

PARSHAT EMOR – DRASH

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The last verses in Parshat **Emor** address how to punish those who injure or kill people or animals. It contains the famous declaration, “an eye for an eye”, “a tooth for a tooth” to describe punishment for injuries, and further, “if a man strikes down any human being he shall be put to death”.

An eye for an eye is generally viewed as a cruel and vengeful law. However, it could be seen as a guideline that limits the degree of punishment to being equal to the crime and no more.

Even so, rabbinic law eventually replaced corporal punishment with financial compensation. Since Torah is the fixed and sacred law, I decided to look into how the rabbis created oral law that would be consistent with the Torah.

This wasn't easy and in fact the Talmud contains 3 different approaches to making it permissible to substitute financial compensation. They are textual analysis, logic, and moral influence.

1. The rabbis applied textual analysis in at least 2 ways. First, the rabbis interpreted “an eye FOR an eye” as literally *meaning* financial compensation by applying language from other verses from the Torah.

- Maimonides for example, said How do we know that the intent of the Torah's statement with regard to the loss of a limb, "an eye for an eye," is financial restitution? it is explicitly stated in Exodus 21:18-19: "When a man strikes his colleague with a stone or a fist . . . he should pay for his being idled and for his medical expenses." Thus, we learn that the word tachat (תחת) mentioned with regard to a blow indicates the necessity for financial restitution, and so one can conclude that the meaning of the same word with regard to an eye or another limb is also financial restitution. The word tachat in this context means “in exchange”.
- Also looking at the text, the rabbis demonstrated that a literal interpretation would contradict other passages in the Torah. For example, if we are created in the image and likeness of God, then disfiguring a person is a “disfigurement” of God as well. Further, if we are made in the image of God, and God is infinite, then the value of a human life must also be infinite. Therefore, corporal and capital punishment are inconsistent with these, or other passages.

2. Another approach was to show that in many cases it would be impossible to implement an eye for an eye punishment. If it would be impossible to implement, then the Torah could not have meant it to be followed literally.

- For example, what if the perpetrator is blind? What if the wrongdoer had only one functioning eye before the incident; if the other eye were removed, then he'd be in worse condition than the victim. Or what if the victim's eye was only partially damaged, but he could still see somewhat?

3. The restrictions to handing down a sentence of death make it highly unlikely that it could be done.

- The Torah (Numbers 35:31) says that you need two witnesses who had observed the person committing a crime punishable by death. "The testimony of a single witness shall not suffice".
- Building on this, the two witnesses had to have warned the person of the capital punishment he could receive for doing the prohibited act. If the wrongdoer ignored the witnesses' warning, it meant that he was making a conscious decision to change the norms of society
- Finally, the person must have committed the transgression immediately after the warning. Otherwise, the death penalty cannot be applied.
- The same applies to other forms of punishment.

I gave only one or two examples of each of the thought processes incorporated into rabbinic law to show that substituting financial compensation for bodily harm or death actually reflected the intention of the written Law, but there are many, many more.

4. However, on top of all this justification, the rabbis stated outright their moral objection to capital punishment.

- Rabbi Akiva and Eleazar ben Azariah believed that a court which issues a death sentence once in 70 years would be a murderous court.
- Eleazar b. Azariah's colleagues, Tryphon and Akiba said, "Had we belonged to the Sanhedrin [during Judea's independence], no man would ever have been executed," as they would always have found some legal justifications by which to make a sentence of death impossible (Mak. i. 7a).

So, one could say that it was the rabbis' determination that capital punishment was unacceptable to Jewish society that required them to find ways to make this consistent with the Torah.

I have one more example of how an observance changed, although this is more about minhag, custom, rather than law. The time of the counting of the omer was originally a time of joy, related in the Torah to the anticipation of and thankfulness for a good harvest.

Later, the Rabbis declared that the joy and anticipation of the 49-day Omer period, in addition, marked the time the Jewish people, looked forward to arriving at Mount Sinai after the exodus, and receiving the Torah.

But in 135 C.E., the Romans crushed the rebellion led by Shimon bar Kochba. Also, during this period, the thousands of students of Rabbi Akiva died from a plague. As a result, the Jewish people changed the nature of this period, to a time of mourning — no weddings, no parties, no haircuts — in memory of Rabbi Akiba's students.

There was one day during the counting of the Omer, the 33rd day, known as Lag Ba'Omer — that was celebrated as a minor holiday, as on that day the plague abated.

Fast forward to May 5, 1948, when David Ben-Gurion announced the establishment of the modern Jewish State. Now, Zionists celebrate the day as a holiday, interrupting, for the day, the mourning customs of the Sefira period. Yom Yerushalayim, commemorating the recapture of the Old City, also occurs during the Omer season and is also celebrated.

In summary, Jewish law and customs have and will continue to evolve to accommodate changes in our laws and customs as time passes, society changes, and new events occur.