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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 in mind that it is difficult to imagine how Near Eastern society of the late second and early first millenniums BCE could have functioned more beneficially for its inhabitants without it. Neither government nor community were sufficiently advanced and ordered to care for the indigent and the less capable and their families. In the subsistence economy of the Near East of that time period, slavery had long been entrenched as 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.

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

In some societies, under particular circumstances, slaves had sometimes been treated 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 masters. Slaves were bereft of rights and had no recourse to prevent abuse. Loyalty and submission to elicit the master's compassion was a favored strategy. A slave's best protection against harsh treatment was often the greater value of a healthy body to better serve his master.

The Torah did not eliminate the property dimension completely but it recognized the slave as a human

being. As such, every slave possessed significant rights. His life, qua life, was inviolate and his bodily organs and limbs were not to be damaged. Biblical law fostered a humane and sensitive relationship between 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, 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 (Ex. 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). Consequently, לֹא תַעֲבֹד בּוֹ עֶבֶד עִבְרִי, "you may not work him as a slave" (25:39), לֹא תִרְדֶּה בּוֹ בְּפָרֶךְ, "you may not exercise mastery over him in a way that 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 (Ex. 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 establishing himself (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 the previous practice (Ex. 21:7-11). Essentially, the “slave” situation was transformed into what may be described as 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 a second wife after marrying her, he was forbidden to provide her less than the basic rights of a married woman. These are defined as *שְׂאֲרָה פְּסוּתָהּ וְעִנְתָּהּ*, 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” (BT *Qid.* 20a).

3. The Non-Israelite Slave

Regarding the non-Israelite slave, the Torah prescribed a group of laws unprecedented in the ancient Near East. Although such slaves were salable and inheritable, thus considered a monetary possession to some extent, they were emphatically considered fellow human beings. If in chastising a non-Israelite slave the master killed him, the Torah prescribes *נָקָם יִנָּקֵם* (Ex. 21:20), the victim is to surely be 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 concept, “Whoever sheds the blood of man, by man shall his blood be shed” (Gen. 9:6). The reason is provided in the continuation of the verse, “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* as opposed to *עֶבֶד עִבְרָי* that was employed earlier in the chapter and by referring to him with the phrase *כִּי כֶסֶפוֹ הוּא* (“for he is his monetary possession”). 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 in our context – indicating “avenging” the victim – raises a question. Although generally associated with killing, this term is not otherwise used in place of saying, “he should be put to death,” so why is this unique locution employed just in this case?

Its deployment here appears to be connected to the qualification that if the slave does not die within the day *לֹא יִקָּם*, he is not avenged, that is, the master is not put to death, contrary to the law in standard cases of murder. The Torah’s explanation of this detail is *כִּי כֶסֶפוֹ הוּא*. Although a master who kills his slave is liable for murder, to some degree the slave is his master’s “property.” Hence, the master was permitted to chastise him, for that was the common way of disciplining slaves. The incident that caused the slave’s death may have resulted from the master chastising his slave and crossing a line without intending to do so. If the slave dies promptly *וַיָּמָת תַּחַת יָדוֹ*, the presumption is that the master was aware that he might be killing him and is accordingly subject to the death penalty; if the slave’s death was after a time, the master must be given the benefit of the doubt – perhaps the death was brought about by the permitted disciplining.

In the depth of *peshat* it is understood that a time limit of twenty-four hours or however long the Torah’s “*אִם יוֹם אוֹ יוֹמִים יַעֲמֵד*” (literally: “if a day or two he

survives”) is translated cannot solve all the doubts related to this matter. The sacredness of human life is also a consideration concerning the master. It obligates the court to use its judgment and avenge the victim in fairness to himself while also being fair to the master. The court is charged יִקָּם יִקָּם, a master guilty of murder should be put to death but it is not as definite as when the perpetrator did not have a right to strike the victim to start with. He very possibly may not have intended to kill. Such a case cannot be termed מוֹת יוֹמָת as in the neighboring cases.

Alternatively, it is possible that כִּי כִסְפוֹ הָיָא explains why, after the slave lingered for a while, the presumption is that the master did not intend to kill him. The master “owned” the slave and he suffers a loss when the slave dies. Although the master might have struck him in a manner that he knows could possibly cause death, when the slave lived on for a time we say that the master very possibly did not intend to cause himself a loss. Only when death was prompt do the scales tilt in favor of guilt.

The Torah states that 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,” the law obviously means to extend the principle to all bodily organs. In addition to the inherent fairness in such laws, they were powerful deterrents to abusive treatment.

Slaves of Israelites were to be brought into the Covenant between G-d and Israel: “As for the home-born slave and the one purchased from a foreigner, who is not of your seed, you must surely circumcise, home-born 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 Shabbat as a day without labor. Indeed, the Deuteronomy version of the Decalogue (Deut. 5:14) states that the primary purpose for which G-d commanded the Israelites to fulfill a Shabbat day is in order for the slave to have a day of rest. (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 *qorban Pesah*. Through observing Shabbat and celebrating festivals and special occasions with the master and his family, slaves were transformed into a part of the household.

In an 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 following verse obligates the Israelite with whom the slave sought refuge, or more probably the court or civil authority: “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). This extraordinary formulation, rare for its expansiveness, appears designed to assure that society acknowledge its humanitarian obligations to the erstwhile slave in a law that ran contrary to all previous codes.

From the time of the classic Sages, this law of not returning a slave to his master has been explained as qualified in various ways. Perhaps there was a subtle acknowledgement that it was naïve to conceive of it as speaking in all cases, for involuntary slavery could not coexist with such a broad regulation. 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 country or from non-Israelite masters. It still would be a major innovation. It should be noted that extradition treaties covering escaped slaves had been in force among states in the region.

However, we may wonder, is it possible that the Torah formulated the law without qualification precisely to leave the understanding of it in the idealistic mode, difficult as it may be for society to fulfill without providing some qualification? In this manner the Torah would have subtly expressed its view on involuntary servitude. 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

without exception. As previously mentioned, the expanded statement to be supportive of the runaway slave reflects this fact.

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 man-servant or my maid-servant 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.

4. Location of the Hebrew Slave Passage

The case of the Hebrew slave is the first subject addressed after the introductory verse of *Parashat Mishpatim*. One might have thought that the section of *mishpatim* (ordinances dealing in large part with interpersonal relationships) would begin with an elaboration of the most serious violation against one's fellow man מַכָּה אִישׁ נֶמְתָּ, the case of homicide. This would follow the Decalogue's sequence wherein לֹא תִרְצַח (You shall not kill) begins the section of interpersonal relationships. However, laws concerning the homicide commandment are located following the passage of 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 the slave's plight. The Israelites should now appreciate the Torah's essential abolishment of true slavery in the nation of Israel. In addition, such a beginning corresponds with the opening pronouncement of the Decalogue, "who brought you forth from the land of Egypt, the house of bondage."

This is an unconvincing explanation. Of course human dignity is important, but life comes first. True, the Israelites had recently been redeemed from slavery, but 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 Shabbat law in several of its formulations.

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

A conjecture. The most notable Scriptural application of the slave laws concerning Israelites is found in Jeremiah 34. Shortly before the destruction of Judea in 586 BCE, when the Babylonian army had besieged Jerusalem, Jeremiah relates that the king and leaders were in a repentant frame of mind. They made a most auspicious Covenant renewal ceremony in the Temple, a *Berit ben Habetarim* as it was described there (Jer. 34:18-19), and solemnly committed themselves to abide by the 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 this law for a period of time and, in their contrition, now set them free, male and female.

When the siege was lifted and they felt relief from the Babylonian danger, these leaders pressed their former slaves back into slavery! Hashem informs Jeremiah that because they desecrated His name by reneging on their commitment and did not truly release their slaves, He will "release" them to destruction. He will bring back the Babylonians who will capture the city and destroy the country.

Perhaps in the original order of *Parashat Mishpatim* the case of homicide was elaborated first and that of the Hebrew slave in its appropriate place. At the time of the destruction, the law regarding the Hebrew slave

going free emerged as symbolic of the Covenant. Hashem declared that violation of that law was the evidence of Israel's insincere commitment to, indeed, desecration of, the Covenant. The granting of freedom to the Hebrew slaves – properly relating אִישׁ לְאָחִיו וְאִישׁ לְרֵעֵהוּ “a man to his brother and a man to his fellow” (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.

In the license granted the prophets that underlies the principle אֵין מִקְדָּם וּמֵאַחֶר בְּתוֹרָה – that some passages in the Torah are not in chronological order (BT *Pes.* 6b) – we may imagine the following scenario, thereby answering our question. Jeremiah, working toward the rejuvenation of the nation and the Covenant, 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. Accordingly, he shifted the Hebrew slave passage in *Parashat Mishpatim* to first place, immediately after the account of the Decalogue and the launching of the Covenant.

It should be noted that the ten verses pertaining to the Hebrew slave and the immediately following maid-servant (Ex. 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, אָמָה and עֶבֶד. If, indeed, the passage was moved from another location, this is a sign that it was done wholly and that its integrity was preserved.

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