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Center for Modern Torah Leadership



חירות ואחריות

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"Taking Responsibility for Torah"

SLAVES, WAGE SLAVES, AND DIVINE SERVICE

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What is the difference between slavery and employment?

Western society has a linguistic commitment to opposing slavery. If you call something slavery, we're against it. This reality does credit to our society.

However, we sometimes define slavery too narrowly. We treat slavery and freedom as absolute opposites, when really there are degrees of freedom, and degrees of slavery. Our opposition to slavery should not be satisfied because we have eliminated its absolute form. We need to be advocates for freedom as well.

There are reasons to be cautious when advocating freedom. The word is susceptible of many meanings. Freedom can mean license – and we do not mean to support license. Most of us acknowledge that individuals must surrender some of their freedoms to a state in order for all of us to live free of fear of violent crime. Most of us acknowledge that we sometimes need to surrender some of our “freedom from” in order to gain “freedom to”, because many things are possible only in the context of genuinely committed relationships.

Two verses in Parshat Behar, Vayikra 25:42 and 25:55, exemplify this tension.

כי עבדי הם

אשר הוצאתי אתם מארץ מצרים

לא ימכרו ממכרת עבד:

כי לי בני ישראל עבדים

עבדי הם

אשר הוצאתי אותם מארץ מצרים

אני יקוק א-להיכם:

Because they are my avadim

whom I have taken out of the land of Mitzrayim;

they must not be sold in the way an eved is sold.

Because the Children of Israel are avadim to Me;

they are My avadim

whom I have taken out of the Land of Mitzrayim

I am Hashem your G-d.

Why do we owe gratitude for being saved from one *avdut*, if our redeemer now claims us for Himself?

Chazal note that G-d's claim here is used exclusively to protect us from human masters. We cannot be sold in the manner that humans sell their slaves; we cannot be subjected to pointless commands whose only purpose is to demonstrate dominance (*avodat perekeh*); we cannot be sold permanently. But why does G-d allow any form of *avdut* at all?

A spectacular passage on Bava Metzia 10a offers a subtle and brilliant meditation on the problem of *avdut*.

The passage starts with a formal legal statement that seems utterly irrelevant to our topic:

Rav Nachman and Rav Chisda both said:

*“One who picks up a lost object in order to acquire it for his fellow – his fellow has **not** acquired it.*

On the surface, this seems morally questionable. If the law allows me to acquire a lost object selfishly, why should it deny me the capacity to do so altruistically?

The Talmud explains:

Why?

Because he is viewed as one who seizes something on behalf of a creditor when that seizure harms the interests of third parties, and one who seizes something for a creditor when that seizure harms the interests of third parties does not acquire the seized object.

This requires some unpacking.

To acquire something on behalf of someone else, I must be their agent. If they appoint me, I essentially become them legally. But if they have not appointed me, my agency is a construction, a sort of legal fiction, which the law allows only when it benefits my fellow **and** harms no one else.

A sample case where it works is when I seize property from a defaulting debtor on behalf of a creditor. A sample case where it doesn't work is when I seize the same property, and by doing so ensure that other creditors will not be fully repaid.

How does this relate to lost objects? Lost objects are a financial opportunity for everyone in the world. When I acquire a lost object for one person, I am depriving everyone else of that opportunity. So lost objects cannot be acquired on behalf others except by appointed agents.

Rava challenges Rav Nachman (and Rav Chisda) from the following *beraita*:

*What a worker/poel finds - he keeps for himself.
These words apply when the employer said to him:
"Weed with me today, hoe with me today".
But if the employer said to him
"Do work with me today"
his findings belong to the employer".*

It seems from this *beraita* that one person – specifically a worker – **can** acquire lost objects for another person – specifically their employer – even if they were not hired explicitly for that purpose!?

Rav Nachman replies:

*Workers are different
because his hand is considered as if it were his employer's hand.*

The simplest way of explaining Rav Nachman is to say that the default employment contract includes a clause appointing the employee as the employer's agent for the purpose of acquiring lost objects. But this is true only if the hiring language is generic – “do work”. If the hiring language is task-specific – “hoe”, or “weed” – then all other tasks, for example acquiring lost objects, are excluded.

Now Rava raises the stakes. Rav Nachman's response is wrong, he says, because it contradicts a statement by Rav:

A worker can back out of his contract, even in midday.

What is the contradiction? How does the right to withdraw from a contract change the terms of the contract while it is in force?

The answer is that Rav Nachman's argument was not really about implicit contract clauses. Rather, he regarded employees as fundamentally slaves – his language is parallel to language that prevents slaves from acquiring property even for themselves. Rava objects that workers are not slaves, because workers can free themselves.

But Rav Nachman has an answer this time as well.

So long as he hasn't backed out, his hand is as if it were his employer's hand.

*When he reneges, another factor comes into play –
"For to Me are the Children of Israel avadim (servants/slaves), they are My avadim" –
they are My avadim, not avadim of avadim.*

Rav Nachman holds that there is no fundamental difference between employment and slavery. Just – the Torah states that we can only be subcontracted, because G-d holds our primary contract, and He allows us to break the subcontract. (This is true even for the *eved ivri*, but because he was paid in advance, he cannot break his contract without returning a prorated portion of his advance.) For all other legal purposes, employees are slaves (perhaps even without the legal protections that the Torah grants slaves specifically).

Except this is not fully true. Not **all** workers are slaves, only those who were hired without task-specific language. Workers hired to “hoe” or “weed” own their own “hands”, and therefore they cannot acquire lost objects for their employers.

We end up with a hierarchy of *avdut*.

Absolute *avadim* are bound to do whatever their master wills them to do. They cannot choose to end the relationship, and they have no task-autonomy.

An *eved ivri* has no task-autonomy, but he can theoretically end the relationship. However, it is unlikely that he will be able to do so in practice, since he must return a prorated portion of his advance, and he entered the relationship because he needed the advance.

An employee who is hired per-time, without designated tasks, is still a slave while at work.

An employee who is hired for designated tasks, and who can end the relationship, is much closer to freedom.

But absolute freedom means working only at what you want to do now. That's why Mishnah Bava Metziah 75a declares that it is morally wrong to trick someone into working for you instead of independently, even if they do the exact same work and end up with exactly the same profit. Absolute freedom means never being bound even by your own commitments to others.

The Torah takes simultaneous stands against slavery and absolute freedom by grounding the former in our subordination to G-d's will. Halakhic People can recognize that there are times and ways in which we should permit or require people to make commitments that they cannot undo unilaterally. But we should also see freedom as the default, and countenance the surrender of autonomy only grudgingly.