



## The Indentured Servant: Did Maimonides Accept the *Sifrei*'s Ruling? By rabbi David Silverberg

The Torah devotes a section in Parashat Re'ei to discussing the laws relevant to the *eved ivri*, the indentured servant whose master must release him after six years of service. The reason, as the Torah explains, relates to *Benei Yisrael*'s experience in Egypt, where they suffered the brutality and humiliation of slavery: "You shall remember that you were a slave in the land of Egypt, and the Lord your God redeemed you; it is for this reason that I command you with regard to this matter today" (15:15). The Torah then proceeds to offer a servant the opportunity to remain in his master's service if he so desires. A servant who chooses not to be released after six years has his ear pierced by the master – a ceremony called "*retzi'a*" – and thereby becomes indentured until the jubilee year.

The *Sifrei* takes note of the juxtaposition between the word "*hayom*" ("today"), which appears at the conclusion of the aforementioned verse, and the subject of *retzi'a* which follows. On the basis of this association, the *Sifrei* deduces that *retzi'a* must take place specifically by day, and not by night. The word "*hayom*," which alludes to daytime and appears just before the Torah's discussion of *retzi'a*, suggests that this ritual is valid only if it is performed during the daytime hours.

Several writers observed that Maimonides makes no mention of this provision in his presentation of the laws of *eved ivri* in the Hilkhot Avadim section of *Mishneh Torah*. While it is true that this *halakha* does not appear anywhere in the Talmud, we find no indication in the Talmud that it is disputed. The question thus arises as to why Maimonides chose not to codify this requirement that *retzi'a* be performed specifically by day. Netziv (Rabbi Naftali Tzvi Yehuda Berlin of Volozhin, 1817-1893), in his commentary to the *Sifrei*, leaves this question unanswered.

Malbim (Rabbi Meir Leibush Weiser, 1809-1879) answers by proposing an entirely different reading of this passage in the *Sifrei*. According to his reading, the *Sifrei* meant that the *eved ivri* is given the option of *retzi'a* only if he expresses his desire to remain a servant the day his initial term ends. If he does not make this declaration until the following evening, once he has already been granted his release, he cannot reenter his master's service through *retzi'a*. Maimonides indeed codifies this *halakha* in the third chapter of Hilkhot Avadim (*halakha* 10). According to Malbim, then, Maimonides does, in fact, mention the law established by the *Sifrei*, which has nothing to do with the question of whether *retzi'a* must take place during the day.

Rabbi Yosef Karo (Spain-Israel, 1488-1575), in his *Kesef Mishneh* commentary to *Mishneh Torah* (Hilkhot Avadim 3:10), accepts the straightforward reading of the *Sifrei*, and claims that Maimonides actually alludes to this provision. As mentioned, Maimonides codifies the requirement that the servant express his desire to undergo *retzi'a* before completing his six years of service. He writes that the servant must make his declaration when at least a coin's worth of service remains at the end of the six years.

Maimonides emphasizes that this small amount of time must remain “in the day.” The *Kesef Mishneh* proposes that this emphasis is meant as an allusion to the fact that the *retzi’a* must be performed specifically by day, as the *Sifrei* establishes.

However, the *Kesef Mishneh’s* reading seems very difficult to accept, as Maimonides makes no mention of *retzi’a* at all in this passage. His discussion relates only to when the servant must announce his desire to remain, and not to the *retzi’a* ritual.

The *Toledot Adam* commentary to the *Sifrei* suggests that Maimonides did not codify this provision because he found a Talmudic source implying that *Halakha* does not follow the *Sifrei* in this regard. The Mishna in Masekhet Megila (20) lists numerous rituals which must be performed specifically by day, and it does not include *retzi’a* in this list. Maimonides perhaps understood from the Mishna’s omission that it did not subscribe to the *Sifrei’s* inference from the verse that *retzi’a* must be performed by day. He therefore concluded that *retzi’a* is valid even if it takes place during the nighttime hours.

Rabbi Meir Simcha Ha-kohen of Dvinsk (1843-1926), in his *Meshekh Chokhma*, suggests a much different approach to explain Maimonides’ omission of this *halakha*. The *Meshekh Chokhma* draws our attention to a debate recorded in the Talmud (Kiddushin 14b) as to whether or not the *retzi’a* option is available in all situations of *eved ivri*. According to one view, *retzi’a* applies only to servants who were sold into servitude by the courts due to their inability to repay stolen funds. If a person voluntarily sold himself as an *eved ivri*, then, according to this view, he leaves after six years without the option of remaining through the procedure of *retzi’a*. This is the view accepted by Maimonides (Hilkhhot Avadim 3:12).

This debate, the *Meshekh Chokhma* comments, will affect the nature of the *retzi’a* ritual. The *Mekhilta* (to Shemot 21:6) comments that if a man was sold by the courts as an *eved ivri* and then chooses to remain in service, *retzi’a* is performed under the auspices of the court. However, according to the view that even a servant who had sold himself has the option of *retzi’a*, in such a case the master performs *retzi’a* upon the servant privately. It thus emerges that according to Maimonides’ view, that *retzi’a* is performed only on servants who had been sold by the court, this ritual is always done under the formal auspices of the court. As such, *retzi’a* is bound by the guidelines that apply to court proceedings. The Talmud, in Masekhet Sanhedrin (32b), establishes that court functions are held specifically during the day, and not by night. Accordingly, the *Meshekh Chokhma* explains, there was no need for Maimonides to make explicit mention of the *Sifrei’s* provision, requiring that *retzi’a* be performed specifically by day. Since, as we saw, Maimonides views *retzi’a* as a court function, it must naturally follow all the standard guidelines that apply to court proceedings, including the restriction that it may not be performed during the nighttime hours. He therefore did not make mention of this provision in Hilkhhot Avadim, as this provision is simply an application of a general rule that applies to all court functions.

The *Sifrei*, apparently, followed the view that *retzi’a* could be performed even for an *eved ivri* who had sold himself into service, in which case *retzi’a* is a private matter, which is not conducted under the auspices of the *Bet Din*. For this reason, the *Sifrei* was compelled to infer the daytime provision through textual inference, since *retzi’a* is not always a court-administered procedure.