended upon the peak, but we're not privy to it, thank God. We'd certainly die if we beheld the Presence up close or heard the Voice. God speaks to Moshe. He is our eyes, our ears, and our interpreter, thank God. We heard the first bit—the first ten. They were un-hearable. But what now? Ten Commandments does not a society make.

In Parashat Mishpatim, the Ten Commandments are immediately followed by a more thoroughgoing account of the Israelite legal code. God, through Their intermediary Moshe, reveals some of the particularly sticky, tricky, and challenging cases of civil law. Mishpatim begins to answer the questions “What happens when human beings are slammed together in community? What happens when they disagree, make mistakes, and cause incidental or intentional harm? What happens when they kill each other?”

The parashah addresses the whole gamut of communal regulations: slave law, death penalty, murder and manslaughter, civil family law, and a detailed spectrum of damages and restitution. It is here we receive the following (in)famous injunction towards equality before the law:

וְאִם־אָסוֹן יִהְיֶה וְנִתְּתָה נֶפֶשׁ תַּחַת נֶפֶשׁ: עֵין תַּחַת עֵין שֵׁן תַּחַת שֵׁן
יָד תַּחַת יָד רֶגֶל תַּחַת רֶגֶל:

And if there is harm done, you should give life for life. Eye for eye, tooth for tooth, hand for hand, foot for foot. (Exod. 21:23–24)

It's one of the most recognizable lines in the whole Tanakh, and it's a compelling section for a number of reasons: Is it meant to be taken literally? Does this principle lead to interminable cycles of revenge? Are these laws to be applied uniformly to kings and courtiers, rich and poor? Prof. Nehama Leibowitz remarks that in roughly

contemporaneous Babylonian legal codes, a system of damages and restitution existed that allowed the wealthy to buy their way out of punishment for harm done. Thus, argues contemporary translator and commentator Everett Fox in his footnote on these verses, the Toraitic legal code was meant to set Israel apart: “In Israel this could not be done, and thus we are dealing not with ‘strict justice’ but with strict fairness.” In other words, while financial compensation for injury may represent a *just* outcome to an unfortunate situation, the fact that not everyone would be able to afford financial restitution means that, to keep things *fair*, everyone must be held to the standard of physical restitution in the form of mirrored injury.

There is something morbidly compelling about this read, that the wealthy and powerful are held to account the same way anyone else would be. But beyond the politics of socio-economic status, I think this passage gets at a deeply human instinct: when someone hurts us, we want to hurt them in just the same way. On its face, the Torah seems to be giving us permission to act on this instinct.

But is that the justice that God wants? Saadiah Gaon (882–942 CE) recognized a difficulty, and the commentator Ibn Ezra (1089–1167) paraphrases him well:

אמר רב סעדיה לא נוכל לפרש זה הפסוק כמשמעו. כי אם אדם הכה עין חבירו וסרה שלישית אור עיניו איך יתכן שיוכה מכה כזאת בלי תוספת ומגרעת. אולי יחשיך אור עינו כולו ויותר קשה

Rabbi Saadiah says that we cannot interpret this verse according to its simple meaning. For if a person struck their fellow's eye and destroyed one third of their vision, how could such a blow be struck [retaliated upon the offender] that is no more and no less? Perhaps their [the original

culprit's] vision will be more destroyed! (Ibn Ezra on Exodus 21:24, עין ה"י)

Rav Saadiah Gaon is arguing something critical here: there is a transcendent equality that God may command us to get as close to as possible. But there are moments where we simply cannot inflict and uphold divine justice as human beings. We cannot be sure that our retaliation will not represent a problematic escalation of damage or violence, so we must be creative in finding another method of restitution. Saadiah's conclusion reflects those reached by the vast majority of interpreters from the rabbinic period to today:

ראוי להיותו עינו תחת עינו אם לא יתן כפרו.

It *would be* appropriate to [literally] give an eye for an eye *if* they do not pay [money] for it. (ibid)

Saadiah has returned us to the question of financial restitution for injury, but he does not see it as the privilege of the wealthy. Rather, because it is untenable to sustain a society where justice is achieved through mutual mutilation, everyone is held to the standard of financial compensation for injury. Thus, Saadiah reads the Torah as advocating against perpetual punishment; the Torah is an *etz hayim*, a tree of life, and cannot possibly expect literal, bodily restitution for harm done. The possibility of continued violence is no solution. Instead, restitution must be made by other means: monetary reparations, mediation, diplomacy.

This diplomacy is on full display later in the parashah where we read:

כִּי תִפְגַּע שׁוֹר אֵיבֶךָ אוֹ חֲמֹרוֹ תֵעָה הַשֵּׁב תְּשִׁיבֵנּוּ לוֹ: כִּי־תִרְאֶה
חֲמֹר שׁוֹנֵאֵךְ רֹבֵץ תַּחַת מְשָׁאוֹ וְחָדַלְתָּ מֵעֲזֹב לוֹ עֲזַב תֵּעֲזֹב עִמּוֹ:

When you encounter your enemy's ox, or their donkey wandering astray, you must return it to them. If you see the donkey of one who hates you lying down under its burden, reject [the inclination] to abandon it to them, but help them unburden it. (Exod. 23:4–5)

Parashat Mishpatim recognizes that the hustle and bustle of humanity can lead to disagreement, challenge, anger, and violence. But I believe the place it's trying to get us to, the

world it is trying to envision, is a just one: a world where people on all levels of society are held to account for their misdeeds, but not in a way that sustains violence. Parashat Mishpatim accepts that ours is a world where enemies, violence, and bloodshed exist. But the text also depicts a civilization where we recognize a human kinship with our enemies, where we remain in community with those who hate us, and where we seek to end cycles of violence through reparations, humility, and diplomacy. In so doing, we get as close as we can to divine justice.