

Does a Law of Equivalency Result in Equal Justice?

A D'var Torah on *Parashat Emor* (Lev. 21:1 – 24:23)

By Terri Goodman

“Emor el-haKohanim b'nai Aharon v'amarta aleihem....”
“Speak to the Kohanim, the sons of Aaron, and say to them....”

Paradox and parallel, *Parashat Emor* is not what it seems. The end of *Emor* has the seemingly out-of-place story of the blasphemer, which follows detailed laws for the priests and instructions for observing holy days. In addition to the story's apparent dislocation, the commandments for punishments following the story seem a bit out of place. This is the story of a boy who receives death for blaspheming God's name. The punishments that follow address harms against people and property. With these laws, we find some of the most-misunderstood text in the Torah — one of three references to *lex talionis*,¹ an eye for an eye. Today, “an eye for an eye” has a harsh connotation, used to justify extreme punishments. However, references to “an eye for an eye” found in current media alluding to violent retribution are nothing short of paradoxical taken in the context of *Emor* and Talmudic interpretations.

The modern-day connotation is most ironic given that the concept of *lex talionis* was originally intended to guard against vengeful retribution and that God instructed Moses that the punishments were to apply to Israelite and stranger alike, specifically to provide for equal justice. In fact, the Talmud has interpreted the provisions for “parallel punishments” found in three places in the Torah,² to prescribe nothing more than monetary damages, except in certain specific cases.

In *Emor*, the son of an Israelite mother and an Egyptian father begins a fight with an Israelite. The half-Israelite son speaks the Name in blasphemy. The villagers take him to Moses to await God's judgment. God tells Moses to take the blasphemer to the community to be stoned to death. And so it is done. God says that anyone — stranger or citizen — who blasphemes God's name shall be put to death.³

God then tells Moses to instruct the Israelites: “If anyone kills any human being, he shall be put to death. One who kills a beast shall make restitution for it: life for life. If anyone maims his fellow, as he has done so shall it be done to him: fracture for fracture, eye for eye, tooth for tooth. The injury he

¹ The law of equal and direct retribution; literally, the law of retaliation.

² Exodus 21:23, Leviticus 24:19-20, and Deuteronomy 19:21.

³ Leviticus 24:10-16.

inflicted on another shall be inflicted on him. One who kills a beast shall make restitution for it; but one who kills a human being shall be put to death. You shall have one standard for stranger and citizen alike: for I the Lord am your God.”⁴

The placement of the story of the blasphemer at first appears most curious. The story of the fighting boy who says the Name in blasphemy appears at the end of lengthy instruction defining the holiness code for the Levitical priesthood and permissible acts of citizens in proximity to the priests. The beginning of *Emor* defines permissible conduct for the Levitical priests and disqualifying blemishes for the Kohanim. *Emor* next provides protocols for offerings and the cleanliness requirements to partake of the offerings. The text then defines each of the holy days and festivals, and provides instructions for observing them and the days of rest. Suddenly the blasphemer appears, the only anecdote in the parashah.

Although the story of the blasphemer seems to simply appear, there is a prior reference to blasphemy. Between the directions for the Levitical priests and the instructions for holy-day observance, there is the commandment: “[Y]ou shall faithfully observe my commandment: I am the Lord.” Then follows, “You shall not profane My holy name, that I may be sanctified in the midst of the Israelite people — I the Lord who sanctify you, I who brought you out of the land of Egypt to be you God, I the Lord.”⁵ The placement of this commandment gives some indication of the sole jurisdiction of the Levitical priests to engage in the activities associated with worship of God, according to Rabbi Elyse Goldstein in her writing on the portion.

In this context, the story of the blasphemer falls into place. Rabbi Goldstein comments on the placement of the blasphemer but does not cite the commandment not to profane found between the two instructional sections. She hypothesizes that the story of the blasphemer demonstrates Levitical priest elitism. “This man, labeled ‘the blasphemer,’ pronounced God’s name. The priests had sole jurisdiction over such actions, and had forbidden anyone else to engage in any sacred activity associated with the worship of God in the absence of a presiding priest.”⁶ Thus, the blasphemer exemplifies the notion that no one is to infringe on the priest’s power or jurisdiction.

The blasphemer received the ultimate penalty: death. God made clear that the penalty for blasphemy as well as the penalties for harms between people were to be imposed on citizen and stranger alike. The imposition of penalties on citizen and stranger is also paradoxical. In the context of the sin of blasphemy, imposition of the death penalty on stranger and Israelite alike would

⁴ Leviticus 24:17-22.

⁵ Leviticus 22:31-33.

⁶ *The Women’s Torah Commentary* by Rabbi Elyse Goldstein; Jewish Lights Publishing; 2003.

result in the stranger being prosecuted more often than the Israelite. This was likely for two reasons: First, the commandments surrounding the worship of God would be more readily understood and observed by Israelites, and specifically by those from the community who respected the authority of the Levitical priests, than by strangers. Second, the local Israelite community would adjudicate the future cases of blasphemy by strangers; thus, the Israelite community would adjudicate cases against strangers that did not share the same beliefs or the same heritage.

The prohibitions against blasphemy derive from both the Ten Commandments and the seven Noachide laws extrapolated in the Talmud. The Ten Commandments applied only to Israelites, but the Noachide laws applied to citizen and stranger, alike. However, a stranger that did not share Israelite religious beliefs might not recognize the validity of the general application of the Noachide laws. In the case of the blasphemer, the stranger had mixed blood. The blasphemer's mother was an Israelite, identified by name and tribe. In a time of patrilineal descent,⁷ the community viewed the blasphemer as an outsider because of his Egyptian father.

It is far easier to judge a stranger more harshly than a fellow Israelite, even if that stranger is a resident alien living among you. Anyone who is different, with different beliefs, is subject to human prejudice and misunderstanding. Thus, a stranger would be more likely to violate the commandment prohibiting blasphemy *and* to be more harshly judged when there is a question of violation.

Now for the twist. Following the story of the blasphemer, God provided commandments for how to punish those who harm other people and their property. The applications are parallel — an eye for an eye, a beast for a beast — for stranger and citizen. In *this* context, the application of the laws to stranger and citizen alike *protects* the strangers. Unlike in the case of blasphemy, all may equally understand the rules of communal conduct. Strangers and citizens understand that members of a community cannot take lives, steal beasts, or maim and dismember one another. Thus, in the context of the commandments regarding harms between people, equal punishment protects the citizen from the sort of bias and harsh judgments that often befall the stranger in a “court of justice” saturated with family and neighbors that might not otherwise come to a just decision. The law of equivalency applied to citizen and stranger alike was intended to provide a fair system of justice.

Thus, we find a midrash that provides the second reason for the placement of the blasphemer: community holiness. “The long series of laws dealing with the Tabernacle and the offerings was preceded by *Sidrah Mishpatim*,

⁷ See Numbers 18:1.

which deals with relationships among people. So, too, after the passage of the show-bread, *Leviticus* deals mainly with such relationships. This emphasizes that the goal of the Torah is to establish a nation of human beings who seek perfection in their relationship with one another, no less than in their relationship with God.”⁸ The Midrash identifies the necessity of purity in our social relationships and points to the blasphemer as a symbol for the need for purity in our communities. The punishment laws provide a mechanism for order and ultimately for holiness.

Would the literal application of the law of equivalency — an eye for an eye — actually result in equal justice, thereby contributing to the goal of holiness within a community? “The unlearned maintain that it is originally meant literally, but was later reinterpreted by the Sages to mean monetary compensation.”⁹

Jewish law recognized that it would be impossible to inflict the exact degree of physical damage in response to a harm.¹⁰ For instance, “one who strikes mortally an animal shall make restitution, *a life for a life*.”¹¹ The Sages hypothesize, “a singer with a mangled finger would lose little of his value, but a pianist would lose a considerable part of his value if he lost the use of his hand.”¹²

The final question remains: If the Israelite community can mete out parallel justice — for an eye and a tooth and beast — to stranger and citizen alike, is this a sufficient legal system to effect the seventh Noachide law, which requires creation of a legal system sufficient to ensure obedience to the other six Noachide laws?¹³ In addition, if this legal system *is* sufficient to satisfy the seventh Noachide law, can the *lex talionis* system of punishments applied to stranger and citizen alike also form the basis for a broader justice system to promote community and ultimately a community of purity and holiness?

⁸ *The Chumash: The Stone Edition*; Edited by Rabbis Nosson Scherman and Meir Zlotowitz; Mesorah Publications, Ltd.; 2003; p. 692.

⁹ *Ibid.*, p. 693.

¹⁰ *Sforno on Torah*; Translated and edited by Rabbi Raphael Pelcovitz; Artscroll; 1997; p. 613.

¹¹ *Leviticus*, 24:18, emphasis added.

¹² Sherman and Zlotowitz, *op. cit.*, p. 693.

¹³ Laws that prohibit idolatry, blasphemy, murder, sexual sins, theft, and eating a limb torn from a living animal (Sanhedrin 56A).