# What Do We Do When the Law Permits Something Immoral?

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## A. The Law (and Beyond?)

**משנה תורה הלכות עבדים ט:ח**

מותר לעבוד בעבד כנעני בפרך. ואף על פי שהדין כך, מדת חסידות ודרכי החכמה שיהיה אדם רחמן ורודף צדק, ולא יכביד עולו על עבדו, ולא יצר לו, ויאכילו וישקהו מכל מאכלו ומכל משקהו: חכמים הראשונים היו נותנין לעבד מכל תבשיל ותבשיל שהיו אוכלין, ומקדימין מזון הבהמות והעבדים על סעודת עצמן. הרי הוא אומר "כעיני עבדים אל יד אדוניהם, כעיני שפחה אל יד גברתה" (תהלים קכג:ב): וכן לא יבזהו לא ביד ולא בדברים, לעבדות מסרן הכתוב, לא לבושה. ולא ירבה עליו צעקה וכעס, אלא ידבר עמו בנחת וישמע טענותיו, וכן מפורש בדרכי איוב הטובים שהשתבח בהן "אם אמאס משפט עבדי ואמתי בריבם עמדי וכו' הלא בבטן עושני עשהו ויכוננו ברחם אחד" (איוב לא:יג-טו): ואין האכזריות והעזות מצויה אלא בגויים הערלים, אבל זרעו של אברהם אבינו, והם ישראל שהשפיע הקדוש ברוך הוא להם טובת התורה וציום בחוקים ומשפטים צדיקים, רחמנין הם על הכל. וכן במידותיו של הקדוש ברוך הוא שציונו להידמות בהן הוא אומר "ורחמיו על כל מעשיו" (תהלים קמה:ט). וכל המרחם מרחמין עליו, שנאמר "ונתן לך רחמים ורחמך והרבך" (דברים יג:יח):

**Mishneh Torah, Hilkhot Avadim 9:8**

It is permitted to work a Canaanite slave with breaking labor. And even though this is the law, the pious approach and the ways of wisdom [indicate] that a person should be merciful and chase righteousness and he should not make the burden of his slave heavy and he shouldn't cause him distress, and he should feed him and give him to drink of any food or drink. The early sages would give the slave of any dish that they would eat, and they would take care of the feeding of the animals and the slaves before their own meals. As it says, "Like the eyes of a slave to the hand of their master, and the eyes of a maidservant are to her mistress" (Psalm 123:2), so he should not scorn him with his hand or with his words. The verse submitted them to service, not to shame. And he should not yell or get excessively angry at him, rather he should speak with him calmly and listen to his claims. And it is explained among the good

ways of Job about which he praises himself, “If I have denied justice to any of my servants, whether male or female, when they had a grievance against me… Did not he who made me in the womb make them? Did not the same one form us both within our mothers?” (Job 31:13-15). And cruelty and brazenness are only found among the non-Jews who worship idols, but the progeny of Avraham our Father, that is Israel, whom God has bestowed the Good of the Torah on them and commanded them with righteous and merciful laws and statutes on everything. And so God commanded us to imitate His ways. So it says, “and his mercy is on all of his creations” (Psalm 145:9) and all who have mercy receive mercy, as it says “and He will give you mercy, and He will have mercy on you and increase you” (Deuteronomy 13:18).

## The Four Verses:

**1. תהלים קכג:ב**

הִנֵּ֨ה כְעֵינֵ֤י עֲבָדִ֙ים אֶל־יַ֤ד אֲדוֹנֵיהֶ֗ם כְּעֵינֵ֣י שִׁפְחָה֮ אֶל־יַ֤ד גְּבִרְתָּ֣הּ כֵּ֣ן עֵינֵ֑ינוּ אֶל־יְקֹוָ֣ק אֱלֹקֵ֗ינוּ עַ֜ד שֶׁיְּחָנֵּֽנוּ׃

**1. Psalm 123:2**

As the eyes of slaves follow their master’s hand, as the eyes of a slave-girl follow the hand of her mistress, so our eyes are toward the LORD our God, awaiting His favor.

**2. איוב לא:יג, טו**

אִם־אֶמְאַ֗ס מִשְׁפַּ֣ט עַ֭בְדִּי וַאֲמָתִ֑י בְּרִבָ֗ם עִמָּדִֽי׃…הֲלֹא־בַ֭בֶּטֶן עֹשֵׂ֣נִי עָשָׂ֑הוּ וַ֝יְכֻנֶ֗נּוּ בָּרֶ֥חֶם אֶחָֽד׃

**2. Job 31:13, 15**

Did I ever brush aside the case of my servants, man or maid, when they made a complaint against me?… Did not He who made me in my mother’s belly make him? Did not One form us both in the womb?

**3. דברים ד:ח**

וּמִי֙ גּ֣וֹי גָּד֔וֹל אֲשֶׁר־ל֥וֹ חֻקִּ֖ים וּמִשְׁפָּטִ֑ים צַדִּיקִ֖ם כְּכֹל֙ הַתּוֹרָ֣ה הַזֹּ֔את אֲשֶׁ֧ר אָנֹכִ֛י נֹתֵ֥ן לִפְנֵיכֶ֖ם הַיּֽוֹם׃

**3. Deuteronomy 4:8**

Or what great nation has laws and rules as perfect as all this Teaching that I set before you this day?

**4. תהלים קמה:ט**
טוֹב־יְקֹוָק לַכֹּל וְרַחֲמָיו עַל־כָּל־מַעֲשָׂיו׃

**4. Psalm 145:9**
The LORD is good to all, and His mercy is upon all His works.

**(The Fifth verse:)**

**5. דברים יג:ח**
וְנָתַן לְךָ רַחֲמִים וְרִחַמְךָ וְהִרְבֶּךָ כַּאֲשֶׁר נִשְׁבַּע לַאֲבֹתֶיךָ׃

**5. Devarim 13:8**
…and in His compassion increase you as He promised your fathers on oath.

**בבלי שבת קנא:**
תַּנְיָא, רַבִּי גַּמְלִיאֵל בְּרַבִּי אוֹמֵר: ״וְנָתַן לְךָ רַחֲמִים וְרִחַמְךָ וְהִרְבֶּךָ״, כָּל הַמְרַחֵם עַל הַבְּרִיּוֹת — מְרַחֲמִין עָלָיו מִן הַשָּׁמַיִם, וְכֹל שֶׁאֵינוֹ מְרַחֵם עַל הַבְּרִיּוֹת — אֵין מְרַחֲמִין עָלָיו מִן הַשָּׁמַיִם.

**Bavli Shabbat 151b**
It was taught that Rabbi Gamliel, son of Rabbi, says: “And He will show you mercy and have compassion on you and multiply you” (Deuteronomy 13:18)— anyone who has compassion for the creatures will receive compassion from Heaven, and anyone who does not have compassion for the creatures will not receive compassion from Heaven.

**רש"י שם**
**ונתן לך רחמים**. שתרחם על הבריות.

**Rashi, ad loc.**
**And He will show you mercy.** That you may show mercy upon the creatures.

## B. What is *Avodat Parekh*?

**משנה תורה הלכות עבדים א:ו**
כָּל עֶבֶד עִבְרִי אָסוּר לַעֲבֹד בּוֹ בְּפֶרֶךְ. וְאֵיזוֹ הִיא עֲבוֹדַת פֶּרֶךְ זוֹ עֲבוֹדָה שֶׁאֵין לָהּ קְצָבָה וַעֲבוֹדָה שֶׁאֵינוֹ צָרִיךְ לָהּ אֶלָּא תְּהֶיה מַחְשַׁבְתּוֹ לְהַעֲבִידוֹ בִּלְבַד שֶׁלֹּא יִבָּטֵל.

**Mishneh Torah, Hilkhot Avadim 1:6**
It is prohibited to work a Hebrew slave with breaking labor. What constitutes breaking labor? It is work that has no limitations and work that one does not need but rather its intent is merely to work [the slave] so that he is not sit idle.

## C. Hilkhot Avadim 9:8: Law and/or Beyond? Two Academic Interpretations

**Isadore Twersky, *Introduction to the Code of Maimonides* (Mishneh Torah) (1982)**
Inasmuch as the mercy shown in this case is supererogatory rather than mandatory– **it is avowedly *not* legislated**– why refer to the laws of the Torah? The mention of 'statutes and judgments' would seem to be gratuitous, inasmuch as they do not prescribe the 'way of wisdom' and piety being recommended? The clear inference, however, is that all the laws are a springboard for the highest morality and perfection which emanate slowly and steadily from them. Just as one embraces reality in order to transcend it, one adheres to the law in order that it may enhance one's perception of the good and the true and induce behavior which transcends the letter of the law. In short, law alone, in a formal sense, is not the exclusive criterion or ideal religious behavior, either positive or negative. It does not exhaust religious-moral requirements. There is rather a continuum from clearly prescribed legislation to open-ended supererogatory performance, for the goal of the Torah is the maximum sanctification of life (427-428).

**Menachem Kellner and David Gillis, *Maimonides the Universalist: The Ethical Horizons of the Mishneh Torah* (2020)**
In asserting that "the mercy shown in this case" is "avowedly *not* legislated," Twersky presumably alludes to the phrase "though such is the rule," taking it to mean that what follows is not a legal rule. Our approach is that there are two rules, and they conflict. If we

assume “wisdom” and “piety” to have the specific meanings that they have in “Laws of Moral Qualities,” then they actually are prescribed by the “statutes and judgments,” the mention of which is not at all gratuitous. “The quality of piety” may perhaps only be recommended, but “the way of wisdom” is absolutely mandated…

Through the allusion to these two stages [wisdom and piety] in the development of Jewish ideology and law, Maimonides builds toward explicit mention of the commandment of *imitatio dei*, and provides further indication that he regards mercy towards a non-Jewish slave as *din* and not as *lifnim mishurat hadin*. Or to put it another way, the laws are not “a springboard for the highest morality and perfection”; the highest morality and perfection are legislated. A reading of the halakha as based upon conflict within the laws of the Torah, and a resolution of the conflict through a universal principle overriding a particular law, thus avoids Twersky’s difficulty, and is smoother reading than a reading based upon *lifnim mishurat hadin* (253).

## D. Why Would the Law Allow Such Behavior?

**R. Yehudah Amital, “The Significance of Rav Kook’s Thought for Our Generation” (1991)**
[Rav Kook] maintains that there is a special purpose in the noninclusion of many duties in the mandatory Halakha: There is a special purpose in having these things done out of a free, inner compulsion as a form of free-will offering and the love of kindness… In his view, the ideal is to keep the Torah as the patriarchs kept it, that is, out of a free, inner cognitive awareness, and not because of a heavenly command… If all the moral duties were to be turned into mandatory halakha, it would spoil the mission of Knesset Yisrael to be a light to the nations. The very fact that the people of Israel, by the Torah’s guidance, attained to moral paths of life—out of an inner and free cognitive awareness will cause many nations to marvel and will move them to go up to the mountain of the Lord… Moral duties that we are accustomed to define as a way of piety (*hasidut*), and beyond the requirement of the Law, are thus the basis of Torah…
The conscience part is ever so much greater than the halachic part.