

MITZVOT 568 AND 569: DO NOT RETURN A FUGITIVE SLAVE TO HIS MASTER

FUGITIVE SLAVE LAW OF 1850 (UNITED STATES)

In response to the weakening of the original Fugitive Slave Act, Senator James M. Mason of Virginia drafted the Fugitive Slave Act of 1850, which penalized officials who did not arrest someone allegedly escaping from slavery, and made them liable to a fine of \$1,000 (\$30,732 in present-day value). Law enforcement officials everywhere were required to arrest people suspected of escaping enslavement on as little as a claimant's sworn testimony of ownership. Habeas corpus was declared irrelevant, and the Commissioner before whom the fugitive from slavery was brought for a hearing—no jury was permitted, and the alleged refugee from enslavement could not testify—was compensated \$10 if he found that the individual was proven a fugitive, and only \$5 if he determined the proof to be insufficient. In addition, any person aiding a fugitive by providing food or shelter was subject to six months' imprisonment and a \$1,000 fine. Officers who captured a fugitive from slavery were entitled to a bonus or promotion for their work. Enslavers needed only to supply an affidavit to a Federal marshal to capture a fugitive from slavery. Since a suspected enslaved person was not eligible for a trial, the law resulted in the kidnapping and conscription of free Blacks into slavery, as suspected fugitive slaves had no rights in court and could not defend themselves against accusations.

DEUTERONOMY 23: 16-17

לֹא-תִסְגֵּר עֶבֶד אֶל-אֲדֹנָיו אֲשֶׁר-יִנָּצֵל אֵלֶיךָ מֵעַם אֲדֹנָיו: עִמָּךְ יֵשֵׁב בְּקִרְבְּךָ בַּמָּקוֹם אֲשֶׁר-יִבְחַר בְּאֶחָד שְׁעָרֶיךָ בְּטוֹב לּוֹ
לֹא תִנְנֶנּוּ: (ו)

You shall not turn over to his master a slave who seeks refuge with you from his master. He shall live with you in any place he may choose among the settlements in your midst, wherever he pleases; you must not ill-treat him.

SEFER HACHINUCH 568

שלא להסגיר עבד שברח אל אדוניו - שנמנענו (עי' רמב"ם ספהמ"צ ל"ת רנד) שלא להשיב עבד שברח מאדוניו מחוצה לארץ ישראל, ואפילו אדוניו ישראל, לא נשיבהו אליו, אבל נשחרר אותו ונכתב בדמיו חוב על עצמו, ועל זה נאמר (דברים כג טז) לא תסגיר עבד אל אדוניו, וכן הוא מבאר במסכת גטין (מה, א), שבעבד שברח מחוצה לארץ ישראל הכתוב מדבר. ואמרו שם, שהדין בו, שנכתב שטר בדמיו עליו ונכתב לו גט חרות, ולא נשיבהו לעבודה בשום פנים, בעבור שנכנס בבקעה הטהורה הנבחרת לעבוד בה השם יתברך.

Not to turn over a slave that fled from his master: That we have been prevented from returning a slave that fled from his master outside of the land, [who came] to the Land of Israel (see Sefer HaMitzvot LaRambam, Mitzvot Lo Taase 254). And even if his master is an Israelite, we do not return [the slave] to him. But [rather], we free him and write down his value as a debt on himself. And about this is it stated,

(Deuteronomy 23:16), "You shall not turn over a slave to his master." And so it elucidated in Tractate Gittin 45a, that the verse is speaking about a slave that fled from outside of the Land to the Land of Israel. And they said there that the law about him is that we write a contract with his value [as a debt] for him and we [also] write a contract of [his] freedom; and that we not return him to slavery in any way - since he entered the chosen valley of purity to serve God, may He be blessed, there.

That which we mentioned is from the roots of this commandment - that God wanted for the honor of the land, that one who flees to there be saved from slavery; in order that we place the honor of the place into our hearts and fix the awe of God, may He be elevated, into our hearts, when we are there. And all of this is to help His people and to give them merit, as He is one Who desires kindness.

SEFER HACHINUCH 569

שלא להונות עבד הבורח אלינו מחוצה לארץ - שנמנענו שלא להונות העבד הבורח אלינו מחוצה לארץ, ועל זה נאמר (דברים כג יז) עמך ישב בקרבך במקום אשר יבחר בטוב לו לא תוננו. ולשון ספרי לא תוננו זו אונאת דברים, כלומר שלא נחרפהו ונבזהו בדברים וכל שכן במעשה

To not oppress a slave who has fled to us, from outside the Land, to the Land [of Israel]: That we have been prevented, that we not oppress the slave that flees to us from outside of the Land. And about this does it state (Deuteronomy 23:17), "He shall live with you in any place he may choose among the settlements in your midst, wherever he pleases; you must not oppress him." And the language of Sifrei is "'You must not oppress him' - that is verbal oppression" - meaning to say, that we not curse him or disgrace him with words; and all the more so with actions.

And that which I wrote about with the negative commandment of oppressing the convert in the Order of Mishpatim (Sefer HaChinukh 63) is from the roots of the commandment are, since both of them are the same. And therefore, just like God, may He be blessed, added a negative commandment with the oppression of a convert because of the weakness of his soul, from his being a foreigner among the [Jewish] nation; so too did He add the negative commandment of oppressing the slave, as he is [even] more weak-souled and disgraced than the convert. [It is] such that you not say, "This is a slave and there is no concern about him, and we would not have a sin upon us in oppressing him verbally."

And we know with certainty that this convert and this slave - whom we have been warned about oppressing them even with words - both, accepted the Torah upon themselves. [This is] meaning to say that this convert is a righteous convert (a ger tzedek, as opposed to a ger toshav, who is not a convert, but rather a resident alien) and that this slave is a slave that was circumcised and immersed in order to become a slave. And I wrote a few of the laws about verbal oppression and monetary oppression there - concerning oppression of the convert and, so too, concerning the negative commandment of oppression of the fellow Israelite - in the Order of Behar Sinai (Sefer HaChinukh 338).

רש"י

לא תסגיר עבד. כְּתִרְגוּמוֹ; ד"א — אֶפְלוּ עֶבֶד כְּנַעֲנֵי שֶׁל יִשְׂרָאֵל שֶׁבָּרַח מִחוּצָה לְאֶרֶץ יִשְׂרָאֵל (גיטין מ"ה)

רבנו בחיי

לא תסגיר עבד אל אדוניו. האדון הזה איננו ישראל, ועבד זה ברח מחוצה לארץ לארץ, ואסור להסגירו לידי אדוניו שבחוצה לארץ, וזה משום חבת הארץ, וכופין את רבו לכתוב לו גט שחרור ולהתירו בישראל ויכתוב לו העבד שטר על דמיו

אבן עזרא

מעם אדוניו. גם הוא איננו ישראל כי הוא בא לכבוד השם הנקרא על ישראל ואם העבד יסגירו ישראל אל אדוניו הנה זה חלול השם על כן לא תוננו

העמק דבר

אשר ינצל אליך. דייק הכתוב אליך לא משום שבא להנצל משעבוד אדוניו הקשה והיה בורח לאיזה מקום. בזה האופן אין לקבלו אלא באופן שבורח דיקא אליך באשר רוצה להתגיר ולהכנס תחת כנפי השכינה. ובבית אדוניו לא יכול לעשות כן

רמב"ן

וטעם לא תסגיר עבד אל אדוניו דבק למעלה שאם יברח העבד מאדוניו אשר יצאת עליו מחנה וינצל אל מחנך לא תסגירו לו בממון אשר יתן לך ולפי שאמר במקום אשר יבחר נראה שהוא מצוה שיהיה בן חורין ולא נעבוד בו אנחנו והטעם במצוה הזו כי עמנו יעבוד את השם ואיננו הגון שנחזירנו אל אדוניו לעבוד ע"ז ועוד שיתכן שילמד דרך מבוא העיר כי בענין כזה ילכדו מדינות רבות על ידי העבדים והשבויים הבורחים משם ורבותינו אמרו (גיטין מה) אפילו בעבד כנעני של ישראל שברח מחוצה לארץ לארץ שגם זה יעמוד לפני יושבי ארץ השם וינצל מעבוד היושבים על אדמה טמאה ושאין כל המצות נוהגות שם

שמואל א 20-10:30

וַיִּרְדֹּף דָּוִד הוּא וְאַרְבַּע־מֵאוֹת אִישׁ וַיַּעֲמְדוּ מֵאַתִּיּים אִישׁ אֲשֶׁר פָּגְרוּ מֵעֶבֶר אֶת־נַחַל הַבְּשׂוֹר:

David continued the pursuit with four hundred men; two hundred men had halted, too faint to cross the Wadi Besor.

וַיִּמְצְאוּ אִישׁ־מִצְרַיִם בְּשׂוֹדָה וַיִּקְחוּ אֹתוֹ אֶל־דָּוִד וַיִּתְּנוּ־לוֹ לֶחֶם וַיִּשְׁקְהוּ מַיִם:

They came upon an Egyptian in the open country and brought him to David. They gave him food to eat and water to drink;

וַיִּתְּנוּ־לוֹ פֶּלֶחַ דְּבַלָּה וּשְׁנֵי צִמְקִים וַיֵּאָכֵל וַתִּשָּׁב רוּחוֹ אֵלָיו כִּי לֹא־אָכַל לֶחֶם וְלֹא־שָׁתָה מַיִם וּשְׁלֹשָׁה לַיְלוֹת: (o)

he was also given a piece of pressed fig cake and two cakes of raisins. He ate and regained his strength, for he had eaten no food and drunk no water for three days and three nights.

וַיֹּאמֶר לוֹ דָּוִד לְמִי־אַתָּה וְאִי מֵזָה אַתָּה וַיֹּאמֶר נַעַר מִצְרַיִם אֲנִי עֶבֶד לְאִישׁ עַמְלִקִּי וַיַּעֲזֹבֵנִי אֲדֹנָי כִּי חָלִיתִי הַיּוֹם שְׁלֹשָׁה:

Then David asked him, "To whom do you belong and where are you from?" "I am an Egyptian boy," he answered, "the slave of an Amalekite. My master abandoned me when I fell ill three days ago.

אֲנֹחֲנוּ פָּשְׁטָנוּ נֶגְבַּת הַכְּרָתִי וְעַל־אֲשֶׁר לִיהוּדָה וְעַל־נֶגְבַּת כְּלָב וְאֶת־צִקְלָג שָׂרְפָנוּ בְּאֵשׁ:

We had raided the Negeb of the Cherethites, and [the Negeb] of Judah, and the Negeb of Caleb; we also burned down Ziklag.”

וַיֹּאמֶר אֵלָיו דָּוִד הַתּוֹרֵדְנִי אֶל־הַגְּדוּד הַזֶּה וַיֹּאמֶר הַשִּׁבְעָה לִּי בְּאֵלֵהֶם אִם־תְּמִיתֵנִי וְאִם־תִּסָּגְרֵנִי בְּיַד־אֲדֹנָי וְאוֹרְדֶךָ אֶל־הַגְּדוּד הַזֶּה:

And David said to him, “Can you lead me down to that band?” He replied, “Swear to me by God that you will not kill me or deliver me into my master’s hands, and I will lead you down to that band.”

וַיְרִדְהוּ וְהָגָה נְטָשִׁים עַל־פְּנֵי כָל־הָאָרֶץ אֲכָלִים וְשָׂתִיבִם וְחָגְגִים בְּכָל־הַשָּׁלָל הַגְּדוֹל אֲשֶׁר לָקְחוּ מֵאָרֶץ פְּלִשְׁתִּים וּמֵאָרֶץ יְהוּדָה:

So he led him down, and there they were, scattered all over the ground, eating and drinking and making merry because of all the vast spoil they had taken from the land of the Philistines and from Judah.

וַיָּבֹאוּ דָוִד מֵהַנֶּשֶׁף וְעַד־הָעֶרֶב לְמַחֲרָתָם וְלֹא־נִמְלֹט מֵהֶם אִישׁ כִּי אִם־אַרְבַּע מֵאוֹת אִישׁ־נָעַר אֲשֶׁר־רָכְבוּ עַל־הַגְּמָלִים וַיִּנָּסוּ:

David attacked them from before dawn until the evening of the next day; none of them escaped, except four hundred young men who mounted camels and got away.

וַיִּצַל דָּוִד אֶת כָּל־אֲשֶׁר לָקְחוּ עִמָּלְק וְאֶת־שְׁתֵּי נָשָׁיו הַצֵּיל דָּוִד:

David rescued everything the Amalekites had taken; David also rescued his two wives.

וְלֹא נָעַדְרָ לָהֶם מִן־הַקְּטָן וְעַד־הַגְּדוֹל וְעַד־בָּנִים וּבָנוֹת וּמִשָּׁלָל וְעַד כָּל־אֲשֶׁר לָקְחוּ לָהֶם הַכֹּל הָשִׁיב דָּוִד:

Nothing of theirs was missing—young or old, sons or daughters, spoil or anything else that had been carried off—David recovered everything.

David took all the flocks and herds, which [the troops] drove ahead of the other livestock; and they declared, “This is David’s spoil.” When David reached the two hundred men who were too faint to follow David and who had been left at the Wadi Besor, they came out to welcome David and the troops with him; David came forward with the troops and greeted them. But all the mean and churlish fellows among the men who had accompanied David spoke up, “Since they did not accompany us, we will not give them any of the spoil that we seized—except that each may take his wife and children and go.” David, however, spoke up, “You must not do that, my brothers, in view of what the LORD has granted us, guarding us and delivering into our hands the band that attacked us. How could anyone agree with you in this matter? The share of those who remain with the baggage shall be the same as the share of those who go down to battle; they shall share alike.” So from that day on it was made a fixed rule for Israel, continuing to the present day. When David reached Ziklag, he sent some of the spoil to the elders of Judah [and] to his friends, saying, “This is a present for you from our spoil of the enemies of the LORD.” [He sent the spoil to the elders] in Bethel, Ramoth-negeb, and Jattir; in Aroer, Siphmoth, and Eshtemoa; in Racal, in the towns of the Jerahmeelites, and in the towns of the Kenites; in Hormah, Borashan, and Athach; and to those in Hebron—all the places where David and his men had roamed.

משך חכמה, כי תצא ס"ג

לא תסגיר עבד אל אדוניו מכאן אמרו המוכר עבדו וכו'... ועיין שם בגמרא מעם אדוניו לרבות גר תושב, פירש דמיותר דהו"ל למכתב מעמו, והגמרא בגיטין מ"ה לא פריך דרק אם נאמר דכל המקרא מדבר על גר תושב, אבל כיון שעיקר הפסוק מדבר בעבד תו לק"מ דאגב דכתב כאן אדוניו כתוב גם שם

PHILO, ON VIRTUES 124

And if another man's slave, it may be with two generations of slavery behind him, takes refuge with you to obtain protection in fear of his master's threats or through consciousness of some misdeed, or because without having committed any offence, he has found his master generally cruel and merciless, do not disregard his plea. For it is a sacrilegious act to surrender a suppliant and the slave is a suppliant who has fled to your hearth as to a temple, where he has a right to obtain sanctuary, and protected from treachery may preferably come to an honest and open agreement, or if that is not possible, be sold as a last resort. For though in changing masters there is no certainty which way the scale will turn, the uncertain evil is not so grave as the acknowledged.

RAMBAM, GUIDE FOR THE PERPLEXED, 3:39

וכן כל ה'מצוות' אשר ספרנום ב"הלכות עבדים" כולם - חמלה רחמנות וחנינה לאביונים. ומרוב הרחמנות - יציאת 'עבד כנעני' חפשי בחסרון אחד מאיבריו שלא יתחברו בו העבדות והביטול ואפילו בהפלת שן כל שכן על זולתה מהאיברים ואין מותר גם כן להכותו אלא בשוט או בקנה וכיוצא בו - כמו שבארנו ב"משנה תורה" - ועם זה כשירבה להכותו עד שימיתהו יהרג עליו כשאר בני אדם. - ואמרו "לא תסגיר עבד אל אדוניו" עם היותו רחמנות יש בזאת המצוה תועלת גדולה והיא שנתנהג בזאת המידה הנכבדת והוא - שנעזר מי שיעזר בנו ונשמרהו ולא נסגירהו ביד מי שברח ממני. ולא די שתעזר מי שיעזר בך אלא שאתה חייב לעיין בתיקונו ותיטיב לו ולא תכאיב לבבו בדברים - והוא אמרו ית' "עמך ישב בקרבך... באחד שעריך בטוב לו לא תוננו". ועוד שחייב זה הדין בפחות שבבני אדם והוא העבד - כל שכן אם יעזר בך איש נכבד שראוי לך לעשות מה שראוי לו. ונגד זה הענין - שהעובר המעול כשיעזר בנו לא יעזר ולא ירוחם ולא יחסרו ממנו דין כלל - ואפילו בא להעזר בנכבד שבדברים והגדול שבהם - והוא אמרו "מעם מזבחי תקחנו למות" - הנה זה בא להעזר באלוה ית' ונתלה במה שהוא מיוחס לשמו ולא עזרו אבל צוה להסגירו ביד בעל דין אשר ברח מלפניו - כל שכן מי שבא להושע באיש מבני אדם שאין צריך להושיעו ולא לרוחם עליו שהרחמנות על העבריים - אכזריות היא על כל הברואים. אלו הם המדות השוות בלא ספק אשר הם מכלל 'חוקים ומשפטים צדיקים'; ולא כמדות הסכלים אשר יחשבו למעלות שישובח האיש בהם על עזרו ושמרו מי שידמן עושק או עשוק כמו שהוא מפורסם בדבריהם ושיריהם

The precepts contained in "the laws concerning slaves" (Hilkot 'abadim), likewise prescribe only acts of pity, mercy and kindness to the poor. It is an act of mercy to give liberty to a Canaanite servant for the loss of one of his limbs (Exod. 21:26, 27), in order that he should not suffer from slavery and illness at the same time. The law applies even to the case that a tooth of a slave has been knocked out, much more to the mutilation of other limbs. He could only be corrected with a rod or reed or the like, as we have stated in Mishneh-torah. Besides, if the master strikes the slave too hard and kills him, he is punished with death as for ordinary murder. Mercy is also the object of the law, "Thou shalt not deliver unto his master the servant that is escaped from his master" (Deut. 23:15); but it teaches besides a very useful lesson, namely, that we must always practise this virtue, help and protect those who seek our help, and not deliver them unto those from whom they flee; and it is not sufficient to give assistance to those who are in need of our help; we must look after their interests, be kind to them, and not hurt their feeling by words. Thus the Law says: "He shall dwell with thee, even among you, in that place which he

shall choose in one of thy gates, where it liketh him best: thou shalt not vex him" (ibid. ver. 16). This we owe to the lowest among men, to the slave; how much more must we do our duty to the freeborn, when they seek our assistance? But, on the other hand, when sinners and evildoers seek our help, it must not be granted; no mercy must be shown to them, and the course of justice must not be interfered with, even if they claim the protection of that which is noblest and highest; for "Thou shalt take him from mine altar that he may die" (Exod. 21:14). Here a person comes to seek the help of God, and claims the protection of that which is devoted to his name; God, however, does not help him, and commands that he be delivered up to the prosecutor, from whom he fled. Much less need any one of us help or pity his fellow-men [under such circumstances]; because mercy on sinners is cruelty to all creatures. These are undoubtedly the right ways designated "righteous statutes and judgments" (Deut. 4:8), and different from the ways of the fools, who consider a person praiseworthy when he helps and protects his fellow-men, without discriminating between the oppressor and the oppressed. This is well known from their words and songs.