



Parshat Mishpatim: Maimonides on “an eye for an eye”
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In this shiur I examine the apparent contradiction between Maimonides’ discussion of an eye for an eye in MT and his discussion of it in MN in light of debates with Karaites, and draw some lessons for ideological debates today.

One of the most famous passages in the Torah appears in this week’s *parshah*: “an eye for an eye, 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.” (Exodus 21.24-25) On the surface the text seems clearly to be talking about corporal punishment, but according to the *Halacha* we demand monetary compensation instead. Maimonides formulates the law in his *Laws of Wounds and Damages*:

1. He who wounds another is obligated to pay five things: damage, pain, cure, lost revenue, and humiliation....
2. How is damage calculated? If he cut off someone’s hand or foot, we consider him as though he were a slave for sale in the market, compare how much he was worth previously and how much he is worth now, and pay the loss that he caused to his value, as it is said, “an eye for an eye... (Exodus 21, 24; Leviticus 24, 20). Our Rabbis learned from the tradition (*ha-shemu’a*) that the fact that it says “for” means that he should pay a monetary compensation.

How does Maimonides justify the apparent deviation from the simple meaning of the text? He says here that the *Halacha* can be learned from the word “*tahat*,” which we have translated “for,” but he does not say how it is to be learned.

Maimonides next responds to another passage in the Torah which seems to imply corporal punishment:

3. As for the fact that it says in the Torah “As someone has made a wound in another, so shall one be made in him.” (*Leviticus* 24, 20) this does not mean to wound the other as the other wounded him, but rather that he deserves to lose a limb or to receive a wound as he did, and therefore he pays him monetary compensation. And it says “you may not take a compensatory payment for a person who murders.” (*Numbers* 35, 31) Only for a murderer is there no monetary compensation, but for the loss of limbs or wounds, there is monetary compensation.

Here Maimonides brings a short, clear summary of one of the *drashot* that is found in the Talmud (Bava Kama 83b), arguing that the passage from Leviticus 24 does not imply corporal punishment. As the *Lechem Mishneh* points out, this only shows that compensation is permissible in cases other than murder, it does not show that corporal punishment is banned.

Finally, Maimonides offers his proof that the reference to “an eye for an eye” does not imply corporal punishment:

5. And from where do we learn that *an eye for an eye* is monetary compensation? We learn it from the phrase *a wound for a wound* (Exodus 21,

25). And it explicitly says *When a person hits another with a stone or fist... only he shall pay for the loss of his time, and shall cause him to be thoroughly healed.* (Exodus 21, 18-19). Here you have learned that the word “for” mentioned in relation to a wound means monetary compensation, and the same holds of the word “for” that is mentioned in relation to an eye and the other limbs.

This too is a summary of a *drasha* from Bava Kama 83b. In Exodus 21 18-19 it is clear that monetary compensation is used in the case of wounds, so the phrase “wound for wound” used in Exodus 21:25 must also mean monetary compensation. But if “wound for wound” means monetary compensation, so must “eye for eye.”

Debates with Karaites

Why does Maimonides put in such effort to show the Biblical basis of monetary punishment? And if the subject is so important, why doesn't he bring the Talmudic arguments of Shimon Bar Yohai and Beit Hezekia, which argue that practical difficulties make it impossible to perform corporal punishment in any case? The omission of these arguments is surprising because similar arguments were commonly used by Maimonides' contemporaries in debates with Karaite sympathizers. A debate between Sa'adia Gaon and a Karaite named Ben Zuta on this subject is recorded by Ibn 'Ezra (commentary on Exodus 21, 24):

Rav Sa'adia said, “We cannot interpret this passage in accordance with its simple meaning, for if a person strikes the eye of another and destroys a third of its vision, how is it possible that he will receive such a blow without any addition or reduction? Perhaps he will lose the sight of his eye altogether. And it is even more problematic in the case of a burn or a wound or a bruise. For if they are in a dangerous spot, perhaps he will die, and this is unreasonable.

Ben Zuta replied: But is it not written in another place (Lev. 24:20) “As someone has made a wound in another, so shall one be made in him.”

The Gaon answered: The *beit* in the words “in him” should be understood as *'al*, and the meaning is “He will pay a penalty *for* it.”

Ben Zuta insisted, “It says further, “As he did so will it be done to him.”

The Gaon responded, “Samson said, “As they did to me, so I will do to them.” (Judges 15:11) But Samson did not take their wives and give them to others, but only paid them their deserts.”

And Ben Zuta asked, “If the offender was a poor man, what would be his punishment?”

The Gaon responded, “And [according to your theory] if a blind man should blind the eye of a sighted person, what should be done to him? For the poor person may one day become rich and pay, but the blind person won't be able to pay ever.”

The debate recorded here makes use of two kinds of proofs: those based on the interpretation of passages from the Bible, and those based on ordinary human logic, *s'varah*. Sa'adia argues that it is impossible to actually practice corporal punishment as it is described in the Torah, and he also argues that this is not what the Torah actually says to do. Ben Zuta makes the opposite argument, claiming that it is more

reasonable to use corporal punishment than monetary recompense, and also that this is what the Torah says.

But the balance is not the same. Sa'adia Gaon makes more use of *s'varah*, and only refers to passages from the Torah in order to respond to challenges from Ben Zuta. Ben Zuta on the other hand, primarily uses arguments based on passages from the Torah, and only uses *s'varah* to respond to Sa'adia. This pattern seems to be typical of debates between Rabbinic Jews and Karaite Jews at the time (see Yehudah Hallevi, *Kuzari* 3.46-7 for another example). The Karaites based their position on the literal meaning of Biblical passages, while Rabbinic Jews used extensive philosophical or rational arguments in addition to proofs from the text. Ben Zuta, then, seems to represent a typical Karaite Jew.

The use of *s'varah* by the Rabbinic scholars sheds light on their polemical aims. If the aim were only to prove in a particular case that a Karaite interpretation was wrong, they would need only scriptural proofs. But they also wanted to show that the entire Karaite approach to the Bible was wrong, because it did not take sufficient account of logic. The case of an eye for an eye gave a perfect opportunity to prove that it is impossible to follow an overly literal interpretation of the Torah. But it is hard to know how often this approach actually succeeded in persuading a Karaite.

Maimonides took a completely different approach. In the passage we have seen from *Mishneh Torah*, he does not use *s'varah* to show that corporal punishment is unworkable, instead relying only on scriptural proofs to show that this is not what the text means. Why does he avoid *s'varah*?

The simplest explanation is that Maimonides does not believe that there is anything inherently unjust or impractical about corporal punishment. Given that corporal punishment is not completely unreasonable, using such arguments might have a negative effect. The argument would not be persuasive to anyone who thinks corporal punishment is reasonable; and if Maimonides would persuade someone to believe it is not reasonable, without persuading him that the Torah supports monetary compensation, this would only lead the person to doubt the wisdom of the Torah. By avoiding these critiques, and using only textually-based arguments, Maimonides aims to persuade the literalists to adopt the Rabbinic interpretation without entering into unnecessary conflicts with them.

Moreh Nevuchim

We can see signs of this approach to the Karaites in Maimonides' discussion of this topic in *Moreh*. Here he again takes a position different from his predecessors, this time suggesting that the Biblical text can be understood literally:

The punishment given to anyone who has done wrong to somebody else consists in general in his being given exactly the same treatment that he has given to somebody else. If he has injured the latter's body, he shall be injured in his body, and if he has injured him in his property, he shall be injured in his property.... And he who has deprived someone of a limb shall be deprived of a similar limb: *As someone has made a wound in another, so shall one be made in him.* You should not engage in cogitation concerning the fact that in such a case we punish by imposing a fine. For at present my purpose is to give reasons for the [Biblical] texts and not for the pronouncements of the legal science. (3.41)

Here Maimonides quotes the same passage that Ben Zuta quoted, and for the same purpose. He not only adopts the Karaite style of literal interpretation, he also reaches the conclusion that the passage instructs us to perform corporal punishment. Further, here he uses *s'varah* to argue that this is demanded by justice, and he even offers a response to the critiques of his fellow-Rabbinic scholars:

a fine is imposed in the case of wounds in requital of which exactly similar wounds could not be inflicted: *only he shall pay for the loss of his time, and shall cause him to be thoroughly healed.* (Exodus 21, 18-19)

This principle, which was used by others as an argument against the institution of corporal punishment altogether, is used by Maimonides to support it: since there is an alternative method to be used in difficult cases, corporal punishment can be maintained as a valid principle in general. Maimonides bases this compensation option on the same passage that he had used in the *Mishneh Torah* to show that one must always substitute monetary compensation.

No wonder commentators such as Shem Tov were shocked at Maimonides' statements. The apparent contradiction between the *Moreh* and the *Mishneh Torah* on this point continues to be seen as a major unresolved contradiction in Maimonides. (See I Twersky, *Introduction to the Code of Maimonides*, 437, n. 198.) But perhaps the answer is not as difficult as it seems.

Why did Maimonides adopt this literalist position in the *Moreh*? It would be absurd to suggest that Maimonides, who spent his lifetime battling the Karaite heresy and strengthening Rabbinic Judaism, was sympathetic to Karaism. But his position on the question may teach us something about his approach to religious controversy in general.

Although deeply opposed to Karaism, Maimonides was very eager to welcome Karaites back into Rabbinic Judaism. Perhaps his willingness to adopt some of their positions can be understood from this point of view. He does not argue that their interpretation of the passage is impossible. On the contrary, as an interpretation of the isolated text, the interpretation is perfectly valid. Moreover, he does not argue that the difficulties of instituting corporal punishment are sufficient grounds for replacing it; on the contrary, it can be instituted as long as exceptions are allowed. This is a position the Karaites can live with.

But there are still two problems with the literalist Karaite position. First it is not an acceptable interpretation of the Biblical text from a legal point of view. Although the Karaite interpretation can work for the isolated passage, it cannot serve as a legal interpretation because it would result in a divergence between the law concerning wounds and that concerning an eye, and a legal system, by its very nature, must present a consistent and coherent whole. He shows this implicitly in the discussion in *Mishneh Torah*.

But even more importantly, it is not in accordance with the oral tradition. Maimonides emphasizes this point too in his discussion in *Mishneh Torah*:

6. Even though these matters are clear in the written Torah, and are explained by Moses from Mount Sinai, all of them are *Halacha* to Moses in our hands and on this principle our forefathers gave judgment in the courts of Joshua and Samuel of Ramath, and in every court that existed from the time of Moses to our own time.

This passage would seem superfluous since Maimonides has already argued that the *Halacha* can be derived from the Torah. But the passage is essential because it shows the real basis of Maimonides' position. While the texts do support the law when properly interpreted, they can be interpreted otherwise. It is therefore the oral tradition which determines the interpretation.

Maimonides offers a hint concerning this in the discussion in the *Moreh* as well. He concludes his remarks with the following enigmatic words: "Despite this, I have an opinion concerning this provision of legal science [monetary compensation] which should only be expressed by word of mouth." (3.41) No one today knows what

Maimonides would have said in a private interview, but it seems likely that it had something to do with the primacy of the oral tradition for determining *Halacha*.

This approach to the literalist Karaite controversy resembles Maimonides' approach to the Aristotelian controversy. There too he does not deny that theoretically the eternity of the universe as conceived by Aristotelians is a possibility (*Moreh*, Introduction to second part), and there too he does not deny that the Biblical text could be interpreted in accordance with it as well (*Moreh* 2.25). But just as here, also there he rejects the theory of eternity because he has a reliable prophetic tradition negating it (*Moreh* 2.23).

Rather than create unnecessary disagreements with the Karaites and the philosophers, Maimonides chose his battles carefully. He did not take issue with their positions so long as they had reason and did not contradict essential Jewish principles. By accepting the possibility of their arguments without contest, he was able to show that their opposition to Rabbinic Judaism was baseless. In this way he encouraged Jews who were sympathetic to these movements to find a place within the Rabbinic Judaism of his day.

This can be a very useful approach to controversies in our own lives. As parents, teachers and associates we are often faced with people who disagree with us. Attacking their positions head on rarely results in their accepting our position and acknowledging defeat. If we really want to persuade them, we may do better by accepting the valid points they make and showing them that these do not contradict our own.