

WHY DID THE TORAH ALLOW SERVITUDE?

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The Torah allows the bondage of a Hebrew, and its laws are known to everyone conversant with the Torah (Ex. 21:1-6; Lev. 25:39-55; Deut. 15:12-18). There were two categories of *eved ivri* (a Hebrew servant): a robber sold by the court because he was unable to pay restitution; and someone who, on his own initiative, sold himself as an *eved* because he was destitute (TB *Kiddushin* 14b; Maimonides, *Hilkhot Avadim* 1:1).

However, the glory of biblical history is its clarion call of liberty. The Exodus is its classical expression, as is the magnificent verse *And you shall proclaim liberty* (Lev. 25:10). In fact, Deuteronomy establishes a link between the Exodus and the Hebrew bondman in its directive to free an *eved ivri* in the seventh year: *You shall remember that you were a bondman [eved] in Egypt and the Lord redeemed you* (Deut. 15:15).

It should be noted that contrary to all other law codes in the ancient Near East, the laws of the Torah begin with the rules governing a slave.¹ Ramban, in his commentary to Exodus 21:2, explains that these laws were given special prominence because they speak to the very origin of the Israelite nation, leaving bondage in Egypt. The idea of treating a Hebrew bondman well is rooted in the utter rejection of everything associated with Egypt, referred to as *beit avadim*, a "house of slavery," when the Israelites are told to recall their experiences there.²

The tension between the biblical stress on freedom and human bondage reaches a height in Jeremiah 34. Here it is told that during a most critical period, shortly before the destruction of Jerusalem, Nebuchadnezzar's army laid siege to the city. In a surge of national repentance, the people made a covenant with King Zedekiah to proclaim liberty, freeing every slave from servitude. The siege was lifted, whereupon, to the great fury of Jeremiah, the status quo ante (servitude) was restored. These are the remarkable words of Jeremiah: *Thus said the Lord . . . I made a covenant with your fathers on the day I brought them forth from Egypt, out of the house of bondage saying: 'At the end of seven years, you shall free every man, his brother, that had been sold to you'* (Jer. 34:13-14).

Such a covenant at the Exodus from Egypt is not known to us from a particular explicit biblical passage, although, according to the Jerusalem Talmud (TJ *Rosh Ha-Shanah* 3:5), it is hinted at in a verse in Exodus: *So the Lord spoke to both Moses and Aaron in regard to the Israelites and Pharaoh king of Egypt, instructing them to deliver the Israelites from the land of Egypt* (Ex. 6:13). This is understood to refer to Hebrew slaves owned by other Israelites.³ Clearly, Jeremiah tied the liberation from bondage (Egypt) with liberation of the bondman – which is certainly a declaration of the human right to freedom, divinely sanctioned.

Basing himself on the verse, *For unto Me the children of Israel are servants* (Lev. 25:55), R. Yoḥanan ben Zakkai commented: "Being a servant of God, he [the bondman] could not be a servant of a servant."⁴

One can infer that in the Jewish tradition, from the Pentateuch to the Prophets and later to the Talmud, servitude was looked upon with much repugnance. The question is legitimate: why was it not done away with altogether? We may consider that the biblical form of (Hebrew) servitude was offered as a solution for one who was unable to pay his debts, as an alternative to beggary or imprisonment and other historical "solutions." Servitude under biblical law was temporary, and put the debtor in a secure position, where he was taken care of, until such time as his debt was paid off. This is the attitude of R. Samson Raphael Hirsch in his commentary to Exodus 21:6. He explains that this type of servitude, for someone unable to pay restitution for a stolen object, was actually a form of rehabilitation – much more humane than imprisonment, which serves only to punish and cause grief.

Another possible solution to this dilemma may be Rambam's insight that it was in accordance with the wisdom and plan of God that He did not abruptly discontinue certain habits which a man was used to at the time. "It is impossible to go suddenly from one extreme to the other; such is man's nature that he cannot suddenly give up everything to which he has been accustomed" (Maimonides, *Guide to the Perplexed*, The Divine Commandments, chapter 18). Thus, the ultimate goal of the biblical version of slavery was indeed to abolish it. In fact, we have no record of Hebrew bondmen in the Talmudic era, perhaps because there was no more Jubilee (yovel) after the destruction of the First Temple (TB *Arakhin* 29a).⁵

THE CANAANITE SLAVE

In the Torah there are a few legislative references to the Canaanite slave, a gentile bought by an Israelite to serve in that capacity. *If a man smites his slave with a rod, and he dies under his hand, he [the master] shall be severely punished* (Ex. 21:20). According to Rashi, based on Midrash *Mekhilta*, he is subject to the death penalty. *If a man smites the eye of a slave . . . and destroys it, he shall let him go free* (Ex. 21:26). *You shall not deliver to his master a slave that fled from him to you* (Deut. 23:16).⁶ According to TB *Gittin* 45a, this rule is understood to apply to the Canaanite slave of an Israelite who fled from outside the Land of Israel to Israel proper.

Slavery has been practiced from antiquity down to modern times. Even U. S. President Thomas Jefferson kept slaves. The Code of Hammurabi, heralded by some scholars as a *Vorlage* (model) of Hebrew legislation, has this to say about slaves:

If a man has induced a male or a female slave from the house of a patrician or plebeian to leave the city, he shall be put to death (15). If a man has harbored in his house a male or female slave from a patrician's or plebeian's house, and has not caused the fugitive to leave on the demand of the officer over these slaves condemned to public labor, that householder shall be put to death (16).

Indeed, it would seem that the Torah laws regarding slavery were given in protest not only against Egypt, but also against the Code of Hammurabi.

In Athens, the cradle of Greek democracy, slavery was a thriving business. Fustel de Coulanges informs us: "Many cities were without manufactures . . . If there were manufacturers, the workmen were slaves."⁷ The rich Athenians, contemptuous of work, had weavers, carvers, even armorers in their homes. The legal status of these workers was that of an "animated tool." In Rome, due to its many conquests, slaves were cheap commodities and regarded as chattels. Their cruel treatment led to the abortive revolt of Spartacus.

How did non-Hebrew slaves fare in a Jewish household? We have scant but significant records. The Torah describes the curious status of Eliezer, Abraham's trusted servant, *the elder of his house that ruled over all that he had* (Gen. 24:2). Abraham, then being childless, pleads with God: *The one in charge of my household is the Damascene Eliezer . . . one who is my steward*

will be my heir' (Gen. 15:2-3). This seems to indicate that Eliezer was not merely a slave, for a slave could not inherit from his master, being his master's property. Though a bondservant, he clearly enjoyed a higher status.⁸

It is significant that Maimonides, when discussing the laws pertaining to a Canaanite slave, reaches this conclusion: "The attribute of piety and the way of wisdom is for a person to be merciful and to pursue justice, not to make his slaves carry a heavy yoke, nor cause them distress. He should allow them to partake of all the food and drink he serves. This was the practice of the Sages of the first generations who would give their slaves from every dish of which they themselves would partake. And they would provide food for their animals and slaves before partaking of their own meals. And so, it is written (Psalms 123:2): *Like the eyes of slaves to the hand of their master, and like the eyes of a maid-servant to the hand of her mistress, so are our eyes to God.* Similarly, we should not embarrass a slave by our deeds or with words, for the Torah prescribed that they perform service, not that they be humiliated. Nor should one shout or vent anger upon them extensively. Instead, one should speak to them gently, and listen to their claims. This is explicitly stated with regard to the positive paths of Job, for which he was praised (Job 31:13, 15): *Have I ever shunned justice for my slave or maid-servant when they quarreled with me . . . Did not He who made me in the womb make him? And did not One form us both in the womb? Cruelty and arrogance are found only among idol-worshiping gentiles. By contrast, the descendants of Abraham our patriarch – i.e., the Jews whom the Holy One, blessed be He, granted the goodness of the Torah and commanded to observe righteous statutes and judgments – are merciful to all" (Hilkhoh Avadim 9:8). The indications are that treatment of slaves in Israel was, in fact, more humane than elsewhere in the ancient world.⁹*

In the Talmud a slave is considered a partial Jew. He undergoes circumcision and is obligated to observe all the precepts incumbent on a Jewish woman. Therefore, according to R. Shim'on ben Gamliel, a slave who is kidnapped has to be redeemed, "Just as it is a religious duty to ransom a free man, so is it a religious duty to ransom slaves" (TB *Gittin* 37b). R. Yohanan maintained that a slave who escapes from prison becomes a free man (TB *Gittin* 38a). Rabban Gamliel II had a slave named Tabi. When Tabi died, Rabban Gamliel, much to the amazement of his colleagues, accepted condo-

lences, explaining that his slave was special (TB *Berakhot* 16b). We are told that the maidservants of R. Yehudah ha-Nasi would interpret Hebrew terms to rabbis who had forgotten their meaning (TB *Rosh Ha-Shanah* 26b). J. H. Hertz informs us that during the Hadrianic persecutions, one of the grave counts against Rabbi Eleazar ben Parta was that he had freed his slaves.¹⁰

SUMMARY

Israel's experience, from slavery to freedom, had an incalculable impact on the nation's religious and ethical legislation. It also shaped the nation's character as it fought, albeit unsuccessfully, against the empires of Assyria, Babylonia, Greece, and Rome.

The question still remains: why did the Torah permit servitude? The institution of slavery was deeply entrenched from ancient to recent times. Following the lead of Maimonides, that "it is impossible to go suddenly from one extreme to the other," the Torah promulgated certain basic rights for the slave, ensuring his decent treatment, in the hope that this unfortunate practice would eventually disappear once and for all.¹¹

NOTES

1. By contrast, Hammurabi's code deals with slavery last (pars. 278-282); Nahum Sarna, *The JPS Torah Commentary – Exodus* (Philadelphia: Jewish Publication Society, 1991) p. 118.
2. For example, Ex. 13:3, 14.
3. See *Meshekh Hokhmah* on Exodus 6:13 and the *Korban ha-Edah* commentary to *TJ Rosh Ha-Shanah* 3.
4. See also TB *Bava Metzia* 10a.
5. However, there may be a hint, in TB *Keritot* 11a, that the *eved ivri* was still extant. The Talmud (TB *Arakhin* 29a) affirms that a *shifhah harufah* (a maidservant who is half-free and half-*eved*) can be betrothed to an *eved ivri* only when the Jubilee year (*yovel*) is in effect. TB *Keritot* 11a states why those who returned under Ezra had to bring a sacrifice owing to their marriage with a *shifhah harufah*. That the *yovel* must have been in effect during part of the Second Temple era is explicit in *Tosafot* TB *Arakhin* 31b, *d"h hitkin Hillel*; and in *Tosafot* TB *Gittin* 36a, *d"h bi-zeman*.
6. See also Leviticus 25:44-46.
7. Numa Denis Fustel de Coulanges, *La Cité antique*, 1864; published in English as *The Ancient City* (Garden City, NY: Doubleday Anchor, 1956) p. 337.
8. The idea that Eliezer can inherit from Abraham may reflect the custom found in ancient Near Eastern documents where an adopted stranger may inherit the estate in return for performing filial duties toward the adoptive parents. See Nahum Sarna, *The JPS Torah Commentary – Genesis* (Philadelphia: Jewish Publication Society, 1989) p. 113.

9. Howard F. Vos, *Nelson's New Illustrated Bible Manners and Customs* (Nashville, TN: Thomas Nelson Publishers, 1999) p. 453. See also Shmaryahu Leib Horvitz, *The Six Orders of the Mishnah* (New York: Ginsberg Linotyping Co., 1936), vol. 1, p. 139: commentary to *Berakhot* 2:7 (Hebrew). The issue of slavery and its elimination, from biblical to modern times, is discussed at length by Dr. Gabriel Sivan in chapter 1 of *The Bible and Civilization* (Jerusalem: Keter Publishing House & New York: Quadrangle/The New York Times Book Co., 1973) pp. 93-100.

10. Rabbi Joseph H. Hertz, *The Pentateuch and Haftorahs* (London: Soncino Press, 1956) p. 848: commentary on Deuteronomy 23:16 regarding fugitive slaves.

11. This approach was used by anti-slavery rabbis during the American Civil War to explain how slavery could be permitted in the Bible. See Yaakov Weinstein, "The Biblical View of Slavery, Then and Now", *Hakirah* vol. 14 (Winter 2012) pp. 273-287. See also Abraham Jacobs, "World Peace – How?", in Hayyim Lifshitz and Rabbi She'ar Yashuv Cohen, eds., *Sefer Adam-No'ah* (Jerusalem: Makhon Harry Fischel, 1970) p. 393 (Hebrew).



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