



After the Ten Commandments: The Laws of the Covenant Code

Marty Lockshin

Torah in Motion, 2022



An eye for an eye....

Exodus 21:23-25

וְאִם אֶסוֹן יִהְיֶה וְנִתְּתָה נַפְשׁ
תַּחַת נַפְשׁ. עֵין תַּחַת עֵין וְשֵׁן
תַּחַת שֵׁן יָד תַּחַת יָד רֶגֶל
תַּחַת רֶגֶל. כְּוִיָּה תַחַת כְּוִיָּה
פָּצַע תַּחַת פָּצַע חֲבוּרָה תַחַת
חֲבוּרָה

But if other damage
ensues, the penalty shall
be life for life, eye for eye,
tooth for tooth, hand for
hand, foot for foot, burn
for burn, wound for
wound, bruise for bruise.

חובל ומזיק פרק א Maimonides, Mishneh Torah

עין תחת עין, מפי השמועה למדו שזה שנאמר: "תחת" לשלם ממון הוא.	"An eye for (תחת) an eye": From the Oral Torah we know that the word תחת implies a monetary penalty.
---	--

Maimonides, Mishneh Torah (cont.)

זה שנאמר בתורה: כאשר
יתן מום באדם כן ינתן בו
(ויקרא כד כ), אינו לחבול
בזה כמו שחבל בחברו, . . .
הרי הוא אומר: ולא תקחו
כופר לנפש רוצח (במדבר לה
לא). לרוצח בלבד הוא שאין
בו כופר, אבל לחסרון איברים
או לחבלות יש בו כופר.

When the Torah says, “Just as
he caused a blemish in another,
so shall it be done to him,” it
does not mean to injure him the
same way he injured another.
The verse says, “You may not
take a ransom for a murderer.”
This means that murderers
cannot escape with a ransom
but there is a ransom for
injuries and physical damage.

Maimonides, Mishneh Torah (cont.)

ומנין שזה שנאמר באיברים עין
תחת עין תשלומין הוא? שנאמר
בו: חבורה תחת חבורה,
ובפירוש נאמר: וכי יכה איש את
רעהו באבן או באגרוף וגו' רק
שבתו יתן ורפא ירפא. הא
למדת שתחת שנאמר בחבורה
תשלומין, והוא הדין לתחת
האמור בעין ובשאר איברים.

And how do we know that what it says about the loss of limbs, “an eye for (תחת) an eye,” means monetary payment? Because it also says, “wound for (תחת) wound,” and yet the verse explicitly says, “if one strikes the other with stone or fist, . . . he must pay for his idleness and his cure.” So we see that תחת written about wounds means money. So, it also means money when applied to the loss of an eye or another organ.

Maimonides, Mishneh Torah (cont.)

ואע"פ שדברים אלו נראין מענין
תורה שבכתב כולן מפורשין הן
מפי משה רבינו מהר סיני, וכולן
הלכה למעשה [י"ג למשה] הן
בידינו. וכזה ראו אבותינו דנין
בבית דינו של יהושע ובבית דינו
של שמואל הרמתי ובכל בית דין
ובית דין שעמדו מימות משה
רבינו ועד עכשיו.

Even though all these ideas can be found in the written Torah, they were all made explicit by Moses at Mount Sinai and they all have the status of *halakhah lema'aseh* for us. Furthermore, we saw our ancestors adjudicating this way in every court—that of Joshua, that of Samuel and each and every *beit din* from the days of Moses to today.

Maimonides, Guide for the Perplexed 3:41

The punishment of one who sins against his neighbour consists in the general rule that there shall be done unto him exactly as he has done: if he injured anyone personally, he must suffer personally; if he damaged the property of his neighbour, he shall be punished by loss of property.. . . Even if the murdered person continued to live after the attack for an hour or for days, was able to speak and possessed complete consciousness, and if he himself said, "Pardon my murderer, I have pardoned and forgiven him," he must not be obeyed. We must take life for life, and estimate equally the life of a child and that of a grown-up person, of a slave and of a freeman, of a wise man and of a fool. For there is no greater sin than this. (cont....)

Maimonides, Guide (cont.)

He who mutilated a limb of his neighbour, must himself lose a limb. "As he has caused a blemish in a man, so shall it be done to him again" (Lev. 24:20). You must not raise an objection from our practice of imposing a fine in such cases. For we have proposed to ourselves to give here [in this book] the reason for the precepts mentioned in the Torah, and not for that which is stated in the Talmud. I have, however, an explanation for the interpretation given in the Talmud, but it will be communicated *viva voce* (in person, face to face). Injuries that cannot be reproduced exactly in another person, are compensated for by payment; "he will pay only damages of lost wages and medical expenses." (Exodus 21, 19).

Avraham the son of Maimonides

ולאבא מרי ז"ל במורה
רמז בזה שנמסר ממנו
פירושו על פה בו הכרעה
נפלאה בין הקבלה ופשט
המקרא ולא אפשר
לכותבו מפני שהוא ז"ל
הסתירו.

My father in the Guide
hinted about this subject.
He explained to me orally
a wonderful
harmonization (?)
between the tradition and
the *peshat*. I cannot write
it since he hid it.

Shadal

והנה ממה שכתוב ולא תקחו
כופר לנפש רוצח אשר הוא
רשע למות כי מות יומת
(במדבר ל"ה:ל"א) ראיה
ברורה שהתירה התורה
לקחת כופר ממון בשאר
חבלות שאין בהן מיתה

From what is written, "And do not accept a ransom for the life of a murderer, who is guilty of death, but he must be put to death" (Num. 35:31), there is clear proof that the Torah permits the taking of a monetary ransom in the case of other injuries that do not involve death.

Shadal (cont.)

וזה מן הדברים שהניחה התורה
ביד השופטים, כי אמנם אם
ימצא איש עשיר שלא יחוש
לאבוד ממונו וימצא קורת רוח
בהזיקו לבני אדם, יוכלו
השופטים לעשות בו משפט
כתוב עין תחת עין, ובתורות רומי
Si membrum (Tab. XX) כתוב:
rupit, ni cum eo pacit, talio
est

This is one of the decisions that the Torah left to the judges, for if indeed there would be a rich person who did not mind losing his money and who took pleasure in injuring others, the judges would be able to impose the written penalty, "eye for eye." In the Roman laws (Twelve Tables) it is written, "If he has maimed a part of the body, unless he settles with him, there is to be retaliation [talion]."

Footnote from Daniel Klein's translation of Shadal on Exodus

The law of talion (lex talionis) was the principle that criminals should receive as punishment precisely those injuries and damages they inflicted upon their victims. Modern scholarship echoes Shadal's view: "The central claim of the new research on talionic systems is that revenge coexisted with the option of compensation. Revenge was not phased out gradually, but was a central component of the whole idea of compensation" (Kaius Tuori, "Revenge and Retribution in the Twelve Tables: Talio esto Reconsidered," *Fundamina*, vol. 13, pp. 140-145 [2007]).

Philo of Alexandria

Our law exhorts us to equality when it ordains that the penalties inflicted on offenders should correspond to their actions ... if the offence was a bodily injury, the penalty being determined according to the limb, part, or sense affected.
(Special Laws 3.181–83)

Josephus, *Antiquities* 4:280

Whoever maims another person shall undergo the like, being deprived of that same limb that he deprived the other of, unless indeed the maimed person be willing to accept money; for the law empowers victims to assess the damage that befell them and makes this concession.

Influenced by Roman law?

Baba Kama 83b-84a

תניא ר' דוסתאי בן יהודה אומר עין תחת עין ממון . . .

תניא אידך רבי שמעון בן יוחי אומר עין תחת עין ממון . . .

דבי רבי ישמעאל תנא . . .

דבי רבי חייא תנא . . .

תנא דבי חזקיה . . .

Baba Kama 84a

תניא ר"א אומר עין תחת עין ממש
ממש סלקא דעתך רבי אליעזר לית
ליה ככל הני תנאי

. . . אמר רב אשי לומר שאין שמין
אותו בניזק אלא במזיק

Rabbi Eliezer taught that an eye for an eye is literal. Could he literally mean literal!? Is it possible that Rabbi Eliezer disagrees with [the proofs adduced by] all those *tannaim*?

. . . Rav Ashi said that what he meant was that we estimate the value of the **offender's** limb, not the **victim's** limb.