

## Labor Justice in Jewish Tradition

### Pre-Introduction

Talk about history of the program, how guys will be used in this structure. Note that on the whole the guys haven't studied these particular texts in-depth, but they should serve as guides to the parameters of the plausible. Note that this is all experimental and ask for indulgence.

### Introduction

Agreeing to lecture on "Labor Justice in the Torah" entails the assumption that the Torah in fact has something to say about labor relations. This is a legitimate assumption, but can mean two very different things. It might mean that the broad values espoused by the Torah bear on the issues involved in labor relations. For instance, texts that emphasize the dignity and worth of every human being - for example, man being created in the image of G-d - might be deemed relevant to issues such as the minimum wage, and texts emphasizing the innate value of work - such as man being created in the image of G-d who does melakhah=work might be used to justify workfare.

I think, however, that such a presentation would be a distortion and abuse of Torah. For I could just as easily bring texts that emphasize the right to private property, such as the disproportionately detailed discussion of property damage in Exodus or the repeated admonitions against theft, to demonstrate that government regulation is illegitimate, or those that mandate unconditional charity to inveigh against workfare.

So herewith my credo - support for almost any human value can be found in the Torah, and in just about any worthwhile text. Indeed, support for the majority of humanly held values can be found universally - if one views that value in isolation. The distinctiveness and contributions of specific texts and cultures lie in their priorities, in the relative value they assign values. They lie in the choice between the innate value of work and the value of unconditional charity, between the dignity of one man and the rights of another, in the hierarchy of values. Accordingly, we will try to avoid studying isolated texts, however value-laden.

We could turn, instead, to texts that deal with specific labor-relations issues. But here also we run into difficulties, albeit somewhat different difficulties. The first is that the Torah has very few specifically labor-justice related comments. Actually, with regard to wage labor, only one comes to mind, formulated with slight differences in Leviticus and Deuteronomy.

ויקרא פרק יט:ג - לא תעשק את רעך ולא תגזל לא תלין פעלת שכיר אתך עד בקר:  
דברים פרק כד:יד-טו - לא תעשק שכיר עני ואביון מאחריך או מגרך אשר בארצך בשעריך. ביומו תתן שכרו ולא תבוא עליו  
השמש כי עני הוא ואליו הוא נשא את נפשו ולא יקרא עליך אל ידוד והיה בך חטא.

Leviticus 19:13 - Do not unjustly withhold that which is due your neighbor; do not let a worker's wages remain with you overnight until morning.

Deuteronomy 24:14-15 - Do not unjustly withhold that which is due to your poor or destitute hired hand, whether he is one of your brethren or a proselyte living in a settlement in your land. You must give him his wage on the day it is due, not letting the sun set with him waiting for it, since his life depends on it, and [if you do this] he will not cry out to G-d against you and you will not have sinned.

The variations between these texts raise interesting questions, e.g. can one legitimately withhold the wages of a middle-class worker, or can you enter a contract with payment due only at the end of the week. And one can ask whether the need to specify this practice means that other seemingly immoral practices, such as lowering wages in mid-contract, are acceptable.

In other words, isolated specific laws are also insufficient objects of study to make a meaningful contribution. We can give an even more striking instance.

תלמוד בבלי מסכת בבא מציעא דף י עמוד א  
רב נחמן ורב חסדא דאמרי תרוייהו: המגביה מציאה לחבירו - לא קנה חבירו. מאי טעמא - הוי תופס לבעל חוב במקום שחב  
לאחרים, והתופס לבעל חוב במקום שחב לאחרים - לא קנה. איתבייה רבא לרב נחמן: מציאת פועל - לעצמו. במה דברים  
אמורים - בזמן שאמר לו בעל הבית נכש עמי היום, עזור עמי היום. אבל אמר לו: עשה עמי מלאכה היום מציאתו של בעל  
הבית הוא! - אמר ליה: שאני פועל דידו כיד בעל הבית הוא. - והאמר רב: פועל יכול לחזור בו אפילו בחצי היום! - אמר ליה:  
כל כמה דלא הדר ביה - כיד בעל הבית הוא, כי הדר ביה - טעמא אחרינא הוא, דכתיב +ויקרא כ"ה+ כי לי בני ישראל עבדים -  
עבדי הם, ולא עבדים לעבדים.

Contracts are not binding on employees on the grounds that Jews are already G-d's servants.

Accordingly, we are forced into the Oral Torah.

But here we run into a new problem. The written Torah is, on the whole, an idealistic document in that its legislation takes no account of social reality except in the most general terms. Rabbinic tradition, by contrast, accepts with regard to most civil issues that "the law of the sovereign is

the law” and that commercial custom is binding. Accordingly one must be very careful in analyzing the values behind Rabbinic law to control for environment. Nonetheless, I think that by analyzing specific cases and issues we can begin to build an understanding.

One more point - Rabbinic law is religious law, and accordingly assumes the reality of G-d's justice. Jewish law further generally assumes, at least in theory, that the majority of the population fears G-d's justice. Many of the problems in applying Jewish law nowadays stem from the generic problem of applying a legal system to a population that does not acknowledge its authority. But this also means that one cannot prove from a view as to what should be done that that thing should be enforced.

I'd like today to do two brief issues as samples of the kinds of analysis necessary to apply Jewish law, and then next time we'll try to work a single issue through. The first involves two texts in Bava Metzia.

תלמוד בבלי מסכת בבא מציעא דף עה:-עו.

/משנה/. השוכר את האומנין והטעו זה את זה - אין להם זה על זה אלא תרעומת.  
 גמרא. חזרו זה בזה לא קתני, אלא הטעו זה את זה דאטעו פועלים אהדדי. היכי דמי? דאמר ליה בעל הבית: זיל אוגר לי פועלים, ואזל איהו ואטעינהו. היכי דמי? אי דאמר ליה בעל הבית בארבעה, ואזיל איהו אמר להו בתלתא - תרעומת מאי עבידתיה? סבור וקביל! אי דאמר ליה בעל הבית בתלתא, ואזיל איהו אמר להו בארבעה, היכי דמי? אי דאמר להו שכרכם עלי - נתיב להו מדידיה! דתניא: השוכר את הפועל לעשות בשלו, והראהו בשל חבירו - נותן לו שכרו משלם, וחוזר ונוטל מבעל הבית מה שהנהגו. - לא צריכא, דאמר להו שכרכם על בעל הבית. ולחזי פועלים היכי מיתגרי! - לא צריכא, דאיכא דמגר בארבעה ואיכא דמתגר בתלתא. דאמרו ליה: אי לאו דאמרת לן בארבעה - טרחינן ומתגרינן בארבעה. איבעית אימא: הכא בבעל הבית עסקינן, דאמרו ליה: אי לאו דאמרת לן בארבעה - הוה זילא בן מילתא לאתגורי. איבעית אימא: לעולם בפועלים עסקינן, דאמרי ליה: כיון דאמרת לן בארבעה - טרחינן ועבדינן לך עבידתא שפירתא. - ולחזי עבידתייהו! - בריפקא. - ריפקא נמי מידע ידע! - דמלי מיא, ולא ידיע. איבעית אימא: לעולם דאמר ליה בעל הבית בארבעה, ואזל איהו אמר להו בתלתא. ודקאמרת סבור וקביל - דאמרי ליה: לית לך +משלי ג'+ אל תמנע טוב מבעליו?

Mishnah: One who hired workers, and they tricked one another - they have a valid complaint against one another, but no cause of legal action.

Gemara: It doesn't say that one backed out on the other, but rather that they tricked one another, so it must be discussing a case where the workers tricked one another. What would the case be?

Suppose the employer said to him: "Go hire me workers", and he went and tricked them. What would the case be?

If the employer told him that he would pay 4, and then he went and told the workers 3, why is there valid cause for complaint? They agreed to work for that price!

If the employer told him 3, and he went and told them 4, what would the case be?

If he said to them that he was responsible for their salaries, then he should pay them from his own pocket (and if he doesn't there is cause for legal action and not just for complaint), as we were taught: "If one hires workers for his own field, and then directs them instead to a neighbor's field, he pays them in full from his own pocket, and then demands reimbursement from the owner of the field for whatever benefit accrued to him."

So it must be a case in which he told them that the employer was responsible for their salaries.

So let's see how much workers get paid! (If they get paid 3, they have no grounds for complaint, and if 4, and if they get paid 4, the owner should pay them!)

We're talking about a case in which workers sometimes get paid 3 and sometimes 4, so they can tell him that had he not tricked them they would have gone to the extra effort of finding an employer who would really pay 4.

Alternatively, we're dealing here with workers who are also landowners, and thus he can argue that had he not been offered four it would have been beneath his dignity to hire himself out.

Alternatively, we're dealing with ordinary workers, but they can claim that because of the promise of a wage of four they worked harder and produced a better product.

So let's see how good their work is?

They were working in a swamp.

But you can tell the quality of their work even in a swamp?

The swamp is now flooded.

Alternatively, we are actually dealing with a case in which the owner said 4 and the middleman said 3, and as to your objection that since they agreed to the price they have no grounds for complaint, don't you believe in the verse (Proverbs 3: ) "Do not withhold good from its owner"?

(Note that the concluding verse is used in Bava Kamma 81b to create public rights in private property, e.g. rights-of-way in fields which will not be damaged by pedestrians, or the right to damage non-sentimental property to save your own more valuable property and restitute)  
(Note that Rambam uses this to ban subletting when the landlord is willing to let you leave without paying rent for the amount of time left on your lease)

תלמוד בבלי מסכת בבא מציעא דף פג עמוד א

#### Bava Metzia 83a

רבה בר בר חנן תברו ליה הנהו שקולאי חביתא דחמרא. שקל לגלימיהו, אתו אמרו לרב. אמר ליה: הב להו גלימיהו. - אמר ליה: דינא הכי? - אמר ליה: אין, +משלי ב'+ למען תלך בדרך טובים. יהיב להו גלימיהו. אמרו ליה: עניי אנן, וטרחינן כולה יומא, וכפינן, ולית לן מידי. אמר ליה: זיל הב אגרייהו. - אמר ליה: דינא הכי? - אמר ליה: אין, +משלי ב'+ וארחות צדיקים תשמר.

Some porters broke a barrel of wine they were carrying for Rabbah bar Bar Chanan. He took their garments. They came and reported this to Rav. Rav said to him: "Give them their garments". He asked: "Is that the law?" He replied: "Yes, in accordance with Proverbs 2: "so that you will go in the ways of the good". He gave them their garments. They said to him: "We are poor, and we have worked the entire day. and we're exhausted, and we have nothing to show for it". He said to him: "Go, give them their wages". He said to him: "Is that the law?" He replied: Yes, in accordance with Proverbs 2: "and you will keep to the paths of the righteous".

#### Strike-related issues

1. Is arbitration/adjudication possible?
2. Will the employer suffer irretrievable loss?
3. Does an employee have a right to work and therefore to strike-break?
- 4.

1. ויקרא פרק יט:יג - לא תעשק את רעך ולא תגזל לא תלין פעלת שכיר אתך עד בקר:

2. דברים פרק כד:יד-טו - לא תעשק שכיר עני ואביון מאחיך או מגרך אשר בארצך בשעריך. ביומו תתן שכרו ולא תבוא עליו השמש כי עני הוא ואליו הוא נשא את נפשו ולא יקרא עליך אל ידוד והיה בך חטא.

### 3. תלמוד בבלי מסכת בבא מציעא דף י עמוד א

רב נחמן ורב חסדא דאמרי תרוייהו: המגביה מציאה לחבירו - לא קנה חבירו. מאי טעמא - הוי תופס לבעל חוב במקום שחב לאחריים, והתופס לבעל חוב במקום שחב לאחריים - לא קנה. איתיביה רבא לרב נחמן: מציאת פועל - לעצמו. במה דברים אמורים - בזמן שאמר לו בעל הבית נכש עמי היום, עדור עמי היום. אבל אמר לו: עשה עמי מלאכה היום מציאתו של בעל הבית הוא! - אמר ליה: שאני פועל דידו כיד בעל הבית הוא. - והאמר רב: פועל יכול לחזור בו אפילו בחצי היום! - אמר ליה: כל כמה דלא הדר ביה - כיד בעל הבית הוא, כי הדר ביה - טעמא אחרינא הוא, דכתיב +ויקרא כ"ה+ כי לי בני ישראל *avadim* - עבדי הם, ולא *avadim* ל*avadim*.

4. ויקרא כה:מג - "לא תרדה בו בפרך"

### 5. ספרא בהר פרשה ו ד"ה פרשה ו

לא תרדה בו בפרך, שלא תאמר לו החם את הכוס הזה והוא אינו צריך, הצין לי את הכוס והוא אינו צריך, עדור תחת הגפן עד שאבוא שמה תאמר לצורך עצמי אני עושה, והרי הדבר מסור ללב שנא' ויראת מאלהיך הא כל דבר שהוא מסור ללב נאמר בו ויראת מאלהיך.

6. ויקרא כה:מו - "ובאחיכם בני ישראל איש באחיו לא תרדה בו בפרך"

### 7. ספרא בהר פרשה ו ד"ה פרשה ו

ובאחיכם בני ישראל איש באחיו לא תרדה בו בפרך, בו אין אתה רודה בפרך, [אבל] רודה את בנן חורים בפרך.

### 8. תלמוד בבלי מסכת בבא מציעא דף עה:-עו.

*משנה*./ השוכר את האומנין והטעו זה את זה - אין להם זה על זה אלא תרעומת. גמרא. חזרו זה בזה לא קתני, אלא הטעו זה את זה דאטעו פועלים אהדדי. היכי דמי? דאמר ליה בעל הבית: זיל אוגר לי פועלים, ואזל איהו ואטעינהו. היכי דמי? אי דאמר ליה בעל הבית בארבעה, ואזיל איהו אמר להו בתלתא - תרעומת מאי עבידתיה? סבור וקביל! אי דאמר ליה בעל הבית בתלתא, ואזיל איהו אמר להו בארבעה, היכי דמי? אי דאמר להו שכרכם עלי - נתיב להו מדידיה! דתניא: השוכר את הפועל לעשות בשלו, והראהו בשל חבירו - נותן לו שכרו משלם, וחוזר ונוטל מבעל הבית מה שהנהו. - לא צריכא, דאמר להו שכרכם על בעל הבית. ולחזי פועלים היכי מיתגרי! - לא צריכא, דאיכא דמגר בארבעה ואיכא דמתגר בתלתא. דאמרו ליה: אי לאו דאמרת לן בארבעה - טרחינן ומתגרינן בארבעה. איבעית אימא: הכא בבעל הבית עסקינן, דאמרו ליה: אי לאו דאמרת לן בארבעה - הוה זילא בן מילתא לאתגורי. איבעית אימא: לעולם בפועלים עסקינן, דאמרי ליה: כיון דאמרת לן בארבעה - טרחינן ועבדינן לך עבידתא שפירתא. - ולחזי עבידתייהו! - בריפקא. - ריפקא נמי מידע ידע! - דמלי מיא, ולא ידיע. איבעית אימא: לעולם דאמר ליה בעל הבית בארבעה, ואזל איהו אמר להו בתלתא. ודקאמרת סבור וקביל - דאמרי ליה: לית לך +משלי ג'+ אל תמנע טוב מבעליו?

### 9. תלמוד בבלי מסכת בבא מציעא דף פג עמוד א

רבה בר בר חנן תברו ליה הנהו שקולאי חביתא דחמרא. שקל לגלימיהו, אתו אמרו לרב. אמר ליה: הב להו גלימיהו. - אמר ליה: דינא הכי? - אמר ליה: אין, +משלי ב'+ למען תלך בדרך טובים. יהיב להו גלימיהו. אמרו ליה: עניי אנן, וטרחינן כולה יומא, וכפינן, ולית לן מידי. אמר ליה: זיל הב אגרייהו. - אמר ליה: דינא הכי? - אמר ליה: אין, +משלי ב'+ וארחות צדיקים תשמר.

1. **Leviticus 19:13** - Do not unjustly withhold that which is due your neighbor; do not let a worker's wages remain with you overnight until morning.

2. **Deuteronomy 24:14-15** - Do not unjustly withhold that which is due to your poor or destitute hired hand, whether he is one of your brethren or a proselyte living in a settlement in your land. You must give him his wage on the day it is due, not letting the sun set with him waiting for it, since his life depends on it, and [if you do this] he will not cry out to G-d against you and you will not have sinned.

3. **Talmud Bava Metzia 75b-76a**

Rav Nachman and Rav Chisda both said: "One who picks up a lost object in order to acquire it for someone else - his friend has not acquired it. 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.

Rava challenged Rav Nachman: "The findings of a worker - he keeps them 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!

Rav Nachman replied: "Workers are different, because their hands are considered the employer's hands".

But Rav said "A worker can back out of his contract even in midday!

Rav Nachman replied: "So long as he hasn't backed out, his hand is an extension of the owner's.

When he reneges, another factor comes into play - "For to Me are the Children of Israel *avadim*, they are my *avadim*" (Leviticus 25:55) - they are My *avadim*, not *avadim* of *avadim*.

4. **Leviticus 25:43**

"You shall not rule over him (a Jewish *eved*) oppressively"

5. **Sifra (*halakhic midrash*) to Parashat Behar**

"Don't tell him to warm drinks if you have no need, or cool drinks if you have no need, or to hoe underneath a grapevine until you come. Should you say that you are in fact doing this to satisfy your needs, the matter is given over to your conscience as the end of the verse says "and you shall fear your G-d" - all matters which are given over to conscience have written regarding them "and you shall fear your G-d".

6. **Leviticus 25:46**

"And your brothers the Children of Israel, one man to his brother, you shall not rule over oppressively"

7. **Sifra to Parashat Behar**

Him you cannot rule over oppressively, but you may rule over a free person oppressively

## 8. Talmud Bava Metzia 75b-76a

Mishnah: One who hired workers, and they tricked one another - they have a valid complaint against one another, but no cause of legal action.

Gemara: It doesn't say that one backed out on the other, but rather that they tricked one another, so it must be discussing a case where the workers tricked one another. What would the case be?

Suppose the employer said to him: "Go hire me workers", and he went and tricked them. What would the case be?

If the employer told him that he would pay 4, and then he went and told the workers 3, why is there valid cause for complaint? They agreed to work for that price!

If the employer told him 3, and he went and told them 4, what would the case be?

If he said to them that he was responsible for their salaries, then he should pay them from his own pocket (and if he doesn't there is cause for legal action and not just for complaint), as we were taught: "If one hires workers for his own field, and then directs them instead to a neighbor's field, he pays them in full from his own pocket, and then demands reimbursement from the owner of the field for whatever benefit accrued to him."

So it must be a case in which he told them that the employer was responsible for their salaries.

So let's see how much workers get paid! (If they get paid 3, they have no grounds for complaint, and if 4, and if they get paid 4, the owner should pay them!)

We're talking about a case in which workers sometimes get paid 3 and sometimes 4, so they can tell him that had he not tricked them they would have gone to the extra effort of finding an employer who would really pay 4.

Alternatively, we're dealing here with workers who are also landowners, and thus he can argue that had he not been offered four it would have been beneath his dignity to hire himself out.

Alternatively, we're dealing with ordinary workers, but they can claim that because of the promise of a wage of four they worked harder and produced a better product.

So let's see how good their work is?

They were working in a swamp.

But you can tell the quality of their work even in a swamp?

The swamp is now flooded.

Alternatively, we are actually dealing with a case in which the owner said 4 and the middleman said 3, and as to your objection that since they agreed to the price they have no grounds for complaint, don't you believe in the verse (Proverbs 3:27) "Do not withhold good from its owner"?

## 9. Talmud Bava Metzia 83a

Some porters broke a barrel of wine they were carrying for Rabbah bar Bar Channan.

He took their garments. They came and reported this to Rav.

Rav said to him: "Give them their garments".

He asked: "Is that the law?"

Rav replied: "Yes, in accordance with Proverbs 2:20: "so that you will go in the ways of the good".

He gave them their garments.

They said to him: "We are poor, and we have worked the entire day. and we're exhausted, and we have nothing to show for it".

Rav said to him: "Go, give them their wages".

He said to him: "Is that the law"?

He replied: Yes, in accordance with Proverbs 2:20 "and you will keep to the paths of the righteous".