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"ONE RULE TO RING THEM ALL?" MISHPAT ECHAD, EQUITY, AND EQUALITY

By Rabbi Aryeh Klapper

Parshat Emor closes with the genealogy and story of the man who curses G-d and is punished by stoning. The Torah provides no explicit motive for his blasphemy.

Rashi, following Chazal, locates the motive in the genealogy. He is initially described as the “son of a Yisraelit women, he being the son of a Mitzri man” going out “amongst the Children of Israel”. Because he was a matrilineal Jew, he had no place with any specific tribe. Next he is described as “the son of a Yisraelit” while in dispute “within the camp” with “a Yisraeli man”. After the blasphemy, we learn that his mother was “Shlomit bat Divri of the tribe Dan”. All this suggested to Chazal that he had sued for a hereditary estate (=space within the camp) in Dan’s tribal portion and been rejected on the grounds that matrilineal Jews have no tribal affiliation.

He is brought before Mosheh, and Mosheh refers the case to G-d. G-d responds by ordering the blasphemer stoned, but also by ordering Mosheh to teach the Jews a highly relevant legal paragraph including the laws of blasphemy. The capstone of the paragraph reads

משפט אחד יהיה לכם
כגר כעזרחה יהיה
כי אני יהוה אלהיכם:

There must be one *mishpat* for all of you
the *ger* and the *eizrach* must be alike
because I am Hashem your G-d

In narrative context, it seems clear that the blasphemer was considered a *ger*, and that his demand was to be treated as an *eizrach* = Yisraeli man. The core issue in his lawsuit was not land but rather status and identity. One possible reading is that G-d endorsed his legal position, overruling Mosheh, but that being correct about the law did not excuse his reaction.

Indeed, Chazal contend that Mosheh was compelled to recuse himself from judging the blasphemer because of their prior relationship: the “Mitzri man” who fathered him was the same “Mitzri man” whom Mosheh killed for beating a Yisraeli man. If so, perhaps the blasphemer could have successfully disqualified Mosheh’s verdict in the prior real estate case rather than blaspheming. Perhaps he brought that case in mistaken confidence that Mosheh would feel too guilty about the past to rule against him.

So “there must be one *mishpat* for all of you” cuts both ways. It is incoherent to accept matrilineal Jews as citizens and yet deny them hereditary land. (Yitro argues that the same is true of full converts with no biological Jewish parents – see Chapter 8 of *Divine Will and Human Experience* for evidence that his position is adopted for the Messianic redivision of the Land. It seems reasonable to assume that this applies to matrilineals via *keal vachomer*.) But matrilineal Jews cannot be excused for the sins they commit out of frustration with the legal system, even when that system badly fails to live up to its nondiscriminatory ideals. (But it is flat-out wrong to claim that halakhic rulings always live up to the Torah’s ideals, and profoundly wrong to treat respectful attempts to point that out in specific cases as blasphemy.)

Halakhah derives many rules from this verse that are not related to its narrative context. Each of these derivations seems to generate a certain amount of incoherence.

For example, Mishnah Sanhedrin 4:1 derives that witnesses in financial cases are interrogated in the same rigorous manner (*derishah vachakirah*) as witnesses in capital cases. However, the Mishnah then lists an array of differences between financial and capital proceedings. It’s not clear how these differences can be reconciled with the claim that *mishpat echad* requires the law to be the same in both kinds of cases.

Moreover, we find the following on Yebamot 122b:

Said Rabbi Chanina:

As a matter of Torah law, financial cases and capital cases alike
require *derishah vachakirah*
as Scripture says:

There must be one mishpat.

So why did (the Rabbis) say that financial cases don’t require
derishah vachakirah?

So as not to lock the door in the face of borrowers.

The process of *derishah vachakirah* often leads even truthful witnesses to contradict themselves or each other, thus disqualifying their testimony. This outcome is acceptable and maybe even desirable with regard to prosecution witnesses in capital cases, but apparently led to a credit crunch. The Rabbis therefore vacated the requirement in financial cases. This seems to be a case in which the rabbis simply overruled Torah law, although Maimonides suggests instead that the courts engaged

in a minimal interrogation in financial cases so as to comply with the letter of Torah law.

Another example: Ketubot 33a derives that perjured witnesses can be convicted without *hatraah* (specific advance warning of capital illegality) because such warning is impossible in some cases of perjury, and our verse requires “*mishpat* that is the same for all”. Yet making all perjured witnesses subject to the same law (no *hatraah*) makes the law for perjury different from (almost) all other capital cases.

Another example: Talmud Bava Kamma 83b-84a cites beraitot that derive from our verse that *an eye for an eye* cannot be literal: since people’s eyes are different sizes, some people’s punishment would be greater than the damage they inflicted, and other people’s would be less!¹ An unacknowledged irony is that these beraitot are cited in the context of a Mishnah that declares that when it comes to compensation for humiliation resulting from a tort, “everything is in accordance with the shamer and the shamed”.

Similar arguments can be made with regard to the derivations that conversion requires a court of three judges since our verse applies the term *mishpat* to the *ger* = convert, and financial *mishpat* requires three judges; that relatives cannot serve as witnesses; that the rules for marriage and divorce must be the same as those for financial cases; and so on.

Torah Temimah sums up the situation:

(While the Talmud derives from our verse that we require “*mishpat* that is the same for all”) the categories of “sameness” differ, because it is impossible to say that if a dwarf killed a giant, or vice versa, or if someone with small eyes blinded someone with large eyes, or vice versa, that they would not be punished because they were not “the same”,
ואמנם גדרי ההשוואה שונים הם,
דא”א לומר שאם הננס הרג את הענק או להיפך,
או שבעל עין קטנה סימא עין גדולה ולהיפך,
לא יענשו מטעם שאינם שוים בכמותם.

The ineluctable physical differences between human beings mean that the law can never have exactly the same effect on every person. The same is true with regard to differences in emotional makeup, intellectual capacity, family background, religious belief, and ethnic identity.

Consider the American legal standard for criminal (as opposed to civil) guilt of “beyond a reasonable doubt”. The law is the same for all criminal cases, financial or capital. Yet I doubt

that any sane and moral jury would convict in a death penalty case at the same level of certainty they would need to convict in a case punishable by at most a token fine.

One possible framing of this tension is that *mishpat ehad* requires us to balance equality with equity.

A subcategory of that tension, which brings us back to the narrative of the blasphemer, is that legal rights are intertwined with legal responsibility, meaning that diminished responsibility inevitably and properly leads to weakened rights. Consider the following from Ralbag in this light:

*There must be one mishpat for you,
the ger and the ezrach must be alike –*
we have learned that the law in this matter is the same for a
convert and a born Jew.
This has been repeated many times in the Torah.
And this is proper,
because the Torah is one *nomos*,
which aims for a single purpose,
and its way is not divisible;
therefore it is obligatory for a convert to accept all the
commandments of the Torah in their entirety.
משפט אחד יהיה לכם, כגר כאזרח יהיה –
למדנו שהדין בזה שוה בגר צדק ובאיש מישראל;
וכבר נכפל זה במקומות רבים בתורה.
וראו יהיה להיות כן,
כי התורה נימוס אחד,
יכוון בו לתכלית אחד במספר;
ומה שזה דרכו הוא בלתי מתחלק;
לזה יחוייב לגר שיקבל עליו כל מצוות התורה בשלמות.

Ralbag argues that for the law to be the same for the convert as the born Jew, we must have the same expectations for both. And yet we surely must understand that people’s past experiences shape their relationship to law, in ways that generate both stringency and leniency. Sometimes the only way to account for those differences is to actually make the law different; sometimes the law simply can’t account for those differences; and sometimes, as Maimonides suggests regarding *derishah vachakirah* in financial cases, and along the model I suggested for “beyond a reasonable doubt”, the form of the law remains identical but its application varies. Thus Netziv claims, if I understand him correctly, that in the end, one symbolic rock was soberly and calmly tossed toward the blasphemer.

Shabbat shalom!

¹ Thank you to Deborah Klapper for pointing out that the requirement as stated allows for different eyes to be compensated with different amounts of money. It’s not clear why eye-size is the relevant axis. This problem is intensified when the Talmud then makes the same argument to explain why the penalty for accidental tortious killing can’t be execution – the penalties for a *katan* killing a *gadol* and vice versa wouldn’t be “the same” - especially according to Rashi who understands *katan* and *gadol* as referring to body size, e.g. to dwarves and giants.