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An Eye For An Eye: The Interdependence of Written and Oral Law

By Rabbi Avi Weiss

In this week's portion, the Torah proclaims the famous dictum "eye for an eye." (Leviticus 24:20) The message seems clear. If one takes out the eye of a neighbor, his punishment is that his eye is taken out.

The oral law, however, explains through logic that "eye for an eye" is monetary compensation as it may be impossible to carry out equal justice through a physical penalty. For example, Rabbi Shimon Bar Yohai said, if a blind person damaged the sight of another...how would he be able to give an eye for an eye? The school of Hezekiah added that it can sometimes happen that more than an eye could be taken from the perpetrator if in the process of taking an eye, the assailant dies. (Baba Kamma 84a)

The Talmud also uses a textual proof for its thesis. The Torah states "You shall not take a ransom for the life of a man who is condemned to death." (Numbers 35:31) This implies that for the *life* of a murderer you may take no ransom, but you may take ransom for the major organs of the human body which do not grow back. (Baba Kamma 83b)

One wonders, however, if "eye for an eye" is monetary, why doesn't the Torah spell this out clearly? Perhaps it can be suggested that the written law sets the tone, gives the direction, and presents the teaching. As the Torah is read the listener hears the words "eye for an eye" and concludes that if I remove the eye of another, the crime is so heinous it is deserving of my eye being removed. In the words of *Ha-ketav Ve-ha-Kabalah* "the Torah mentions here only what punishment the perpetrator of bodily injuries deserves."

The oral law, however, which is the interpretation of the Torah, tells us how these rules are actually practiced. While one who removes the eye of another may be deserving of physical punishment, in practical terms he receives a monetary penalty.

My Rebbe in Tanakh, Nechama Leibowitz, points out that in the phrase "eye for an eye" (*ayin tahat ayin*) the term *tahat* is used. While usually translated as "for" *tahat* actually means "instead of." In place of the eye something different is substituted – money.

This concept may explain what seems to be a difference between the written and oral law concerning capital punishment. On many occasions, for example for cursing one's parents, the Torah states "He shall die." (Exodus 21:17) Yet, the oral law cites opinions that capital punishment was hardly, if ever, carried out. (Mishna Makkot 1:10) The Torah once again is telling us about what the perpetrator deserves. Cursing a parent and other such offenses are so horrible that they are deserving of death. However, the oral tradition, through the practical halakhic judicial process, proclaims that capital punishment hardly, if ever, actually occurs.

The written law cannot be understood without the oral law. Together they form one unit. The Zohar claims that written law is the "harsh law" while the oral tradition is the "soft law." The two combine to form what we refer to as Torah whose ways are "ways of pleasantness." (Proverbs 3:17)

Rabbi Avi Weiss is the Founder and President of Yeshivat Chovevei Torah Rabbinical School and Rabbi of the Hebrew Institute of Riverdale.

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475 Riverside Drive, Suite 244 ° New York ° NY 10115 ° T 212.666.0036 ° F 212.666.5633 ° www.yctorah.org

