

PARSHAS MISHPATIM - THE PUNISHMENT FOR THEFT

by Rabbi Yitzchok Adlerstein

The Punishment For Theft¹

If you acquire a Hebrew servant, he shall work for six years.

Prisons aren't us. They are conspicuously absent in the routine practice of Jewish criminal law. The selling of the thief is the only instance we know of a statutory deprivation of freedom as punishment for a crime. We shall see that it is not much of a punishment in the conventional sense.

The thrust of the six years of indentured servitude for the thief is not incarceration but rehabilitation. Its aim is to uplift the spirit of the criminal, not to break it. Halacha cautions us to treat the servant as one of the family, eating and sleeping on a place equal to the other members of the household. He is treated as a brother, not an underling.

His suffering of his family is not dismissed as unfortunate collateral damage to society's need to exact retribution from a criminal offender. To the contrary, his family members become wards of the master who acquires his services. While the master enjoys the fruits of his labor, they are supported at his expense.

Too many details in this parshah make it unlikely to regard it as a kind of punishment. To begin with, the sale of the criminal is limited to the crime of theft, but not any other kind of crime or indebtedness. His sale seems to be more a fulfillment of his obligation to make good on what he stole. It is restitution, plain and simple! Yet while there are many situations in which people need make restitution, only the thief need go to the extreme of forfeiting his liberty to pay compensation for the damage he caused. Only the thief shows contempt for the very idea of property. On a practical level, property ownership is bound up with trust of the public. Were it not for this trust, we could not really own anything not nailed in place. We could not take our eyes off anything we owned, for fear that others would steal it while our glance is averted. We are able to enjoy the right of ownership only because we trust the majority of our neighbors to reciprocally respect that right. When the thief steals, he not only deprives some owner of his property, but he strikes a blow at the trust in the public that makes property possible, and communal life a reality. No other indebtedness violates this core value of civilization; it is only for theft, then, that the criminal must make amends by any means possible, including placing his very freedom in the service of restitution.

This is born out by yet other details. The thief may be sold only if the value of his theft equals or exceeds the value of his work. He cannot be sold if his labor is worth more than what he stole. In that

case, rather than deprive him of his freedom, the court simply attaches his earnings, and directs them to the plaintiff. The thief may only be sold to pay for what he stole - but not for any statutory fine (e.g. the doubled payment imposed upon a thief caught with the illicit goods in hand). Should the victim of the crime waive his right to compensation, and accept a signed promise by the thief that he will pay back the plaintiff whenever he comes into some money, the thief will not serve - a surefire indication that the thief doesn't serve to "pay" society for his crime, but simply to make restitution for what he stole. The Torah does not easily impose such a heavy burden as loss of a person's freedom!

We can find only one element of the treatment of the thief that resembles punishment, and a rather unusual one at that. So long as the thief is sold and in the domain of his new master, he can be given (if already married) a new consort. He can be assigned a semi-spouse of a slave-woman, who would ordinarily be forbidden to him. Children born of this "union" become the property of his master, not his true children. His relationship with the female slave is thus entirely physical, having none of the spiritual component of the bond between ordinary husband and wife. He becomes a reproduction technician, not a husband.

This might seem to some not the harshest form of punishment, but it in fact is a powerful reminder to him that holiness can be compromised and lost. Holiness is, and ought to be, the birthright of every Jew. It is not a burden, but a privilege. This holiness does not allow him to consort with a slave-woman. By stooping to theft, by striking a blow at the system of trust that enables us to enjoy our property, he sacrifices that holiness, and can be treated as a reproductive machine, rather than a human being. While he is treated with love and concern during the years of his servitude, we cannot pretend that he is no different from all others. We will treat him with respect - but as a person who has seriously tarnished his moral luster.

His punishment, in a word, is learning that he has deprived himself of holiness, and is the lesser person for it.

When he steals, he effectively sells himself to the world of the physical, the world symbolized by the six days of creation. He turns his back on the values tied up in the number seven, the transcendent Power that is responsible for the existence of the six, and that elevates it to a higher place. It is perfectly fitting, then, that he toil for six years to strive to recapture the element of "seven" in his life. When the seventh year arrives, he goes free, always to remember what he has learned in the years of his rehabilitation: "six" enslaves; "seven" sets free.

Roadmap to Holiness²

Men of kedushah you shall be to Me. Flesh torn in the field you shall not eat...

Theories abound concerning the laws of kashrus, especially among scholars who would love to justify their own refusal to comply with them. Different outside critics have imputed rationales for

these laws ranging from sound dietary practice to forced separation from non-Jews. All these rationales share a common deficiency - they entirely ignore the reason given by the Torah itself in the pasuk cited above! Kashrus has nothing to do with any of the reasons commonly used. The Torah quite clearly describes it as an adjunct to holiness, not any of the conjectures of modern scholars.

While these scholars overlook the entire verse, we sometimes ignore the nuance. Seeing the word "kedushah," we jump to the conclusion that keeping kosher makes us holy. This is also an error. If this were true, the pasuk would have to read "אנשים קדושים/ holy people you shall be to Me." The Torah does not tell us that abiding by the laws of kashrus will make us holy. It is far from that simple, and not at guaranteed!

The Torah tells us instead to be people concerned with, preoccupied with holiness. Abiding by the laws of kashrus will help us attain our goal more efficiently, because eating non-kosher will confound our quest. One who eats treifah animals will have a more difficult time elevating himself to the place of spiritual greatness that we should all aspire to. One who scrupulously follows the laws of kashrut does not become holy by doing so, but puts himself in a better position to achieve his goals of spiritual elevation.

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1. Based on the Hirsch Chumash, Shemos 21:2
 2. Based on the Hirsch Chumash, Shemos 22:30
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