

# PARSHAS NASO - ON JUSTICE, HUMAN AND DIVINE

*by Rabbi Yitzchok Adlerstein*

## **On Justice, Human and Divine<sup>1</sup>**

*If the man has no relative to whom the debt can be returned, the returned debt is for Hashem [and is given] for the Kohen, besides the ram of atonement[2].*

Payment. Restitution. Compensation.

We cannot imagine a stable society in which these were not available to citizens entitled to them. Securing them is what civil law is all about. People who are owed money because they have performed services, provided goods, or suffered a loss because of another, ought to be able to collect what is theirs.

Torah law addresses all of these, and indeed does the predictable. It, too, legislates that monies owed ought to be paid. Parshas Mishpatim covers the gamut of monetary law, dealing with torts, bailments, and theft.

It is entirely predictable - until we arrive at our Parshah. Here we discover a passage in which there is no claimant, no aggrieved party, and in a sense, no cause for action. Yet the Torah insists on payment in this rather obscure case, breaking the mold of monetary law. The Torah not only mandates payment in the case of gezel ha-ger, theft from a convert, but it adds on several layers of penalty to boot.

Chris, a convert, has a claim against Reuvain. Reuvain may owe Chris money because of a debt, past wages due, or some actionable damage that Reuvain committed. Chris asks Reuvain for what he is owed. Reuvain not only falsely denies the claim, but he swears by the Name of G-d that he owes nothing. Chris dies.

Chris never married after his conversion, and thus has no heirs. All those to whom he was previously related are no longer regarded as his kin. All previous kinship is legally erased upon conversion, when the convert assumes a new legal persona. Legally, he has no relatives. When he dies, therefore, no one can lay claim to his property on the basis of inheritance law. His property is effectively ownerless and available for seizure; whoever seizes it first acquires legal ownership. In regard to the monies that Reuvain owed to Chris in his lifetime, it is clear that Reuvain himself is the first on the scene to "seize" the monies he would otherwise be required to pay. This seizure effectively puts an end to his indebtedness. Despite the shoddy way that Reuvain treated Chris in his

lifetime, Reuvain ought to be able to breathe a sigh of relief. Chris' unfortunate demise should get him off any legal hook.

The Torah looks at the situation differently. The legal reasoning presented above is rejected, and Reuvain must indeed pay what he owes. Moreover, he must add on a stiff twenty-five percent penalty, besides a mandatory korban. Not having any heirs to receive the payment is no obstacle to making restitution. Hashem announces that the payment is now due to Him - "the returned debt is for Hashem," with the Kohen serving as His proxy.

There is a complication. None of the above holds true unless Reuvain confesses of his own volition. He has to be the one who wants to make good. The court has no authority to make him pay.

This makes little sense to us. If he owes the money, he ought to be made to pay if he lacks the integrity to come forth on his own. If the perpetrator is penalized an additional twenty-five percent, we would think that his crime must be unusually severe, and all the more reason that he should be compelled to pay.

His payment, we must conclude, is not for an ordinary monetary infraction. The key to understanding it is in the oath that Reuvain offered to Chris in order to convince him of the truth of his declaration of non-liability. Every oath invokes the Name of G-d, and joins it to the statement sworn. In a sense, it takes all the abstractions about G-d, and trains them on the very practical matter at hand. It brings G-d into the arena of the common, pedestrian "non-religious" affairs of the community.

Once you join G-d to anything, however, it becomes sanctified. In the case at hand, moreover, Hashem is invoked twice: first in the original oath, and once more when pangs of conscience - really the Voice of G-d stirring within - cause Reuvain to confess. The disputed money has become saturated with G-d. It becomes a holy object, because Hashem's Name, Authority and Presence have been joined to it. Chris' death now becomes irrelevant. The money is holy money, and belongs to G-d. Moreover, because Reuvain abused its holiness - his oath, in fact, was a false oath - he essentially misappropriated holy property. He therefore must pay a penalty - the same penalty of a chomesh that he would pay if he misappropriated hekdesch - property belonging to the Mikdosh!

The chomesh penalty for the false oath is the opposite of, and complementary to, the double payment for theft[3]. Our penalty is imposed only when a person confesses his monetary crime. It cannot be imposed by the court. The double payment required of the thief applies only when imposed by the court, but not if the thief comes forth on his own. The two penalties both address the demands of justice, but one relates to Divine justice, while the other to human justice.

The chomesh payment, as we have explained, recognizes the role of G-d in the ordinary monetary affairs of men. The double payment for theft, on the other hand, emphasizes the importance of human society. It does not apply to gezel, to open and notorious robbery, but to genevah alone, to theft by stealth. The robber takes property from the hands of its owner. To be sure, the robber commits great harm in denying the right of another person to enjoy his property. The thief, however,

adds an additional dimension of moral failing. He takes property while its owner has turned his back to it, and whose eyes are averted from actively guarding it. Members of society cannot possibly stand over everything they own, 24/7. Our very notion of property ownership relies on the protection offered by civilization itself, on the assumption that people are constrained from evil acts by their general regard for society and its laws.

Theft, then, as opposed to robbery, contains a disregard for society. Its punishment, therefore, needs to be a reflection of the value and authority of that society. The penitent who realizes the error in his crime does not need to be forced by society to hearken to its voice. The one who swears a false oath, on the other hand, trifles with the role of G-d in the affairs of Man. His penalty must be imposed by G-d Himself, i.e. when he is moved by his conscience, which is nothing less than the Voice of G-d within.

Between these two unusual laws, the Torah teaches us the importance of justice as applied to ordinary property - the justice of G-d and the justice of Man.

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1. Based on the Hirsch Chumash, Bamidbar 5:8,10
  2. Bamidbar 5:8
  3. Shemos 21:37
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