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חירות ואחריות

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"Taking Responsibility for Torah"

PSHAT and MEANING: AN I on an EYE for an Eye-IN Rabbi Aryeh Klapper, Dean

There is a perhaps apocryphal story about Jacques Derrida, a prolific literary critic who believed that words were incapable of transferring meaning from the author to the reader. Derrida was asked: "Why do you write, if you don't believe that anyone will understand your intent?" He responded: "I am a determinist; I don't believe I have a choice." This *dvar Torah* is in a less extreme version of that spirit.

Words don't mean anything by themselves. At least, not after Migdal Bavel; my preferred interpretation of that story is that it describes a transition from a natural language to artificial languages. In a natural language, sound, orthography, and meaning are intrinsically connected. The Rabbinic term for this may be "lashon hakodesh". In artificial languages, sound, orthography, and meaning are connected to each other only arbitrarily. Onomatopoeia is a vestigial example of natural language, for example bees buzzzzzzzz instead of hissing. You can see from the "u" that the correspondence is not really crucial; a buzz would sound the same if it were a bizz or a bazz or a bezz or a bozz, or a bzzz, or for that matter a hiss.

Let us take a perhaps provocative example: What is the *pshat* of the phrase "I'll kill you for that"? I'm asking this question not philosophically, but rather as a matter of practical law. The halakhah famously works on the principle *habo lehargekha hashkem lehargo* = "one who comes to kill you – anticipate and kill him first". In order to apply this principle, what evidence does one need of the other person's intent? Is a stated threat sufficient? One halakhic authority held that it depends on whether the threatener is a *talmid chakham* or rather an *am ha'aretz*. A scholar means by that phrase only that s/he is very angry with you, whereas an ignoramus *vaday yaaseh kemo sheamar* = will certainly do as he said.

Taken at face value, that scholar meant the following. Scholars are so psychologically distant from the possibility of violent action that their threats of murder must legally be understood as hyperbole. When said by a scholar, "I'll kill you" means "I'm very angry with you", or at most "I'm

so angry with you that if I were not a scholar I would kill you". When said by an ignoramus, "I'll kill you" is an expression of actual intent to commit violent action. In other words, the *pshat* of "I'll kill you" resides not in the words themselves, but in the interrelationship of words and speaker.

Some readers may find that interrelationship intuitively compelling. Of course intellectuals, or at least Torah intellectuals, or at least people who have spent significant effort on understanding certain texts about Jewish law, are less likely to engage in violence.

Other readers, perhaps based on personal experience of yeshiva politics, will not find the interrelationship even plausible. If nonetheless committed to the position of the unnamed halakhic authority above, they may develop cynical explanations. For example, they may claim that any *talmid chakham* with actual murderous intent would be clever enough not to express that intent and put the intended victim on guard. Or even more cynically, they might claim that the law was formulated by a *talmid chakham* so as to give *talmidei chakhamim* an advantage in potentially deadly confrontations; the *am ha'aretz* is never permitted to go for his gun first.

Other readers may claim that the interrelationship is itself dependent on a broader social context. In some times and places, *talmidei chakhamim* are less likely to mean their threats than *amei ha'aretz*; in other times and places, the reverse is true. They may suggest as well that it depends on the subject matter that lead to the threat, or on the physical and social context in which the threat is offered, or even on which yeshiva educated the threatener.

To close this section, I need to note that "anticipate and kill him first" does not legally mean that one is encouraged or even permitted to do so when other means of effective self-protection are available, such as calling the police (and letting them and the judicial system decide whether the threat was intended literally).

Now – what does all this tell us about the *pshat* of *ayin tachat ayin* = "eye for eye", in Vayikra 24:20? (Readers can decide for themselves whether to presume that it has the

same meaning in Shemot 21:24, or whether their horror of Torah redundancy forces them to the opposite presumption, that it cannot have the same meaning in both places.)

The Halakhah of course is that judicial authorities are not permitted to remove or blind the eye of someone who caused someone else's eye to become blind. There are fundamentally three approaches to asserting that this is the "original intent" of the law as it is found in Chumash. (I want to be clear that "ayin tachat ayin" may appear in legal codes that either precede Chumash, and there is no reason to assume that the meaning are consistent across contexts. The same is true for later non-Halakhic codes. Modern "back to the pshat" movements might very well produce codes which intend the phrase literally.)

1. No legal system could ever have intended the phrase literally, because there are inevitable corollary consequences (such as loss of blood) that would prevent exact proportionality.

2. The literary context of the phrase makes clear that it refers to financial compensation.

3. The Torah as a legal document must be interpreted in accordance with its own rules of statutory construction, and not in the same way as one would interpret a text written in ordinary language. Those rules demonstrate that it refers to financial compensation.

I find some versions of each of these approaches compelling. But my purpose here is not to explicate those arguments – for summaries, see for example Ibn Ezra and Ramban. Rather, I want to try a fourth approach in response to those who believe that Rabbinic interpreters consciously changed the meaning of the phrase from physical retaliation to financial compensation **because they had independently and self-consciously acquired a moral discomfort with the literal meaning.**

My argument is that

- a) in order to demonstrate morality-based reinterpretation, you have to show that interpreters read these texts differently than they would have read the same texts absent moral pressure.
- b) In order to demonstrate self-conscious morality-based reinterpretation, you have to show that interpreters understood morality as different in kind than the tools they used to interpret texts in accordance with the texts' original meaning.

In other words,

- a) If it can be shown that the Rabbis might have understood "eye for eye" as referring to financial compensation even if they had had no moral objection to

understanding it literally, then there is no evidence that they engaged in morality-based reinterpretation

- b) If it can be shown that the Rabbis thought that reasonableness was a way of determining the original meaning of texts, then there is no evidence that they engaged in **self-conscious** moral reinterpretation.

Now with regard to all these arguments, we can argue that there is also a qualitative element. If understanding "eye for eye" as referring to financial compensation is more radical textually than rabbinic moves which have no plausible moral motive, then one can argue that this particular move must still have a moral motive. But if it turns out that this is just a garden-variety rabbinic interpretive move, then there is no basis for assigning morality a role.

My parade countercase in this week's parashah is the law found in Vayikra 22:28:

וְשׁוֹר אֹךְ שֶׁה

אֵתוֹ וְאֵת בְּנוֹ

לֹא תִשְׁחָטוּ בְּיוֹם אֶחָד

An ox or a sheep

It (masculine) and it(masculine)'s son

You must not slaughter them in one day.

On Talmud Chullin 78b we find the following Tannaitic text:

- "אותו ואת בנו"

נוהג בנקבות ואינו נוהג בזכרים

חנניה אומר: נוהג בין בזכרים ובין בנקבות.

(The law of) "It (masculine) and it(masculine)'s son" - applies to females and not males.

Chananiah says:

It applies to both males and females.

It seems to me that the anonymous first position is by any measure a more radical textual move than saying that "an eye for an eye" is a metaphor. There is no morality motive for this move. (It seems necessary to say that willingness to be fluid about gender in grammar says nothing about willingness to be fluid about gender in practice). Therefore, I contend, there is no basis for assigning such a motive to the Rabbinic understanding of "eye for eye", except insofar as moral intuition was an ordinary Rabbinic tool for determining the reasonableness of an interpretation.

Shabbat shalom!