

PARASHAT BEHAR

"Two Hebrew Servants"

By Rav Elchanan Samet

A. Two Different Parshiyot

Parashat Behar features a brief section dealing with the laws of "eved ivri," the Jewish indentured servant (Vayikra 25:39-43). Although this halakhic concept is already familiar to us from Parashat Mishpatim (Shemot 21:2-6), the two discussions, as we will see, have virtually nothing in common beyond their shared interest in a Jew who becomes a servant to another Jew.

The issue of "eved ivri" arises a third time, in Parashat Re'eh. That section parallels the corresponding discussion in Mishpatim, both in terms of literary style and content. Its sole addition to the presentation in Mishpatim involves the mitzva of "ha'anaka," the owner's responsibility to provide his servant with basic support immediately upon his attainment of freedom, so as to help him regain his financial independence. Indeed, the section in Re'eh appears amidst other mitzvot requiring one to assist others beyond the normally expected standard. For example, one must supply all the needs of the poor, lend money even just prior to the Sabbatical year when debts are annulled, etc. Thus, we may, for all intents and purposes, equate the section in Re'eh with the corresponding discussion in Mishpatim, the former coming merely to add a dimension "beyond the call of duty" to the requirements of freeing a servant.

Now, let us delineate the differences between the discussion of "eved ivri" as presented in Mishpatim/Re'eh and that in our parasha:

1. Parashat Mishpatim requires the servant's release after seven years of servitude, allowing for an extension until the jubilee year only with the servant's consent, in which case his ear is pierced, symbolizing his indentured status. In our parasha, the servant remains indentured until the jubilee year under all circumstances.
2. Parashat Behar omits the owner's obligation of "ha'anaka," which, as we have seen, earns mention in Parashat Re'eh.
3. Our parasha prohibits unduly harsh treatment of the indentured servant in three separate verses (39, 42, 43), an element absent from the corresponding discussions in Mishpatim and Re'eh.
4. Whereas Parashat Mishpatim allows for the owner to marry his servant to a Canaanite maidservant, no such possibility exists in Parashat Behar.
5. Finally, after the "eved ivri" discussion in Behar, the Torah proceeds to another scenario, where a Jew in financial straits sells himself not to another Jew, but to a gentile. In Parashat Mishpatim, the Torah does not address this case, but rather moves on to the situation of "ama ivri'a," the Hebrew maidservant, an issue treated nowhere in our parasha.

More generally, the overall attitude towards the institution of the indentured servant differs fundamentally in the two parshiyot. Parashat Mishpatim presents this institution as established and acceptable. In Parashat Behar, by contrast, we find a concerted attempt by the Torah to minimize, if not abolish, the entire concept of servitude among Jews: "For they are My servants, whom I freed from the land of Egypt" (25:42); "For it is to Me that the Israelites are servants: they are My servants, whom I freed from the land of Egypt" (25:55). For this reason, it would seem, the term "eved" (slave or servant) never appears in the discussion here in Behar, while it is the dominant term employed in Mishpatim. The section in Behar seems to focus primarily on the limitations and restrictions of the servant's status as such, a theme with no counterpart in Mishpatim.

Further complicating matters are three differences that seem to point us in the opposite direction. The servant in Behar serves until the jubilee year under all circumstances; his term may extend for 49 years! By contrast, both Mishpatim and Re'eh mandate the servant's freedom after six years. Secondly, the servant as portrayed in our parasha receives no gratuity from the owner upon his release, as earned by the servant of Re'eh-Mishpatim. Finally, the Torah in Parashat Behar allows

for a gentile's acquisition of a Jewish slave, a possibility never addressed in the two corresponding sections.

What emerges, then, are two distinct parshiyot dealing with two different instances entirely. Stated otherwise, the servant of Mishpatim-Re'eh is not the same servant who appears in Parashat Behar. As the Rambam explicates at the beginning of Hilkhhot Avadim, a Jew becomes a servant in one of two ways: either he sells himself into servitude out of sheer destitution, or he is sold by the Jewish court upon being convicted of theft and unable to afford compensation to his victim. The Rambam writes explicitly that the section in Parashat Behar addresses the first situation, as clearly indicated by the opening verse: "If your kinsman under you continues in straits and must give himself over to you..." (25:39). Mishpatim and Emor, posits the Rambam, deal with the thief who cannot afford compensation and is therefore sold into slavery. (This method is spelled out by the Torah later in Parashat Mishpatim - Shemot 22:2. See also Mekhilta, beginning of Parashat Mishpatim.)

The different circumstances addressed in the different sections may very well account for the discrepancies in presentation. The laws of the indentured servant as presented in Mishpatim/Re'eh apply to the thief who was forced into servitude, while the legal detail in Behar affect only one who sells himself out of poverty.

Indeed, this is the view of the first tanna in the beraita in Kiddushin (14a), who lists four practical differences between the two types of servants: 1) duration - the thief goes free after six years, while the pauper who sells himself remains in service beyond the six years; 2) the thief sold into slavery may extend his term of service by having his ear pierced, as outlined in Mishpatim/Re'eh, unlike the one who sells himself; 3) only the thief receives financial assistance from the owner upon his departure into freedom; 4) only the thief may be married to a Canaanite maidservant.

In other words, the tanna accepts the distinction we drew between the two parshiyot, and rules accordingly, taking into account several differences between the sections we noted at the outset of our discussion. The Rambam (Hilkhhot Avadim 3:12) adds a fifth distinction, that one selling himself may do so to a gentile, while the court sells a thief only to another Jew.

(One difference we observed between the two sections is not noted by the tanna or the Rambam - the prohibitions against harsh or denigrating labor, which appear only regarding the servant who sells himself. Although neither the tanna nor the Rambam says so explicitly, we will see that indeed, at least according to the Rambam, these laws may very well apply only to this servant.)

B. The Reason Behind the Differences

Can we find any common denominator behind the differences we delineated between the thief sold by the court and the pauper who sold himself? At first glance this seems impossible, for one simple reason - the differences point in two opposite directions. As we noted, the servant sold by the court leaves his master after only six years, receives a gratuity when he goes free and may never be sold to a gentile. All these laws indicate a higher level of independence than that enjoyed by his counterpart who sold himself. On the other hand, the servant who sold himself never has his ear pierced and may not be married off to a Canaanite maidservant, seemingly implying a higher status than the servant sold by the court.

Let us begin by identifying the one factor that most vividly expresses a fundamental difference in status between the two servants. Clearly, this would be the issue of marrying a Canaanite maidservant. A Jewish man may not marry a Canaanite maid. The permission to marry a non-Jewish maid granted to the indentured servant sold by the court reflects a drastic change in his personal legal status. More succinctly, he is no longer the same as other Jews. The servant who sold himself, by contrast, may not marry a Canaanite maidservant, just like the rest of the nation.

The issue of the ear-piercing, too, reflects this change of status. A servant sold by the court has his ear pierced should he decide to remain in service beyond the six years. This physical imprint labels him as a slave; it marks the change in his personal status. No corresponding procedure exists with regard to the servant who sold himself.

We may thus draw a scale, if you wish, of the various levels of servitude. On the lowest rung stands the Canaanite slave, who is considered the property of the Jewish owner. At the opposite end we find the Jewish employee ("sakhir"), who merely entered into a contractual agreement of labor, and may even nullify the agreement under certain circumstances (see Bava Metzia 10a). The two servants we have been discussing appear in between these two extremes. The servant sold by the court is further down, closer to the Canaanite slave, as his legal status underwent a significant change with his sale. The servant who sold himself, however, is closer to the employee. Indeed, the Torah compares him to a "sakhir" three times in the discussion in our parasha. Furthermore, as we have seen, the Torah never refers to this servant with the term "eved," an expression the Torah does employ in its discussion in Mishpatim.

The other differences, which seem to "favor" the servant who sold himself, may be understood in light of the Rambam's comments in Hilkhot Avadim 1:7. In the context of the prohibitions against forcing one's servant to perform menial tasks which are assigned to slaves only, the Rambam writes,

"When is all this relevant? Regarding a Hebrew servant, because his soul is low [i.e. he has suffered humiliation] as a result of his sale [by the court]. But an Israelite who was not sold - he may be made to do the work of a slave, since he performs this work only out of his own will and volition."

Which of the two Hebrew servants suffers from a "low soul," or wounded emotions? Clearly, the servant forcefully sold by the court. Due to the emotional blow dealt to him through the compulsory sale, he especially requires the maintenance of basic human dignity.

Therefore, the Torah spared this servant the indignation of an extended term of service. One who sells himself, by contrast, remains a free man. As such, he alone determines the length of his servitude according to his financial needs. The duration of his term depends entirely upon the contract he draws up with his employer, so long as he returns to his family on the jubilee year. Furthermore, one may sell himself to anyone, including a gentile. The Torah outlaws the sale of a Jew to a gentile only in the case of the servant sold by the court, so as to preserve his dignity and honor.

Finally, the requirement that a servant receive financial assistance upon his attainment of freedom applies only to the servant forcefully sold by the court. He has spent his term of service under a slave status, and he now rejoins the world of freemen. The servant who sold himself, however, was free all along; his sale evolved merely as a result of his financial circumstances. He does not require his employer's gratuity upon his departure. Additionally, recall that the servant sold by the court is a thief who could not afford to pay restitution. Any property he owned was given to his victim; he leaves his master's home penniless. The one who sold himself, however, presumably still owns the money he received through his purchase, given that the owner was responsible for supporting the servant's family throughout his term of service.

One final question remains. The entire purpose of the thief's sale, it appears, is to enable the victim to receive the full amount stolen from him. If this is the case, then why does the Torah change the thief's personal legal status, and decree upon him such a severe level of subjugation? How does this affect the victim, and how does this relate to his right to full reimbursement?

We must conclude that the compulsory sale serves as a punishment for this thief, who not only stole but also consumed the merchandise to the point where he can no longer repay its value. Significantly, the Gemara (Kiddushin 15a) raises the possibility that if the court sells a thief into servitude within six years of the jubilee, the servant should not go free, in spite of the onset of the jubilee year. The Gemara explains that since he committed a crime, he should be penalized and his term extended. Although the Gemara negates such a possibility based on a Biblical proof, this passage reveals that Chazal perhaps perceived the thief's slavery as a punitive measure.

Thus, the thief's sale serves a dual purpose. It guarantees the return of the stolen goods, and at the same time penalizes the criminal, by subjecting him to a humiliating process that sends him to a social status lower than that of the rest of the people.

(Translated by David Silverberg)

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