

# PSHUTO SHEL MIKRA

From the Teachings of Rav Yehuda Copperman zt"l

## PARSHAT MISHPATIM

### The Meaning of Ayin Tachat Ayin

עַיִן תַּחַת עַיִן.

*An eye for an eye. (Shemot 21:24)*

#### She'eylat HaKeytzad — Asking “How?”

The Torah states that the punishment for inflicting injury on another is “עַיִן תַּחַת עַיִן — *an eye for an eye.*” As we know, the halachah is that the perpetrator does not actually have his own eye taken out but instead pays the victim the value of his eye. The Ramban (*peirush* to *Shemot* *ibid.*) explains that this is based on a tradition received by Chazal (“*kabbalat Rabboteinu*”). Similarly, the Rambam writes, “This is how our fathers saw the *din* being conducted in the *beit din* of Yehoshua and in the *beit din* of Shmuel Haramati, and in every *beit din* that existed from the days of Moshe Rabbeinu until now” (*Hilchot Chovel U'Mazik* 1:6).

At the same time, the Gemara (*Bava Kama* 83b–84a) did not refrain from getting involved in the question of “*keytzad*,” namely, how can we find a source for *kabbalat Chazal* in the *pesukim* even though the basis for the halachah is not the *pasuk* but the *kabbalah* of Chazal? After a long discussion (two *amudim* of Gemara!), Chazal find a source for the halachah through a *gezeirah shavah*.<sup>1</sup>

<sup>1</sup> *Gezeirah shavah* is one of the principles of *midrash halachah* whereby a key word that features in two different places in

## She'eylat HaMadua — Asking “Why?”

At this stage we proceed to ask the question of “*madua*”? Why did the Torah not simply write, “He shall pay the value of the eye,” which would thereby teach us the halachah in a way that is clear and leaves no room for misunderstanding? What do we gain from the Torah’s writing the penalty in a way that the *pshat* understanding differs from the halachah?

The **Seforno** answers (s.v. *ayin*):

*This is what should have happened based on “hadin hagamur” (absolute justice),<sup>2</sup> for this is middah k’neged middah. Except that the kabbalah of Chazal then tells us that he pays the monetary value, due to our inability to execute the punishment precisely, for perhaps we may make a mistake and inflict undue injury (on the perpetrator) for which we would then be culpable.*

In other words, according to the *Seforno*, the *pshat* of “*ayin tachat ayin*” does not teach us halachah. That is taught by *kabbalat Chazal*. What it does teach us are two things:

1. How the halachah would look if Am Yisrael were to be operating on a level of absolute justice. Operating on that level would create a risk of killing the perpetrator while trying to just take out his eye. We should note that this explanation offered by the *Seforno* is actually one of the proofs that Chazal themselves (*Bava Kama* *ibid.*) sought to bring for the interpretation of “*mamon*,” but they subsequently rejected it. This rejected proof was then “resurrected” by the *Seforno*, so that his words are ultimately sourced in Chazal, just not in their conclusion!<sup>3</sup>
2. A *mussar* (ethical) statement that teaches the perpetrator a crucial lesson in how the Torah looks at these matters. A person shouldn’t think that in the same way that if he breaks someone’s window the punishment is two hundred dollars, so too if he puts his eye out the punishment is two thousand dollars, so that the difference between them is simply the amount of money paid. Rather, the Torah teaches us through *pshuto shel mikra*, “Know that you really deserve to have your eye taken out just as you took his out, exactly like נפש תחת נפש — a soul for a soul. In that case no one asks, what does the family of the dead person gain from the *beit din* killing his murderer, for it is *middah k’neged middah*.” So too here, based on *middah k’neged middah*, the punishment should be “*ayin tachat ayin*” — *mamash!* In contrast, had the Torah written “*d’mei eino yeshalem* — he shall pay the value of his eye,” it would have thereby equated the value of a person’s limbs with that of the rest of his property.

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Torah allows us to learn *halachot* from one to the other. In this instance, the halachah certainly preceded the *drash*. In the *sefer Pshuto Shel Mikra* (Section 1, Chapter 9) we discuss at length the *machloket* between the *Netziv* and the *Ohr HaChaim* regarding the benefit of establishing a basis for a received halachah through the principles of *midrash halachah*.

2 This is in keeping with the view of the *Seforno* that the *pesukim* in *Parshat Mishpatim*, prior to the *Chet Ha'Egel*, represent the maximum level of absolute justice from which we fell as a result of the *Chet Ha'Egel*.

3 This phenomenon, which is quite prevalent among the *mefarshim*, is discussed in our *peirush* to the *Seforno*, *Shemot* 21:24.

We see here how the *pshat* functions as an integral part of *kedushat haTorah*, albeit not on a *halachic* plane, and teaches us what should have been the verdict based on “*hadin hagamur*,” whereas the Midrash teaches us the actual *halachah*. And this is most fitting, for the *shleimut haTorah* is expressed through each method of learning, which gives us an additional aspect of that totality.

## “Ayin Tachat Ayin” K’pshuto Affecting the Halachah

However, after examining the words of “*HaNesher Hagadol*” — the **Rambam** — it seems that “*ayin tachat ayin*” on a *pshat* level actually *does* function in the halachic sphere. Before we discuss the *halachah* that the Rambam derived from *pshuto shel mikra*, let us first direct our attention to his words (*Hilchot Chovel U’Mazik* 1:3) that are similar in approach to those of the *Seforno* but phrased in the unique style of the Rambam:

*That which the Torah states (Vayikra 24:20), “Just as he inflicted a wound on a person, so shall it be inflicted upon him,” does not mean that we should injure him just like he injured the other person. Rather, it means he is deserving of losing a limb or suffering injury as he himself inflicted. And therefore he pays for the injury. Behold, the pasuk states (Bamidbar 35:31), “וְלֹא תִקְחוּ כֶּפֶר לְנַפְשׁוֹ רֹצֵחַ” — do not take ransom for the soul of the murderer,” [this teaches us that] only for a murderer we do not take ransom,<sup>4</sup> but for loss of a limb or other injury there is ransom.*

Looking at these words, we cannot help but ask ourselves, why is the Rambam in the *Mishneh Torah* getting involved in *parshanut* of the Torah? If the Rambam states that “he is deserving of losing a limb,” what are the *halachic* implications that he is looking to glean from *pshuto shel mikra*? After all, the Rambam’s *Mishneh Torah* deals with *halachot*, not with *parshanut*!

The **Rambam** himself provides the answer (*Hilchot Chovel U’Mazik* 5:9):

*Damaging a person bodily is not the same as damaging his property. If one damages his fellow’s property, once he has paid him what he is obligated to pay he has received *kaparah*. However, if one injures his fellow, even if he has paid him all five payments<sup>5</sup> he has not received *kaparah*. Even if one were to offer all *eilei nevayot*<sup>6</sup> as *korbanot* he would not receive *kaparah*, nor would his sin be forgiven until he asks the injured person for forgiveness.*

Here we see an explicit *halachah* being learned from *pshuto shel mikra*! The law of one who injures his fellow is not the same as one who damages his property. When he inflicts injury, he is “deserving of losing a limb,” and this concept finds expression in a **practical obligation** (to ask for forgiveness), for it withholds from him the *kaparah* that he would otherwise receive. Thus, the idea of “he is deserving” derived from *pshuto shel mikra* translates into

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4 [I.e. allow him to offer monetary restitution in lieu of physical punishment.]

5 [I.e., the five payments one who injures his fellow is obligated to pay: *nezek* (damage), *tzaar* (suffering), *ripui* (healing), *shevet* (lack of employment), and *boshet* (embarrassment).]

6 [A phrase used by Chazal (*Bava Kama* 92a) to imply a multitude of animals, based on *Yeshayah* 60:7.]

*hilchot teshuvah d'Oraita!* Had it said “*demei eino yeshalem,*” his status would be the same as if he damaged his fellow’s property, both in *beit din shel matah* and in *Beit Din Shel Maalah*.<sup>7</sup>

## Further Implications

Elsewhere, too, it seems that **Rambam** has understood “*ayin tachat ayin*” *k’pshuto* as functioning in the *halachic* sphere (*Hilchot Chovel U’Mazik* 4:9):

*If one injures his fellow on Yom Kippur, even intentionally,<sup>8</sup> he is liable to pay [all five payments for injury], even though he committed an aveirah that makes him liable to receive malkot,<sup>9</sup> and the general rule is that “one who is liable for both malkot and monetary payment receives malkot and does not pay,”<sup>10</sup> for one does not both receive malkot and a monetary penalty. That is generally true in all such cases, with the exception of physical injury, for the Torah explicitly included one who injures his fellow in monetary payments, as it says, “רק שבתו יתן ורפא רפא” — only for his lost time he shall pay, and for his healing” (*Shemot* 21:19).*

We would like to suggest that behind the source in the *pasuk* (*gezeirat hakatuv*), which the Rambam provided to explain the ruling of “receiving *malkot* and having to pay,” lies the principle of “*ayin tachat ayin*” — *k’pshuto mamash!* Let us explain as follows. The *d’Oraita* rule of “*risha’a achat,*” only incurring one penalty, only applies with regard to two different types of penalties, such as *malkot* and monetary payment. It is clear, however, that if one did an action that made him liable for two or three sets of *malkot* [for example, plowing with an ox and donkey together on Yom Kippur during the *Shemittah* year], he would receive *malkot* for each separate *aveirah*.

Therefore, had the Torah written “*demei eino yeshalem,*” we would apply the restricting rule of “*kidei rishato,*” for then we would be dealing with two different types of punishment; bodily punishment for violating Yom Kippur, and monetary punishment for injuring his fellow. However, once the Torah writes “*ayin tachat ayin,*” we are now dealing with two bodily punishments (his eye and *malkot*), and therefore he is liable for both of them!

According to this understanding, it turns out that “*ayin tachat ayin*” is *k’pshuto* (that is, “*mamash*”) with regard to the **essence** of the *din*, but becomes **monetary** when it comes to its **implementation**. It was this monetary execution that was witnessed in every *beit din*, from the *beit din* of Yehoshua down to the *beit din* of the Rambam. This appears to us to be the explanation of the idea that “injuring one’s fellow is not the same as damaging his property.”

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7 See also Rambam *Hilchot Teshuvah* 2:9.

8 Since this act would incur the punishment of *kareit*, not death through *beit din*, it would make the person liable for *malkot* (see next footnote).

9 Since all *aveirot* that incur *kareit* can incur *malkot* if he is warned by witnesses (*Ketuvot* 32a).

10 As discussed in Gemara *Makkot* 13b based on the words “*כְּדֵי רִשְׁתּוֹ*” — *kidei rishato*,” we make him liable for one penalty and not for two.

## R' Eliezer's View

This idea will perhaps give us a deeper understanding of the position of R' Eliezer (*Bava Kama* 84a) who states that “*ayin tachat ayin*” means *mamash* — literally! The Gemara explains that R' Eliezer holds that the amount paid is not the value of the victim's eye, but rather that of the one who injured him. All agree that the practical implementation of this *din* is in the form of monetary payment; no one ever imagined that it would be otherwise. However, R' Eliezer, who is from the *beit midrash* of Shamai HaZaken, paves the way for the *Sefer*'s understanding that the *pasuk* is referring to absolute justice, “*hadin hagamur*” — and who will expect absolute justice if not the *beit midrash* of Shamai HaZaken! If indeed absolute justice demands *middah k'neged middah*, then the monetary payment must be the value of the damager's eye — for it is his eye that should have been taken out — and not the value of the victim's eye. This is very clearly “ransom” for the **damager's eye** and not “payment” for the victim's eye.

With this we can understand with full precision the words of the *pasuk* in the case of a murderer (*Bamidbar* 35:31), “*וְלֹא תִקְחוּ כֶּפֶר לְנַפְשׁ רֵצַח* — *do not take ransom for the soul of the murderer,*” from which Chazal infer (*Bava Kama* 83b), “*אבל לראשי אברים אתה לוקח* — *but for loss of limb you may take ransom.*” According to R' Eliezer, we are taking ransom of the damager's eye that should have been taken out, as opposed to the case of murder where we take his soul *mamash*, with no possibility of ransom.