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בס"ד

## Parashat Mishpatim Part II Concerning Slavery

### 1. Introduction

In dealing with the topic of slavery in the Torah it is important to bear certain basic considerations in mind. In the subsistence economy of the ancient Near East, slavery was an important part of the solution to the ever-present danger of death and chronic illness due to deprivation of food and shelter. It also was a safeguard against many turning to crime. Neither government nor community were sufficiently advanced and ordered to care for the indigent and the less capable members of society. It is difficult to imagine how society of that time could have functioned beneficially for its inhabitants without it.

Thus, there was virtually no chance that a law outlawing slavery under the circumstances that then prevailed could be implemented. While allowing the institution of slavery to exist, however, the Torah initiated critical reforms regarding its functioning.

In some societies, slaves had often been treated somewhat humanely at the discretion of humane owners. Nevertheless, the prevalent view was that a slave was chattel, subject to maltreatment including the most rigorous and dangerous labor as well as physical chastisement at the owner's discretion. There was barely any legal restriction on how masters treated their slaves. Slaves were bereft of rights and had no recourse to prevent abuse. Loyalty to the master and submission to his whims to elicit his favorable disposition and compassion were favored strategy. The best protection a slave had against harsh treatment was often nothing more than the greater value of a healthy body to better serve his master.

The Torah did not completely eliminate the outlook that viewed the slave as property but it did recognize

the slave as a human being. As such, every slave possessed significant rights. His life was inviolable and his bodily organs and limbs were not to be damaged. Biblical law fostered a humane and sensitive relationship between the master (as well as his family), and the slave. It sympathized with the escaped slave. In general, the Torah increased consciousness of the slave's humanity, limited the harshness of slavery and pointed in the direction of its eventual elimination.

### 2. The Israelite Slave

The biblical rules governing the Israelite slave, an עֶבֶד עִבְרִי (a "Hebrew slave"), make absolutely clear that in the final analysis such an individual was not at all a slave in the usual understanding of the word. Sold because of inability to repay a theft (Exod. 22:2) or impoverishment (Lev. 25:39), he was consistently termed "your brother" (Lev. 25:39 ff.; Deut. 15:12), fostering an attitude of concern for him. G-d states regarding all Israelites: "For they are My servants, whom I brought forth from the land of Egypt," therefore, "they may not be sold the sale of a slave" (Lev. 25:42). It also states in that context regarding a fellow Israelite: עֶבֶד בּוֹ עֲבַדְתָּ עֶבֶד, "you may not work him as a slave" (25:39) and לֹא תִרְדֶּה בּוֹ בְּפָרֶךְ, "you may not exercise mastery over him in a way that essentially transforms him from a free man into a slave" (vv. 43, 46). He was to be treated as a hired hand or as a resident settler (v. 40).

The Israelite slave automatically gained his freedom in the seventh year, that is, following six years of service (Exod. 21:2; Deut. 15:12) or at the Jubilee year (Lev. 25:10, 40). Upon his freedom the master was to present him with a substantial gift to assist him in getting established (Deut. 15:13-14). If an Israelite

sold himself to a non-Israelite, his relatives were required to redeem him (Lev. 25:47 ff.). In any event, assuming the latter sale took place under Israelite jurisdiction, the non-Israelite owner was required to treat his Israelite “slave” as a yearly hireling and was prohibited from transforming him into a regular slave. (See our study on Leviticus 25.)

When an Israelite sold his daughter (usually due to dire poverty and/or to provide her a secure future), the Torah insisted on a number of precedent-setting conditions that substantially improved the girl’s lot from what it would have otherwise been expected to be (Exod. 21:7-11). Essentially, the “slave” situation was transformed into short-term domestic work as a household maid. It was officially understood that when she comes of age either the master or one of his sons would marry her (thus preventing sexual exploitation) and she would be treated “in accordance with the rules of daughters” of free families. If the master or his son married another wife besides her, he was forbidden to provide her less than the basic rights of a married woman. These are defined as *שְׂאֵרָה קְסוּמָהּ* (שְׂאֵרָה, *שְׂאֵרָה*), generally translated as bodily sustenance (food), clothing and conjugal rights. The third term may mean “shelter” or “ointments.” If neither master nor son chose to marry her and she had not been redeemed, she must be allowed to go free – presumably at puberty – without payment. She could not be resold.

In conclusion, we may say that the term *עֶבֶד* (“slave”) for the Torah’s concept of a Hebrew slave is a homonym with its use of the word in other contexts. The sages remark, “Whosoever purchases a Hebrew slave is as if he purchased a master for himself” (*b. Qidd. 20a*).

### 3. The Non-Israelite Slave

Regarding the non-Israelite slave, the Torah prescribed a group of laws unprecedented in the ancient Near East. Despite the fact that such slaves were considered a monetary possession, salable and inheritable, they were categorically considered fellow human beings. If in chastising a non-Israelite slave the master killed him, the Torah prescribes *נָקָם יִקָּם* (Exod. 21:20), the victim “is to be fully avenged.” This unusual usage is understood by the sages, as well as by most present-day scholars, to mandate the death penalty for the perpetrator, which is seen as

“vindication” for the murdered man that requires no less than the life of the murderer. This is consistent with the fundamental Torah precept, “Whoever sheds the blood of man, by man shall his blood be shed” (Gen. 9:6). The continuation of the latter verse articulates a foundational principle of the Torah: “for in the image of G-d did He create man.”

The case of the master’s culpability for killing his slave is clearly referring to a non-Israelite slave. This is indicated by use of the unqualified term *עֶבֶד* (slave) as opposed to *עֶבְדֵי עִבְרִי* (Hebrew slave) that was employed earlier in the chapter and by referring to the slave with the phrase *כִּי כֶסֶף הוּא* (“for he is his monetary possession” [v. 21]). Ibn Ezra points out that our passage cannot be taken as referring to an Israelite slave, for it would be inconceivable to have thought that such a person lost his standing as a fellow Israelite. Indeed, one who is “your brother,” and regarding whom there is a command that he may not be treated as or transformed into a slave, cannot be the subject of this passage.

The *n-q-m* root, although generally associated with killing, is not otherwise used in place of saying, “he should be put to death.” The reason this unique locution is employed in this case is because of the qualification that if the slave does not die within the day, *לֹא יִקָּם* (“he is not avenged” [v. 21]), that is, the master is not put to death, contrary to the law in standard cases of murder. The text provides the explanation of this detail in the following words, “for he is his monetary possession.” Hence, to prod the slave to work, the master may have resorted to physical chastisement, which was permitted, for that was the common way of disciplining slaves. (The sad situation of the times is reflected in the verse, “With words a slave is not disciplined; for though he understands, he does not respond” [Prov. 29:19].) The striking that brought about the slave’s death may have resulted from the master’s chastising him and, without awareness, overdoing it, crossing a line without intending to do so.

If the slave dies promptly from the master’s blow *וַיָּמָת יָדוֹ תַּחַת יָדוֹ* (“And died under his hand”) the presumption is that the master was aware that he might be killing him and is accordingly subject to the death penalty. When the slave’s death was after a time, the master must be given the benefit of the doubt. Since the

master was permitted to strike him, it cannot then be assumed that he intended the death or should have been aware that he was killing his slave.

In the depth of peshat it must be acknowledged that a time limit of twenty-four hours, or however long the Torah's intention of *אם יום או יומים יַעֲמֵד* (“if a day or two he survives”) is understood, cannot truly solve all the doubts related to this matter. The court is charged to avenge the victim and a master guilty of murder should be put to death, but a decision for the death penalty cannot be as definite as when the perpetrator did not have a right to strike the victim to begin with. There is a “gray” area. The sacredness of human life must be considered with regard to the master's life as well. It obligates the court to use its judgment and avenge the victim in fairness to himself while also being fair to the master. Such a case cannot be termed *תּוֹמַת יְיָ* as are the neighboring cases.

It is also possible that the phrase “for he is his monetary possession” means that since the slave is of value to the master and the master suffers a loss when the slave dies, the general presumption is that the master did not intend to kill him. Only when death was relatively prompt do the scales tilt in favor of guilt.

#### 4. Other Laws Regarding the Non-Israelite Slave

If a master destroyed his slave's eye or knocked out his tooth, the slave gained his freedom (21:26-27). By specifying “eye” and “tooth” – widely considered the most precious of those organs whose loss is non-lethal and the least precious, and each elaborated in a separate verse – the law obviously meant to extend the principle to all bodily organs. In addition to the inherent fairness of such laws, they were powerful deterrents to abusive treatment.

Non-Israelite slaves of Israelites were to be brought into the covenant between G-d and Israel: “As for the homeborn slave and the one purchased from a foreigner, who is not of your seed, you must surely circumcise, homeborn and purchased alike; thus shall My covenant be in your flesh as an everlasting covenant” (Gen. 17:12b-13). Undoubtedly, as the sages posit, slaves were not obligated in the full gamut of ritual law, but they were included to a significant degree.

Masters were commanded to have their slaves observe the sabbath as a day without labor. Indeed, the Deuteronomy version of the Decalogue states that a purpose of the sabbath day is “in order that your male slave and your female slave may rest as you do” (Deut. 5:14). (In our study *On Decalogue Variants* we support the view that the latter constitutes the Torah's original formulation of the Decalogue.)

Slaves were to be included in family rejoicing on occasions of voluntary offerings at the sanctuary (Deut. 12:12, 18) and on festivals (16:11, 14). When circumcised, the slave joined in the Passover sacrifice. Through observing the sabbath and celebrating festivals and special occasions with the master and his family, slaves were transformed into a part of the household.

In a historic innovation, the Torah mandates, “You shall not hand over to his master a slave who has escaped to you from his master” (Deut. 23:16). The Israelite with whom the slave sought refuge, or more probably the court or civil authority is charged with the following responsibility: “He shall live with you in your midst in any place he may choose among your settlements, where it suits him; do not ill-treat him” (v. 17). In a law that ran contrary to all previous codes, this extraordinary formulation, rare for its expansiveness, appears designed to ensure that society acknowledge its ongoing humanitarian obligations to protect and assist the erstwhile slave.

From the time of the classic sages, this law of not returning a runaway slave to his master has been explained as qualified in various ways. There was tacit acknowledgement that involuntary slavery could not coexist with such a broad regulation that applied in all cases. A slave who chose to be free would merely have to escape from his master and go to the neighbor or to the court or local civil administration!

Many view this law as limited to slaves who escaped from outside the region or from non-Israelite masters. Even if this were the case, the law would still have been a major innovation. It should be noted that extradition treaties covering escaped slaves had been in force among states in the region.

However, difficult as it may be for society to fulfill this law without some qualification, we may wonder:

Did the Torah formulate this law without a stated qualification precisely to leave the literal reading of it in the idealistic mode? In this manner the Torah would have subtly expressed its view on involuntary servitude: Only slaves who chose to remain with their masters had to do so. In any event, this law was an innovation of the greatest magnitude. In neighboring cultures, one who harbored or assisted an escaped slave or did not properly report him to his master or to the authorities, was uniformly subject to harsh penalties, often death. The Torah reversed a practice that was widely and vigorously reinforced in neighboring societies. The expanded statement prescribing that Israelite society be supportive of the runaway slave reflects this fact.

For historical perspective it should be recalled that the U.S. Congress passed and President Millard Fillmore signed the Fugitive Slave Law in 1850, which mandated the return of escaped slaves even from the free states. It also provided for drafting citizens into a posse to capture escapees and allowed suspected blacks to be seized without a jury trial. Surely it was an act anomalous with the forward movement of American sensibilities and law, but it does provide perspective on how deeply attached slaveholders may have been to the institution of slavery.

When thinking about the biblical view concerning slavery, Job's words of human brotherhood and recognition of the moral demand to treat the slave as a fellow human being spring forth: "Did I ever reject the just cause of my manservant or my maidservant when they contended with me? What then would I do when G-d rises up; When He calls me to account, what would I answer Him? Is not He who made me in the stomach made him, did not One form us both in the womb?" (Job 31:13-15).

The foregoing concerns a non-Israelite slave. Nothing comparable is to be found in the pre-Torah literature of the ancient Near East. In summary, we may say that in the Torah, slavery as it was previously known was officially terminated and the seeds were planted for its eventual elimination.

## 5. Location of the Hebrew Slave Passage

The first subject addressed after the introductory verse to our section – "And these are the ordinances" – is

the case of the Hebrew slave. One might have thought that the section would begin with an elaboration of the most serious violation against one's fellow man – מַכָּה תַּחַת שְׂרָפָה, the case of homicide. This would follow the Decalogue's sequence wherein "You shall not murder" begins the section of interpersonal relationships. However, laws concerning the homicide commandment follow the passage about the Hebrew slave.

The general explanations have been that the laws of slavery are first because of the great value the Torah places on the human dignity of the slave and the importance of treating him properly. This is especially the case since the Israelites had so recently been redeemed from slavery and were expected to be extra-sensitive to a slave's plight. The Israelites should now appreciate the Torah's essential abolishment of true slavery as regards members of the nation of Israel. In addition, beginning the section with this law corresponds with the opening pronouncement of the Decalogue in which G-d mentions the benefaction, "who brought you forth from the land of Egypt, the house of bondage."

These are unconvincing explanations. Of course human dignity is important, but concern for life comes first. True, the Israelites had recently been redeemed from slavery, but then why begin the ordinances with the Hebrew slave, while laws pertaining to the non-Hebrew slave are not addressed until much later, subsequent to considerable intervening subject matter? After all, the Egyptian bondage that should motivate the Israelites to more humane treatment of slaves is much more analogous to the case of non-Israelite slaves. Indeed, this is the focus of the sabbath law in the Deuteronomy formulation of the Decalogue.

It should be noted that only the laws concerning the Hebrew slave are elaborated before מַכָּה אִישׁ וְיָמָה, the laws having to do with homicide (Exod. 21:12), focusing the question on that topic alone. Laws concerning the non-Hebrew slave appear in the generally expected order.

Following is a conjecture that may answer this question. The most notable scriptural application of the slave laws concerning Israelites is found in Jeremiah 34. Shortly before the destruction of Judea

in 586 B.C.E., when the Babylonian army had besieged Jerusalem, Jeremiah relates that the king and leaders were in a repentant frame of mind. They had a most auspicious covenant renewal ceremony in the Temple, a *berit ben habetarim* (a “Covenant between the Parts”) as it was described there (Jer. 34:18-19). They solemnly committed themselves to abide by the stipulations of their covenant with G-d. The particular law that was highlighted in the ceremony – indeed, the touchstone of their commitment – was the requirement to set free one’s Hebrew slaves in the seventh year, as the Torah mandates. The leaders had been egregiously violating that law for a period of time and, in their contrition, now set them free, male and female.

Subsequently, the siege was lifted and the people felt relief from the Babylonian danger. The leaders then pressed their former slaves back into slavery. Hashem informs Jeremiah that because they desecrated His name by renegeing on their commitment and did not truly release their slaves, He will “release” them to destruction. “I will bring back the Babylonians to this city [Jerusalem], they will battle upon it, capture it, burn it in fire, and the cities of Judah I will make a desolation, without inhabitant” (Jer. 34:22).

Perhaps in the original order of *Parashat Mishpatim*, the case of homicide was elaborated first and that of the Hebrew slave in its expected place. At the time of the destruction, the law mandating setting the Hebrew slave free emerged as symbolic of the covenant. Hashem had proclaimed that violation of that law was the evidence of Israel’s insincere commitment to and desecration of the covenant. The granting of freedom

to the Hebrew slaves – having a proper relationship “a man to his brother and a man to his fellow” (אִישׁ לְאָחֵיוּ ) [Jer. 34:17]) – became the singular pivotal issue in national life. It became the primary symbol to the leaders of their failings and of what was required of them to aspire to restoration of the covenant.

Jeremiah, perhaps the foremost individual working toward restoration of the covenant and rejuvenation of the nation, recognized that commitment to the law of releasing the Hebrew slave after his six years of service was an essential first step toward repentance and restoration. In the license granted the prophets that underlies the principle that Torah passages need not be in chronological order (אֵין מְקָדֵם וּמְאַחֵר בְּתוֹרָה) [*b. Pesah. 6b*]), we may imagine the following scenario. The prophet shifted the Hebrew slave passage in *Parashat Mishpatim* to first place, immediately after the account of the Decalogue and the launching of the covenant, to remind the Israelites of their tragic backsliding in this area and prompt them to correction.

It should be noted that the ten verses pertaining to the Hebrew slave and maidservant (Exod. 21:2-11), clearly associated passages, comprise a complete and self-contained unit totaling 122 words. This is the numerical equivalent of the combined *gematria* of the two respective key words, עֶבֶד and אִמָּה. If, indeed, the passage was moved from another location, this is a sign that it was done wholly and that its integrity was preserved.