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Dedicated in loving memory of
HaRav Yosef Grossman zt"l

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LABOR FORCE: MAY A PERSON BE COMPELLED TO WORK?

Adapted from the writings of Dayan Yitzhak Grossman

The Associated Press reports:

More than 150 years after slaves were freed in the U.S., voters in five states will soon decide whether to close loopholes that led to the proliferation of a different form of slavery—forced labor by people convicted of certain crimes.

None of the proposals would force immediate changes inside the states' prisons, though they could lead to legal challenges related to how they use prison labor, a lasting imprint of slavery's legacy on the entire United States.

The effort is part of a national push to amend the 13th Amendment to the U.S. Constitution that banned enslavement or involuntary servitude except as a form of criminal punishment. That exception has long permitted the exploitation of labor by convicted felons...

Nearly 20 states have constitutions that include language permitting slavery and involuntary servitude as criminal punishments. In 2018, Colorado was the first to remove the language from its founding frameworks by ballot

measure, followed by Nebraska and Utah two years later.

This November, versions of the question go before voters in Alabama, Louisiana, Oregon, Tennessee, and Vermont.

[Memphis state senator Raumesh] Akbari also had to work with the state Department of Correction to ensure that inmate labor wouldn't be prohibited under her proposal.

The proposed language going before Tennessee voters more clearly distinguishes between the two: "Slavery and involuntary servitude are forever prohibited. Nothing in this section shall prohibit an inmate from working when the inmate has been duly convicted of a crime."

"We understand that those who are incarcerated cannot be forced to work without pay, but we should not create a situation where they won't be able to work at all," Akbari said.¹

¹ Kimberlee Kruesi. Slavery is on the ballot for voters in 5 US states. AP News. <https://apnews.com/article/2022-midterms-13th-amendment-slavery-4a0341cf82fa33942bda6a5d17ac4348>.



PARSHAS LECH LECHA

NAME CALLING

Excerpted and adapted from a shiur by
Rav Moshe Zev Granek

And the people of Sdom were wicked and sinful toward Hashem, exceedingly.

Bereishis 13:13

Rashi comments that Chazal associated with this *pasuk* the idea that "vesheim resha'im yirkav" (the name of the wicked shall rot—Mishlei 10:7). Chazal also say that one should not name a child after a *rasha* (Yoma 38b). Tosafos, Tosafos Yeshanim, and the Ritva appear to understand this as an actual *issur*, and they ask how the *tana R' Yishmael* was named after the *rasha* Yishmael!

Tosafos (Ksubos 104b) asks how a *tana* in the Mishnah could be named Shevna, a *rasha* in the time of Yeshayah (as evident from the Gemara in Sanhedrin). Rabeinu Tam answers that the Mishnah should read Shachna, not Shevna. But the Ri (Tosafos, Shabbos 12b) answers based on other *psukim* that there was a different Shevna who was a *tzadik*.

The Hafla'ah writes (Ksubos 104b) that
(continued on page 2)

¹ Some of the answers given to this question are that Yishmael did *teshuvah*, and that because Hashem gave Yishmael his name, we may use it. Rabeinu Chananel says there is no prohibition; the Gemara is only recommending not to use the name of a *rasha*, because it may cause a person not to have good *mazal*.

The proposed Tennessee language is rather confusing: Does it allow an inmate to be compelled to work (for pay) against his will or not? To compel work, even for pay, clearly constitutes involuntary servitude, which according to the first sentence
(continued on page 2)

Q&A from the
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Man Down

Q My Mincha and Ma'ariv minyanim typically have exactly ten participants. Sometimes one man leaves early. May we say *chazaras hashatz* or kaddish with nine?

A While most parts of davening may be recited by a *yachid*, passages classified as *davar shebikdushah* (e.g., kaddish, kedushah, *barchu*, and *chazaras hashatz*) require a minyan (Brachos 21b). This is alluded to in the *pasuk* (Vayikra 22:31) "venikdashhti besoch Bnei Yisrael," (and I will be sanctified among Bnei Yisrael).

The Shulchan Aruch (O.C. 55:2) says that if the recitation began with a minyan, it may
(continued on page 2)

(continued from page 1)

is forever prohibited. But the second sentence insists that the law does not prohibit an inmate from working, which seems to mean that the state may indeed compel him to work against his will. (If the provision is limited to voluntary work, it would be quite superfluous: Why would anyone think it would be illegal for an inmate to work voluntarily?)

In this article and a follow-up, we consider various Torah perspectives on involuntary servitude of Jews in various circumstances.

EVED IVRI

The classic scenario where the Torah unequivocally allows the imposition of involuntary servitude is that of a thief who cannot repay what he has stolen:

He shall make restitution; if he has nothing, he shall be sold for his theft.²

This does not apply today, because it only does when the law of *yoveil* is in effect.³

AN INSOLVENT DEBTOR

There is a much-discussed position of Rabeinu Tam that an insolvent debtor cannot be compelled by a court to work in order to earn money to satisfy his debt;⁴ this view is codified by the Shulchan Aruch⁵ and is generally considered normative. Unfortunately, however, Rabeinu Tam's actual discussion of the question is not extant and his position is recorded only in secondhand sources, so there is considerable uncertainty regarding its precise rationale and scope.

Tosafos cites a dispute about whether a husband is obligated to accept employment in order to maintain his wife, with Rabeinu Eliyahu asserting that he is and Rabeinu Tam maintaining that he is not.⁶ Addressing the husband's commitment in the *ksubah* to work (*va'ana eflach*) for his wife, Rabeinu Tam explains that this means that he will engage in agricultural labor on (his) field in order to provide for her, but he is not obligated to hire himself out. The Rosh's formulation of Rabeinu Tam's position is that *va'ana eflach* is limited to "work that it is customary for a man to do in his home, such as plowing and planting";⁷ it is not entirely clear whether the key words here are "customary" or "in his home"—the Taz omits "customary" and cites Rabeinu Tam as understanding *va'ana eflach* as referring to "work that is customary to do, such as work (?) and plowing,"⁸ implying that the location of the work is not relevant, but only whether the type of work in question is customary or not.

² Shmos 22:2.

³ Arachin 29a; Rambam Hilchos Avadim 1:10, Hilchos Shmitah VeYoveil 10:9.

⁴ The Acharonim debate whether despite the court's inability to compel him to work, the debtor himself has a moral/halachic obligation to do so; see Bach ibid. *siman* 99; Sha'ar Mishpat *siman* 97 s.k. 3; Chazon Ish E.H. *siman* 108 s.k. 10 s.v. *Ule'inyan lachafu*; Imrei Binah, *Dinei Chiyuv Chov siman* 2 from s.v. *Ve'ha dikasov beShulchan Aruch*; *Shu"t Sho'eil Umeishiv mahadura taryana cheilek 4 siman* 54; Otzar Haposkim *siman* 70 n. 65 p. 28.

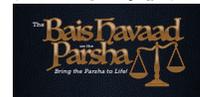
⁵ Shulchan Aruch C.M. 97:15.

⁶ Kubos 63a s.v. *Be'omer eini zan ve'eni mefarneis*. This question is the subject of considerable debate among other *Rishonim* and *Acharonim*; see our article *Chiyuv Haba'al Lehaskir Atzmo Bishvil Mezonos Ishta, Bizmanim Kadmonim Uvizman Hazeh*.

⁷ Piskei HaRosh ibid. *perek* 5 *siman* 32. Similar language appears in Tur E.H. *siman* 70.

⁸ Ibid. s.k. 4.

(continued from page 1)



Rabeinu Tam agrees that one may give

a child a common name even if a *rasha* was among those who bore it, he just maintains that an

uncommon name originally borne by a well-known *rasha* should not be given to a child.



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(continued from page 1)

continue even if the minyan dispersed, provided at least six remain. But this allowance only applies to the stage of davening that had a minyan at its start; a *davar*



RAV ARYEH FINKEL

shebikdushah in the next stage may not be said. For example, if the silent Shmoneh Esrei began with ten and one left, the chazzan cannot begin *chazaras hashatz*, which is another stage (Biyur Halacha ibid.). If he left during *chazaras hashatz*, it may be completed—including *kedushah* (ibid. 3), and even the *kaddish shaleim* afterward, which is the closing of *chazaras hashatz* (Rama ibid.).

Similarly, if Ma'ariv began with a minyan and a man left, the *chatzi kaddish* before Shmoneh Esrei may be recited—because it is the closing of *birchos krias Shma*—but not the *kaddish* that follows Shmoneh Esrei.

If Shmoneh Esrei of Ma'ariv began with a minyan, the *kaddish* afterward may be said, because it is the closing of the Shmoneh Esrei of Ma'ariv (Mishnah Brurah ibid. 22).

At Mincha, if ten were present when Ashrei began but only nine remained when it concluded, the Pri Megadim is unsure whether the chazzan may say the *chatzi kaddish*. But the Mishnah Brurah (ibid. 7) cites other *poskim* who rule that it may not be said.

The Shechinah is only present when a minyan convenes. It is an *aveirah* to drive the Shechinah away by leaving only nine men (Rama ibid. 2), so one should do so only if forced by circumstances.

of the location of any particular form of work or whether it is customary or not. (As to the proof from the language of *va'ana eflach*, various *Rishonim* offer other explanations of that language that do not necessarily imply any obligation to work.¹⁵)

⁹ Hagam Shaul-Shanah Shaul, os 40 *siman* 3, cited in Otzar Haposkim ibid. s.k. 18 os 11 p. 30, and cf. there os 5 p. 15; Mishnas Yaakov Hilchos Ishus *perek* 12 halacha 1 and halacha 2 osios 6-7, cited in Otzar Haposkim ibid. p. 28; Piskei Halachos/Vad David Hilchos Ishus *cheilek* 3 *perek* 14 os 15 p. 3, cited in Otzar Haposkim ibid. os 11; R' Shmuel Baruch Werner, R' Shlomo Tene, and R' Y. Halevi Epstein in Piskei Din Shel Batei Hadin HaRabanim BeYisrael, Vol. 10 p. 166 s.v. *Leotzar Rabeinu Tam*, cited in Otzar Haposkim ibid.; R' Eliyahu Bar-Shalom, *Mishpat Haksubah* Vol. 3 *perek* 19 os 6 p. 12 and Vol. 4 *perek* 30 p. 67.

¹⁰ Kidushin 18a.

¹¹ *Shu"t HaRosh klaf* 78 *siman* 2, cited in Tur ibid. *siman* 99.

¹² *Vajikra* 25:55.

¹³ Bava Kama 116b, Bava Metzia 10a.

¹⁴ *Shu"t Radvaz cheilek* 3 *siman* 996 (566), mentioned in *Pis'chei Teshuvah* ibid. s.k. 4 and cited in Otzar Haposkim ibid. s.k. 18 p. 28 s.v. *UveShu"t HaRadvaz*. Cf. *Hagahos Maimoniyos Hilchos Ishus perik* 12 os 8, *Mordechai Kubos remez* 205.

¹⁵ *Chidushei HaRitva Kubos* ibid. (Mosad Harav Kook edition); *Sefer Ra'aviah cheilek* 4 *Mishpetei Haksubah siman* 919 pp. 294-95; *Hagahos Maimoniyos* ibid. For further discussion of many of the ideas discussed in this article, as well as additional sources on the topic, see our aforementioned article *Chiyuv Haba'al Lehaskir Atzmo Bishvil Mezonos Ishta, Bizmanim Kadmonim Uvizman Hazeh*.

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