



After the Ten Commandments: The Laws of the Covenant Code

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Torah in Motion, 2022

Mishpatim

א וְאֵלֶּה הַמִּשְׁפָּטִים
אֲשֶׁר תִּשִּׂים
לִפְנֵיהֶם. ב כִּי
תִקְנֶה עֶבֶד עִבְרִי
שֵׁשׁ שָׁנִים יַעֲבֹד. . .

These are the rules
that you shall set
before them: When
you acquire a
Hebrew slave, he
shall serve six years .

..

Two (mutually exclusive?) comments in Rashi

אשר תשים **לפניהם** – אמר לו הקב"ה למשה:
לא תעלה על דעתך לומר: אשנה להם הפרק
שנים שלשה פעמים, עד שתהא סדורה
בפיהם כמשנתה, ואיני מטריח עצמי להבינם
טעמי הדבר ופירושו. לכך נאמר: אשר תשים
לפניהם – כשולחן הערוך ומוכן לאכול לפני
האדם. (מכילתא)

לפניהם – ולא לפני גוים. ואפילו ידעתה בדין
אחד שהגוים דנין אותו כדיני ישראל, אל
תביאהו בערכאות שלהם. שהמביא דיני
ישראל לפני גוים, מחלל את השם, ומיקר שם
עבודה זרה להחשיבה. . . . (תנחומא, גיטין
פח)

WHICH YOU SHALL PUT **BEFORE THEM** – God said
to Moses: Do not think of saying, "I shall teach
them a section of the Torah twice or three times
until it will become fluent in their mouths
verbatim, but I shall not take the trouble to make
them understand the reason of each thing and its
significance"; therefore Scripture says, "which you
shall put before them" — like a table fully laid in
front of a person, with everything ready for eating.

BEFORE THEM – but not before the gentiles. Even
if you know concerning one specific issue that they
would rule in the same way as Jewish law would,
do not bring it before their courts; for he who
brings Israel's law-cases before the heathens
desecrates the Name of God and pays honour to
the name of the idol . . .

Professor
Avraham
Grossman

היו שסברו
שכאשר מצא רש"י
חולשה בכל אחד
משני הפירושים
העדיף להביא את
שניהם

There are those who have claimed that when Rashi sensed that each of two interpretations of a specific text involved some difficulty, he offered both.

Grossman says that this approach was championed by Eliyyahu Mizrahi and later by Nehama Leibowitz.

Grossman (cont.)

כל מי שהאמת נר
לרגליו ומבקש להימנע
מתירוצים דחוקים, ייאלץ
להודות כי אין בידינו
הסבר מספק לכל
המקרים הרבים
שבפירושו, וככל הנראה
לפחות במקצת המקרים
חיבת המדרש היא
שהניעה אותו שלא
להסתפק במובאה אחת

Any truth seeker who wants to avoid dubious explanations will have to admit that we do not have a sufficient explanation for all the many instances [of double comments] in his commentary.

Apparently, at least in some of the cases it is simply love of midrash that motivated Rashi not to make do with one explanation.

Gur Aryeh
commentary
on Rashi

לפניהם ולא לפני גוים. מדכתיב "לפניהם"
בכינוי, דמשמע אותם שהוזכרו למעלה,
דהם ישראל, על זה קאי "לפניהם". ואף
על גב דלעיל דרשינן "לפניהם" כשלחן
ערוך, לא דרשינן רק 'לפני' דכתיב, דהוי
למכתב 'אשר תשים לפנים', אבל כנוי
"לפניהם" לא דרשינן, ואם לא בא רק
ללמוד שיהיה כשלחן ערוך לפני האדם,
הוי למכתב 'אשר תשים לפנים', מאי
"לפניהם", אלא "לפניהם" 'ולא לפני
גוים'.

The Hebrew slave

כִּי תִקְנֶה עֶבֶד עִבְרִי שֵׁשׁ שָׁנִים
יַעֲבֹד וּבַשְּׁבִיעִת יֵצֵא לְחֻפְּשֵׁי
חָנָם. אִם בָּגֵפוֹ יָבֵא בָּגֵפוֹ יֵצֵא
אִם בַּעַל אִשָּׁה הוּא וַיֵּצֵא
אִשְׁתּוֹ עִמּוֹ. אִם אֲדֹנָיו יִתֵּן לוֹ
אִשָּׁה וַיֵּלְדָה לוֹ בָּנִים אוֹ בָּנוֹת
הָאִשָּׁה וַיֵּלְדֶיהָ תִּהְיֶה לְאֲדֹנֶיהָ
וְהוּא יֵצֵא בָּגֵפוֹ.

When you acquire a Hebrew slave,
he shall serve six years; in the
seventh year he shall go free,
without payment. If he came
single, he shall leave single; if he
had a wife, his wife shall leave
with him. If his master gave him a
wife, and she has borne him
children, the wife and her children
shall belong to the master, and he
shall leave alone.

Slavery in Israel and the Ancient Near East (Nahum Sarna)

All the law collections of the ancient Near East deal with the topic of slavery. This evil institution . . . [was] widespread, persistent, and socially sanctioned. . . . Biblical legislation is directed toward enhancing the social and legal status of this human chattel. This humanitarian approach expresses itself in a variety of ways: the slave is termed “your brother” (e.g. Lev 25:39); he possesses an inalienable right to rest on the Sabbath day and festivals; . . . He is to be “avenged” if he dies from a beating from his master.....

Encyclopedia
Britannica
Master-Slave
Relationship

An owner could kill his slave with impunity in Homeric Greece, ancient India, the Roman Republic, Islamic countries, Anglo-Saxon England, medieval Russia, and many parts of the American South before 1830.

... The Code of Justinian [6th century CE] changed the definition of the slave from a thing to a person and prescribed the death penalty for an owner who killed his slave by torture, poison, or fire. Spanish law of the 1260s and 1270s denied owners the right to kill their slaves.

Ira Stoll, *Wall Street Journal*, April 28, 2022

The first Jew at Harvard was a slaveholder. That's the bombshell, so far as I can tell, buried in the appendix of the new report "Harvard & the Legacy of Slavery," released by the university this week.

The report's "list of human beings enslaved by prominent Harvard affiliates" includes the "enslaved persons" Cuffy and Cicely, owned by Judah Monis. Monis lived from 1683 to 1764 and was an instructor in Hebrew at Harvard College from 1722 to 1760. In researching this article, I discovered a third possible slave, "my Negro child Moreah," mentioned in Monis's 1760 will.

Wall Street Journal (cont.)

I first encountered Monis's name more than a decade ago while working on a biography of the American revolutionary leader Samuel Adams. Part of the required curriculum for Harvard students from 1735 to 1755 was the study of Hebrew grammar from a textbook written by Monis. That might seem like an obscure detail, but it's of historical significance because Harvard students in that era included Samuel Adams, his cousin and the future President John Adams, and their fellow signers of the Declaration of Independence John Hancock, Robert Treat Paine, and William Ellery.

Wall Street Journal (cont.)

Monis had converted to Christianity from Judaism one month before joining the Harvard faculty. In a 2018 article for the Harvard Divinity Bulletin, Jon D. Levenson writes that the conversion had been a condition of hiring. The baptism took place in Harvard Yard. “Although doubts about Monis’s sincerity in converting have long been raised, I am certain that he was absolutely sincere in his desire for a Harvard professorship,” Mr. Levenson writes.

Wall Street Journal (cont.)

Samuel Adams described the British as “taskmasters” and likened the American revolutionaries to the children of Israel fleeing slavery in Egypt. In a speech to the Continental Congress in 1777, Samuel Adams noted that they had told the world of their determination “to die freemen, rather than to live slaves.” The Declaration of Independence spoke of how all men are created equal, “endowed by their Creator” with the right to liberty.

It’s one thing to reckon with hypocrisies in the stories of plantation-owning Virginians like Thomas Jefferson and George Washington. That’s old news. But Samuel Adams’s Harvard Hebrew professor? That hits closer to home for those who consider Boston to be the cradle of liberty.

Wall Street Journal (cont.)

If the future American revolutionaries were diligent students of the Hebrew Monis taught, they would have been able to parse with some care the text of Exodus. At Sinai, after God identifies himself as having “brought you out of Egypt, the house of slavery,” he issues the commandment that the children of Israel obey the Sabbath in part by not having their own slaves work on the seventh day.

In experiencing the irreconcilable contradiction between the reality of slave ownership and the ideal of freedom, in other words, the American revolutionaries weren't unlike the children of Israel. They were following in their footsteps.

Pesahim 116a

אמר ליה רב נחמן לדרו עבדיה
עבדא דמפיק ליה מריה לחירות
ויהיב ליה כספא ודהבא מאי בעי
למימר ליה אמר ליה בעי לאודויי
ולשבוחי

א"ל פטרתן מלומר מה נשתנה
פתח ואמר עבדים היינו

Rav Nahman asked his slave Daru:
“If a master frees a slave and gives
him gold and silver, what should
that slave say to the master?”
Daru answered: “He should thank
and praise the master!” Rav
Nahman answered: “You have
exempted us from saying Mah
Nishtanah.” He began the seder
with “Avadim hayyinu.”

Rabbi Yosef Bekhor Shor on verse 2

כי תקנה עבד עברי – . . . לפי
שאמר אשר הוצאתיך מארץ
מצרים (שמות כ"ב') – להיות בני
חורין, מפרש ואזיל שלא ימכרו
עוד ממכרת עבד. כי איני רוצה
שיהיו עבדים עוד, כי עבדי הם,
כדכתיב: כי לי בני ישראל עבדים
(ויקרא כ"ה:נ"ה), וקדם שטרי
לשטר אחרים.

A Hebrew slave: . . . Since the text says “who brought you out of the land of Egypt, [the house of bondage]” for you to be free people, the text now proceeds to explain that they cannot be sold into permanent slavery, since I [God] do not want them to be slaves any more, since they are My slaves, as it is written, “For it is to Me that the Israelites are slaves [they are My slaves, whom I freed from the land of Egypt].” My deed is older than others’.

Rabbi Yosef Bekhor Shor on verse 2 (cont.)

ובשביעית – שאינו חורש וזורע וקוצר ובוצר,
אינו צריך עבודה כל כך.

דברים טו: וְזֶה דְבַר הַשְּׂמִטָּה שְׂמוֹט כָּל בַּעַל
מִנְשֵׁה יָדוֹ אֲשֶׁר יִשֶׁה בְרֵעֵהוּ לֹא יִגַּשׁ אֶת רֵעֵהוּ
וְאֶת אֲחִיו כִּי קָרָא שְׂמִטָּה לֵה'. אֶת הַנִּכְרִי
תִּגַּשׁ . . .

בכור שור: אבל הנכרי תיגוש – שהנכרי זורע
וקוצר ובוצר ויכול לשלם ולפרוע, אבל אחיך
לא חרש וזרע ולא קצר, במה ישלם.

“And in the seventh year [he shall go free]”: as there is no ploughing, sowing or harvesting; so, work [of a slave] isn’t crucial.

Deut 15: This shall be the nature of the remission: Every creditor shall remit the due that he claims from his fellow; he shall not dun his fellow . . . You may dun the foreigner . . .

Bekhor Shor: You may dun the foreigner—who continues to sow and harvest; accordingly, he can repay you. But your fellow who didn’t plough or sow or harvest—how can he repay?

The seventh year

ירושלמי קידושין א ב: ובשביעית יצא
– בשביעית של מכירה ולא בשביעית
של עולם

Talmud Yerushalmi: The seventh year from when he was sold as a slave, not the seventh year that the world observes.

רשב"ם: ובשביעית – שביעית
למכירתו, ולא שביעית לשמיטה.

Rashbam: The seventh year from the time that he was sold as a slave, not the seventh year of the sabbatical cycle.

Ramban on beginning law with slaves

התחיל המשפט הראשון בעבד
עברי, מפני שיש בשלוח העבד
בשנה השביעית זכר ליציאת
מצרים הנזכר בדבור הראשון,
כמו שאמר בה: וזכרת כי עבד
היית בארץ מצרים ויפדך יי'
אלהיך על כן אנכי מצוך את
הדבר הזה היום (דברים
ט"ו:ט"ו). ויש בה עוד זכר
למעשה בראשית כשבת, כי
השנה השביעית לעבד שבתון
ממלאכת אדניו כיום השביעי.

The first law is that of a Hebrew slave, because releasing a slave in the seventh year contains a remembrance of the departure from Egypt which is mentioned in the first commandment, as it is written, "Bear in mind that you were slaves in the land of Egypt and the LORD your God redeemed you; therefore, I enjoin this commandment upon you today." It also contains a remembrance of creation, just like the Sabbath, for the seventh year serves for a slave as a complete rest from the work of his master, just as the seventh day of the week does.

The Hebrew slave's family (Rashi)

אִם בְּגֵפוֹ יָבֵא בְּגֵפוֹ יֵצֵא אִם בְּעַל אִשָּׁה הוּא
וְיֵצֵא אִשָּׁתוֹ עִמּוֹ. אִם אֶדְנִיו יִתֵּן לוֹ אִשָּׁה
וְיִלְדָה לוֹ בָּנִים אוֹ בָנוֹת הָאִשָּׁה וְיִלְדֶיהָ תִּהְיֶה
לְאֲדֹנָיָהּ וְהוּא יֵצֵא בְּגֵפוֹ

רש"י: ואם בעל אשה ישראלית הוא, ויצאה
אשתו עמו – וכי מי הכניסה שתצא? אלא
מגיד הכתוב שהקונה עבד עברי חייב
במזונות אשתו ובניו.

If he came single, he shall leave single; if he had a wife, his wife shall leave with him. If his master gave him a wife, and she has borne him children, the wife and her children shall belong to the master, and he shall leave alone.

Rashi: "If he had an **Israelite** wife, his wife shall leave...": Who brought her into (slavery) that the text must state that she goes free? Rather by saying this Scripture teaches that he who acquires a Hebrew servant is obligated to provide food for his wife and children too.

The Hebrew slave's family (Shadal)

לפי הפשט גם אשתו באה
עמו בבית האדון, ומשרתת
בבית, . . . אבל לדעת רש"י
וקצת מרז"ל . . . אמרו וכי מי
הכניסה שתצא? אבל מגיד
הכתוב שהקונה עבד עברי
חייב במזונות אשתו ובניו
(מכילתא; קידושין כב א)

According to the plain meaning, his wife comes with him into the master's house and serves with him. . . . However, Rashi and some of the Rabbis . . . said, "Who brought her in that she should go forth? Rather, Scripture teaches that one who acquires a Hebrew servant is obligated to support his wife and children".

The Hebrew slave's family (Shadal: cont.)

וכל זה להרבות מדת החסד
והרחמים בישראל. . . . לא
התירו חכמים שתבא האשה
לבית האדון, אבל חייבו את
האדון לפרנס אותה ואת בניה
והיא יושבת בביתה ומעשה ידיה
לעצמה ולא לאדון, כן פסק
הרמב"ם (הלכות עבדים פרק ג'
הלכה ב'), . . .

This rule was designed to increase the quality of mercy and compassion among Israel; . . . the Rabbis did not allow the wife to [be forced to] enter into the master's house, but they obligated the master to provide for her and her children. She was to live in her own house, and she, not the master, was entitled to the proceeds of her work. So ruled Maimonides (Avadim 3:2) . . .

The Hebrew slave's family (Shadal: cont.)

אבל התורה כמו שהתירה שיהיה
האב מוכר את בתו הקטנה, כן נראה
שהתירה שימכור עצמו ואת אשתו
ואת בניו הקטנים, והנה ידוע כי בימי
קדם היה האב שליט על בני ביתו
וחייהם בידו . . . והתורה נטלה ממנו
השלטון הזה ולא התירה מיתת בן
סורר ומורה אלא על ידי גזרת
השופטים וכן מכירת האשה והבנים
הותרה בתורה שבכתב ונאסרה
בתורה שבעל פה.

However, just as the Torah permitted a father to sell his minor daughter, it appears that it also permitted him to sell himself along with his wife and minor children. It is well known that in ancient times, the father ruled over his household and held their lives in his hands. . . . The Torah took this authority away from him and allowed a rebellious son to be put to death only by the decision of a court. Similarly, a man's sale of his wife and children was permitted by the written Torah but forbidden by the Oral Torah.

The Hebrew slave's family (R. David Tzvi Hoffmann)

בספר מלכים (מלכים ב ד':א')
קובלת האלמנה לפני אלישע
שהנושה בא לקחת את שני ילדיה
לעבדים מפני שלא היה בידה
להחזיר את חובה, ובספר נחמיה
(ה':ה') קובלים רבים על לקיחת
ילדיהם – בניהם ובנותיהם –
לעבדים בשל חובותיהם. ברור
הדבר, שהמעשים המסופרים
בספר מלכים ובספר נחמיה הם
בניגוד למצוות התורה

In the book of Kings, the widow complains to Elisha that the creditor was coming to take her two sons as slaves since she could not repay her debt. In Nehemiah, many complain that their children, sons and daughters, had been taken as slaves because of [the parents'] debts. Clearly, the stories told in Kings and in Nehemiah are infractions of Torah laws.

The Hebrew slave's family (Nahum Sarna)

There are scriptural indications that, in practice, defaulting debtors or members of their family would be subject to seizure by a creditor and forced into service. Whereas the prophets denounce this practice, Mesopotamian laws actually provide for the seizure of debtors.