

Zera Shimshon

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Chapter XI: Vayigash (Gen. 44:18–47:27)

Essay 1. The judgment of the goblet

מִדְרָשׁ "בי אֲדַנִּי", אָמַר לוֹ יְהוּדָה בְּנִימוּסוֹת שְׁלָנוּ כְּתִיב וְ"אִם-אֵין לוֹ וְנִמְכַר בְּגִבְתּוֹ וְנָה יֵשׁ לוֹ לְשֵׁלֶם עַכ"ל. מִקְשִׁים לָמָּה לֹא אָמַר לוֹ מְרִישֵׁיהַ דְקַרְא, "שֵׁלֶם יִשְׁלֶם", וְעוֹד מֵהוּ "בְּנִימוּסוֹת", וְעוֹד וְכִי יוֹסֵף שֶׁהוּא מְלֵךְ בְּמִצְרַיִם חַיִּיב לַעֲשׂוֹת בְּנִימוּסוֹת שְׁלָהֶם.

There is a **Midrash** on the verse discussing the missing goblet being found in Benjamin's possession. When the brothers are brought back to Joseph, in his guise as Zaphnath-Paaneah, second-in-command only to Pharaoh, "Then Judah went up to him and said, 'Please, my lord, let your servant appeal to my lord, and do not be impatient with your servant, you who are the equal of Pharaoh.'"¹ Judah wanted to argue that Zaphnath-Paaneah was acting unjustly in demanding that Benjamin become his slave. "**Judah said to him: In our code of laws, it is written [that a thief], 'He shall surely pay [restitution, but] if he has nothing, he shall be sold for his theft,'² but this one has the ability to pay.**"³

Question 1: **People ask: Why did he not cite the beginning of the verse, "He shall surely pay"?**

Question 2: **Furthermore, what is meant by the word בְּנִימוּסוֹת [be'nimosot] ["in our code of laws"]?**

Question 3: **Also, was Joseph, who was practically king in Egypt, obligated to act according to their code of laws?**

וּמִתְחִלָּה נָשִׂים לֵב עַל הַפְּסוּקִים, שְׁבַסְדָּר הַקּוֹדֶם מְצִינּוּ שְׁאָמְרוּ הֵם "אֲשֶׁר יִמְצָא אֹתוֹ מֵעֶבְדֶיךָ נִמְת", וְהָאִישׁ אָמַר לָהֶם, "גַּם-עֵתָה כְּדַבְּרֵיכֶם כִּי-הוּא אֲשֶׁר יִמְצָא אֹתוֹ יִהְיֶה-לִּי עֶבֶד", וְקִשָּׁה שְׁנָה הוּא מִשְׁפָּט חֲדָשׁ וַיּוֹתֵר קָל מִמָּה שְׁאָמְרוּ הֵם. וְאִיךָ שִׁיב לֹמַר "כְּדַבְּרֵיכֶם כִּי-הוּא" אִם אֵינּוּ כְּדַבְּרֵיהֶם, וְעוֹד מֵהוּ "גַּם-עֵתָה". וְכִשְׁבָּאוּ אֶצְלָ יוֹסֵף אָמְרוּ, "הִנֵּנוּ עֹבְדִים לְאֲדֹנֵי גַם-אֲנַחְנוּ גַם" וְכו', דְקִימָא לֵן גַּמִּין רִיבּוּיִין, מָה רְצוּ לְרַבּוֹת בְּמִלַת "גַּם". וְעוֹד שִׁיּוֹסֵף הִשִּׁיב לָהֶם, "חֲלִילָה לִי מֵעֲשׂוֹת זֹאת", אִף עַל פִּי שֶׁהֵם לֹא אָמְרוּ אֲלָא לְהִיּוֹת פְּלֶם עֶבְדִים, וְהָאִישׁ לֹא הִשִּׁיב לָהֶם חֲלִילָה מֵעֲשׂוֹת זֹאת אִף עַל פִּי שְׁאָמְרוּ לוֹ "אֲשֶׁר יִמְצָא אֹתוֹ מֵעֶבְדֶיךָ נִמְת" שֶׁהוּא עוֹנֵשׁ יוֹתֵר חֲמוּר.

To begin with, let us consider the verses. In the previous section, we find that they said, "Whoever it is found with among your servants shall die,"⁴ and the man who was

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¹ Gen. 44:18.

² Ex. 22:2.

³ Gen. Rabbah 93:6.

⁴ Gen. 44:9.

Joseph's agent said to them, "Now also, according to your words, so it shall be: he with whom it is found shall be my slave,"⁵ i.e., slave of his master, Zaphnath-Paaneah. This is difficult, for this is *not* according to their words; it is a new judgment and more lenient than what they themselves said, as slavery is better than death.

Question 4: How, then, could he say, "according to your words, so it shall be," if it is not according to their words?

Question 5: Furthermore, what is meant by "now also"?

When they came before Joseph they said, "What can we say to my lord? How can we plead, how can we prove our innocence? G-d has uncovered the crime of your servants. Here we are, slaves of my lord, also us and also the one in whose possession the goblet was found."⁶ For we maintain that "also" is a term of addition.⁷

Question 6: What did they wish to include by the word "also"?

Furthermore, Joseph replied to them, "Far be it from me to do this, the one in whose possession the goblet was found shall be my slave; the rest of you go back in peace to your father,"⁸ even though they had only said that they would all be slaves. Yet the man who was Joseph's agent did not reply to [the brothers], "Far be it from me to do this," earlier, even though they had said to him, "Whomever it is found with among your servants shall die," which was a more severe punishment than slavery.

Question 7: Why did Joseph say "far be it from me to do this," when his servant did not use such language earlier?

ועוד במה שפרש רש"י על "ואשימה עיני עליו", וכי זו היא שימת עין שאמרת לשום עינך עליו? קשה דמה טענה היא זו, הלא מעתה שחטא ונגב הגביע שלו אינו ראוי עוד לשימת עין. ועוד דאיתא במדרש "בי אדני", בי ולא ביה, אם למימלא מיא אגא, אם לשמשא אגא, אי למפצע קיסין אגא. וכן פרש רש"י, לכול דבר אגני מעולה ממנו וכו'. וצריך עיון מה הנה משיב לו יוסף על זה ומה היתה טענתם בזה.

Also, there is a question regarding what Rashi explains on the verse, "Then you said to your servants, 'Bring him down to me, that I may set eye on him,'"⁹ i.e., take care of him.¹⁰ Rashi interpreted Judah challenging Zaphnath-Paaneah with indignation, "Is this 'setting an eye,' that you said [you would be] 'setting your eye' upon him?"¹¹ This criticism by Judah is difficult to understand, for now that he has sinned and stolen the goblet, he is no longer worthy of having an eye set upon him, i.e., how could Judah expect Zaphnath-Paaneah to have pity on a thief and guard him?

Furthermore, it is stated in the Midrash on the words, "Please, my lord [בי אדני] [*bi adoni*]: "[Take] me [בי] [*bi*] and not him [ביה] [*bei*], whether it is to fill water, it is I; for service,

⁵ Gen. 44:10.

⁶ Gen. 44:16.

⁷ Jerusalem Talmud, Berachot 9:5; Jerusalem Talmud, Sotah 5:5.

⁸ Gen. 44:17.

⁹ Gen. 44:21.

¹⁰ Ramban on Gen. 44:21 explains "set eye on him" means to take pity on the lad and to guard him.

¹¹ Rashi on Gen. 44:18.

it is I; to split logs, it is I.”¹² I.e., Judah was telling Zaphnath-Paaneah that he would make a better servant than Benjamin. **So too Rashi explains: “For all purposes I am superior to him in strength, whether for battle or for service as a slave.”**¹³

Question 8: This requires analysis: what would Joseph reply to this, and what was their argument in this matter?

וניש לומר דמתחלה אמרו הם, "אשר ימצא אתו מעבדיך ומת", כלומר דין התורה הוא שישראל שגנב פשעין לו לשלם ונמכר לעבד ואם יש לו סייב לשלם, אבל הכן גם נהרג אפילו על פחות משנה פרוטה ולא ניתן להשבון. ולפי האמת אנחנו דין ישראל יש לנו שהרי האבות יצאו מקלל בני נח, אבל עתה שאנחנו תחת רשותך אתה צריך לעשות הדין הנוגע לך מדין תורה, וזהו, "אשר ימצא אתו מעבדיך" כלומר שאנו עבדיך ומסת ממשלתך, ומת מן הדין סייב מיתה.

It may be said that initially they said, “whomever it is found with among your servants shall die.” That is as if to say: the law of the Torah is that an Israelite who steals, if he has nothing with which to pay, is sold as a slave, and if he has, he is obligated to pay. But a gentile is executed [even] on account of [stealing] less than the value of a *peruta*, [since gentiles are particular about even such a small loss,] and [an item that a gentile steals] is not subject to restitution.¹⁴

Question 3 asked if Zaphnath-Paaneah was obliged to act according to the code of laws cited by the brothers. **In truth**, the brothers were arguing, **“We have the status of Israelites, for the Patriarchs departed from the category of *Bnei Noach*, i.e., descendants of Noah, non-Jews who are obligated only in the seven *Noahide* laws.”**¹⁵ **But now that we are under your authority, you must carry out the law that applies to you according to Torah law.”** This is what they meant by **“whomever it is found with among your servants,”** that **“we are your servants and under your rule,”** and therefore death is the legally required punishment.

והאיש השיב לו, "כדבריקם פן-הוא", שאני רוצה לעשות דוקא הדין תורה. ו"גם-עתה" שיצאתם מקלל בני נח, "אשר ימצא אתו יקהלי עבד", שהרי הגביע הוא דבר חשוב שאין לו ערך ואי אפשר שיהיה לו לשלם, ויקויים "אם-אין לו ונמכר בגנבתו". ואפילו אם יחזיר הגביע בעצמו מכל מקום יש לו לשלם תשלומי כפל כדכתיב "שלם ישלם" דמשמע שתי תשלומים, ועל שניהם מסנים הפתוב "אם-אין לו ונמכר בגנבתו".

Question 4 asked how Joseph’s agent could say, “Now also, according to your words, so it shall be,” when the brothers had said that if the goblet were found with one of them, he should die, whereas the agent changed the punishment to enslavement. The answer is that when **the man** who

¹² Gen. Rabbah 93:6.

¹³ Rashi on Gen. 44:33.

¹⁴ Yevamot 47b; Eruvin 62a.

¹⁵ In areas where the obligations of Jews and *Bnei Noach* overlap (such as prohibitions against murder or theft), the *Bnei Noach* may be judged more strictly than Jews, with fewer legal protections and more severe penalties. While the Patriarchs and early Israelites obeyed the 613 mitzvot, this was voluntary: the obligation to do so, and their conversion to full Jewish status, occurred only at Mount Sinai. *Parashat Derachim*, cited in this essay, discusses whether the Patriarchs and early Israelites had left the category of *Bnei Noach*, such that even though they weren’t fully Jewish, they would be treated leniently for violations of *Noahide* laws, or if they were they still part of *Bnei Noach* and its stricter punishments.

was Joseph's agent **replied to [them]:** “ ‘**according to your words, so it shall be,**’ he meant that “I accept your principle that guilt attaches to the one with whom it is found, but **I wish to carry out precisely the judgment according to the law of the Torah.** Thus, even though you are under our authority, we will not judge you as a gentile, but as an Israelite”

Question 5 asked about the intent of the introductory words, “**Now also.**” The agent was saying, “**Since you have departed from the category of *Bnei Noach* and are judged under Torah law, ‘he with whom it is found shall be my slave,’ for the goblet is an important object that is priceless, and it is impossible for him to have the means to pay. Thus will be fulfilled the law, ‘if he has nothing, he shall be sold for his theft.’ Even if he returns the goblet itself, nevertheless he must pay double payment, as it is written, ‘He shall surely pay,’ which implies two payments; and with regard to both of them the verse concludes, ‘if he has nothing, he shall be sold for his theft.’**”

וְכַתֵּב הַכֶּסֶף מִשְׁנֵה (בְּפָרֶק ט' מֵהִלְכוֹת עֲבָדִים) דְּנִישׁ סָפֵק אִם מְלֵךְ פּוֹתֵי קוֹנֵה פּוֹתֵי אֶף לְגוֹפּוֹ מִדִּינָא דְּמַלְכוּתָא דִּינָא, אוֹ דִּילְמָא אִינוּ קוֹנֵה אוֹתוֹ רַק לְמַעֲשֵׂה יָדָיו וְעֵי"ש. וְזֶהוּ מֵה שְׂרָצוּ לְרִמּוֹז לְיוֹסֵף כְּשֶׁאָמְרוּ לוֹ "הֲנֵנוּ עֲבָדִים לְאִדְנִי גַם-אֲנַחְנוּ גַם אֲשֶׁר-נִמְצָא" וְכו', כְּלוּמַר אִם אֲתָה רוֹצֵה לְנַהוֹג עֲצָמָךְ בְּחֻק הַמַּלְכוּת שְׂדֵנִים בְּזָרוּעַ, אִין לְנוּ פִּה לְהַשִּׁיב אֶלָּא "הֲנֵנוּ עֲבָדִים" לָךְ, וְלֹא לְמַעֲשֵׂה יָדָינוּ בְּלִבְד אֶלָּא אֶף גּוֹפֵינוּ קְנוֹי לָךְ. וְיוֹסֵף הַשִּׁיב, "חֲלִילָה לִי מַעֲשׂוֹת זֹאת", אִינִי רוֹצֵה לְהַחְמִיר כָּל כֶּף עֲלֵיכֶם, אֶלָּא "הָאִישׁ אֲשֶׁר נִמְצָא הַגְּבִיעַ" הוּא יִהְיֶה גּוֹפּוֹ קְנוֹי לִי בְּלִבְד.

The *Kesef Mishneh* writes (Laws of Slaves, ch. 9, halacha 4) that there is a doubt whether a gentile king acquires a gentile even with respect to his person by virtue of the principle that the law of the kingdom is to be observed as law, or perhaps he acquires him only for his labor; see there.¹⁶

[Question 6] asked what they wished to allude to Joseph when they said to him, “Here we are, slaves of my lord, also us and also the one in whose possession the goblet was found.” This was as if to say, if you wish to conduct yourself according to the law of kingship, which judges by force, we have no argument to make except “here we are, slaves” of yours, not only with respect to our labor but even that our bodies are acquired by you.

But Joseph replied, “Far be it from me to do this.” Question 7 had asked why he said that with regard to enslaving all the brothers, when his agent did not use such language earlier with regard to their offer that the one who was found with the goblet would die. Zaphnath-Paaneah was saying], “I do not wish to be so severe with you; rather, “the one in whose possession the goblet was found,” only his body shall be acquired by me.”

That is, when the goblet was found, Joseph's agent avoided the more severe punishment by procedure, immediately reframing the case under Torah law and limiting the consequence to a single individual. However, when brothers stand before Zaphnath-Paaneah, they concede enslavement of all the brothers under Egyptian law. This escalation triggered Joseph's ethical refusal, “Far be it from me to do this.”

¹⁶ Yosef Karo (1488-1575), author of the *Beit Yosef* and *Shulchan Aruch*. His *Kesef Mishneh* (Venice 1574–75) is a commentary on the Ramban's *Mishneh Torah*.

ואז, "ויגש אליו יהודה" וכו' וכי זו היא שימת עין שאמרתי לשום עיניך עליו, שאם לא הנה חוטא לא הנה צריך לשימת עין שלך, אלא נדאי שפוננתה היתה שאפילו שיחטא אתה רוצה להקל עליו בדינו. ואם כן יש לה לדנו כמאן דאמר שאין מלה פותי קונה לפותי אחר לגופו אלא למעשה נדיו, דהשתא יש לי מקום לומר לה "בי אדוני" אם לשמשא אנה וכו' שלכל דבר אני מעולה ממנו, מה שאין כן אם היית דן אותו קנוי קנן הגוף שאז אין מקום לומר "ועתה ישב-נא" וכו'.

Then, "Judah approached him," etc., as Rashi interpreted, "Is this 'setting an eye,' i.e., taking care of him, that you said [you would be] 'setting your eye' upon him?" For if he had not sinned, he would not have needed your [taking care of him]. Rather, certainly your intention was that even if he were to sin, you wished to be lenient with him in his judgment.

If so, you should judge him in accordance with the view that a gentile king does not acquire another gentile with respect to his body but only for his labor. Now I have grounds to say to you, "[Take] me and not him, whether it is to fill water, it is I; for service, it is I; to split logs, it is I," that for every task I am superior to him. In contrast, if you were judging him as acquired with respect to his body, then there would be no place to say, "Therefore, please let your servant remain as a slave to my lord instead of the boy, and let the boy go back with his brothers."¹⁷

ועוד שאחר שאמרתי "ואשימה עיני עליו" אין לה מקום כלל לומר שיהיה נשאר בנזמין לה לעבד, שהרי בנימוסות שלנו כתיב "אם-אין לו ונמכר בגנתו", וזה יש לו לשלם שכר החרור הגביע, ואם תאמר בשביל תשלומי כפל, הלא מלת "בגנתו" מיותרת. היא לדרש בגניבתו ולא בכפילו.

Furthermore, after you said, "that I may set my eye upon him," you have no grounds at all to say that Benjamin should remain with you as a slave, for in our code of laws it is written, "If he has nothing, he shall be sold for his theft," and this one has the means to pay, since he has already returned the goblet. If you say it is on account of the double payment, then isn't the word "for his theft" superfluous? Rather, it is to be expounded as that he can be sold "for his theft," i.e., to pay for the item stolen, but he can not be sold to pay for his double payment.¹⁸

ובזה מתורץ למה לא הביא רישיה דקרא, "שלם ושלם", שאדרבה זו היתה טענת יוסף שיהיה חייב שתי תשלומים ואם לא ישלם יהיה נמכר, ומשום הכי יהודה לא הביא אלא סיפיה דקרא כדי לדייק מלת "בגניבתו". ואמר בנימוסות שלנו, שלפי שעדיין לא ניתנה התורה לא יצאו האבות מכלל בני נח, אלא ממנהגם הטוב שרצו לנהוג עצמם כישראלים גמורים.

With this [Question 1] is resolved as to why he did not cite the beginning of the verse, "He shall surely pay," for on the contrary, this was Joseph's argument, that he is obligated to pay two payments and if he does not pay, he will be sold. Therefore, Judah cited only the end of the verse, in order to infer from the word "for his theft" that a person could be sold to make restitution for the amount of the theft, but not to make restitution for the doubled payment.

¹⁷ Gen. 44:33.

¹⁸ Kiddushin 18a.

As far as the answer to Question 2, he said “in our code of laws,” because since the Torah had not yet been given, in his opinion the Patriarchs had not departed from the category of *Bnei Noach*, except by their good custom, in that they wished to conduct themselves as full Israelites.

ויוסף הנה משיב לו שדי להקל עליו שלא לדונו כבן נח שיהנה חייב מיתה אף על פי שעדיין לא ניתנה התורה, וזו היא השימת עין שהבטיח, אבל לא להקל לגמרי פישראל גמור שלא יהנה נמכר בכפלו או קולא אחרת שלא יהנה גופו קנוי מדינא דמלכותא.

Question 8 asked how Judah could still expect that Zaphnath-Paaneah would “set an eye” on Benjamin with pity after the evidence showed that he had stolen the goblet. **Joseph would reply to him that it sufficed to be lenient with [Benjamin] by not judging him as a *Ben Noach* who would be liable to death, even though the Torah had not yet been given. This is the “setting an eye” that he promised, but not to be completely lenient as appropriate for a full Israelite, so that he would not be sold for his double payment or receive some other leniency, such that his body would not be acquired by virtue of the law of the kingdom.**

ואנלו לשיטתיהו דלפי מה שפירש הפרשת דרכים (דף ד' ע"ב) שיוסף והשבטים היו חלקים מעקרא בסברא זו, שהשבטים היו סוברים שהאבות יצאו מקלל בני נח לגמרי אפילו להקל, ומשום הכי היו אוכלים המפרקסות. ויוסף הנה סבירא ליה שלא יצאו מקלל בני נח אלא להחמיר ותייבם בחומרות שניהם, ומשום הכי סיפר לאביו שהיו אוכלים אבר מן החי, הקא נמי יוסף אינו רוצה לילך לקולא לגמרי אלא בספנת פיקום נפש, שאינו רוצה לדונו כבן נח משום חומרא דספק נפשות.

They follow their respective positions, for according to what the author of *Parashat Derachim* explains (*Derech Ha'Atarim*, discourse 1) (page 4b),¹⁹ Joseph and the tribes disagreed from the outset on this reasoning. The tribes held that the Patriarchs departed entirely from the category of *Bnei Noach*, so that they'd be treated with leniency for any violations of *Noahide* law, and therefore they ate flesh torn from a living animal.²⁰ In contrast, Joseph held that they departed from the category of *Bnei Noach* only to be stringent and were obligated in the stringencies of both Israel and *Bnei Noach*, and therefore he told their father that they were eating flesh torn from a living animal. Here too, Joseph did not wish to be entirely lenient except where a doubt involving life is present, for he did not wish to judge [Benjamin] as a *Ben Noach* because of the stringency of a doubt involving life.

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¹⁹ Yehudah Rosanes (1657–1727), Rabbi of Constantinople, *Parashat Derachim* (Venice 1743).

²⁰ Rashi on Gen. 27:2, based on Gen. Rabbah 84:7.