

**THE FOLLOWING** is a letter written by Rabbi Isaac bar Sheshet Perfet (1326–1408), a communal legal authority in 14th-century Christian Spain, referred to in shorthand as the Rivash, an acronym of his initials. The Rivash lived in a time of slowly escalating anti-Jewish sentiment, which culminated in the riots of 1391 and the forced expulsion of over 200,000 Jews, including himself.

The Rivash may have begun his adult life as a merchant. He settled in Barcelona, where he served as a Jewish civil judge for several years. His tenure was dramatically cut short when local Jewish informers denounced him and a handful of other prominent rabbis to the city government. The rabbis spent six months in jail, only to be found innocent of all charges. Shortly afterwards, the Rivash left Barcelona and accepted a post in Saragossa, where this particular letter was written. In 1391, he fled Spain (some scholars hold that for a brief time he converted to Christianity under duress), ultimately landing in Algiers, where he spent the remainder of his life rebuilding the shattered Jewish community.

The Rivash authored over 500 letters to Jewish communities around Spain and North Africa. These letters, known as *teshuvot* or *responsa*, are just that—responses to specific civil and ritual questions faced by self-governing Jewish communities (known as *aljamas*). As historical documents, *responsa* are invaluable, though often neglected; as far as I can tell, next to none of the Rivash's letters have been translated into English.

This study guide focuses on the excerpt of the Rivash's letter discussed in *Jewish Currents*'s Chevruta column; a more complete letter can be found at the link listed in the "Further Reading" section, below. Along with my translation, I've provided running commentary in the form of footnotes. Some clarify basic terminology or prompt further discussion; others are intended for scholars of Jewish law interested in further research on the topic.

### Teshuvot Ha'Rivash #484

Huesca.<sup>1</sup> To Rabbi Isaac Alitansi, fearer of God.<sup>2</sup>

*Question:* Reuven<sup>3</sup> borrowed from Shimon . . . under the law of *alfarda*.<sup>4</sup> The government of Aragon enforced this law, [which said that] if one didn't have any available assets to pay with, they'd get thrown into prison. Now, Shimon the lender demanded his money from Reuven, and Reuven didn't have it. [Shimon] asked [the court] to throw [Reuven] into prison because of the debt. But [Reuven] claimed that physically seizing him would be illegal, since nowhere in Torah law do we find a case of a Jewish person getting physically forced into bondage [*shibud*]<sup>5</sup>. So the judge asked me who the law goes with.

אושקה. לרבי יצחק אליטנסי י"א

שאלה: ראובן שלוח משמעון ונתחייב לו . . . לחק אלפארד"א. וחק זה הוא נהוג במלכות ארגון שאם אין לו מטלטלין בני חורין שהוא נתפש בגופו. ועתה שמעון המלוה תבע חובו מראובן הלוח ונמצא

1 City in the Kingdom of Aragon, modern-day Northern Spain.

2 Local judge of the self-governing Jewish government of Huesca, who several times consulted the Rivash for legal advice.

3 Reuven and Shimon are generic rabbinic names similar to John and Jane Doe. With minimal context, it's hard to say whether we're talking about an exchange between peers or professional moneylending.

4 The Arabic word "alfarda" refers to a tax leveled by the state against minority groups—at this time Jews and Muslims.

5 Literally "oppression" or "subjugation"—a term frequently used to describe the Jews' slavery in Egypt.

שאינ לו. בקש שיהיה הלואה נתפש בגופו כפי החיוב  
שנתחייב לו. והלואה טוען שאינו מן הדין שיהיה  
נתפש בגופו. כי לא מצינו זה בדין תורה שיהיה  
אדם מישראל נתפש בגופו על שום שעבוד. ושאלת  
הדין עם מי הדין

The law goes with Reuven the borrower. No one can conditionally agree to be physically seized, for others to physically hurt him, or for the court to coerce him. [One proof is that] the Talmud says about a wage worker: "He can walk off the job even in the middle of the day."<sup>6</sup>

So it goes without saying that a condition that one be locked up in a prison,<sup>7</sup> [what the Bible calls] "a dungeon of those who sit in darkness,"<sup>8</sup> has no legal force. [Another proof]: Even when the court [impounds] a borrower's possessions,<sup>9</sup> [the Talmud] tells us: "We make arrangements for him."<sup>10</sup> [ . . . ] We give him food for a month, clothes for a year, a bed, a mattress,<sup>11</sup>—and his shoes, and his *tefillin*.<sup>12</sup> And if he's an artisan, we give him two of each and every tool of his trade, even if all of his property's been mortgaged [ . . . ].

[Furthermore,] the Torah says, "A handmill or an upper millstone can't be taken in pawn, for that would be taking someone's life in pawn."<sup>13</sup> [Given all this,] how could [we possibly allow] anyone to pawn out their very body, the body they'll go out with in the marketplace and the streets in search of a living!

And Shimon the lender's claim that the law of the kingdom is binding<sup>14</sup> has no weight whatsoever. It's usually neither the law of the kingdom nor a law at all

that a person should be physically seized for the sake of a debt. Only the *alfarda* has this rule. So if anyone conditionally agrees to go into debt for a loan based on this law, our Torah rules that this condition has no legal force.

הדין עם ראובן הלואה שאין אדם יכול לשעבד עצמו ולהתנות להיות נתפש בגופו [ . . . ] [או] שיצערורו בגופו ומפני זה יכפוהו ב"ד בצער ההוא . . . ועוד דאפילו פועל קי"ל (בב"ק קט"ז:) שיכול לחזור בו אפי' בחצי היום [ . . . ] אין צ"ל שלא יועיל תנאי שיהיה במסגר אסור ובבית כלא יושבי חשך. ואפי' בגוביינא שעושין ב"ד מנכסיו תניא בבריי' בב"מ פ' המקבל (ק"ג:) . . . מסדרין בבעל חוב, והוא שנותנין לו מזון שלשים יום וכסות י"ב חדש ומטה ומצע וסנדליו ותפליו. ואם הוא אומן נותנין לו שני כלי אומנות מכל מין ומין, אע"פ ששעבד כל נכסיו . . . וכן . . . אמרה תורה לא יחבול רחים ורכב כי נפש הוא חובל. ואיך ימשכנו בגופו שצריך לבקש פרנסתו בשוקים וברחובות. ומה שטען שמעון המלוה בזה דדינא דמלכותא דינא, אינו ענין לזה כלל. שאין דינא דמלכותא ואף לא דינא דמלכא שיהיה אדם נתפש בעד הלואה אלא באלפרד"א לבד הוא המנהג והדין. ואם זה התנה להתחייב בהלואתו כפי החק ההוא מדין תורתנו אין תנאי זה מועיל

The truth is that in our city, the judges [order] borrowers thrown in prison when they're in debt, [in line] with a community decree. (The community also

6 For example, if a worker is hired for eight hours, and walks off the job halfway through, they can't be legally prosecuted and have a right to compensation for the time they put in (Bava Metzia 10a). This is a core passage of Jewish labor law, especially for 20th-century debates around striking workers' rights.

7 Jewish prisons and Jewish sections of state prisons were common institutions in medieval Christian Spain, where Jewish communities held a significant degree of local political autonomy. Those consigned to prisons included debtors, murderers, thieves, adulterers, blasphemers, and public violators of ritual laws. Capital punishment was also widespread. See Abraham Hershtman's *Rabbi Isaac bar Sheshet and His Times*.

8 Isaiah 42:7: "I, God, in My grace, have summoned you, and I have grasped you by the hand. I created you, and appointed you; opening eyes deprived of light, rescuing prisoners from confinement, from the dungeon those who sit in darkness."

9 I.e. impounding his property.

10 Analogous to a bankruptcy/welfare safety net.

11 Bava Metzia 113b. Notice that the Rivash tacks on a few items at the end of the Talmud's list here.

12 Tefillin are ritual apparel for daily prayers, a costly leather set of boxes with handwritten scrolls inside. Note that the debtor's "bankruptcy package" includes not only physical possessions, but religious and social needs.

13 Deuteronomy 24:7.

14 This general legal principle laid out in the Talmud, *dina d'malkhuta dina*, states that the laws of the reigning non-Jewish government are treated as binding for Jews, unless they contradict Torah law.

made a [second] decree that a person could be thrown in prison for failure to pay not just debt, but any sort of monetary claim made against them,<sup>15</sup> or forced to give property as security against the claim.<sup>16</sup>

I tried to stop them [from enforcing] this decree, since it's against Torah law. But they said, "This is an economic decree against scoundrels, and it makes sure that borrowers still have access to loans."<sup>17</sup> So I left them to their practice.

However, one might say that the court could possibly pressure or imprison a borrower who's assumed to have assets and flees.<sup>18</sup>

והאמת כי בעירנו זאת נוהגין הדיינין לתפוש הלוה בגופו כשנתחייב כן והוא מצד תקנת הקהל. ועוד תקנו הקהל שאף בלא חיוב יתפש כל אדם על כל תביעה שיתבעוהו, או יתן ערבים על התביעה הנקרא קיום ב"ד ואני רציתי למחות בידם על התקנה ההיא באשר היא שלא כדין תורתנו. ואמרו לי כי זו תקנת השוק מפני הרמאין. ושלא לנעול דלת בפני לוין והנחתים על מנהגם ומכל מקום, אפשר לומר: שאם הלוה מוחזק שיש לו מטלטלין, ומבריח; אפשר לבית דין לכופו ולאסרו

If the borrower is poor, though, and has nothing left to pay, it's very clearly forbidden to throw him in prison and afflict his spirit [ . . . ] [Consider: The Talmud teaches that] even walking by a borrower to shame him [into paying] is certainly forbidden. [It says:]

"How do we know that one who has lent a sum he knows [his fellow] can't repay is forbidden even to walk by him? Because [the Torah] says: 'Don't be like a creditor to [your fellow].'"<sup>19</sup>

And how can a court be required to help [the lender] with a task [that the Torah] forbids? All the more so, since the condition [to be thrown in prison] or anything like it has no legal force, as I've written above. I can't see any legal way to physically seize [a borrower] with nothing to repay with, unless<sup>20</sup> [the borrower] swears [in advance] to put himself in jail and not leave until his debt is paid. This would be like the existing practice of *ostage*, where a person swears to be physically seized as part of an oath.<sup>21</sup>

אבל אם הלוה עני ואין לו מה לשלם הדבר ברור שאסור לתפשו בגופו ולענות נפשו . . . שהרי אפילו לעבור לפניו כדי לביישו אסור. כדאמרין בפרק איזהו נשך (ע"ה:) מנין לנושה בחברו מנה ויודע בו שאין לו, שאסור לעבור לפניו, תלמוד לומר לא תהיה לו כנושה ואידך יהיו ב"ד נזקקין לסייעו בדבר האסור. וכ"ש שאין התנאי מועיל בכיוצא בזה, כמו שכתבתי למעלה. ואיני רואה שום צד אחר שיהיה מן הדין לתפסו בגופו כיון שאין לו מה לשלם— אלא אם כן נשבע לשים עצמו בבית הסהר ושלא לצאת משם עד יפרע חובו. וזהו כעין אושטגי"ש שבענין זה תופסין אותו בגופו כמו שנשבע כדי שיקיים שבועתו

<sup>15</sup> Such as property damage, negligence, or theft.

<sup>16</sup> This appears comparable to today's bail.

<sup>17</sup> Literally, "not to shut the door against borrowers." The argument is that forgiving debts or treating them lightly will discourage lenders from offering money, thus making life for borrowers more difficult. This is an age-old rabbinic principle first invoked in the first century CE by Hillel, who eliminated the sabbatical year's loan forgiveness program

<sup>18</sup> The Rivash taps into a commonsense moral intuition here that we ought to pay our debts if we can—a point contested at length by David Graeber in *Debt: The First 5,000 Years*.

<sup>19</sup> The Torah verse is Exodus 22:24, and the Talmud passage comes from Bava Metzia 75b. It is an unusual statement: Taken literally, it seems to suggest that taking action to collect a debt is legally forbidden. The key post-Talmudic legal authorities (Maimonides, the Tur, the Shulchan Aruch) all mention it at the start of their sections dealing with debt, only to proceed to explain at length exactly how debt should be collected.

<sup>20</sup> Once again, the Rivash approaches the threshold of a radical conclusion, only to immediately qualify it in the following sentence.

<sup>21</sup> The medieval Christian institution of *ostage* (in English, "hostageship") meant confining a borrower to his own house or a "house of hostages" if he failed to repay a loan. Before receiving the loan, the borrower would take an oath along these lines: "If the time for repayment comes and I don't have the money, I swear not to leave the city's hostage house until I've gathered it." On a formal level, this differs from the case under discussion in that the borrower makes an oath to God rather than to a lender, and that hostage houses often involved a shorter and less severe confinement than prisons. Nonetheless, it serves a similar function.

## Sample Discussion Questions

1. How is the initial question posed to the Rivash similar to and different from modern questions that arise around debt?
2. At several points, the Rivash questions the legitimacy of using state coercion to collect a debt. What would a state without economic coercion even look like? Is it a vision worth aspiring to?
3. To prove the illegitimacy of debt imprisonment, the Rivash draws parallels to two Talmudic cases: a worker who walks off the job and an insolvent borrower who receives a benefit package. How do you see debt, labor, and imprisonment as related, in the Rivash's time and today?
4. The Rivash attempts to institute a ban on debt imprisonment, only to meet with pushback from within his community. What do you make of the community's arguments around ensuring that the poor have access to loans? Do they feel compelling?
5. The Rivash finally rules that debt imprisonment is forbidden—except when a debtor takes an oath (a *shevuah*) in advance to voluntarily place themselves in prison if they can't repay the loan. How do you understand this ruling? Is it a sound public policy decision? A reluctant concession to his community? Both?
6. How would you describe the Rivash's tone here? How do you think he felt as he was writing this? Idealistic? Ambivalent? Frustrated?
7. How does the Rivash navigate the tension between the laws of the state (*alfarda* and *ostage*) and Jewish law? What can we make of that tension today, when the state can step in to close off independent sources of political authority?

## Further Reading

The full Hebrew text of the letter with translation can be found [here](https://bit.ly/3WMgDjX): [bit.ly/3WMgDjX](https://bit.ly/3WMgDjX)

On the Rivash: Rabbi Abraham Hershman, *Rabbi Isaac Ben Sheshet and His Times* (Jewish Theological Seminary, 1943): [bit.ly/3vM6WGh](https://bit.ly/3vM6WGh)

On medieval debt collection and *ostage*: Pinchas Roth, "[The Nasi, the Judge, and the Hostages: Loans and Oaths in Thirteen-Century Navonne](#)" (Dine Yisrael, 2019): [bit.ly/3QkRsTf](https://bit.ly/3QkRsTf)

On the legitimacy of state coercion: Chevel Nachalato 2:65

On modern Jewish legal limitations on debt enforcement: Be'er Moshe 8:26

On student debt in Jewish law: Shevet Ha'Levi 4:129.