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The Hebrew Slave and the Cities of Refuge:
Toward a Rabbinic Model of Prisons

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Referee: Professor Michael Chernick

I wish to extend my thanks to my teacher and advisor,
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Introduction

Though its name gives no indication, Congregation Beth Shalom of Tamal, California is not a typical synagogue. It does not hold regular Shabbat services; its membership consists of about fifty men, who meet Tuesday mornings in their own small building, a pink-stoned institutional structure. The synagogue is no more than one hundred yards from the edge of San Francisco bay, but there is no view of the water. It is blocked by a wall, some thirty feet high, and though it has a gate it is not easy to pass through. For Beth Shalom is the Jewish congregation of San Quentin prison, and its members are all inmates serving time for crimes committed in California.

From the fall of 1974 until the following summer I served as a Jewish chaplain at San Quentin prison, where I spent one or two mornings a week with Congregation Beth Shalom. San Quentin is a maximum security prison and its inmates have nearly all been convicted of serious crimes, ranging from armed robbery to kidnapping and murder; the Jewish inmates are no exception to this rule. During the year I spent working with these inmates six were released; a year later four were back in prison. Though I was somewhat surprised at this, it was not a cause for wonder among the prison population. Though the national rate of recidivism is about thirty-five per cent, the majority of inmates at San Quentin have served time before. They have come to expect most of those released eventually to

return, and they usually do.

The Department of Corrections of the State of California operates with a system known as indeterminate sentencing. Under this system all inmates in the state prisons are technically serving life terms. Though guidelines for release are established by the courts, the power to determine the exact date of release rests only with the Adult Authority, the state's parole board. The theory behind indeterminate sentencing rests on the belief that the length of time an individual inmate spends in prison must be determined by his rehabilitative progress. The court cannot know this at the time of sentencing, but the Adult Authority in its yearly review of the inmate's activities and counseling reports is expected to have this knowledge. Based on this information, when a man is sufficiently rehabilitated he is released.

When indeterminate sentencing was first instituted in the late 1950's it was viewed as a victory for prison reform. But now the same people who worked for its inception are fighting for its removal. They claim the Adult Authority's actions are arbitrary. A negative decision by the parole board can only be appealed to the same board; it cannot be taken to court. Rehabilitation, it is argued, is subjective. The psychological counselors' reports only attest to the fact that some inmates are sufficiently intelligent to learn how to play the game and give correct answers, but they

offer no real proof of rehabilitation.

There is more that one might offer, both by way of criticism and defense. It is only one example of how even people on the same side of the fence disagree on the necessary methods of achieving prison reform. The issues are not limited to the difficulty of measuring rehabilitation. They include the methods and programs of rehabilitation, the treatment of inmates and the very function of prisons themselves. If the goal of our penal institutions is punishment, they have all provided a measure of success, but if the intent is to reduce crime and return former convicts to a productive life in general society, then they have all in various degrees failed us.¹

A year at San Quentin has not made me an expert on prisons. But it has taught me enough to know that most experts are unsure of exactly what they want to achieve. There is considerable difficulty in formulating any single philosophy to guide our penal institutions, much less determining the policies and programs that need to be implemented. The problems and inequities of our prison system are abundantly clear to anyone who has served time in prison, and they are slowly becoming apparent to our public officials. In time it may even become an issue to engage the attention of the general public, and their concern may demand a complete reevaluation. Eventually, one may see a department of corrections that does just that, resulting

in prisons that rehabilitate criminals as well as punish them. It is doubtful, however, that the present members of Congregation Beth Shalom will be among them. For those currently incarcerated at San Quentin and most other prisons if rehabilitation occurs it will be in spite of the present penal system, not because of it.

Is there a Jewish view of prisons? This was a question I asked when I returned to New York and rabbinic school. Certainly, one can see in the maxims and ethical writings of rabbinic Judaism a concern for the dignity and life of man that has many applications. Yet, to apply this general, social picture to prisons could hardly constitute a legitimate Jewish view, for in such a situation it would not be the Rabbis but the interpreter who actually speaks of incarceration and rehabilitation. The alternative, of course, would be to examine the halachic material and let rabbinic criminal law be the basis for such a presentation. The difficulty, however, lies in the fact that prisons are a relatively new form of punishment, and they were not part of any rabbinic penal system.² Rabbinic injunctions generally mandated forms of punishment that a court could administer in a very brief span of time, ranging from fines and lashes to the death penalty. Punishment was clear and immediate; rehabilitation seems not to have been a major concern. Two areas, however, were suggested as being worthy of

further investigation--the homicide exiled to the city of refuge and the Hebrew slave sold by the court for thievery. Both are exceptions to the general type of punishment found in rabbinic injunctions, but in the laws dealing with the exile and the Hebrew slave it is possible to discern a rabbinic notion of incarceration and rehabilitation--in short, a Jewish view of prisons.

Biblical law established cities of refuge where those guilty of accidental homicide could find sanctuary. No description of them is found in the Bible, and one would assume that they were normal cities with the added quality of affording asylum. In later writings, however, they are seen somewhat differently. Under rabbinic law it is only one found guilty of negligent homicide that is banished to one of the cities, and residence there constitutes his punishment. Though it is doubtful that the cities of refuge functioned in rabbinic times, the literature offers a detailed description of where they were to be built and what they were to provide. Though the term 'exile' carries with it the image of banishment to the far reaches of the countryside the cities were to be established only in populous areas, and in that sense it was certainly not banishment but incarceration.

Biblical law also permitted one found guilty of thievery and unable to pay the requisite fines to be sold into slavery for six years. Rabbinic legislation dealing with such a

slave is extensive. It is concerned not only with seeing that his debt is paid and he is punished for his crime, but also insuring that such a crime will not be repeated in the future. Laws governing his work and treatment during the period of enslavement actually constitute a program of rehabilitation.

Though the rabbinic legislation was designed to deal with only two types of criminals, it is applicable to many others that are today imprisoned for their crimes. The following chapters will detail the specific rabbinic legislation regarding the exile and the Hebrew slave sold for his theft. From a thorough analysis of this material it is possible to construct the outline of a penal institution that incorporates the Rabbis' emphases and concerns.

The Cities of Refuge

Within the Biblical framework the cities of refuge were established to deal with a particular dilemma. Biblical society, knowing man to be created in the image of God, could not tolerate the murder of a human being. While monetary compensation could be accepted for the death of animals or destruction of property, the only adequate compensation for murder was the life of the murderer.¹ Therefore, Biblical law mandated that the murderer was to be turned over to the victim's next-of-kin, the blood avenger, to be put to death.² In such a way was the blood guilt of the victim avenged. Yet Biblical society also realized that there was an essential difference between one who willfully committed murder and one who did so accidentally. In both cases blood had been spilled, and in both cases the blood avenger had the right if not the obligation to avenge the death of his murdered relative. However, in the case of accidental murder the society did not believe itself obliged to turn the murderer over to the blood avenger. There still could be no adequate compensation for the death which took place, and Biblical law would not insist that the accidental murderer had an equal right to remain alive. But it would insist that he had a right to sanctuary from the blood avenger. The cities of refuge were established to provide such sanctuary.³

It is the intent of this thesis to see in the rabbinic understanding of the cities of refuge intimations

of a rabbinic notion of prison and imprisonment. Were these cities considered by the Rabbis to be no more than places of sanctuary such intent would be misplaced. However, by the time of the Babylonian exile the cities of refuge had ceased functioning, and they were never revived during the Second Commonwealth;⁴ they remain a part of rabbinic legal discussion, but with a function qualitatively different from that of Biblical times. Under Biblical law the cities' purpose was to provide refuge from the blood avenger; the circumstances under which the accidental murder took place were not an issue. But these circumstances are of major concern to the Rabbis, for it is their understanding that only a person guilty of negligent homicide is banished to the city of refuge. If the death were found to be accidental and without negligence, the accused murderer is freed and the blood avenger has no right to harm him, for under rabbinic law the cities of refuge exist only for those guilty of negligent homicide. Once this basic premise has been established--and it should become apparent further on in this chapter--it is not difficult to recognize punishment to be the fundamental purpose of the rabbinic notion of the cities of refuge. Considering that under current American legal statutes one found guilty of negligent homicide would be sent to prison, it is not so unusual to suggest that the Rabbis' description of these cities might be employed to derive a rabbinic model of prison. For

in reality that is what they were.

While the following pages will make mention of the Biblical injunctions regarding the cities of refuge, they are primarily concerned with demonstrating through the use of Mishnaic, Talmudic and other rabbinic writings that only one guilty of negligent homicide was banished to the city of refuge and presenting a rabbinic picture of the city of refuge. This description will later be used to suggest a model for contemporary prisons.

The Homicide

Biblical law assigns six cities to serve as cities of refuge, three east and three west of the Jordan river. One who is guilty of accidental murder is permitted to flee to one of these cities to escape death at the hand of the blood avenger. There are two Pentateuchal sections which define this type of homicide. In Numbers, Chapter 35:

The homicide who has killed a man by accident...
(Numbers 35:11)

If he attacks a man on the spur of the moment, not being his enemy, or hurls a missile at him not of set purpose, or if without looking he throws a stone capable of causing death and it hits a man, then if the man dies, provided he was not the man's enemy and was not harming him of set purpose.
(Numbers 35:22-23)⁵

And in Deuteronomy, Chapter 19:

This is the kind of homicide who may take sanctuary there and save his life: The man who strikes another without intent and with no previous enmity between them; for instance the man who goes into a wood with his mate to fell trees, and, when cutting a tree, he relaxes his grip on the axe, the head glances off the tree, hits the other man and kills him.
(Deuteronomy 19:4-5)⁶

The Biblical injunction defines the homicide who may flee to a city of refuge as one who, "has killed a man by accident," and, through several examples, demonstrates just how such an accident may occur. The Rabbis, however, have another concern, for they wish to distinguish between two types of accidental murder. It is their understanding that one entails banishment to a city of refuge and one

does not. Employing the phrase from Numbers 35:23, "and it hits a man," (literally, "and it falls upon him") the following general principle is formulated in Mishnah

Makkot:

In every case [where the mishap occurred] in the course of a descent, he must go into exile; but when not in the course of a descent, he need not flee into exile.⁷

Several examples of this general principle are also cited. These include the downward roll of a roof roller, the lowering of a cask and the downward descent of a ladder. In each case, if these downward motions result in the accidental death of one standing beneath the homicide is required to go into exile. If, however, such an accident occurs as a result of an upward motion, the homicide is not required to go into exile.

There does appear to be a logical reason for this distinction, although it is nowhere explicitly stated in the Mishnah. In cases where a downward motion is involved one might be expected to observe a certain amount of caution. Upon descending a ladder (or lowering a cask or roller) one would be remiss if one failed to survey the path of descent. This would not necessarily be the case, however, when one climbs a ladder or raises a cask. This distinction becomes more apparent in the closing section of this Mishnah. Deuteronomy 19:5, presented the example of one killed by an axe head that comes loose while chopping wood as a death

that would warrant the slayer to flee to a city of refuge. Though R. Judah Ha-Nasi takes issue with this, the Sages concur, but they proceed to suggest a situation where the chopper of wood need not flee:

If the iron slipped from its haft and killed a man, Rabbi says he need not escape into exile, but the Sages say that he must do so. If a piece of wood that was being chopped [flew up and killed a man], Rabbi says he must escape into exile, but the Sages say he need not do so.⁸

How does one understand the Rabbis' position in this matter?

It would seem that one who is chopping wood has the responsibility to maintain a certain control over his axe and see that his tools are kept in good condition. Surely, he would be negligent if he proceeded to chop a tree with a loose axe head. He does not have the power, however, to control the flying wood chips that result from his work, and it is his neighbor who would be expected to execute caution and stand out of their range.

Finally, in Mishnah Makkot 2:2, we have another example of the Rabbis distinguishing between two types of accidents. Having established the rule that one, who by throwing a stone into the public domain kills another, is required to flee into exile, the case of a similar action occurring in a private domain is taken up:

If he threw the stone into his own courtyard and killed another, if he that was injured had permission to enter, the other must escape into exile; but if he did not have permission, the other need not escape into exile.⁹

In both cases we are speaking of an accident; the only thing that would seem to distinguish them is the issue of negligence. Certainly one who knows there may be people in his courtyard is expected to take precautions before throwing a stone into it. This is the example the Rabbis offer of one who must flee to a city of refuge. When one also considers the previously mentioned examples, it should be apparent that not every accidental death warrants exile, but only those situations in which one is able to demonstrate that negligence was a contributing factor.

Where Mishnah Makkot 2:1, had established the general principle of downward motion to be the basis of determining whether one is banished to a city of refuge, such a principle is not taken literally in the Talmud. Rather, it is understood as an expression for determining negligence. Thus, in Talmud Makkot 7b, we are offered the case of a rung coming loose while a man is going up a ladder. One Tanna holds that he is liable and the other that he is exempt. This seemingly contradictory response is resolved in the following manner:

Is not the point at issue between them this: That one master considers it a downward movement and the other an upward movement? Not necessarily. It may be that all agree in considering it an upward movement, and yet it is not difficult to explain the discrepancy. ...Both versions refer to banishment. The first version refers to a case where the rung was worm eaten, while the second version to where it was not worm eaten. [Or I could say] that the latter version refers to a case where the rung was fixed tightly, while the former version refers to where it was not

fixed tightly.¹⁰

It is a death caused by the negligent use of a ladder with a loose or worm eaten rung that determines banishment; whether the man was descending or ascending is immaterial.

Similarly, there is the case in Talmud Makkot 8a, of one unintentionally causing death by throwing debris onto a rubbish heap:

If the public pass there often, he is guilty of negligence; and if the public does not pass there often, he is victim of mischance.¹¹

While there may be some debate in this Sugya as to exactly what conditions would constitute "mischance," there is no doubt that the penalty of banishment must be determined by finding negligence.

The Blood Avenger

There can be no question that Biblical society understood the purpose of the cities of refuge to be a place of sanctuary from the blood avenger:

The homicide may take sanctuary in any one of these cities, and his life shall be safe. Otherwise when the blood avenger pursued him in the heat of passion, he might overtake him if the distance were great, and take his life, although the homicide was not liable to the death penalty because there had been no previous enmity on his part.

(Deuteronomy 19:5-6)¹²

However, for the Rabbis the purpose of the cities of refuge was not simply to provide sanctuary from the blood avenger. For if it were, we would have difficulty reconciling that purpose with the following Mishnah:

A father goes into exile for the death of his son, and a son goes into exile for the death of his father.¹³

Surely, in situations where the victim is the homicide's father or son the issue cannot be escape from the blood avenger, who would be the murderer's own next-of-kin.¹⁴

The Rabbis understand that that person is required, nevertheless, to go into exile. Such a decision only makes sense when one recognizes that the purpose of the city of refuge was as much to punish one guilty of negligent homicide as it was to provide sanctuary from the blood avenger.

In time, there were even some who argued that the blood avenger had no right either inside or outside the cities to slay the homicide. According to these authorities,

had the blood avenger done so, he could have been punished for murder. In Talmud Makkot 12a:

Mar Zutra b. Tobiah citing Rab said: If a homicide who had gone beyond the bounds of the city was met and slain by the blood avenger, the latter is slain on that account.¹⁵

Thus, if Mar Zutra's citation is to be accepted, by the time of Rab it had already been argued that the blood avenger had no more right to kill the homicide than to kill an innocent man. If such were the case, then the only purpose served by the cities of refuge would have been to punish those found guilty of negligent homicide.

For the purpose of this thesis it is not necessary to maintain that punishment was the sole function of the cities of refuge. However, the fact that rabbinic legislation required proof of negligence before banishment was imposed, and also mandated exile for one who had no need to flee a blood avenger, suggests that punishment was certainly a major function of the cities.

A Rabbinic Description of the Cities of Refuge

Since the cities of refuge were not operational during the Second Commonwealth it would make no sense for the Rabbis to mandate, as did the Biblical injunctions, specific cities to serve as cities of refuge. However, they were concerned with the nature of the city's location, and this is reflected in the rabbinic halachah. The position stated in both the Talmud and the halachic midrashim is essentially the same; the cities are to be medium-sized boroughs, established in marketing districts with water readily available. These three points are to be found in Talmud Makkot and the Tosefta. In Talmud Makkot 10a:

These cities are to be made neither into small forts nor large walled cities, but medium-sized boroughs. They are not established except in places where there is water; if there is no water it is to be brought in. They are not established except in marketing districts.¹⁶

In Tosefta Makkot 3:8:

They are not built as large walled cities or as small forts but as medium-sized boroughs. They are not built except in a place where there is water; if there is no water it is to be brought in. ...They are not built except in a place where there is a market; if there is no market, one is to be established.¹⁷

Similar points are to be found in the following halachic midrashim. In Sifre Numbers:

"Cities." I might have thought even large cities. But Scripture says, "[Medium-sized] cities." I might have thought even villages. But scripture says, "[Medium-sized] cities." Thus we learn they must contain marketing places and the means for livelihood.¹⁸

In Midrash Tannaim:

"He shall flee to one of these cities and live."... What does Scripture mean by, "and live?" Do things for him that will enable him to live. Thus Scripture teaches that these boroughs are not to be established except in marketing districts and places with water.¹⁹

In Sifre Deuteronomy:

[Medium-sized] cities and not small forts. [Medium-sized] cities and not large cities. [Medium-sized] cities and not villages.²⁰

While the cities of refuge are envisioned as medium-sized boroughs, they are understood as being built in populous areas. Should the general population decrease, additional people are to be settled in their place. Should there be a decline in the population of the cities themselves, they are to be replaced by people from the various levels of society--members of the priestly class, Levites and Israelites. In Talmud Makkot 10a:

They are to be established only in populous districts. Should the population decrease, others are to be brought in. Should the residents of the cities decrease, Cohanim, Levites and Israelites are to be brought in.²¹

And in Tosefta:

They are not to be built except in populous districts. If the population decreases, others are to be brought in to take their place. Should the residents of the cities decrease, Cohanim, Levites and Israelites are to be brought in.²²

Thus, the rabbinic legislation is clear in its understanding that the cities, while not large developments, must be of sufficient size to permit its residents to live. The basic necessities, water and marketing facilities, must be present.

Though the homicide's movement is confined to the city boundries, by locating it within a larger, populous area he is permitted at least partial involvement with the activities of the world around him. The importance of this is emphasized by insisting that, should the population decrease, others are to be brought in.

Though the legislation presented above would seem to mandate all the requirements necessary for survival in the city of refuge, there are several sources which suggest further things to be done on behalf of the homicide. It is not enough that he simply be provided with a place to sleep, in Tosefta we are told,

Build him a house, that he may dwell there. As it is written, "that he may dwell there."²³

And, as can be seen from the following passages in the Talmud, the necessities of life included not only a house:

It is taught, a disciple who goes into banishment is joined in exile by his master.

R. Johanan said: A master who goes into banishment is joined in exile by his college.²⁴

Formal study and teaching, though perhaps unnecessary for mere physical survival, were clearly seen by the Rabbis to be an important part of life, and were not to be excluded from the cities of refuge.

In addition to specifying those items the cities of refuge must provide, the rabbinic legislation also contains a number of prohibitions. Unlike the regulations concerning the city's size and location, these prohibitions are not

repeated throughout the literature. One is able to draw some tentative conclusions about the underlying nature of what is prohibited, but only with reservations. They seem to be divided into two general categories, the first proscribing certain amenities that, though easily found in a normal city, might not be thought appropriate to cities designated as penal institutions. Among other things the following citation in Midrash Tannaim forbids luxurious houses or gardens:

They shall contain neither stone heaps, dung heaps nor luxurious houses, nor anything like them. It is said that the cities of refuge are to have neither inclines nor declines, orchards nor gardens. For Scripture says, "live," to teach us that there may only be markets necessary to sustain life.²⁵

And in Sifre Sutta, one finds the following similar prohibitions:

Within the cities of refuge you may not establish parks or gardens, stores or taverns, or luxurious houses.²⁶

Though it is easy to understand a prohibition against parks, gardens taverns and luxurious houses, it is not to be found in other sources dealing with the cities of refuge. It may be that the Rabbis were divided as to how limited the cities were to be, and it is possible that Midrash Tannaim and Sifre Sutta reflect a more stringent view.

While the Talmud and Tosefta also prohibit certain activities, they are much more narrowly defined, and they also offer reasons for the prohibitions. In the Tosefta:

They may not make oil presses or traps, according to R. Nehemiah. But the Sages permit. ...Neither rope nor glass may be manufactured in the cities, so that the blood avenger will not become accustomed to regular visits there.²⁷

And in Talmud Makkot:

There should be no traffic in arms or traps, according to R. Nehemiah. But the Sages permit. They agree, however, that traps may not be set there, and that ropes are not to be manufactured, so that the blood avenger will not become accustomed to regular visits there.²⁸

Though, as the two different versions of R. Nehemiah's statement point out, there may have been some confusion as to exactly what activities were forbidden, it is still possible to suggest a tentative theory that binds these prohibitions together. The Rabbis recognized a need for the city of refuge to be included in the commercial and economic life of the larger geographic area, for only in this fashion would its inhabitants be able to live and still remain within the confines of the city. However, they were also concerned that the city not become so large as to attract great numbers of outsiders, and so the above prohibitions may be understood as a means of preventing the city from becoming a commercial center. Factories for the manufacture of specialized products usually require a larger market than that available from the local populace. By limiting their establishment, the rabbinic legislation also limits the number of people that will need to visit the cities of refuge.

It is also important to note the types of products forbidden by the Rabbis--the manufacturing of arms, traps, rope and glass. The first two items clearly may be used to kill another person, while rope and glass could be fashioned into weapons with little difficulty. Whatever the exact cause of the murder which brought the homicide to the city of refuge in the first place, the rabbinic legislation is concerned with limiting the possibility of future deaths within the city. This can be best achieved by prohibiting implements of death. Both the Talmud and Tosefta passages indicate that such prohibitions are offered so that the blood avenger will not become accustomed to regular visits. Certainly, it is difficult for a man to confront the murderer of his relative, and the cities should not become such important commercial centers so as to require the blood avenger to travel there frequently. But Rashi suggests that the blood avenger may still be intent on killing the murderer of his relative, in spite of the legal consequences.²⁹ Therefore, while it is possible to check his possessions upon entering the city, it is also necessary to insure that he will be unable to obtain a weapon within the city itself.

Finally, it is possible that the prohibition against these specific items may be understood in a slightly different manner, one that would also explain the prohibition of inclines and declines mentioned above in Midrash Tannaim.

While the city of refuge was expected to provide all that was necessary for one to live, it still forced a man to remain within its confines for the rest of his life. For some that alone might have been enough to contemplate suicide. Weapons could not only be used against another but on oneself, and ropes could easily be employed to hang oneself. Buildings of any substantial height necessitated stairways, inclines and declines, and presented the possibility of a man jumping to his death. While it was impossible to totally prevent suicide, it was possible to make it difficult, and one might see these prohibitions as doing just that.

Release from the Cities of Refuge

While it is understood that no court or individual has the authority to release a homicide from the city of refuge, Biblical law recognizes one situation in which the man is permitted to leave, and that is upon the death of the high priest:

The community shall protect the homicide from the vengeance of the kinsman and take him back to the city of refuge where he had taken sanctuary. He must stay there till the death of the duly anointed high priest.³⁰

In both the Biblical passage and the Mishnaic references such an injunction seems similar to a general amnesty that might be declared at the coronation of a new monarch. It is here understood to be applicable only to those who were exiled during the term of the high priest who died.

Since in Biblical Israel the high priest embodied certain redemptive qualities that no other could possess, it was understood that his death could effect a level of atonement unattainable by an ordinary man. This notion is echoed in the following passage found in Sifre Numbers:

R. Meir says: A murderer shortens the life of a man, while the high priest lengthens the man's life.
Rabbi says: A murderer defiles the earth and causes the Divine Presence to withdraw, while the high priest causes the Divine Presence to dwell with man on earth. Is it not logical that he who defiles the earth should remain before he who causes the Divine Presence to dwell with man on earth?³¹

This unique power of the high priests seemed to be the cause of some motherly concern as reflected in Mishnah

Makkot 2:6:

Therefore did the mothers of the high priests provide for them [the exiles] food and clothing that they should not pray that their sons should die.³²

While the priests' mothers may have been involved in such activities their reason for doing so is a topic of discussion in the Talmud. It is difficult for the Rabbis to accept the notion that the prayers of the homicides could have any efficacy. In Talmud Makkot 11a, an alternative explanation is offered:

Said a venerable old scholar: I heard an explanation at one of the sessional lectures of Raba, that [the high priests were not without blame, as] they should have implored divine grace for [averting the sorrows of] their generation, which they failed to do.³³

Thus, it is here understood that the high priests had a sort of moral obligation to try to avert the evils which occurred during their time, and the action of the mothers is meant to offset any failure of their sons in meeting such obligations.

It is possible to see both in this passage and in the above Mishnaic passage an underlying concern of the Rabbis that the ruling authorities, represented by the high priests and even their mothers, continue to be aware of those banished to the cities of refuge. As leaders of society the priests must accept partial responsibility for the crimes of the homicides, and this responsibility does not end when the court passes sentence. The gifts of the mothers are symbolic of the concern for the exiled that those outside the cities of refuge are expected to have.

Summary

Though the cities of refuge were designed to serve as punishment for those guilty of negligent homicide the rabbinic legislation is clearly designed to insure that life within the cities comes as close as possible to approximating life in a normal society. While 'medium-sized' is hardly a precise term, the intent of such an injunction is to permit a level of activity and interaction unavailable in a small village. Though confined within the cities, by requiring that they be located in generally populous areas the inmates are afforded a certain amount of contact with the outside world that would not be possible in remote areas of the country. The importance of this is stressed in the rabbinic legislation by insisting that new people be settled in the area should a decline in the population occur. By mandating that all elements of society be included--Cohanim, Levites and Israelites--the Rabbis intend that both the cities and the outlying areas resemble the general world and not simply one segment of it.

The rabbinic proscriptions are intended to prevent the city from becoming a commercial center for the surrounding communities. But while the manufacturing of specialized products is prohibited, marketing places are specifically required. Marketing places must here be understood as small stores and workshops and so in this sense the

cities are expected to provide the necessities of life and give a measure of self-sufficiency. While luxurious items, parks and gardens are not allowed, the spartan quality of the cities is still intended to permit a certain normalcy and individuality in life. The resident is not consigned to a cell-block or barracks but is given a separate and private domicile. Thus, both the working facilities and the residences are designed to encourage a diversity and variety of life within the cities of refuge.

Finally, one might see in the rabbinic discussion of the high priest's relation to those confined to the cities a concern that the society not forget the exiles. The authorities' responsibilities are two-fold. The cities are established and the courts are required to insure that the guilty are removed from society and punished. Once this is accomplished, however, equal concern must be given to their life within the cities. Though incarcerated they remain human beings and as such they are entitled to humane treatment. The society is no less obligated to insure this than it is to convict the guilty.

The Hebrew Slave

The rabbinic legislation dealing with the Hebrew slave is concerned with a very particular type of crime and punishment. Rabbinic law recognizes the right of a court to sell a man into slavery for a period of six years if that man is found guilty of thievery and is too poor to make monetary restitution. Involuntary servitude is not a common form of punishment in rabbinic law; this is the only example to be found. Though it is the intention of this thesis to see in the material dealing with the Hebrew slave a rabbinic model of both criminal punishment and rehabilitation, it also recognizes the danger in making too sweeping a generalization based on only one specific source.

Nevertheless, the Hebrew slave is a particularly appropriate subject when speaking about crimes of a non-violent nature that are obviously influenced by social conditions. In this area it is possible to suggest that there is a fairly well-defined rabbinic view that includes--though the word is never explicitly stated--rehabilitation as well as punishment. This view is most clearly reflected in the legislation dealing with the Hebrew slave, and it is bolstered by the fact that the same legislation is held by differing schools of rabbinic thought.

In cases of theft both Biblical and rabbinic law are primarily concerned with seeing that either the stolen goods are returned or replaced. Additional fines serve as both a deterrent and a form of punishment. In the case of one who

is too poor to make restitution these same concerns are also operative. The rabbis, however, are cognizant of the fact that one who is in such a state of poverty faces additional difficulties. Six years of servitude might well repay the victim whose property was stolen as well as punish the thief himself, but it does not necessarily take notice of the social and economic conditions that may have prompted the theft in the first place. Therefore, much of the rabbinic legislation concentrates on the treatment of the Hebrew slave. Inherent in this concern is the recognition that six years of involuntary servitude can produce varying results. If the Hebrew slave is indeed only a slave, the end of his term may find him further alienated from society and economically no better off than when he committed his crime. However, if care is taken during these six years to see that the Hebrew slave is prepared to return to society and to support himself financially, one may see the terms of servitude as rehabilitating the thief as well as repaying the victim. It is the latter position which seems to be reflected in the rabbinic legislation.

A program of rehabilitation begins with the basic recognition that the criminal is still a human being, and as such is entitled to dignity and respect. Punishment need not be vindictive, and it is no service to society if the conditions of incarceration turn the criminal into an animal. In most cases the criminal is already at the margi-

nal end of society. In order for him to become a productive member of society it is necessary that he have both a sense of self-worth and the ability to support himself upon his release. This notion of rehabilitation can be found in the rabbinic legislation dealing with the Hebrew slave.

The following pages present the Biblical injunctions regarding the Hebrew slave and the rabbinic legislation that arises from those injunctions. An analysis of this material should make apparent the above assertions.

The Biblical Concept of the Hebrew Slave

There are three sections in the Pentateuch which make reference to the Hebrew slave and form the basis of a rabbinic understanding of the laws governing one who is sold into slavery for his theft. In Exodus, Chapters 21 and 22, one finds mentioned the requirements of restitution in cases of thievery. Included is the case of one who is too poor to make such restitution:

When a man steals an ox or a sheep and slaughters or sells it, he shall repay five beasts for the ox and four for the sheep. He shall pay in full; if he has no means he shall be sold to pay for the theft.

(Exodus 22:2-3)¹

While an Israelite may sell himself into slavery and be similarly designated, the laws regarding the Hebrew slave are understood to be equally applicable to one who has come to such a state by being forceably sold for his theft. It is this case of Hebrew slavery which is being examined here.

This same section in Exodus contains the following passage which begins to define the Hebrew slave's conditions of servitude:

When you buy a Hebrew slave, he shall be your slave for six years, but in the seventh year he shall go free and pay nothing. If he comes to you alone, he shall go away alone; but if he is married, his wife shall go away with him.

(Exodus 21:2-3)²

The Hebrew slave is thus understood in a manner qualitatively different from that of a Canaanite slave, the rabbinic term

for a normal slave. His length of servitude is clearly defined as six years after which time his freedom is automatic.

Unlike the Canaanite slave, he is not required to buy his freedom, and his master may make no claims on his wife once the period of servitude has ended.

This distinction is further delineated in the relevant passages in Leviticus which deal with the conditions of his servitude:

When your brother is reduced to poverty and is sold to you, you shall not use him to work for you as a slave. His status shall be that of a hired man or a stranger lodging with you.

(Leviticus 25:39-40)³

Because they are my slaves whom I brought out of Egypt; they shall not be sold as slaves are sold.

(Leviticus 25:42-43)⁴

But your fellow Israelites you shall not drive with ruthless severity.

(Leviticus 25:46)⁵

From these passages it becomes apparent that, while the text speaks of the Hebrew slave, it does not envision the conditions of slavery that one might normally associate with the word.

Rather, his conditions are likened to that of a "hired man," implying a relationship more closely equivalent to that of an employer to his employee than of a master to his slave.

Unlike a Canaanite slave the Hebrew slave may not be worked with great severity, and, based on the above passages, it even appears that the manner in which he was sold into slavery was understood as different from that of a Canaanite slave.

Finally, in Deuteronomy one finds an additional reference to the Hebrew slave which partially echoes what has already appeared in Exodus:

When a fellow Hebrew, man or woman, is sold to you as a slave, he shall serve you for six years and in the seventh year you shall set him free. But when you set him free, do not let him go empty-handed. Give to him lavishly from your flock, from your threshing floor and your wine press.

(Deuteronomy 15:12-14)⁶

Again the six years of servitude are mentioned. The Biblical text seems here to take special recognition of the difficulties confronting one who is so poor he must sell himself into slavery or one whose poverty is so great he is unable to make restitution for his theft, and so the master is commanded to make provisions for him when the term of servitude has reached its end.

In its discussion of the Hebrew slave who is sold for his theft the Biblical text presents us with a notion similar to that of a debtors' prison. A man unable to make restitution for his theft is here provided with the means of paying off his debt, by serving for a period of six years. In no case is the term of servitude envisioned as longer than six years. Though Leviticus 25:40, states that the Hebrew slave goes free in the Jubilee year, neither is the term of servitude normally expected to be less than six years. The Biblical text seems also intent on distinguishing the Hebrew slave from the Canaanite slave. His work and manner of employment is not that of a slave, and one is reminded on several occasions

that he is a fellow Israelite and as such deserves special consideration. This Biblical description of the Hebrew slave serves as the basis of the rabbinic legislation dealing with the Hebrew slave who is sold by the court into servitude for his theft.

The Sale of the Hebrew Slave

There seems to be little doubt that, in the eyes of the Rabbis, all the Biblical verses mentioned above are applicable in determining the law regarding the Hebrew slave who is sold for his theft. It is the court that is now cited as responsible for the sale and as such one must understand this period of servitude as the man's punishment. In Sifre Deuteronomy:

Scripture says, "And he is sold to you." From this it is understood that it is the court which sells him to you.⁷

Similarly, in the Mekhilta of R. Ishmael:

"When you buy a Hebrew slave." The verse refers to one who is sold by the court for his theft.⁸

Clearly, it is the court that must determine when a man is sold into slavery for his theft. The Biblical text only stated that when one was unable to make restitution for his theft he was sold, but the Rabbis are more precise in outlining the procedure for the slave's sale.

First, it is understood that the value of his theft has a part in determining whether he will be sold. In the Mekhilta of R. Ishmael:

"Then shall he be sold for his theft." Not for less nor for more. R. Judah says: If what he stole is worth less than he is, he is not to be sold. If what he stole is worth more than he is, the one from whom he stole has the choice of either having him sold or receiving from him a note of indebtedness. R. Eliezer says: If what he stole is worth less than he is, he is not to be sold. If what he stole is worth more than he is, it is enough for the owner to regain half and lose half.⁹

Both R. Judah and R. Eliezer seem to recognize that if the item

stolen is of relatively small value, though it be more than that for which the thief can immediately provide compensation, it does not warrant six years of his labor. It is expected that the six years of the Hebrew slave's labor be of no more value than that of the theft. It may in fact be worth less, and in such cases, according to R. Judah, the victim is given the option of accepting a note of indebtedness instead of the six years of service. Presumably, in such a situation the victim may feel that in this fashion he would be more adequately compensated for his losses. R. Eliezer, however, does not recognize this as an option, and believes it sufficient for the victim to receive whatever compensation may come from the six years of the Hebrew slave's service.

A further limitation is found in the parallel passage of the Mekhilta of R. Shimon:

"Then shall he be sold for his theft." Sold for his theft and not sold for fines above the value of his theft.¹⁰

Though it is understood even in the Biblical text that a thief is required to return the value of what was stolen along with additional penalties, the Rabbis appear to maintain in this passage that, should he be able to provide restitution only for the value of the theft, the additional penalties alone may not serve as grounds for six years of servitude. When placed alongside the statements of R. Judah and R. Eliezer in the previous passages, one might understand this to further emphasize their point that one sold into slavery is there only

if the theft is equal in worth to him. In determining this, one is not permitted to add the penalties as well.

One additional passage is found in Sifra that deals with the manner in which the Hebrew slave is sold, which, as stated in Leviticus 25:43, is not to be in the same fashion as a Canaanite slave might be sold:

He is not to be sold as a slave is sold: Not placed up for sale on a back street or put on an auction block.¹¹

There appears to be concern even in the method by which the Hebrew slave is sold, and a certain dignity is required in the transaction that would not normally be present in the sale of slaves. It is not done secretively, nor does it take place in the public market, but it is the court that effects the sale of the Hebrew slave to the one from whom he stole.

Thus, there seems already in the rabbinic view a clear understanding of the conditions present when one is sold into slavery by the court. By virtue of the fact that the theft must be at least of equal value to six years of a man's labor, one is not sold into slavery for a minor infraction. Although one who makes restitution for his theft is required to pay additional penalties as well, this factor is specifically excluded in the court's determination of the loss necessary to require enslavement. We are here dealing with one whose poverty is so great as to preclude even a simple repayment, and it is quite possible that there is as well the implicit recognition that the man's poverty may have been a factor in his crime.

In any case it is to be expected in such a situation that society and the court will attempt to achieve repayment in the only manner possible, involuntary servitude. At the same time such a period of enslavement can easily be seen as a form of punishment for the crime of thievery. What is not so easily comprehended, however, is the attitude that the Rabbis take toward one who is so punished. Great concern is placed not only on the physical conditions of his enslavement but on the psychological and social attitudes as well. These distinctions will become most apparent in the rabbinic discussions of the terms of servitude, but one can begin to discern it in the proscriptions related to the sale itself. From the beginning of the court's involvement there seems to be an attempt made to preserve in this man some sense of personal dignity. The Rabbis seem concerned not only that the Hebrew slave repay his debt, but that upon his release the conditions that may have forced him to steal initially will no longer remain.

The Attitude of the Slave

While most of the rabbinic literature concerns itself with the particular activities and responsibilities of the Hebrew slave and his master, one specific reference is made to the respective attitudes of the two men. In Sifra:

Scripture says, "When your brother is sold to you." Thus, it is understood that you conduct yourself toward him in a brotherly manner. But might it not be understood that the Hebrew slave conducts himself in a brotherly manner? Scripture says, "Slave." Might it not then be understood that you conduct yourself toward him as you would toward a slave? Therefore scripture says, "He is your brother." This is done in order to teach us that you conduct yourself toward him in a brotherly manner, but he is to conduct himself as would a slave. 12

It is an interesting picture of how the slave and the master are expected to act. Since it involves no specific regulations, it is doubtful that the Rabbis intended this to be an enforceable piece of legislation. Rather, it is perhaps best understood as the attitude of master and slave that ideally would exist during the six years of servitude. One might also see this as underlying the particular regulations concerning the period of enslavement. While the Rabbis recognize that in such a situation the Hebrew slave must know his place, it is not for the master to make him realize that he is a slave. Perhaps the Rabbis considered it sufficient that the Hebrew slave no longer had control over his own life and activities; he was found guilty and being punished for the crime of theft. The simple fact

that he was to spend six years in involuntary servitude may have been enough to consider himself as a slave.

It is especially interesting, however, that the master is admonished to treat him as if he were an equal. He is enjoined to view the Hebrew slave in exactly the opposite manner to that with which the slave is expected to view himself. Such an emphasis seems hardly necessary if the only concern is to exact from the Hebrew slave repayment of his debt. It certainly makes no sense if punishment is expected to be the primary goal of the period of enslavement. Rather, one can only understand this attitude by recognizing an interest on the part of the Rabbis in the character and the future of the Hebrew slave beyond the six years of servitude. It is an essential element in preparing the man for his eventual return to society, where he should be psychologically self-sufficient as well as free of financial obligations. This sense of rehabilitation along with repayment seems implicit in much of the particular regulations that follow.

The Conditions of Servitude

The Rabbis are quite specific as to the type of work the Hebrew slave may not perform. The first category of prohibited work is generally understood to include the type of activities in which a regular slave might normally engage. Though there are several parallel citations,¹³ one finds the following in the Mekhilta of R. Ishmael:

"Six years he shall serve." I might have understood this to mean any kind of service, but Scripture says, "You shall not use him to work for you as a slave." From this it is said: A Hebrew slave may not wash the feet of his master, nor put his shoes on for him, nor carry his things to the bath house, nor support him by the hips when ascending steps, nor carry him in a litter or a chair or a sedan chair as slaves do. For Scripture says, "Your fellow Israelites you shall not drive with ruthless severity."¹⁴

As is stated in the Midrash itself we have here listed examples of the kind of work a slave would normally perform, all of which the Hebrew slave is not permitted to carry out. If such activities were thought to be the sole providence of personal slaves such a distinction would simply be understood as more clearly defining the differences between the Hebrew and the Canaanite slave. But one finds an interesting concluding statement to the above Midrash in both Midrash Tanna'im and the Mekhilta of R. Ishmael:

But regarding one's son or student, [such work] is permitted.¹⁵

Thus, it would seem that the Rabbis' concern here is reflective of the attitude they wish to see develop between

the Hebrew slave and his master, and not simply defining work that only a slave would do. Considering the halachic emphasis on honor due to one's parent or teacher such demands might be appropriate if made of a child or a student. In the relationship between a parent and child the bonds of love and blood might be expected to insure that excessive demands are not imposed. Though a student might perform certain tasks for his teacher that he would not normally consider, he does so voluntarily. But the relationship of a child to his parent or a student to his teacher is certainly not the relationship expected of the Hebrew slave to his master. Since there are no built-in restraints the master is admonished to treat his slave in a 'brotherly manner,' and in such a way foster a certain sense of equality and mutual respect. While in a different context such work might demonstrate respect to a parent or teacher, here it would only serve to undermine the development of the slave's own dignity and self-esteem.

Paralleling the concluding statements in Midrash Tannaim and the Mekhilta of R. Ishmael, one finds in Sifra the following alternative explanation for the verse, "You shall not work him as a slave:"

You may not give him the work of a slave, but you may give the free man the work of a slave.¹⁶

A free man has the choice of accepting whatever work is offered him.~ It is a choice the slave is not permitted,

and for whom it only serves to reinforce the subservient nature of his position. Because the Hebrew slave's work is involuntary it is necessary that it be carefully regulated. He must provide six years' labor, but it is the intent of the rabbinic legislation that this labor will be infused with a measure of dignity and worth.

In addition to prohibiting the Hebrew slave from serving his master in the manner of a personal slave, there are certain specific occupations that the Rabbis understand to be similarly prohibited. Though the listings of these occupations may vary slightly from one source to another, they all consist of work that would require the Hebrew slave to serve the public. Both Sifra and the Mekhilta of R. Shimon trace the basis of this restriction to the passage in Leviticus 25:40, "He will work with you." In Sifra one finds the following:

"He will work with you." You shall not send him off to serve others. He should not be installed as a bath master for the public or a barber or a baker for the public.¹⁷

Nearly the same statement is found in the Mekhilta of R.

Shimon:

He is not to be sent to work for another. He should not be made a bath master, a barber or a baker, all of whom serve the public. Since I might have thought if he held one of these jobs before being sold it would be permitted, Scripture says, "He will work with you."¹⁸

This principle of service to the master alone is also upheld

in the Mekhilta of R. Ishmael and in Midrash Tannaim which offer several additional examples of prohibited types of service. The Mekhilta of R. Ishmael forbids the Hebrew slave from serving as a butcher or tailor, and Midrash Tannaim adds the occupations of butcher and cistern digger. In these sources, however, they are considered forbidden because of their "humiliating" nature. In the Mekhilta of R. Ishmael:

"Six years he shall serve." I might understand this to mean by doing any kind of work, whether it is humiliating or not. Therefore, Scripture says, "As a hired man, as a settler." Just as a hired man cannot be forced to do anything other than his trade, so also a Hebrew slave cannot be forced to do anything other than his trade. Hence the Sages said: The master may not put him to work in a trade in which he has to serve the public, as a tailor, bath master, barber, butcher or baker.¹⁹

Except for the proof text and minor differences, Midrash Tannaim parallels the Mekhilta of R. Ishmael:

"He will serve." I might understand this to mean by doing any kind of work whether it is humiliating or not. Therefore, Scripture says, "You will not give him the work of a slave." Hence, the Sages said: The master may not put him to work as a cistern digger, bath master, barber, butcher or baker.²⁰

There appears to be some question as to whether the Hebrew slave may perform one of these functions if it was his job prior to being sold. The Mekhilta of R. Shimon specifically forbids it; that of R. Ishmael seems to command it.²¹

Nevertheless, it is the intent of the Ishmael school sources to prevent the Hebrew slave from being required to do any humiliating work. Once the sale has taken place

and the thief has become the Hebrew slave of another, the emphasis is not on how the master may make the most of the man's six years of labor. Rather, the rabbinic legislation is designed to prevent the recurrence of the conditions which led to his crime in the first place. Requiring the Hebrew slave to perform humiliating tasks might provide a further measure of punishment, but its effect can only be to further anger and alienate him. If he is to be able to return to society at the end of his term of servitude, he must have both the attitude and ability to perform useful work. This is possible only by requiring that his work as a slave fosters these qualities.

The rabbinic literature dealing with the Hebrew slave not only prohibits certain occupations, but it establishes certain limitations on the permitted forms of work that the slave may be assigned. Though R. Jose maintains the hours during which a Hebrew slave works are dependent on his trade, the Mekhilta of R. Ishmael states that he is required to work only during the day:

"As a hired man, as a settler." Just as a hired man works only during the day and does not work during the night, so too the Hebrew slave works only during the day and not at night. R. Jose says it depends on his trade.²²

One need not discount the opinion of R. Jose to recognize the concern that the Hebrew slave's working hours confirm to those of free men. With regard to the work itself,

one finds the following in Sifra:

"Do not treat him with rigor." Do not say to him, 'Warm this cup,' if it is unnecessary; 'Chill this cup,' if it is unnecessary; or 'Plow under these vines until I return.' You might say, 'It is for my own needs that I do these things.' That is true; it is a matter of personal conscience. However, all decisions of the heart are in sight of God.²³

It seems clear from this passage that the Rabbis' emphasis is on the intent of the work assigned to the slave. The examples mentioned--heating or chilling a cup or plowing a field--are not necessarily tasks that the Hebrew slave cannot be commanded to perform. They must, however, be purposeful. The master is not permitted to make unnecessary requests only to keep the Hebrew slave occupied. In addition to being necessary, according to Maimonides, the work assigned to the slave must have a designated limit.²⁴ The master cannot tell him to work until he returns, but must specify either a particular area to be cultivated or a certain hour until which he must work.

The concern again is not so much with the amount of work the Hebrew slave will perform during his term of servitude, but on the attitude it is hoped he will develop towards that work. He is not expected to be given busy-work simply to occupy his time. The work must be necessary, and in such a manner he may come to develop the feeling that he is providing a useful service. Similarly, his work assignments must have a designated limit. Though he is a slave, in this way he is at least permitted to be

master over his own labor, knowing at the outset just what is expected of him. In such fashion the slave may also begin to learn those habits necessary for him to work on his own once his term of servitude has ended. He must have a sense of what is expected of him, how much time it takes for him to perform certain tasks and how able he is to achieve certain goals. It is certainly possible that the poverty which drove him to stealing in the first place was due to a lack of these basic work habits. Therefore, the rabbinic legislation places on the master the responsibility for developing in his slave these elementary abilities. He must consider in the assignments he gives the vocational needs of the slave. It is perhaps the clearest statement made that the six years of servitude, as reflected in every particular assignment, must serve to rehabilitate the Hebrew slave as well as repay the master.

One of the most striking aspects of the rabbinic regulations governing the Hebrew slave's term of servitude is that which outlines the living conditions his master is required to provide. If the primary concern of the Rabbis were punitive, one would not expect the slave to be given much more than that which is necessary to sustain life. However, the rabbinic legislation demands a great deal more. Though the Biblical text says very little about the master's support of his Hebrew slave, one passage, Leviticus 25:40,

"He [the Hebrew slave] shall be with you," is interpreted in Sifra to mandate conditions equal to that of the master:

"He shall be with you." [He shall be equal to you.]
 Equal to you in what you eat and what you drink; equal
 to you in wearing clean garments. You should not eat
 fine bread while he eats brown bread; you drink old
 wine while he drinks new wine; you sleep on a feather
 bed while he sleeps on straw.²⁵

This is perhaps the clearest expression by the Rabbis of how they expect the master to treat his Hebrew slave as a brother. Though a person is an involuntary slave for six years, his living conditions are to be the equal of his master.

Finally some concern is voiced about the Hebrew slave's wife and children during his term of servitude. The Biblical texts only make brief reference to the slave's dependents. In Exodus 21:3:

If he came in by himself he shall go out by himself;
 if he is married, then his wife shall go out with him.²⁶

And in Leviticus 25:41:

Then shall he depart from you, both he and his children
 with him, and shall return to his own family.²⁷

Implied in both these passages is the notion that the slave's wife and children accompany him during his servitude. Though no explicit mention is made in the Biblical texts, the Rabbis understand the master to be responsible for supporting not only the Hebrew slave but his dependents as well. In the Mekhilta of R. Ishmael one finds the

following:

"Then his wife shall go out with him." R. Isaac says: Was she ever brought in that Scripture should say she shall go out with him? Why then does Scripture say, "Then his wife shall go out with him?" To tell us that the master is required to provide for her and for his children. For it is said, "Then shall he depart from you, both he and his children with him." From the law about leaving slavery one learns about the requirements of entering it.²⁸

The Mekhilta of R. Shimon concurs with this opinion and further considers the question of a master's responsibility should his Hebrew slave marry during the term of his enslavement:

"If he is married, then his wife shall go out with him." He that is responsible for providing for the Hebrew slave is also responsible for providing for the slave's wife and children. Yet I might have said, if the wife and children were with the Hebrew slave prior to the time the master acquired him, the master would then be obligated to provide for them as well, since the slave would not have been acquired except on this condition. However, for a wife and children that came after the Hebrew slave had been acquired the master would not be responsible, since the understanding was already established that his obligation extended only to providing for the slave himself. Rather, the master is also obligated to provide for a wife and children acquired after the slave's sale. Scripture says, "If he is married, then his wife shall go out with him." Both possibilities are included here: a wife taken prior to the slave's sale and one taken after.²⁹

This Midrash continues, excluding the slave's betrothed and sister-in-law waiting for Levirate marriage from the master's obligations, a point also found in the Mekhilta of R. Ishmael. It concludes by taking up the question of the master's obligation in the case of a slave who married without his knowledge:

I might have thought that he would be obligated to provide for the wife of a slave who married without his permission. Scripture says, "He." Just as he, the Hebrew slave, becomes a slave with his master's permission, so too is his wife there with the master's permission.³⁰

Though the Hebrew slave can only marry during his term of servitude with the permission of his master, support of the slave's wife, whether acquired prior to or during his enslavement, is clearly understood to be the master's obligation. Similarly, the master must support the slave's children. While the Hebrew slave is obliged to provide six years of his labor to his master, he is not expected to abandon his family in order to do so.

The rabbinic legislation is concerned with preparing the man for his eventual return to society. In order to accomplish this it is necessary to do as much as possible to approximate life in a real world situation during the period of enslavement. It would be neither appropriate nor helpful to separate the slave from those most dear to him. The presence of his wife and children not only makes the slavery more bearable, but it eases the eventual transition to a state of freedom and independence. Recognizing that poverty was the cause of his sale in the first place, the Hebrew slave cannot be expected to possess the means of supporting his family, and so the master is required to assume this obligation. In so doing it is possible that the master will become more fully aware of the conditions

that initially led to his slave's crime. If, as seems to be the case in the preceding midrashim, the master has a responsibility through the work he assigns to his slave of enabling him eventually to be self-sufficient, he will now know exactly what it will take to do so.

Summary

Having presented the Biblical and rabbinic material concerning the Hebrew slave who is sold for his theft, it is possible to summarize these views and in so doing begin to discern the concepts underlying them. An analogy has already been made likening the Biblical institution to a form of debtors' prison. The Biblical injunctions recognize the following:

1. Thievery is wrong and cannot go unpunished.
2. Restitution of the stolen property is necessary.

In a normal case of theft one is required to return the stolen goods or make repayment of equal value as well as pay a fine. When one is too poor to repay the value of his theft he is sold to the injured party. In such a way he will be both punished and able to work off his debt through six years of involuntary servitude. Though the major emphasis of the Biblical view is the exacting of just retribution, there is the additional concern that one not be forced by his economic conditions to remain perpetually a slave. The term of servitude is clearly established; the master is required to furnish material goods to his slave upon departure which should at least aid in his achieving a measure of self-sufficiency.

While rabbinic legislation governing the Hebrew slave evinces similar concerns, one's attention is quickly focused

on the details outlining the master's relationship with and responsibility to the Hebrew slave, an area not dealt with in the Biblical material. This legislation may be summarized as follows:

1. The court determines who is sold for his theft and establishes certain pre-conditions. The value of the stolen goods must at least be equal to the value of six years' labor. In making such a determination one is not permitted to include any fines that might otherwise be levied.
2. Both the manner in which the slave is sold and the "brotherly" attitude required of the master toward his slave reflect a concern for the Hebrew slave's self-esteem.
3. Certain working limits and conditions are mandated.
 - a. He may not perform the menial functions of a Canaanite slave.
 - b. He need not be required to serve the public.
(Though one view holds he is forbidden to do so.)
 - c. He may not be given humiliating tasks.
 - d. His assigned work must have value to his master; it may not be work given only to keep him occupied.
 - e. His daily work must be clearly defined in terms of time or location.
 - f. His working hours must be similar to those held by paid laborers.

4. The Hebrew slave's living conditions are to be equal to those of his master.
5. The master is required to support his slave's wife and children during his term of servitude.

Though the Biblical injunction stipulates that one is sold for his theft, the rabbinic regulations are designed to insure that such measures will not be taken in cases of petty larceny. The stolen goods must be significantly valuable to warrant a man's sale into slavery. One is only forced into such conditions if no reasonable alternative exists for making restitution for the crime.

Having thus tightened the conditions under which a man is sold, the Rabbis concentrate on the relationship between slave and master. The concern underlying their regulations seems to be the prevention of a true master-slave relationship. Though the court can effect the sale of the Hebrew slave in a dignified manner and admonish the master to treat his slave in a brotherly fashion, the Rabbis recognize the danger of involuntary servitude. Living as a slave for six years may cause a man to become a slave for the rest of his life. It is therefore necessary to create conditions under which the master may not treat his Hebrew slave as a true slave, and to further insure that at the end of six years he is both economically and psychologically able to regain his freedom. To this end his work is strictly defined. It is not enough to keep him from

performing the tasks of a regular slave. It is necessary to insist that the work he does have value and that his assignments be clearly understood. In such a way his labor will be of a similar nature to that of a paid workman, and, one must assume, he would be able to earn money for the same type of work after his term of servitude had ended. Mandating a work schedule similar to that of the paid laborer can only serve to reinforce this idea.

It may be that by not permitting the Hebrew slave to work in occupations serving the public or to perform tasks of no importance the master will find it necessary to train his slave in a new profession and thus further insure the man's eventual independence. However, these regulations seem to be part of a second concern found in the rabbinic material. The restrictions regarding the Hebrew slave's work, combined with the regulations governing his living conditions, are designed to insure a greater contact between master and slave than might otherwise take place. This personal contact between the two men seems to be a major concern of the Rabbis, and it can be understood as being of a beneficial nature to both. Though it is doubtful that anything can truly compensate a man for his loss of freedom, the Hebrew slave's living conditions as envisioned by the Rabbis are clearly designed so as not to reinforce his state of degradation nor deepen any animosities he may already harbor. They may, in fact, suggest to him

possibilities of a better life that he might strive to attain upon his release.

One can assume that under normal conditions it is rare for one in the position of master to have contact with one whose social and economic background is similar to that of the Hebrew slave. By requiring that he do so in this situation may make the master aware of problems and difficulties he never encountered. The further insistence that he support his slave's wife and children can only add to this awareness. Though it may be hard to see this form of punishment working smoothly, the rabbinic view of the Hebrew slave is intended to move beyond the easy dichotomy of criminal and victim or master and slave and help both men to recognize their common humanity. Clearly, the Rabbis' legislation is concerned with far more than simply punishment and restitution. It is, in fact, a program of rehabilitation.

Conclusion

It is generally assumed that a penal institution will serve two functions. It will incarcerate those convicted of crimes so as to both remove them from the general population and punish them for their misdeeds, and it will provide some program of rehabilitation that will enable the inmates upon release to return to useful roles in the general society. The rabbinic legislation dealing with the exile and the Hebrew slave certainly suggests a model incorporating both these elements. While this legislation was never intended to deal with the hardened criminal--involuntary servitude was not mandated for repeat offenders, and it was not exile but the death penalty that faced one convicted of willful murder--it certainly has application to many criminals whose first offense causes their imprisonment. Recognizing both this and the fact that the rabbinic material is more a sketch than a detailed blueprint, it is nevertheless possible to outline a penal institution incorporating the material presented in the previous chapters.

Underlying the particular injunctions is the recognition that these institutions must strive to be as close as possible to real-life situations. Incarceration and a loss of the basic freedom of movement are understood to be the essential punishment the inmate must endure. Within the confines of the prison itself, however, life with its variety and diversity is expected to go on. If opportunities for work and study are demanded for one who

is required to spend the remainder of his life incarcerated they certainly must be available for those who will ultimately be released. The Rabbis clearly recognize that one who had difficulty coping with the world in the first place --and one whose difficulty may have been a contributing factor to the crime--will not have an easy time returning after a period of imprisonment. Therefore, it is necessary to create a structure within the penal institution that will make the eventual transition as easy as possible. In this sense the prison is expected to be a model of general society.

The rabbinic legislation also recognizes the need for fostering and maintaining a sense of dignity among the inmates. Though cruel or uncivilized treatment may be seen by some as being an aspect of punishment, it is certainly not suggested in the rabbinic legislation which limited punishment strictly to incarceration alone. If these inmates are expected to return to general society a development of their sense of self-worth is as important as any vocational training. They cannot become respectable members of society upon their release without having a sense of their own value. This can only be achieved if great care is given to the treatment of inmates as well as to their training. Feelings of inadequacy--real or imagined--accompany most of these individuals to prison; they must be diminished, not re-inforced.

If such, then, are the basic concerns of the rabbinic legislation how are they to be translated into a concrete structure? One might begin with the construction of the prison itself. It is expected to be built in generally populous areas and in certain respects intergrated into the society. The population of the prison itself must be of medium-size; it cannot number into the thousands, nor can it be limited to only a few dozen inmates. It must be large enough to allow for a sufficient amount of diversity in activities and interaction, but it cannot be so large that the individual inmate is simply a number. While the rabbinic legislation pictured the cities of refuge as being self-sufficient, to establish such a goal for present-day penal institutions may not be very practical in a specialized economy. However, it is possible for the prison to provide for its own needs in areas where outside services offer no great savings or advantages. The prison economy and its facilities for work and vocational training must parallel the conditions existing in general society and so be able to compete with them. It is often the case that prison factories manufacture items ranging from furniture to license plates that are purchased exclusively by the state. While such monopsonistic conditions may result in great savings to the government, they are hardly fair to the inmate employees. It is the intent of the rabbinic injunctions that the prisons foster training and

working skills that are parallel to those found outside. If upon release the inmate will be expected to compete in a free-market economy, the prison itself must be a model for this. This can be achieved only if prison workshops and factories themselves are part of a larger, competitive market.

While the prison is expected to be spartan in design and without the luxuries found outside the walls, it must provide those elements necessary for a full life. It is not enough that the inmate is given work, there must be some variety to the work available. It cannot be assigned just to occupy the time of the inmate, but must have some inherent value. The Rabbis recognize that poor economic conditions are often a major factor in the crime itself. Thus, it is necessary for the prison to provide vocational training for the inmate with no marketable skills so that upon release he will be employable. It is equally necessary to provide opportunities for the inmate with a trade to continue in that trade.

Inherent in the rabbinic legislation is the recognition that normal life must permit a certain amount of privacy as well as diversity. It is in this light that separate houses are mandated for residents of the cities of refuge. Instead of encouraging a regimen of uniformity, penal institutions should be designed to permit at least a degree of the individuality that marks life outside the

walls. There must be apartments or rooms that provide the inmate with some privacy--to be by himself or with visiting family members. It is important not only for the maintenance of life within the prison but for the eventual adjustment to outside society.

In a similar vein the prisons must also provide for study, distinct from vocational training. Study in and of itself is also viewed as an essential part of life and must be available. It may suggest opportunities and possibilities that the inmate might strive to attain upon his release and in that sense be of rehabilitative value. However, even if it serves only to provide a richness and texture to physically barren surroundings and so make a life of imprisonment more bearable, it is important and must be a part of any penal institution.

It has been suggested that the rabbinic legislation dealing with the Hebrew slave can be viewed as a program of rehabilitation. Though reference to some of these elements has already been made it is important to look now at the prison structure and activities from this perspective. Central to any rehabilitative program is work and job training. Care must be given not only to the final output of any prison shop, but to the particular activities of its workers. It has already been said that the work must be of some value, but it is equally important that the individual worker or inmate recognize this. He must have

some sense of what he is producing, especially if he is only one of many working in a factory. The institution must make clear its expectations regarding the inmate's labor. The work does not exist to keep the inmate busy. He must know what is expected of him and be encouraged to develop both basic skills and a pride in his own workmanship. The ultimate goal must be seen as the development of a positive attitude toward work on the part of the inmate, which should be accompanied by increasing levels of responsibility. Only thus equipped, with sufficient skills and self-esteem, will the inmate be able to make the transition to the world outside the prison walls.

Though regular family visits are usually permitted at most prisons, they take place only for brief periods and seldom with any privacy. Some penal institutions allow for occasional conjugal visits, but in no way do any of these rights even begin to approximate what is found in normal family relationships. The Rabbis were well aware that maintaining the family unit was important not only during the period of incarceration but in easing the difficulties that come with release from prison. The Hebrew slave was not only permitted to bring his family with him when he went into involuntary servitude, he was expected to do so. Though it is quite rare in America, in some Scandinavian countries provisions are made for families of inmates to live with them during incarceration. Weekend release programs in some

prisons permit at least a degree of family unity. Certainly, the difficulties in making such arrangements are great. However, the lack of intimate contact with one's family is perhaps the greatest barrier separating prison life from the world outside, and everything possible should be done to reduce it. A semblance of family life and the presence of people who truly care for the individual inmate must be recognized as an essential part of any rehabilitative program. It not only provides the inmate with a very real sense of what he is working for and can look forward to, but it reassures him that he is not alone. Sexual and emotional needs do not disappear when a man is incarcerated. In most prisons they become manifest in homosexual acts and retreats into one's fantasies. This is hardly conducive to normal life within the prison or to an eventual future outside. The only possible solution is to see that these sexual and emotional needs are met in a normal manner by insuring that the inmate have frequent, private contact with his family.

The Rabbis were well aware that after six years of involuntary servitude the greatest danger confronting the now freed slave was that he might have become--in his actions and his mind--permanently a slave. The same danger confronts anyone who is incarcerated, as long as the qualities that define a good inmate are in conflict with the qualities desirable in a free man. Where inmates are forced into a strict and arbitrary regimen, where they are expected

neither to question nor to think, there is little hope that the ex-convict will long remain free. Even though the institution of the Hebrew slave and its regulations were made more difficult, the Rabbis attempted to prevent this dangerous situation from occurring. The same must be true with respect to our contemporary penal institutions. Though their administration may be made more difficult, prisons must encourage the spirits of free men to grow in the bodies of those incarcerated.

The final word must be given to the relationship between the government and those incarcerated. The Rabbis did not simply suggest that the leaders of society bear some responsibility for those forced into exile for their crimes. One could easily argue that all society, including its leadership, must accept an element of blame for the evils occurring in its time. To do so, however, is to say since all are responsible no one is responsible. Instead, the Rabbis maintained that tangible acts, carried out on behalf of those incarcerated, were also necessary. Just as the mothers of the high priests sent food and clothing to the cities of refuge, someone close to the seat of power in our generation must assume an active and proprietary interest in those incarcerated. Members of the outside society will always be able to make their concerns known and their power felt, but those behind prison walls must also have a voice, and it must be heard by those in authority.

One is able to suggest a number of ways by which such a general assertion may be translated into a particular program. Several states have already appointed official ombudsmen who serve as consumer advocates. They are not viewed as impartial government officials, but rather are expected to represent only a single constituency in opposition to the large number of corporate lobbyists. One might envision the appointment of an ombudsman to operate in a similar fashion on behalf of the state's convicts, especially mandated to advocate their views. Departments of correction and parole boards include people from varied backgrounds but rarely is an ex-convict among them. However, the inclusion of someone openly sympathetic to the cause of those imprisoned might provide a voice for those who cannot speak. In such ways it is possible for the penal institution to be responsive to the needs of both those in the larger society and those who are imprisoned.

A model of prisons has been presented. Through an analysis--at times selective--of the most apparent rabbinic sources one has seen a discussion of imprisonment and a suggestion of rehabilitation. That there is a Jewish view of penology cannot be doubted. But this thesis has by no means exhausted the sources that must determine such a view. The literature dealing with the Hebrew slave sold for his theft and the homicide exiled to the city of refuge has

provided much information, but scattered throughout the rabbinic writings may be additional material of equal value. A more comprehensive study still remains, but perhaps this thesis can serve as a beginning.

Notes

Chapter One: Introduction

1. Much has been written, especially in recent years, on the subject of penology. This body of secular literature covers a wide spectrum, including studies of particular rehabilitative programs in operation at various prisons as well as philosophical discourses on the nature of imprisonment itself. Though an awareness of this material is not lacking, no attempt is here made to present or analyze the various views expressed in this literature; that itself would be an entire thesis. Instead, it is hoped that this thesis will serve as a fruitful addition to the literature of penology, offering a Jewish perspective to a subject long considered to be solely in the domain of the secular world.
2. A form of prison is, in fact, mentioned in Tosefta Sanhedrin 12:7-8. Its purpose was to confine the man who, though guilty of repeated capital offenses, could not be convicted due to procedural problems. This prison or vault was intended to hold such a person only long enough to kill him in the method described by Abba Saul below:

One is warned and says nothing; one is warned and nods his head; one is warned a first and a second time, but with the third offense he is confined to a vault. Abba Saul says: He is also warned a third time, but with the fourth offense he is confined to a vault and fed only small amounts of bread and water. In this manner were treated those who were found guilty and convicted [of a lesser offense] and so punished again and again by flogging. They were flogged a first time and a second time, but with the third offense they were confined to a vault. Abba Saul says: They are also flogged a third time, but with the fourth offense they are confined to a vault and fed in such measure that their stomachs burst.

מחרין בו ושותק, מחרין בו ומרכין בראשו, מחרין בו פעם ראשונה

ושנייה, ובשלישית כונסין אותו לכיפה. אבא שאול אומר: אף

בשלישית מחרין אותו ובכניעת כונסין אותו לכיפה ומאכילין אותו

לחם צר ומים לחץ. כיוצא בו חייבי מלקיות שלקו ושנו מלקין אותו

פעם ראשונה ושנייה ובשלישית כונסין אותו לכיפה. אבא שאול אומר:

אף בשלישית מקלין אותו ובכניעת כונסין אותו לכיפה ומאכילין

אותו עד שכריסו נבקעה.

Chapter Two: The Cities of Refuge

1. Numbers 35:31:

You shall not accept payment for the life of a homicide guilty of a capital offense; he must be put to death.

2. Numbers 35:20-21:

If the homicide sets upon a man openly of malice aforethought or aims a missile at him of set purpose and he dies, or if in enmity he falls upon him with his bare hands and he dies, then the assailant must be put to death; he is a murderer. His next-of-kin shall put the murderer to death because he had attacked his victim.

3. Numbers 35:25:

The community shall protect the homicide from the vengeance of the kinsman and take him back to the city of refuge where he had taken sanctuary.

4. In Joshua 20:7-8, the six cities of refuge, Kedesh, Shechem, Kiriath-Arba, Bezer-in-the-Wilderness, Ramoth and Golan, are designated. In his article, "The Biblical Conception of Asylum," (p. 130, The Journal of Biblical Literature, 1959) Moshe Greenberg notes that, "The six were part of Israelite territory only during the heyday of the United Monarchy, shortly before and after the death of David." It would have been impossible for these cities to have functioned as cities of refuge during the Second Commonwealth and there is no evidence to suggest other cities were designated in their place.

5. Numbers 35:11:
 רצח מכה נפש בשוגגה.
 Numbers 35:22-23:
 ואם בפתע בלא איבה הדפו או השליך עליו כל כלי בלא צדיה. או
 בכל אבן אשר ימות בה בלא ראות ויפל עליו וימת והוא לא איב לו
 ולא מבקש רעהו.
6. Deuteronomy 19:4-5:
 וזה דבר הרצח אשר ינוס שמה וחי אשר יכה את רעהו בבלי דעת והוא
 לא שנה לו מחסל שלשם. ואשר יבא את רעהו ביער לחטב עצים ונצחה
 ידו בגרזל לכרת העץ ונשל הגרזל מן העץ ומצה את רעהו ומת.
7. Mishnah Makkot 2:1:
 זה הכלל: כל שכדור ירידתו גולה, ושלא בדור ירידתו אינו גולה.
8. Mishnah Makkot 2:2:
 נשמת הגרזל מקטו והרג. רבי אומר: אינו גולה; וחכמים אומרים:
 גולה. מן העץ המחבקע. רבי אומר: גולה; וחכמים אומרים אינו
 גולה.
9. Mishnah Makkot 2:2:
 זרק את האבן לחצרו והרג: אם יש רשות לנזק לכנס לשם, גולה;
 ואם לאו, אינו גולה.
10. Talmud Makkot 7b:
 היה עולה בסולק ונשמתה שליכה מתחתיו תני חדא חייב ותניה אידך
 פסור מאי לאו בהא קא מיפלגי דמר סבר ירידה היא ומר סבר עליה היא
 לא דכ"ע עליה היא ולא קשיא כאן לניזקין כאן לגלות איבעיה אימא הא
 והא לגלות ולא קשיא הא דאחליה הא דלא אחליע ולא קשיא הא דמיהדק
 והא דלא מיהדק.
11. Talmud Makkot 8a:
 אי שכיחי בה רבים פושע הוא אי לא שכיחי בה רבים אנוס הוא.

12. Deuteronomy 19:5-6:

הוא ינוס אל אחת הערים האלה וחי. פן ירדף גאל הדם אחרי הרצח
כי יחס לבבו והשיגו כי ירבה הדרך והכהו נפש ולא אין משפט מות
כי לא שנה הוא לו מחמל שלשם.

13. Mishnah Makkot 2:3:

האב גולה על ידי הבן, והבן גולה על ידי האב.

14. In only one situation can a son be expected to punish his father, and it is not in the case of murder. In Makkot 12a, one finds the following:

חני חדא אב שהרג בנו נעשה לו גואל הדם. וחני אידך אין בנו
נעשה לו גואל הדם. לימא הא רבי יוסי הגלילי והא ר"ע. וחסברא
בין למ"ד מצוה בין למ"ד רשות מי שרי. והאמר רבה בר בר הונא וכן
חנא דבי רבי ישמעאל, לכל אין הבן נעשה לאביו להכותו ולקללתו
חוץ ממסית. שהרי אמרה חורה, לא תחטול ולא תכסה עליו, אלא לא
קשיא. הבנו והאב בן בנו.

It is taught in one [Baraitha]: 'If a father killed [a son], his [other] son becomes the avenger of blood.' Again it is taught in another [Baraitha], 'One's [own] son cannot become the avenger of blood.' Now, could it be suggested that the first reflects the view of R. Jose the Galilean, while the second reflects that of R. Akiba? Can this be maintained? For whichever view you take of the avenger's role, whether that of the one who regards it as obligatory or of him who says it is optional, is it admissible? Did not Rabbah son of R. Huna say, and the same is taught by one of the School of R. Ishmael: Never is a son [to be] commissioned [by the Court] to punish his father, whether it be to inflict a flogging or pronounce a [formal] execration on him, save only in the case of one who entices [another] to idol worship, because there the Torah says, "neither shall thine eye pity him, neither shalt thou spare, neither shalt thou conceal him...[but thou shalt surely kill him,] thine hand shall be first upon him." But this [seeming] incongruity is not difficult [to explain]. One [Baraitha] treats of a son [against a father], the other of a grandson against his grandfather.

15. Talmud Makkot 12a:

אמר רב זוטרא בר טוביה אמר רב רוצח שיצא חוץ לתחום ומצאו גואל
הדם והרגו נהרג עליו.

16. Talmud Makkot 10a:

ערים הללו אין עושין אותן לא סירין קטנים ולא כרכין גדולים
אלא עיירות בינוניות ואין מושיבין אותן אלא במקום מים ואם אין
שם מים מביאין להם מים. ואין מושיבין אותן אלא במקום שווקים.

17. Tosefta Makkot 3:8:

אין בונין אותן לא כרכים גדולים ולא סירים קטנים אלא עיירות
בינוניות. אין בונין אותן אלא במקום שיש מים. אין להם מים מביאין
להם מים. ...אין בונין אותן אלא במקום שיש שוק. אין להם שוק
עושין להם שוק.

18. Sifre Numbers, p. 159:

ערים. שומע אני אף כרכים. ח"ל ערי. אי ערי שומע אני אפילו
כפרים, ח"ל עירים. הא כיצד מגיד שלא היו שם אלא שווקים וביח
המחיה.

19. Midrash Tannaim 19:5:

הוא ינוס אל אחת הערים האלה וחי. שלא יהיה גולה מעיר אל עיר.
ומה ח"ל וחי. עשו לו שיחיה. מגיד שאין מושיבין עיירות אלו אלא
במקום שווקים ובמקום מים.

20. Sifre Deuteronomy, p. 180:

שלוש ערים. ערים ולא סירים. עירים ולא כרכים. עירים ולא כפרים.

21. Talmud Makkot 10a:

אין מושיבין אותן אלא במקום אוכלוסין; נחמטו אוכלוסין מוסיפין
עליהן. נחמטו דיוריהן מביאין להם כהנים לויים וישראלים.

22. Tosefta Makkot 3:8:

אין בונין אותן אלא במקום שיש אוכלוסין. ונחמטו אוכלוסין מביאין
אחרים ומושיבין תחתיהם. נחמטו דיוריהם, מוסיפין עליהם כהנים
לויים וישראל.

23. Tosefta Makkot 3:6:

ובונים לו בית וישב בחוכה שנאמר וישב בה.

24. Talmud Makkot 10a:

חנא תלמיד שגלה מגלין רבו עמו שנאמר, וחי.

א"ר יוחנן הרב שגלה מגלין ישיבתו עמו.

25. Midrash Tanna'im 19:9:

ואין בהן לא אבנים ולא בית זבל ולא בית צורה אף אלו כיוצא בהן.
מכן אמרו ערי מקלט בהן לא מעלות ולא ירידות ולא פרדסיות ולא
מאלכיות. שנאמר, וחי. שאין ח"ל חי אלא מגיד שלא היה שם אלא
בית שרוקים למחיה.

26. Sifre Sutta, p. 180:

ערי מקלט אל יעשו גנוח ופרדסין. ערי מקלט אל יעשו חנויות
ופנדקין. ערי מקלט אל יעשו בית יצורה.

27. Tosefta Makkot 3:9:

אין עושין אותן בדין ויצידה, דברי רבי נחמיה. וחכמים מחירין.
...ואין מפשילין לחוכן חבלים, ואין עושין בחוכן כלי זכוכית, שלא
להרגיל רגל גואל הדם לשם.

28. Talmud Makkot 10a:

ואין מוכרין בהן לא כלי זיין ולא כלי מצודה, דברי רבי נחמיה.
וחכמים מחירין. ושזין שאין פורסין בחוכן מצודות, ואין מפשילין
לחוכן חבלים, כדי שלא תהא רגל גואל הדם מצויה שם.

29. Rashi's commentary to Talmud Makkot 10a:

The manufacturing of weapons is prohibited so that it will not be possible for the blood avenger to purchase such a weapon in the city. If he brings one with him from outside they will notice it.

שלא יקנה גואל הדם שם זיין ויהרוג. שאם יביא כלי זיין ממקומו ירגישו בו.

30. Deuteronomy 35:25:

והצילו העדה את הרצח מיד גאל הדם השיבו אתו העדה אל עיר מקלטו אשר נס שמה וישב בה עד סוף הכהן הגדול אשר משח אתו בשמן הקדש.

31. Sifre Numbers, p. 158:

רבי מאיר אמר רוצח מקצר ימיו של אדם וכהן גדול מאריך ימיו של אדם. רבי אפר רוצח מטמא את הארץ ומסלק את השכינה וכהן גדול גורם לשכינה שתשרה על האדם בארץ. אין בדין שיהא משמטא את הארץ לפני מי שגורם להשרוח את השכינה על האדם בארץ.

32. Mishnah Makkot 2:6:

לפיכך אמותיהן של כהנים מספיקות להם מחיה וכסות כדי שלא יתפללו על בניהם שימותו.

33. Talmud Makkot 11a:

א"ל ההוא סבא מפירקיה דרבא שמייע לי שהיה להן לבקש רחמים על דורן ולא בקשו.

1. Exodus 21:37-22:3:

כי יגנב איש שור או שה וטבחו או מכרו חמשה בקר ישלם חתה השור וארכע צאן חתה השה. אם במחתרת ימצא הגנב והכה ומת אין לו דמים. אם זרחה השמש עליו דמים לו שלם ישלם אם אין לו ונמכר בגנבתו. אם המצא תמצא בידו הגנבה משור עד חמור עד שה חיים שנים ישלם.

2. Exodus 21:2-3:

כי תקנה עבד עברי שש שנים יעבוד ובשנעה יצא לחפשי חנם. אם בגפו יבוא בגפו יצא אם בעל אשה הוא ויצאה אשתו עמו.

3. Leviticus 25:39-40:

וכי ימוך אחיך עמך ונמכר לך לא תעבוד בו עבודה עבד. כשכיר כחושב יהיה עמך.

4. Leviticus 25:42-43:

כי עבדי הם אשר הוצאתי אתם מארץ מצרים לא ימכרו ממכרת עבד.

5. Leviticus 25:46:

ובאחיכם בני ישראל איש באחיו לא תרדה בו בפרך.

6. Deuteronomy 15:12-14:

כי ימכר לך אחיך העברי או העבריה ועבדך שש שנים ובשנה השביעה תשלחנו חפשי מעמך. וכי תשלחנו חפשי מעמך לא תשלחנו ריקם. העניק העניק לו מצאנך ומגרנך ומיקבך אשר ברכך יהוה אלהיך תתן לו.

7. Sifre Deuteronomy, p. 177:

כי ימכר לך. מניין כשאחה קונה לא תהא קונה אלא עבד עברי ת"ל כי תקנה עבד עברי מניין כשהוא נמכר אינו נמכר אלא לך. ת"ל ונמכר לך מניין כשביט דין מוכרים אותו אין מוכרים אותו אלא לך. ת"ל כי ימכר לך.

8. Mekhilta of R. Ishmael, p. 247:

כי תקנה עבד עברי. בנמכר בביה דין על גניבתו הכתוב מדבר.

9. Mekhilta of R. Ishmael, p. 293-294:

ונמכר בגניבתו, לא פחות ולא יותר. רבי יהודה אומר אם גנב פחות
ממה ששוא אינו נמכר, יותר ממה ששוא, הרשות ביד בעל גניבה, אם רצה
למכור ימכור, ואם לאו, כותב לו שטר. רבי אליעזר אומר גנב פחות ממה
ששוא אינו נמכר, יותר ממה ששוא, דיו להשחכר מחצה ולהפסיד מחצה.

10. Mekhilta of R. Shimon, p. 192:

נמכר בגניבו ואין נמכר בכפילו.

11. Sifra, p. 106b:

לא ימכרו ממכרה עבד שלא יעמידנו בסמטא ויעמידם על אכף המקה.

12. Sifra, p. 109b:

ח"ל כי ימכר לך אחיך. שתנהוג בו באחיה. יכול אף הוא ינהוג
בעצמו באחיה. ח"ל עבד. יכול אף אח תתנהג בו כעבד. ח"ל אחיך.
הוא. הא כיצד אח נוהג בו באחיה והוא נוהג בעצמו כעבדות.

13. As one can see from the following passages, the parallels are nearly identical to that found in the Mekhilta of R. Ishmael (note 14.) In Sifra, p. 109b:

לא תעבוד בו עבדות עבד. שלא יסול אחריך בלנטיא ולא יסול לפניך
כלים במרחץ.

Midrash Tannaim, p. 85:

ח"ל לא תעבוד בו עבדות עבד. מיכן אמרו לא ירחץ רגליו ולא ינעול
לו סנדליו ולא יסול לפניו כלים לבית המרחץ ולא יסמוך לו במחניו
כשהוא עולה למעלן ולא יסלנו לו באפריון ולא בכסא ולא בגלוגדקא
כדרך שעבדים עושין. שנאמר, ובאחיכם בני ישראל איש כאחיו לא תרדה
בו בפרך.

14. Mekhilta of R. Ishmael, p. 248:

שש שנים יעבוד. שומע אני כל עבודה במשמע. ח"ל לא תעבוד בו
עבדות עבד. מכאן אמרו לא ירחוץ לו רגליו ולא ינעול לו סנדליו
ולא יסול לו כלים לבית המרחץ ולא יסמוך לו במחניו כיון שעולה
במעלה, ולא יסלנו לו בפורין ולא בכסא ולא בלקקא כדרך שעבדים
עושין. ח"ל, באחיכם בני ישראל איש כאחיו לא תרדה בו בפרך.

15. Mekhilta of R. Ishmael, p. 248:

אבל בבנו ובחלמידו רשאי.

16. Sifra, p. 109b:

דבר אחר: לא תעבוד בו עבודה עבד. בו אין אתה עובד עבודה עבד,
אבל עובד אתה בנך חוריס עבודה עבד.

17. Sifra, p. 109b:

יעבוד עסק. שלא חסור לו אמנחו לאחר שאם היה בלן לרבים ספר
לרבים נחתום לרבים לא יעשה.

18. Mekhilta of R. Shimon, p. 160:

שלא ימסור אומנחו לאחר. שאם היה בלן לרבים ספר לרבים נחתום לרבים
שלחנו לא יעשה. יכול אפילו היחה אומנחו כך. ח"ל יעבוד עסק.

19. Mekhilta of R. Ishmael, p. 248:

שש שנים יעבוד. שומע אני בני עבודה שיש בה בזיון בין עבודה שאין
בה בזיון. ח"ל כשכיר כחושב. מה שכיר אי את רשאי לשנותו מאומנחו
אף עבד עברי אי אתה רשאי לשנותו מאומנחו; מכאן אמרו, לא יושיבנו
רבו באומנות שהיא משמעת לרבים. כגון חייט, בלן, ספר, טבח, נחתום.

20. Midrash Tannaim, p. 85:

ועבדך. שומע אני בני עבודה שיש בה בזיון בין עבודה שאין בה בזיון.
ח"ל לא תעבוד בו עבודה עבד. מיכן אמרו לא יושיבנו רבו ב"ר, בלן,
ספר, טבח, נחתום.

21. Statements attributed to R. Jose are found attached to each Midrash. He held that if such work had been the Hebrew slave's occupation he is permitted to continue. In the Mekhilta of R. Shimon and Sifra R. Jose's view is presented as a minority opinion; in the Mekhilta of R. Ishmael and Midrash Tannaim it is offered as additional support.

22. Mekhilta of R. Ishmael, p. 248:

כשכיר כחושב, מה שכיר עובד ביום ואינו עובד בלילה, אף עבד עברי עובד ביום ואינו עובד בלילה; רבי יוסי אומר, הכל לפי אומנוהו.

23. Sifra, p. 109b:

לא חרדה בו בפרך. שלא תאמר בו החס את הכוס הזה והוא אינו צריך. הצין לי את הכוס והוא אינו צריך. עזר חחה הגפן עד שאבא שםא תאמר לצורך עצמי אני עושה. הרי הדבר מסור ללב, שנאמר ויראה מאלהין הא כל דבר שהוא מסור ללב נאמר בו ויראה מאלהין.

24. Mishneh Torah, Slavery 1:3.

25. Sifra, p. 109b:

יהיה עמר. עמר במאכל, עמר במשחה, עמר בכסות נקייה. שלא תהא אוכל פה נקיי והוא אוכל פה קיבר. אתה שוחה יין ישן והוא שוחה יין חדש. אתה ישן על סוכין והוא ישן על התבן.

26. Exodus 21:3:

אם בגפו יבוא בגפו יצא; אם בעל אשה הוא ויצאה אשתו אמו.

27. Leviticus 25:41:

ויצא מעמך הוא ובניו עמו ושב אל משפחתו.

28. Mekhilta of R. Ishmael, p. 250:

ויצאה אשתו עמו. רבי יצחק אומר מי הביאה שהכחוב מוציאה. ח"ל ויצאה אשתו עמו. מגיד שהוא חייב במזונותיה ובמזונות בניו, שנאמר ויצא מעמך הוא ובניו עמו. מכלל יציאה אתה למד על הכניסה.

29. Mekhilta of R. Shimon, p. 161:

אם בעל אשה הוא, מה הוא חייב במזונותיו אף אשתו ובניו חייב במזונותיהן. עדיין אני אומר אשה ובנים שהיו לו עד שלא לקחו רבו חייב במזונותיהן שמתחלה לא לקחו אלא על מנח כן. אבל אשה ובנים שהיו לו משלקחו רבו לא יאה רבו חייב במזונותיהן שכבר נחתיים במזונותיו. אלא אשה ובנים שהיו לו משלקחו רבו רבו חייב במזונותיהן. ח"ל אם בעל אשה הוא ויצאה אשתו עמו. שתי נשים

כאן. אחת עד שלא לקחו רבו ואחת משלקחו רבו.

30. Mekhilta of R. Shimon, p. 161:

יכול אפילו נשא אשה שלא מדעת רבו. ח"ל, הוא. מה הוא מדעת רבו
אף אשתו מדעת רבו.

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