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BIBLICAL SLAVERY

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*For My Parents,
Richard and Norma Stevens
The Best Masters Anyone Could Ask For*

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BIBLICAL SLAVERY

That slavery was ubiquitous in the ancient world is generally accepted and well attested. Bernand Lewis, in his *Race & Slavery in the Middle East*, quotes correspondence between Mulai Abd Errachman ben Hesham, the "Sultan of Marocco"[sic], and the British Consul General, dated 1842, on the subject of the traffic of slaves:

We have received the Letter you have addressed to our presence exalted of God, wherein you state that the Minister for Foreign Affairs of the Queen of your Nation has called upon you to make inquiry regarding the Trade in Slaves, if it be lawful by our beloved Law or no.

Be it known to you, that the Traffic in Slaves is a matter on which all Sects and Nations have agreed from the time of the sons of Adam, on whom be the Peace of God, up to this day—and we are not aware of its being prohibited by the Laws of any Sect, and no one need ask this question, the same being manifest to both high and low and requires no more demonstration than the light of day. . . [Lewis, p.151]

The Torah does not question or justify the institution of slavery. It does insist that the slave be treated humanely, but there is no discussion of the appropriateness or inappropriateness of owning other human beings. This may simply attest to the antiquity of Scripture. Ruminations over the justness of the institution come much later, with the Greek philosophers, then with the Roman jurists. Discussing the issue never seemed to discourage the Greeks and the Romans from owning slaves, so the lack of treatment of the subject in the Torah is hardly a condemnation of

their actual household economics, about which we know very little. The only known people to have questioned the practice *and* to have refused to own slaves were the Essenes:

They deserve admiration in contrast to all others who claim their share of virtue because such qualities as theirs were never found before among any Greek or barbarian . . . moreover, they hold their possessions in common. . . . They neither bring wives into the community nor do they own slaves, since they believe that the latter practice contributes to injustice and the former opens the way to a source of dissension. Instead they live by themselves and perform menial tasks for one another. [Josephus XVIII: 2021]

The Essenes were the exception. In general, the ancients understood theory as something higher in dignity than practice and did not try to bring to be their noble theories. Aristotle (384-322 B.C.E.) always expected practice to fall short of theory and his writings reveal this conflict. On one hand he defines a "natural slave" so narrowly as to apply to a minuscule number of persons i.e., those who are mentally incompetent to govern themselves. On the other hand, for gentlemen to live the leisured life he recommends--free of the ordinary burdens of daily life so as to apply themselves to higher pursuits--a city would need many more slaves than those he considered to be justly enslaved. Aristotle makes these two contradictory arguments in his *Politics*. First he acknowledges the controversy:

Others hold that exercising mastery is against nature; for [as they believe] it is by law that one person is slave and another free, there being no difference by nature, and hence it is not just, since it rests on force. [*Politics*, I, 1, 3-4]

Aristotle responds to this by making the argument that there are two kinds of slaves, those by nature and those by law. Those by law, he says, are enslaved by convection and those by nature, justly:

That some persons are free and others slaves by nature, therefore, and that for

these slavery is both advantageous and just is evident. . . . Slavery and the slave are spoken of in a double sense. There is also a sort of slave or enslaved person according to law, the law being a certain agreement by which things conquered in war are said to belong to the conquerors. [ibid, I, 5,1-6:1]

After demoting, as it were, the vast majority of slaves owned by Greeks to the status of slaves by convention he moves on to the subject of running a household. Before it had seemed that he would condemn the practice of owning any slaves other than those who are "slaves by nature" but he does no such thing. Again, theory in Aristotle does not match practice. Not only does he consider slaves as a requirement for running a household, he suggests, in fact, that a gentleman hire someone to handle his slaves so he'll have more time for more important duties:

(4) All things of this sort, then are sciences characteristic of slavery: but the science characteristic of mastery is expertise in using slaves, since the master is what he is not in the acquiring of slaves but in the use of them. This science has nothing great or dignified about it: the master must know how to command the things that the slave must know how to do. (5) Hence for those to whom it is open not to be bothered with such things, an overseer assumes this prerogative, while they themselves engage in politics or philosophy. [ibid. 7:4-5]

Anyone who needs an overseer to manage his slaves must have quite a few of them, so Aristotle is hardly condemning the institution of slavery. What he does do, however, is raise the question and plant a seed that over time would grow into further discussion on the subject. That discussion is picked up by the Stoics a century later. The Stoic writer Zeno of Tarsus (c.300 B.C.E.), like Aristotle, condemned slavery in theory but not in practice:

There [in Zeno's *Republic*] he had anticipated a state without family life, without laws or coins, without schools or temples, in which all differences of nationality would be merged in the common brotherhood of man. This cosmopolitan citizenship remained all through a distinctive Stoic dogma, when first announced it must have had a powerful influence upon the minds of men, diverting them from the distractions of almost parochial politics to a boundless vista. There was, then, no longer any difference between Greek and barbarian, between male and female, bond and free. . . . Not that this led to any movement for the abolition of slavery.

For the Stoics attached but slight importance to external circumstances, since only the wise man is really free. [*Encyclopaedia Britannica*, 11th ed., vol.25, p. 947]

In Roman law, the question as to whether slaves are so by nature or by convention is raised once again. Three Roman jurists, Ulpian, Florentinus and Marcian, made statements on the personal status of slaves in each of their own Institutes, which were then excerpted and appear in Justinian's *Digest*. Ulpian, who is quoted first, distinguishes between public and private law. Public law, he says, has to do with religious affairs, the priesthood and affairs of state. Private law, he says, is derived from (and they are always given in the Latin because they are not perfectly translatable) *jus naturale*, *jus gentium*, or *jus civile*. [Justinian I, i, 1-2]. His personal definition of *jus naturale* (and the various jurists define their terms differently) is "that which nature has taught to all animals" [ibid. I, i, 3] and he gives marriage, procreation and child rearing as examples. *Jus gentium*, according to him, is the *jus* of all human peoples among themselves. [ibid. I, i, 4] Slavery and manumission, he says, originated from the *jus gentium*, "since, of course, everyone would be born free by the natural law." [ibid. I, i, 4, 1] *Jus civile*, he continues, is civil law, which he says includes those laws written down and those not written down. [ibid. I, i, 6, 1]. The jurist Florentinus concurs with Ulpian in the placement of slavery under the *jus gentium*. Slavery, he says, "is an institution of the *jus gentium*, whereby someone is against nature made subject to the ownership of another." [ibid. I, v, 4, 1]

The jurist Marcian makes a distinction between in-group and out-group slaves. In-group slaves he puts in the category of the *jus civile* whereas only out-group slaves, according to him, are within the *jus gentium*:

1. People are brought under our power as slaves either by the civil law or by the *jus gentium*. This happens by civil law if someone over twenty years of age allows

himself to be sold with a view to sharing in the price. By the *jus gentium*, people become slaves on being captured by enemies or by birth to a female slave. [ibid. I, v, 5, 1]

All three jurists are in agreement that slaves do not come under the *jus naturale*. Aristotle had said that there is such a thing as a slave by nature. The Romans unanimously disagreed, but this had no effect on the life of slaves under the Romans, because nature did not have the same standing in Rome that it had in Greece. What philosophy was to the Greeks law was to the Romans, for whom the *jus gentium* was equally as valid as the *jus naturale*.

Roman law, the Hebrew Scriptures, and the New Testament are run through the blender by St. Augustine (354-430 C.E.), the Roman pagan-turned-Manichaean-turned-Christian. Son of a Roman official and a Christian, he was trained in rhetoric and Roman law. In his *The City of God*, he argues that slavery is derived from sin not from nature. He explains away the problem of taking slaves by foreign conquest by saying that in a just war the adversaries must be *punished* for their sins and in an unjust war God has humbled the vanquished in order to *remove* their sins. He slip slides around like this forgiving everyone from the Patriarchs (who were kind enough to teach their slaves the worship of God) to the Apostles (who admonish slaves to serve their masters with good will) on the grounds that they were all better off as a result of being enslaved [City of God, xix:15] Though Augustine seems to diverge from a purely pagan view of slavery he still feels compelled to justify it, for two reasons—Roman law and culture sanctioned it and the Patriarchs and the Apostles practiced it. Jews are not in the same bind as Christians when it comes to applying the teachings of the Hebrew Scriptures because Jews do not adjudicate based on the accounts in the biblical narrative. Biblical law, for instance, does not permit a man to marry his wife's sister in his wife's lifetime just because the patriarch Jacob married the sisters

Rachel and Leah. [Genesis 29:1 ff] The Torah later forbids it and juridical decisions are based on the laws, not the lore. [Leviticus 18:18]

Christians, having rejected Torah law and possessing no Christian law, are dependent upon the stories and lore of imperfect people whom they have elevated to reputations of perfection. So when their holy men do base things, Christian commentators look for any way to justify their actions. St. Augustine was in a double bind for he felt compelled to rationalize pagan practice and apologize for Christian practice while excusing biblical Jewish practice on the way. The Hebrew Scriptures themselves never attempt to justify or apologize for the actions of the Patriarchs. That, at least partially, explains why the whole cursing of Ham episode [Genesis xix:20ff.] is more significant to Christians than to Jews and was therefore used by practicing Christians as a justification for the enslavement of negroes in the American South. A second cause of apologetics for the enslavement of Africans in the American South was the contradiction between slavery and the Declaration of Independence. The *Declaration* states:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights [in Stevens, p.28]

America guaranteed all men certain rights, so Southerners had to justify depriving their African slaves of their rights by asserting that they were subhuman. The Greeks had justified their ownership of slaves by asserting that unlettered, uncultured barbarians were meant to be enslaved by them. [Aristotle's *Politics*, I:vi:7] Africans in the American South became the new barbarians. Southerners then pulled out the Bible and asserted that Ham's curse justified the enslavement of Africans. But biblical slavery, both in the narrative and as outlined in the laws, has nothing to do with the modern notion of racism. Racism is a modern graft on this ancient institution:

The immediate evils produced by slavery were nearly the same among the ancients as among the moderns, but the consequences of these evils were different. Among the ancients, the slave belonged to the same race as his master, and often was superior to him in education and enlightenment. Freedom alone separated them; freedom once granted, they easily intermingled. . . . The modern slave differs from the master not only by freedom but also by origin. You can make a negro free, but you cannot do it so that he is not in the position of a stranger *vis-à-vis* the European. . . . The moderns, after having abolished slavery, therefore have still to destroy three prejudices much more intangible and more tenacious than it: the prejudice of the master, the prejudice of race, and finally the prejudice of the white. [Tocqueville, I, ii, 10]

The Hebrew Scriptures make no argument from nature, nature being a Greek concept.

Slavery is handled piecemeal, not by a discussion of its validity or lack thereof. One can learn much by the arrangement and location of the laws pertaining to slavery in the Hebrew Scriptures. They are not grouped under "personal status" or in an entire book on laws of manumission as they are in Roman law. Rather, slavery as a punishment for animal theft follows laws on animals; the punishment for kidnaping for the purpose of selling persons into slavery appears in a list of felonies; and so forth. There being no assertion that men are equal by nature or free by nature in effect liberated the Torah from what would have then amounted to a massive legal fiction. One can then judge each law on its merit or lack thereof. When one compares the sections pertaining to slavery with Mesopotamian antecedents one finds modest but significant improvement in the lot of the slave. What follows is an examination of each of the Torah laws on slavery, looking back to law codes and documents of earlier civilizations and with reference to later civilizations for comparison. Citations are given within the essay in an abbreviated form. A full list of sources can be found below after the appendices.

OUT-GROUP SLAVES

The earliest recorded references to slavery in the Middle East are found in documents from what is now Iraq. The third dynasty, UrIII, which was established circa 2060 B.C.E. under king Ur-Nammu, predates the period of Hammurabi by some 300 years. During UrIII, the people of Mesopotamia lived in "semi-autonomous city-states loosely organized on the basis of a centralized hegemony of the Biblical City of Ur." [Siegel, p.5] In the article "Slavery During the Third Dynasty of Ur," Bernard Siegel looks at the earliest written designation for "slave" which, he says, dates to 3000 B.C.E. with the Sumerian pictograph of "male" and "mountain," and for maidservant, "woman" and "mountain." The sign *kur*, which means "mountain" is also used for "foreign country," so the gist of the meaning of the signs for slave and maidservant seems to be "foreigner." Documents dated from UrIII, show that foreigners were purchased to replace locals who had been inducted into the royal army. It is not clear whether the locals were themselves slaves. If so, they were clearly "in-group" slaves, not foreigners.

In the matter of (?) [. . . Sima] numeans who had not yet been set in exchange for purchased workers did Susu, the son of Ezalagani, and Ur-^dAB-HI-NUN, son of Sheshkalla, take an oath (to the fact) that they had been lost.

Arshih is to give one Simanumean in restitution because Lugalkagina was inducted into th army. The nubanda (is) Arshih.

Laia is to give one Simanumean in restitution because Urbaba was inducted into the army. The nubanda (is) MIR-SAG-EZEN.

[. . .] lú swore [that he had not laid eyes upon]...dudu, a purchased [worker] who had been replaced with a [Sima]numean, [since the day the palace took him away and that when he would see him he would bring him in.]

Lubalasagaenanna swore that he had not laid eyes upon one Shagubi, a purchased worker who had been replaced with a Simanumean, since the day the palace took him away; and that when he would see him, he would bring him in.

By comparison, the overwhelming number of slaves in Ancient Greece were also out-group slaves, the majority from Scythia, especially Thrace. [Garlan p. 46] Regular wars in the Mediterranean brought entire city-states under enslavement. The Greeks, in particular, disdained enslaving their own. Herodotus, who can always be counted upon to point out the unusual or unique, makes note of an island enslaved by people of their own race:

Of the island settlements, Lesbos has five (the sixth, Arisba, was taken by the Methymnaeans, their kinsmen, and the inhabitants enslaved). [Herodotus, p.75]

Rome also acquired slaves through military conquest. During the Battle of Tarentum, 209 B.C.E., the Romans took 30,000 Carthaginians:

From the work of butchery the troops turned to plunder. It is said that 30,000 slaves were taken, an immense quantity of wrought silver and silver coins, 3,080 pounds weight of gold, and almost as many statues and pictures as had adorned Syracuse. [Livy, *The War With Hannibal*, xxvii, 16]

Indeed, the Roman jurist Florentinus derives the word "slave" *servi*, from the Latin root "to preserve," for he argues that the term originates from the ancient practice of enslaving conquered tribes rather than killing them:

4 Florentinus, *Institutes*, book 9:2. Slaves (*servi*) are so-called, because generals have a custom of selling their prisoners and thereby *preserving* rather than killing them: and indeed they are said to be *mancipia*, because they are *captives* in the hand (*manus*) of their enemies. [Justinian I:v:4:2]

Among the Jews a similar attitude pertained. King Solomon, in order to continue his building projects, levied slaves from the local conquered peoples. Solomon desired to build "for his pleasure" storehouses for his horses and cities for his horsemen in various locations throughout his dominion. For this project he decided he needed slave labor and drew from the

resident out-group population, which Solomon himself distinguishes from the Israelites:

All the people that were left of the Amorites, the Hittites, the Perizzites, the Hivites, and the Jebusites, who were not of the children of Israel; even their children that were left after them in the land, whom the children of Israel were not able utterly to destroy, of them did Solomon raise a levy of bondservants, unto this day. But of the children of Israel did Solomon make no bondservants; but they were the men of war, and his servants, and his princes, and his captains, and rulers of his chariots and of his horsemen. [I Kings 9:20-22]

The number of enslaved Canaanites is not recorded here. In I Kings 9:23 it is recorded that there were 550 officers who supervised the Canaanite slave's work. This entire account is repeated in II Chronicles 8:7ff. In the Chronicles version there is no mention of Israelites as servants of any kind:

But of the children of Israel did Solomon make no bondservants; but they were the men of war, and his servants, and his princes, and his captains, and rulers of his chariots and of his horsemen. [I Kings 9:22]

But of the children of Israel did Solomon make no servants for his work; but they were men of war, and chief of his captains, and rulers of his chariots and of his horsemen. [II Chronicles 8:9]

The version in I Kings shows Israelites working as servants, possibly as palace slaves. The Chronicles version deletes the word "servants" from the list of Israelite job titles. Perhaps there were some Israelites who were enslaved by the palace and the memory of this has been quietly suppressed. There are other slight differences between the two versions. In the Chronicles version, the number of supervisors listed drops to 250 from 550, but either number indicates a substantial number of Canaanites levied for slave labor by Solomon *because they were not Jews*.

The general distaste for enslaving one's countrymen is evident in law codes as well as the extant historical accounts. In the Code of Hammurabi there is a law requiring the immediate

release of slaves purchased abroad who turned out to be natives:

If a seignior has purchased in a foreign land the male (or) female slave of a(nother) seignior and when he has arrived home the owner of the male or female slave has identified either his male or his female slave, if that male and female slave are natives of the land, their freedom shall be effected without any money (payment) [Code of Hammurabi, law 280, Pritchard I, p. 167]

During the Middle Ages the parameters of "in-group" and "out group" were defined by religious affiliation rather than ethnic group but the predilection for sparing one's own remained universal. The Jews of Spain in the 10th-15th centuries understood this and those who worked the slave trade supplied Christian slaves to Muslims and Muslim slaves to Christians. [Abelson, p.620] Even without the Jews' assistance, Byzantine Christians and Ottoman Muslims enslaved each other's populations during endless skirmishes along the porous border of their empires:

The following day, Piali ordered the destruction of idols in the churches, and had two of the best converted into mosques, although he left the Catholic bishop his cathedral. Five hundred non-resident aliens were arrested, including many Knights of Malta and some noblemen from Naples and Messina, who were placed in the Ottoman galleys, to be sold as slaves or held to ransom. [Goodwin, p.102]

In the Torah, non-Jewish slaves, unlike their Jewish counterparts, were held in servitude by their masters in perpetuity:

And as for thy bondmen, and thy bondmaids, whom thou mayest have: of the nations that are round about you, of them shall ye buy bondmen and bondmaids. Moreover of the children of the strangers that do sojourn among you, of them may ye buy, and of their families that are with you, which they have begotten in your land; and they may be your possession. And ye may make them an inheritance for your children after you, to hold for a possession: of them may ye take your bondmen for ever; [Lev.25:44-46a]

Against that sober prescription, the Torah provides certain protections for the Canaanite slave. He was protected against severe beatings by his Hebrew master and protected if he fled

from a cruel master. In the Book of Exodus, sandwiched in the section on personal injury, the verses state that under certain circumstances a Canaanite slave *can* be manumitted. According to Rabbinic tradition these verses apply only to a Hebrew slave, but the verses here do not use any of the usual expressions for a Hebrew slave, such as *eved ivri* "Hebrew slave" or *achicha*, "your brother":

And if a man smite the eye of his bondman, or the eye of his bondwoman, and destroy it, he shall let him go free for his eye's sake. And if he smite out his bondman's tooth, or his bondwoman's tooth he shall let him go free for his tooth's sake. [Exodus 21:26-27]

If one compares these verses to laws in the Code of Hammurabi one can not help but be struck by the differences between them. In the Code of Hammurabi, legislation is designed to protect the rights of the slave owner, not the slave. All the laws pertain to the liability of a free man to another free man for loss:

If he [a seignior] has destroyed the eye of a seignior's slave or broken the bone of a seignior's slave he shall pay one-half his value. [law 199, Pritchard I, p. 161]

If a builder constructed a house for a seignior, but did not make his work strong, with the result that the house he built collapsed and so has caused the death of . . . a slave of the owner of the house, he shall give slave for slave to the owner of the house. [law 231, Pritchard I, p. 163]

There are no Babylonian laws pertaining to a free man and his own slave. The presumption of the unlimited power of a master over his slave is echoed in the writings of the Roman jurist Gaius (fl. 130-180 C. E.). In his *Institutes*, Book I, section 1, he remarks:

Slaves, then, are in the *potestas* of their master, this form of *potestas* being power in virtue of the *jus gentium*. For we can observe that equally among all nations masters have had the power of life or death over their slaves. And whatever acquisitions are made through a slave are acquisitions of the master's. But at the present time no men who are subject to Roman rule are permitted to treat their slaves with a severity which is excessive and without statutory cause shown. For

under an enactment of the deified Antoninus it is obligatory that he who has killed his own slave without due cause be punished not less severely than one who has killed another's slave. But even too great cruelty of masters is restrained by an enactment of the same emperor. [Justinian I:vi:1:1-2]

The enactment of Antoninus is clearly an innovation. Prior to his reign it would seem that in the Roman Empire one could kill one's own slave with impunity. This is not the case in Torah law. It says otherwise quite clearly at Exodus 21:20:

And if a man smite his bondman or his bondwoman, with a rod, and he die under his hand, he shall surely be punished. [Exodus 21:20]

The generally held position returns if the slave survives his beating:

Notwithstanding, if he continue a day or two, he shall not be punished; for he is his money. [Exodus 21:21]

Roman law formalized the gruesome practice of torturing slaves in order to extract evidence from them to be used in court cases involving free citizens. The presumption was that slaves, who otherwise would not be considered acceptable witnesses, will only tell the truth if they are tortured, and therefore only the statements made by them under this terrible duress were admitted as evidence. From the *Institutes* of the Roman jurist Marcian, book 3:

Things in *civitates* such as theaters and stadiums and such like, and anything else which belongs communally to the *civitates* are property of the community corporately not of separate individuals. Thus, even the communal slave of the *civitas* is considered to belong not to individuals in undivided shares but to the community corporately, and accordingly, the deified brothers ruled in a rescript that a slave belonging to the *civitas* can be put to the torture as readily to inculcate as to exculpate a citizen. [Justinian, I:vii:6:1]

What is remarkable about the Torah laws regarding servitude is not so much their liberality but that they consider the rights of slaves *at all*. There is an interesting case described in Plato's *Euthyphro* which concerns a slave who was murdered by a free laborer working on the

householder's estate. When the owner learns of the murder he sends someone to Athens to ask a religious adviser what he should do. He had, in the meantime, tied up the laborer who died while the owner awaited news from Athens. Plato's purpose in the dialogue is to ask a question unrelated to this paper, but the case that is brought up teaches us something about slavery in Greece. An indictment of the owner is brought concerning the death of *the laborer*. The death of the slave doesn't receive any attention from the court. The slave's death was the concern of the owner who consults religious authorities, not the courts:

In this case, the man who was killed was a hired workman of mine, and when we were farming at Naxos, he was working there on our land. Now he got drunk, got angry with one of our house slaves, and butchered him. So my father bound him hand and foot, threw him into a ditch, and sent a man here to Athens to ask the religious adviser what he ought to do. In the meantime he paid no attention to the man as he lay there bound, and neglected him, thinking that he was a murderer and it did not matter if he were to die. And that is just what happened to him.
[Euthyphro 4c-d]

: Not only does the Torah attempt to prevent the Hebrew master from treating his Canaanite slave harshly, protections are mandated to prevent a fugitive slave's being returned to a cruel master. Harboring a fugitive slave is actually encouraged:

Thou shalt not deliver unto his master a bondman that is escaped from his master unto thee; he shall dwell with thee, in the midst of thee, in the place which he shall choose within one of thy gates, where it liketh him best; thou shalt not wrong him.
[Deuteronomy 23:16-17]

There is no law in the ancient world as kindhearted to the fugitive slave and to those who harbor him. In the rest of the ancient world rewards were offered for the return of a fugitive slave.

As early as the end of the third millennium, B.C. E., a fee for the finder was set by law. Ur-Nammu, (2112-2095 B.C. E.) who was the founder of UrIII in Mesopotamia, set down the following fee schedule in his law code:

14: If [. . .] a slavewomen [*or a male slave fled from the master's house*] and crossed beyond the territory of the city, and (another) man brought her/him back, the owner of the slave shall pay to the one who brought him back *two* shekels of silver. [Pritchard II, p.33]

Three centuries later a similar law appears in the Code of Hammurabi:

17: If a seignior caught a fugitive male or female slave in the open and has taken him to his owner, the owner of the slave shall pay him two shekels of silver. [Pritchard I, p.141]

In the Code of Hammurabi, death was the penalty for harboring or aiding the escape of a slave:

15: If a seignior has helped either a male slave of the state or a female slave of the state or a male slave of a private citizen or a female slave of a private citizen to escape through the city-gate, he shall be put to death.

16: If a seignior has harbored in his house either a fugitive male or female slave belonging to the state or to a private citizen and has not brought him forth at the summons of the police, that householder shall be put to death. [Pritchard I, p. 141]

In Ancient Greece, treaties were drawn up between city-states with reciprocal arrangements for the return of fugitive slaves attempting to return to the lands of their birth. Such a treaty existed between the Anatolian city-states of Miletus and Heraclea:

With regard to servants who, having fled from Miletus to Heraclea or from Heraclea to Miletus, are handed over to the mountain guards of either city as from the year following Menandros' assumption of the crown, those who are responsible in Miletus must report the individuals to the *prytaneis* and superintendent magistrates, in each case within ten days from the time when the slave was handed over. These officials must send a letter explaining the circumstances in detail to the *prostatai* of Heraclea. Those who hold the posts of mountain guards in Heraclea must inform the *prostatai* within a similar period and the latter must similarly send a letter to the *prytaneis* of Miletus and the superintendent magistrates. The masters of the slaves of each city will be allowed to take them away, provided they pay the mountain guards ten of the old Rhodian drachmas by way of a recovery fee and, in addition, one obole per day for their keep, and this must be done within four months from the date of the letter addressed to the magistrates: otherwise the slaves will become the property of the

mountain guards. [Garlan, pp. 196-197]

Whether foreign slaves were worse or better off in ancient Israel than in other places is something we will never know. Legislation only has a limited effect on common practice. Texts can be immeasurably more reasonable than people. But if one compares the Torah laws on out-group servitude with those of the neighboring civilizations of antiquity it would seem that a foreigner would be considerably better off under a Hebrew master than under a Sumerian, Babylonian, Greek, or Roman master. The reality may not have matched the ideal, but judging from the documents and codes that have come down to us, an out-group slave in Ancient Israel enjoyed at least some rights – 1) his master was punished for killing him, 2) a serious injury inflicted by his master guaranteed his manumission, 3) if he escaped he was not to be returned to his master and, 4) no one harboring him could be punished for helping him. In the context of the ancient world this is quite impressive. How one ultimately judges the Torah legislation on foreign slaves depends on how one views the Torah. Though the Torah's modest improvement upon existing and antecedent laws is to be praised, the imprimatur on the vile institution of perpetual servitude is to be condemned. Would that our ancestors had condemned it. Although the overwhelming number of slaves in the ancient world were foreigners who had suffered the misfortune of being on the losing side of a war, the bulk of the case law on slaves in the Torah pertains to Hebrew rather than Canaanite slaves.

IN-GROUP SLAVERY

The two principal causes of in-group slavery are crime and debt. In UrIII, if a free man murdered another free man his punishment included the enslavement of his entire family. First he would be executed, then his family became servants in perpetuity to the heirs of his victim:

"Lugirsu was *maškim* to the fact that Kuli, *šutug* (priest) of Eanna, had been convicted (be)fore the (*sukkal*)-*mah* (vizier, minister of the interior) as having killed (Babam)u the singer; (and also the fact) that inasmuch as Kuli had been executed, his effects, and his wife and daughter were given to the children of Babamu. In the fifth year, the wife and daughter of Kuli fled from the children of Babamu; the children of Babamu seized the. Before the judges they (the maid servants) contested maidservantship. Lugirsu, *maškim*, (court official) of the *sukkal-mah*, justified his word. The wife and daughter of Kuli (were con)firmed as maid servants for the (children)of Babamu.. [de Genovillac, 1910-21, II, 2789 in Siegel, p. 24]

This is reminiscent of the modern day punishment in Japan of the family of a suicide. If someone in Tokyo were to commit suicide by throwing himself in front of a bullet train his family is fined a set fee for each minute the trains are delayed. Both of these laws seem to be for the purpose of establishing an effective deterrent. The UrIII law also has the added feature that the family of the deceased, which now must make do without its chief breadwinner, is compensated financially by the addition of maidservants, acquired gratis.

Yvon Garlan, in his *Slavery in Ancient Greece*, refers to an article by the Russian scholar E. Solimonik, "The marking of livestock and slaves in Antiquity" in which he says that fugitive slaves in antiquity were branded or tattooed on the forehead "with a word or symbol which made their degradation publicly known." [Garlan, p. 197] Perhaps a slave mark is what is meant by the "sign of Cain." Perpetual servitude may have been his punishment for murder. Like a fugitive slave he flees from place to place:

And Cain said unto the Lord: 'My punishment is greater than I can bear. Behold, Thou hast driven me out this day from the face of the land; and from Thy face shall I be hid; and I shall be a fugitive and a wanderer in the earth; and it will come to pass, that whosoever findeth me will slay me.' [Genesis 4:13-14]

Perhaps he was protected from marauders by a slave mark that identified his master.

THEFT

An interesting footnote to history is that slavery as a punishment for crime is still legal in the United States. The 13th Amendment to the Constitution, adopted in 1865, says:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

In a Mesopotamian legal document dating from the Old Babylonian period a case is described of a trial for theft where the punishment is "penal servitude":

Ilushunasir and Belshunu—because Taribum had trespassed . . . , in the house of Ilushunasir—arrested him. Taribum son of . . . , before the elders of the city confessed: "I am a thief." Since he [confessed]: "I have committed theft," the stolen goods having been found in his possession, the city elders, in the (presence of) the Axe of Sin and the Mace of Isharkidissu, delivered him up to Ilushunasir for penal servitude.

Witnesses, including the viceroy (*šakanakku*). [Pritchard II, p. 77]

In the Code of Hammurabi, theft is punishable by death, not servitude, if the thief is unable to make restitution. The law distinguishes between theft from public property and theft from private property and assigns fines accordingly:

8: If a seignior stole either an ox or a sheep or an ass or a pig or a boat [*sic!*, "goat"?], if it belonged to the church [*sic!*] (or) if it belonged to the state, he shall make thirtyfold restitution; if it belonged to a private citizen. he shall make good tenfold. If the thief does not have sufficient to make restitution, he shall be put to death. [Pritchard I, p. 140]

Cattle thieves were punished harshly in antiquity as indeed horse thieves were in recent history in the American West. Up until not so long ago horse thieves in our country were hanged. Cattle thieves in Rome suffered a similar fate before the reign of Hadrian. The Roman jurist Ulpian in his *Duties of Proconsul*, book 8, quotes the Emperor Hadrian on the subject of cattle thieves:

1. ULPIAN, *Duties of Proconsul*, book 8: On the punishment of cattle thieves, the deified Hadrian sent the following rescript to the council of Baetica: "Since cattle thieves are to be most severely punished, they are usually condemned to death. But condign punishment does not apply everywhere but only in places where this sort of offense is rife. In other cases, they are condemned to forced labor, sometimes temporary." 1. Correctly speaking, they are offenders of this kind who drive off beasts from pastures or herds and ravage in some way, and they practice their activity almost as an art, driving away horses and oxen from their herds. But if someone take off a straying ox or horses left in the wilds, he is not a cattle thief as such, rather an ordinary thief. 2. Those who make off with a pig or goat or a wether should not be punished so severely as those who drive off the larger beasts. 3. Now although Hadrian prescribed the mines, forced labor, and even death as punishments, those born of respectable rank should not be subjected to such punishment but should be relegated to an island or removed from their civic order. Those who drive off cattle at swordpoint are not improperly exposed to the beasts. 4. One who drives off cattle, over the ownership of which he has raised a dispute, should be remitted, as Saturninus writes, to civil proceedings. This, however, is to be accepted only where he makes a claim of right in good faith and not as a pretext for thieving. [Justinian, XLVII: xiv:1:1-4]

According to the "forest-laws" of King Canute (995-1035) if someone stole and killed one of the king's deer he either had his eyes put out or lost his life. Canute reigned as king of Denmark and, at first, just rural England. Upon the death of Edmond he ruled over all England. His are the earliest recorded forest laws. [*Encyclopaedia Britannica*, 11th ed., vol.19, p.100]

The legislation on animal thieves in the Torah follows the laws on the "goring ox." Various cases are considered. The type of animal, whether it is still alive or has been killed and sold or sold alive, and whether the thief acted under cover of darkness or during the day, are factored in when determining the penalty.

If a man steal an ox, or a sheep, and kill it, or sell it, he shall pay five oxen for an ox, and four sheep for a sheep. If a thief be found breaking in, and be smitten so that he dieth, there shall be no bloodguiltiness for him. If the sun be risen upon him, there shall be bloodguiltiness for him—he shall make restitution; if he have nothing, then he shall be sold for his theft. If the theft be found in his hand alive, whether it be ox, or ass, or sheep, he shall pay double. [Exodus 21:37-22:3]

Chapter 22 verses 1 and 2 of Exodus concern the liability of the homeowner. He is not permitted to grab a thief found on his property and kill him but if night has fallen he is absolved, undoubtedly on the grounds that he is protecting himself and his family. If the thief is caught red-handed the penalty is 2 for 1. If he has disposed of the animal, dead or alive, he pays 5 for 1 for an ox and 4 for 1 for a sheep. If he can not afford the penalty he is sold into slavery for his theft.

When one compares the Torah laws on animal thieving to those of Mesopotamia and Rome, they appear unquestionably more liberal. By Torah law an animal thief is neither hanged (as was done in the American West) nor exiled (as was done to an upper class Roman), nor sent to the mines (as with Roman commoners) nor has his eyes put out (as in 11th century England). He paid a fine, either double, triple, or five-fold, depending on the circumstances. Even the five-fold penalty is half that imposed by the Code of Hammurabi, if the owner was a private citizen, and 1/10th the penalty if the owner was the state. In the Code of Hammurabi if the thief could not afford the penalty he was put to death; in the Torah he is merely sold into slavery. Since the only reason he is sold into slavery is that he cannot afford to pay the penalty, in the Torah servitude for crime is related to slavery for debt.

DEBT

The most common cause of in-group slavery is debt. Selling oneself and one's family members to pay off financial obligations dates back at least 3,800 years. In Mesopotamia at that time it was a custom that at certain intervals the ruler would declare a national amnesty whereby all debts were forgiven and land reverted to its original owner. At the beginning of their reigns and every 7 or more years following, the king would proclaim a period of equity, called *nig.si.sá* in Sumerian and *mišarum* in Akkadian, [Pritchard II, p. 36] These *misharum*-acts were precursors of the biblical year of the Jubilee, and they foreshadow the biblical statutes on the automatic manumission of a Hebrew slave after 6 years of servitude.

One of these *misharum*-acts, and the only complete one extant, is the *Edict of Ammisaduqa*. Ammisaduqa was the tenth ruler of the dynasty of Hammurabi (1646-1626 B.C.E.). [Pritchard II, p.36] In this edict there appears the case of a man, born free, who because of financial obligations is forced to sell himself or a member of his family. During the year of the *misharum* he goes free:

20: If an obligation has resulted in foreclosure against a citizen of Numhia, a citizen of Emutbalum, a citizen of Idamaras, a citizen of Uruk, a citizen of Isin, a citizen of Kisurra, or a citizen of Malgium, (in consequence of which) he [placed] his own person, his wife or his [children] in debt servitude for silver, or as a pledge—because the king has instituted the *misharum* in the land, he is released; his freedom is in effect. [Pritchard II, pp. 40-41]

This is similar to the case described in the Torah:

And if thy brother be waxen poor with thee, and sell himself unto thee, thou shalt not make him to serve as a bondservant. As a hired servant, and as a settler, he shall be with thee; he shall serve with thee unto the year of jubilee. Then shall he go out from thee, he and his children with him and shall return unto his own family, and unto the possession of his fathers shall he return. For they are My servants, whom I brought forth out of the land of Egypt; they shall not be sold as

bondmen. Thou shalt not rule over him with rigour; but shalt fear thy God.
[Leviticus 25:39-43]

In the Code of Hammurabi the period of obligation lasts only three years as compared to the six years of the biblical obligation:

117: If an obligation came due against a seignior and he sold (the services of) his wife, his son, or his daughter, or he has been bound over to service, they shall work (in) the house of their purchaser or obligee for three years, with their freedom reestablished in the fourth year. [Pritchard I, p. 151]

In the documents extant from UrIII there is evidence of the sale of children by mothers as well as fathers and one case of a sale by grandmother. There are also cases of self-sale and the sale of the wife (along with her husband and their children) by the husband. In one case a father, suffering financial straits, disinherits his son, takes an outsider as his heir and weds his daughter to the new heir--thus avoiding having to sell his daughter into slavery. [Siegel, p. 13-14]

In the Torah, the sale of a daughter is always tied to her future marriage to the master of the house or his son:

And if a man sell his daughter to be a maid-servant, she shall not go out as the men-servants do. If she please not her master, who hath espoused her to himself, then, shall he let her be redeemed; to sell her unto a foreign people he shall have no power, seeing he hath dealt deceitfully with her. And if he espouse her unto his son, he shall deal with her after the manner of daughters. If he take him another wife, her food, her raiment, and her conjugal rights, shall he not diminish. And if he do not these three unto her, then shall she go out for nothing, without money.
[Exodus 21:7-11] [See also Appendix C]

There is a case from the Ism-Larsa period which shows a man pledging himself for a debt:

"Ikbatum placed himself for his (i.e., Ikbatum's) debt obligation. When he brings the silver, Ikbatum shall depart." [Siegel, p. 25, n.53]

In Ancient Rome, slavery for debt was abolished in the year 326 B.C.E. following an incident of abuse of a young boy sold by his father to the father's creditor:

28. In that year the liberty of the Roman people had as it were a second birth, with the abolition of enslavement for debt. The change in the law was made as a result of the exceptional lust and cruelty of a single man who had lent money, This was Lucius Papitius to whom Gaius Publilius had bound himself for a debt owed by his father. The debtor's youth and beauty, which might have won him mercy, only inflamed the other's lust and violence. Treating the boy's youthful prime as an additional bonus for the loan, he first tried to seduce him with indecent suggestions, then, when he turned a deaf ear to any shameful proposal, threatened and terrified him with frequent reminders of his position. Finally, when he saw that the boy thought more of his honour than of his present plight, he had him stripped naked and flogged. Bleeding from the lash, Publilius rushed out into the street, bewailing his creditor's lust and cruelty, and a great number of people, moved with pity for his youth and indignation at the shameful treatment he had suffered, and no less with concern for their own situation and that of their children, hurried to the Forum and then in a massed crowd to the Senate-house. The consuls, caught unawares by the commotions, were forced to convene the Senate, and as its members entered the crowd fell at the feet of each one of them, and showed the young man's bleeding back. On that day, as the result of one individual's outrageous treatment, a powerful bond of credit was broken, and the consuls were told to put the proposal to the people that no one should be held in fetters or in prison while awaiting punishment except those who deserved it for an offence committed, and that, to repay money lent him, a debtor's property could be seized, but not his person. Those in bondage were accordingly set free, and enslavement for debt was forbidden in future. [Livy, VIII:28]

In England during the reign of Henry VIII beggars and vagabonds had their ears bored and were kept in jails. Though they were not technically slaves, they lost their freedom and were given the classic biblical slave mark on the ear, for the crime of being poor.

The plight of those sold into slavery for debt is treated in the story of Elisha the prophet helping a destitute widow:

4:1 Now there cried a certain woman of the wives of the sons of the prophets unto Elisha, saying: 'Thy servant my husband is dead; and though knowest that thy servant did fear the Lord; and the creditor is come to take unto him my two children to be bondmen.' [II Kings 4:1]

With Elisha's help she is able to pay back her debts and save her children.

SLAVE SUPPLY

There were three main sources of slaves in antiquity—foreign wars, slavebreeding and slaving. Though there are detailed sections in the Torah as well as evidence in the later books on debt servitude and crime servitude, it is unlikely that these two sources satisfied the demand. It is difficult to gauge whether the dearth of information in the Torah on the purchase of slaves teaches us that it wasn't a common practice or that the discussion of it was distasteful. Among classicists, there is an ongoing scholarly dispute as to whether the primary source of slaves in Rome during the late Empire was slavebreeding or slaving. They are all in agreement that foreign wars supplied Rome early on. Likewise, it is clear that Israel's primary source of slaves early on was the conquered Canaanite tribes.

Slaving is forbidden by Torah law which may explain why Torah law supports the master's right to hold on to the children sired by a Hebrew slave and born to a maidservant of the master's after that slave has been manumitted. Perhaps some forms of slaving were practiced. It is not clear that the Torah frowned upon the purchasing of slaves from a dealer, nor does it say that you are not to sell your houseborn slaves abroad, only that you may not kidnap a free man, presumably a Hebrew, and sell him:

And he that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death. [Exodus 21:16]

If a man be found stealing any of his brethren of the children of Israel, and he deal with him as a slave, and sell him; then that thief shall die; so shall thou put away the evil from the midst of thee. [Deuteronomy 24:7]

If Kohelet is an accurate witness to custom, slaves were routinely purchased from dealers and bred at home:

1:2 Vanity of vanities, saith Koheleth;
Vanity of vanities, all is vanity

2:4 I made me great works. . . .

2:5 I made me gardens. . . .

2:7 I acquired men-servants and maid-servants, and had servants born in my house;
also I had great possessions of herds and flocks. . . .

Slave dealers were viewed as a necessary evil in the Roman Empire where scholars estimate that 20% to nearly 40% of the population in the Empire were slaves. [K. R. Bradley in Finley, p. 53] In Roman legislation slave traders are treated like loathsome relatives who can't be disowned:

Ulpian, *All Seats of Judgement*, book 8: Governors usually hear cases concerning slave-trading, although it is demeaning. . . . for there are functions for this kind of man, as one would expect in so large a state. For there is a kind of slave-trader who is useful in a not unreasonable way in sale and purchase and *commercias* and lawful contracts. [Justinian L:xiv:3]

K. R. Bradley in the essay, "On the Roman Slave Supply and Slavebreeding," describes the Hellenistic trade routes which the Romans utilized for passing kidnaped slaves from trader to trader to the purchaser. [in Finley, p. 58]

If the Torah laws are any indication, slave-breeding, rather than slaving, was the primary source of new slaves in ancient Israel. In all areas during antiquity house-born slaves had the fewest rights. The plight of the houseborn slave is used by the prophet Jeremiah as a metaphor for Israel's abasement:

14. Is Israel a servant?
Is he a home born slave?
Why is he become prey?

15. The young lions have roared up on him,
And let their voice resound;
And they have made his land desolate,
His cities are laid waste,
Without inhabitant [Jeremiah 2:14-15]

House-born slaves in Israel formed a servile class that did not go free after six years as did Hebrew slaves who had been sold, or sold themselves, into slavery. In Roman law a child took the status of his father unless his parents were unmarried, in which case the child took the status of his mother. In Torah law a child of a slave mother always takes the status of the mother. Since in Hebrew the word for "woman" and "wife" is the same it is likely that Exodus 21:4 should read, "If his master give him a woman," not "If his master give him a wife." As in Roman law, the children, then took the status of the mother because their parents were never married and in any case, the father was still a slave at the time. The commentator Arnold B. Ehrlich makes a similar case. He points out that the typical expression for marriage is to "take" a wife and since the verb "to take" is not used here, no marriage has taken place. [see Appendix B, Exodus 21:4]

The matter of children by a slave mother and a free father is not discussed in the Torah. Hebrew maidservants were always betrothed at the time of their sale and their children by the wedded husband, whether the master or his son, were always free. Children of the master by Canaanite bondwomen is not treated. In Ancient Greece during Homeric times the child of a master and slave was free (*Odyssey* 14:200 ff.) Whereas in Rome such children were born slaves.

In Mesopotamia, it appears that being a houseborn slave conferred permanent slave status. The edict of Ammisaduqa (17th century B.C.E.) states that if a free man, due to debt, sells himself or his entire family that they all go free during the year of the *misharum*. However, if due to debts he gives his slaves over as a pledge or gives them over entirely, *they* do not go free during

the *misharum*. [Pritchard II. p.41] The text does not specify that they were houseborn but it is likely since free born men regained their freedom and their land during the *misharum*.

Assuming that Hebrew masters supplied their Hebrew slaves with non-Jewish women with whom to sire children—and that is the assumption of most commentators—then these non Jewish slaves could be kept in perpetuity. But again, whatever actually took place is entirely conjecture. We don't have surviving documents, as have been found in other locales, to help us piece together an adequate picture. In Egypt, for instance, a document has been found dating from the 18th century B.C.E. which names over 80 servants in a Theban household. Over 40 of those listed are stated to be Asiatic. According to the translator, John A. Wilson, there is no evidence for "military capture" of Asiatics, so this suggests the possibility of an active slave-trade route between Egypt and the Orient, with Asiatics selling other Asiatics for profit. [Pritchard II, p. 87] The children have Egyptian names only rather than two names—one Asiatic and one Egyptian--pointing to the possibility that they are house-born slaves:

(35) The Asiatic woman, Baaltuya—she is called Wah-Res-seneb—work-staff. Her daughter Senebtisy—it is her name—child. [ibid.,p.89]

Wilson surmises that they were perhaps slaves even though the word for "slave," he points out, does not appear in the document. In the Torah, the mere fact that slave breeding is mentioned and sanctioned lends credence to the likelihood that this was a prime method for ensuring an adequate supply of slaves.

SLAVE MARKS

Slaves throughout the ancient world were marked in some, usually indelible, fashion. The only slave mark described in the Torah is in reference to the Hebrew slave who has opted to serve his master permanently in order to stay with his wife and children:

If his master give him a wife, and she bear him sons or daughter; the wife and her children shall be her master's and he shall go out by himself. But if the servant shall plainly say: I love my master, my wife, and my children; I will not go out free; then his master shall bring him unto God, and shall bring him to the door, or unto the doorpost; and his master shall bore his ear through with an awl; and he shall serve him for ever. [Exodus 21:4-6]

It is implausible that Canaanite slaves were unmarked, unless the entire local population had been enslaved and every Canaanite was assumed to be a slave. It is more likely that the mark assumed a different character, perhaps a tattoo, and that the detailed description of Exodus 21:6 serves some other purpose. In a manumission document from Elephantine, a Jew by the name of Meshullam son of Zakkur releases his slave, Tapmut, and her daughter, Yehoyishma, at his death. In this Aramaic Papyrus, dating from June 12, 427 B. C. E., Meshullam identified his slave Tapmut by her slave mark:

(1) On the 20th of Siwan, that is the 7th day of Phamenoth, the year 38 of King Artaxerxes--at that time, (2) Meshullam son of Zakkur, a Jew of the fortress Elephantine, of the detachment of Arpakhu said to the woman Tapmut (as she is called), (3) his slave, who has on her right hand the marking "Of Meshullam," as follows: I have taken kindly thought of you (4) in my lifetime. I hereby declare you released at my death and likewise declare released the daughter Yehoyishma' (as she is called) whom (5) you have borne me. [Pritchard II, p.83]

The slave mark might have been some sort of honor accorded to a slave signifying that that slave is no longer of the status of a slave who can be sold to another master or another country. In the Code of Hammurabi the slave mark seems to signify that the slave is now a

permanent member of the household:

146: When a seignior married a hierodule and she gave a female slave to her husband and she has then borne children, if later that female slave has claimed equality with her mistress because she bore children, her mistress may not sell her; she may mark her with the slave-mark and count her among the slaves. [Pritchard I, p.154]

In the Code of Hammurabi the mark used to identify a slave seems to have been a tattoo, as was the case with the slave Tapmut described above. In an interesting section in the Code for Hammurabi devoted to physician services, fees, and penalties for malpractice, there are two laws pertaining to slave branders:

226: If a brander cut off the slave-mark of a slave not his own without the consent of the owner of the slave, they shall cut off the hand of that brander.

227: If a seignior deceived a brander so that he has cut off the slave-mark of a slave not his own, they shall put that seignior to death and immure him at his gate; the brander shall swear, "I did not cut (it) off knowingly," and then he shall go free. [Pritchard I, p. 163]

In ancient Rome bronze collars were utilized to identify the owner. Many have been found and are placed in museums in Europe. One such collar was found around the neck of a skeleton in southern Rome. Their texts speak volumes about the hatred of slaves for their servile status:

"If captured, return me to Apronianus, minister in the imperial palace, at the Golden Napkin on the Aventine, for I am a fugitive slave." [Veyne, p. 59]

A bronze "dog tag" reads similarly:

"I am Asellus, slave of Prejectus attached to the ministry of markets, and I have escaped the walls of Rome. Capture me, for I am a fugitive slave, and return me to Barbers' Street, near the Temple of Flora." [ibid.]

Looking again at Exodus 21:6, then, it would seem that the purpose of the boring of the ear of the Hebrew slave who has opted to stay with his master is to mark him permanently should he try to escape. Much sentimental nonsense has been written about this odd ceremony, but such apologetics do not stand up to reason. There are two questions that need to be considered with regard to the ear boring ceremony; why the ear and why the doorpost. There is a story in the Babylonian Talmud regarding the first question. When a student of Yochanan ben Zakkai asked him why a slave was bored on the ear he replied:

“ The ear that heard the Divine utterance, ‘for unto Me the children of Israel are servants’ (Lev. 25:55) and yet preferred a human master, let that ear be bored.”
[BT]

This sermonic explanation is interesting but it provides a lesson to the student rather than an explanation of the practice. It does, though, capture the idea of the ear as the receptacle of commands.

In the codes and extant legal documents of the Ancient Near East a formulaic statement is used for insubordination or breach of contract. The phrase begins with “You are not my. . . .” In YBC 2177, a Sumerian document thought to be a student scribe’s copy of a legal code, the following law appears:

4: If (a son) has said to his father and to his mother: “You are not my father; you are not my mother,” he forfeits (his heir’s rights to) house, field, orchard, slaves and (any other) property, and they may sell him into slavery) for money at full value. [Pritchard II, p.35]

In an Old Babylonian Marriage contract, a similar expression is used:

Should Sabitum ever say to her husband Warad-kube: “You are not my husband,” They shall bind her and cart her into the water. [Pritchard II, p.35]

The last law in the Code of Hammurabi uses the same formulaic conditional sentence. It is

particularly interesting because it concerns a slave's ear:

282: If a male slave has said to his master, "You are not my master," his master shall prove him to be his slave and cut off his ear. [Pritchard I, p. 167]

The ear is a logical choice because it is, as we said, the receptacle of commands. It is as well one of the few body parts the maiming of which will not inhibit the full strength and usefulness of the slave. Looking back at Exodus 21:5, the Hebrew servant "shall plainly say," that is, he shall make one of these formulaic statements attesting that he will never leave at which point he is given a permanent mark on his ear, lest he try to escape with his wife and children.

It is often said that the ear mark is to dissuade the Israelite from choosing bondage over freedom but this is an error borne of piety. Slavery is business. If the master thought otherwise he would allow the Hebrew slave to purchase the freedom of his wife and children. The Hebrew slave who cannot bear to leave his family is marked on the ear, exactly where insolent slaves in the Ancient Near East were mutilated to punish them for daring to leave, as a stern warning. Slaves in the Ancient Near East with non-permanent slave marks were only permitted movement within a limited area. The Law Code of Eshnunna, a kingdom in Mesopotamia that flourished around the year 2000 B. C. E., that is, after UrIII and before Hammurabi, contains two laws that concern delible slave marks:

51: A slave or a slave-girl of Eshnunna which is marked with a *kannum*, a *maškanum* or an *abbutum** shall not leave the gate of Eshnunna without its owner's permission.

52: A slave or a slave-girl which has entered the gate of Eshnunna in the custody of a (foreign) envoy shall be marked with a *kannum*, a *maškanum* or an *abbutum* but remains in the custody of its master. [Pritchard I, p. 137. (*The text is here annotated as follows: Markings that can easily be removed.)]

The boring of the ear was a permanent slave mark. As to that second question, why the doorpost, the commentator Arnold B. Ehrlich gives two answers. His first explanation ties this ceremony to the biblical narrative, his second answer considers the practical advantage of reminding the slave of his commitment:

Concerning the unique aspect of the door and the mezuzah as compared to the other physical features of the house, know that the door and the mezuzah are unavoidable to anyone entering the house, and anyone exiting must pass by it, something which is not true of any other part of the house. Therefore, the door and the mezuzah together form the most important part of the house. . . . And this is the reason that the blood of the Egyptian Passover is put on the mezuzah and the lintel as a sign The slave's ear is bored at the door in order that he might see the place of the boring and remember what was done [to his ear] each time he comes into the house and exits from it, that he be a loyal slave to his master whom he said he loved. [Ehrlich, p.176]

It seems, then, that the purpose of boring the ear is to mark the Hebrew slave permanently to announce that he is now a permanent member of the household and to prevent his escape. The purpose of performing the ceremony at the doorpost seems likely to be, as Ehrlich suggests, both a symbolic act and a practical reminder.

MANUMISSION

It seems that in Ancient Israel, the laws of manumission only applied to Hebrew slaves since Canaanite slaves were held in perpetuity. This was not the case in Greece and Rome where foreign born slaves were routinely freed in wills. In Greece, a manumitted slave was granted the status of *metic*, i.e. resident alien, and was not admitted to citizenship. In Rome manumitted slaves *were* granted citizenship, leading to a mixing of races in the Empire. In Ancient Israel, where there was no "separation of church and state," the manumission of Canaanite slaves would certainly have encouraged the intermarriage of Jews and Canaanites, something strictly forbidden:

When the Lord thy God shall bring thee into the land whither thou goest to possess it, and shall cast out many nations before thee, the Hittite, and the Girgashite, and the Amorite, and the Canaanite, and the Perizzite, and the Hivite, and the Jebusite, seven nations greater and mightier than thou; and when the Lord thy God shall deliver them up before thee, and thou shalt smite them; then thou shalt utterly destroy them; thou shalt make no covenant with them, nor show mercy unto them; neither shalt thou make marriages with them: thy daughter thou shalt not give unto his son, nor his daughter shalt thou take unto thy son. For he will turn away thy son from following Me, that they may serve other gods; so will the anger of the Lord be kindled against you, and He will destroy thee quickly [Deuteronomy 7: 1-4]

King Solomon had some trouble following this dictum [I Kings 1 ff.]. Most of his seven hundred wives and three hundred concubines were drawn from the local Canaanite tribes. During the return from Exile, Ezra tried to reinstate the old rules:

Now when these things were done, the princes drew near unto me saying: "The people of Israel, and the priests and the Levites, have not separated themselves from the peoples of the lands, doing according to their abominations, even of the Canaanites, the Hittites, the Perizzites, the Jebusites, the Ammonites, the Moabites, the Egyptians, and the Amorites. For they have taken of their daughters for themselves and for their sons; so that the holy seed have mingled themselves with the peoples of the lands; yea, the hand of the princes and rulers hath been first in this faithlessness. [Ezra 9:1-2]

The text goes on to report that the children of the captivity agreed to follow Ezra. At the end of chapter 10 is a list of all the men who agreed to be divorced from their foreign wives. The list reads like other genealogies, but it is rather a list of all those willing to give up their descendants. What is interesting about this odd prohibition is that mixing per se is not what is forbidden. A Hebrew slave was permitted and even forced to have conjugal relations with a Canaanite woman as long as he was still a slave. What is forbidden is for *free Hebrews* to fraternize with free Canaanite women. A Hebrew slave, *even a kohen*, was permitted or forced to have relations with a Canaanite woman during his six years of prescribed servitude. [See Appendix A, "The Hebrew slave who is a *kohen*"] But again, children of slave women took the personal status of their mothers, so they were born as Canaanite slaves. When one looks again at the passage in I Kings 11:3 it says that Solomon had 700 wives and 300 concubines and it was, according to the text, the *wives* who turned away his heart. It doesn't say that the concubines turned away his heart. Concubines for a King are like slaves to an ordinary Hebrew—they don't count. By contrast, in Ancient Greece the children of a freeman and a slave woman took the status of the father. This tradition can be traced back even to the old Greek epics:

I announce that my origin is from Crete, a spacious land; I am the son of a rich man, and there were many other sons who were born to him and reared in his palace. These were lawful sons by his wife, but a bought woman, a concubine, was my mother, yet I was favored with the legitimate sons: [*Odyssey*, XIV:200]

In Ancient Israel there was no venue for the absorption of free Canaanites into the community. Manumission was the reserve and privilege of in-group slaves only. Manumission for a Hebrew male slave of a Hebrew master took place after six years of work, or at the Jubilee.

Manumission for a Hebrew male slave of a non-Hebrew master took place after six years of labor, at the Jubilee, or whenever he or a relative could afford to pay the master for the remaining years of his servitude. [Leviticus 25:47-55] The rabbis traditionally conflate these rules as is evident in the codes. [See Appendix A, "The way to calculate. . . ."] A Hebrew maidservant, sold by her father because of debt, was manumitted upon marriage to the master, marriage to the master's son, or repudiation by the master. [See Appendix B, Exodus 21:7-11].

Though the period of debt servitude in the Torah is double the length of debt servitude in the Code of Hammurabi, the Torah offers some unique features. In Deuteronomy, a Hebrew man or woman going free after six years of labor is given substantial gifts at the time of manumission in order to help the newly freed person to set up a household anew:

If thy brother, a Hebrew man, or a Hebrew woman, be sold unto thee, he shall serve thee six years; and in the seventh year thou shalt let him go free from thee. And when thou lettest him go free from thee, thou shalt not let him go empty; thou shalt furnish him liberally out of thy flock, and out of thy threshing-floor, and out of thy winepress; of that wherewith the Lord thy God hath blessed thee thou shalt give unto him. [Deuteronomy 15:12-14]

This obligation of the master to the slave is unique in the law codes of antiquity. But again, these special considerations were for in-group slaves only. Out-group slaves were kept in perpetuity. Manumission in Greece and Rome was an entirely different matter. In Rome, manumission of out-group slaves was permitted at the discretion of the master. Manumission of privately owned slaves was customarily accomplished at the death of the master if he indicated this in his will. The City of Rome during the Second Punic War, "The War Against Hannibal," offered large groups of slaves freedom upon completion of military service if they agreed to fight for Rome against the Carthaginians. Rome also had in place a reward system whereby if any slave

saved his master's life he was granted his freedom. There are also scattered cases of freedom being granted to this or that slave who rendered a particular service to the city:

After the execution, the informer was rewarded; in addition to a gift of money he was granted his liberty with citizen rights. It was hoped that this measure might double the effect of the execution as a deterrent. The informer is said to have been the first slave to be emancipated by touching with the *vindicta* (staff): some think that the word *vindicta* was derived from his name, Vindicus. It was the custom subsequently to regard all slaves who were freed in this way as admitted to the rights of citizenship. [507 B.C.E.] [Livy, *The Early History of Rome*, 2.5-6]

In Greece, as with Rome, city-states conferred freedom on those conscripted into the armed services during national emergencies. The slaves on the fleet at Arginusai (406 B.C.E.) were freed following the famous battle there between the Athenians and the Spartans. [Xenophon, *Hellenica*, I, vi, 24 ff.] Private citizens could free their slaves either for no fee or with an agreed upon sum subtracted from the slave's *peculium*, i.e. his savings. The slave's new status was announced in public by the master in a law court, at the Athenian theater, or at a religious festival. [Garlan, p. 73]. The Greeks also had an interesting custom of manumitting a slave by dedicating him to a deity, making him the god's property (*ιερόδουλος*). [Woodhouse, p. 617] The god to whom the slave was given varied from city to city—Zeus at Olympia, other gods elsewhere. [Garlan, p. 75]. This was not technically manumission but rather a change of masters. Money still passed from the slave to his original master, again from the slave's savings, but the entire transaction took the form of the master selling his slave to the god. Relating to this custom, Jacob J. Rabinowitz, former professor of Jewish Law at Hebrew University, has an interesting theory. In his book, *Jewish Law: Its Influence on the Development of Legal Institutions*, he points out that writs of divorce and writs of manumission are similar in that they are both letters

of abandonment. But unlike a spurned wife a slave had no capacity to acquire himself because (as under Roman law) whatever he owned belonged to his master:

All the master could therefore do was *to abandon* the slave. But if he just abandoned him, without more, another person might take possession of the slave. The master therefore abandoned the slave to God so as to prevent others from taking possession of him. . . . [Rabinowitz, p. 33]

He goes on to say that this might explain the expression in Leviticus 25:55, "For unto Me the children of Israel are servants," i.e., they had been dedicated to their God after being collectively manumitted from Egypt. [see also Appendix A, "And it is known. . . ." 22b]

The Hebrews are adjured to treat their Canaanite slaves decently, for they themselves had once been slaves, but again, there does not seem to have been an accepted venue for Canaanites to be freed, even if they were willing to be abandoned to the Jewish God. It seems that though they were somewhat assimilated by adherence to specific laws, yet they were never completely absorbed. The men were circumcised [Genesis 17:10] and celebrated Passover as a member of the household:

43. And the Lord said unto Moses and Aaron: 'This is the ordinance of the Passover: there shall no alien eat thereof; 44. But every man's servant that is bought for money, when thou has circumcised him, then shall he eat thereof. [Exodus 12:43-44]

Likewise slaves celebrated Shavuot [Deuteronomy 16:11] and observed the Sabbath. [Exodus 20:10] Jews continued to circumcise their non-Jewish slaves up through the period of the Roman Empire, a practice forbidden by Roman law:

Modestin, *The Rules*, Book VI. Jews are permitted to circumcise only their sons on the authority of a rescript of the Divine Pius; if anyone shall commit it on one who is not of the same religion, he shall suffer the punishment of a castrator. (Circa 138-155) [Linder, p. 100]

Later laws specify that Jews are not permitted to even own a Christian slave:

EMPEROR CONSTANTIUS [*sic!*]AUGUSTUS TO EVAGRIUS

a Jew should not purchase a Christian slave, neither shall he acquire him through gift or any other title. But if someone of the Jews shall have a Christian slave, or if he shall believe that a slave of another sect or nation should be possessed for any reason whatsoever and he shall circumcise him, not only shall he suffer the loss of the slave, but he shall be punished, indeed, by capital punishment, while that same slave shall be given liberty in recompense.

GIVEN ON THE IDES OF AUGUST AT CONSTANTINOPLE IN THE CONSULATE OF CONSTANTIUS [*sic!*] FOR THE SECOND TIME AND OF CONSTANS. (13 August 339) [Linder, p. 149]

Christians did not want non-Christians to own Christian slaves any more than Jews wanted non-Jews to own Jews:

(The Emperor Justinian Augustus)

A pagan, Jew, Samaritan, and anyone who is not Orthodox, is unable to possess a Christian slave, for that slave shall be manumitted and he who had possessed him shall give thirty pounds to the Private Properties.

GIVEN ON THE FOURTH DAY BEFORE THE CALENDIS OF JULY AT CONSTANTINOPLE. (Between 527 and 534) [Linder, p. 370]

Roman law provided a method by which Christians could be freed from Jewish owners. In Jewish law, other than from suffering physical harm, non-Jewish slaves were not to be manumitted. Even according to the Medievals non-Jewish slaves were kept in perpetuity. Manumission occurred only after the slave was maimed in some way, a law which certainly encouraged the master to properly treat him, but no laws existed to give him any hope for the future.

The Ottomans also kept their slaves in perpetuity. In the 15th century they instituted the "boy tribute," a system by which young Christian boys of Greek and Balkan families were selected for the Sultan's service. They were taken to Istanbul and thence to farms where they worked and studied Turkish. They were then converted to Islam and sent to school. They worked for the

Sultan until their deaths with no hope of manumission. Interestingly, their children were born free, as a further way to separate them from their families:

These youths and their predecessors formed, under the Sultan their master, a commonwealth of slaves. Since no born Muslim could be enslaved, their own sons were barred from joining it. So there was no dynastic servitude - Mehmet II tightened the system up when he executed Greek Halil, bringing his family's longstanding hold on the vizierate to its inglorious end - no dynastic threat, no 'empire building' to take place beneath the Grand Turk's nose. After Halil's death, thirty-four of the next thirty-six Grand Viziers, though Muslim converts themselves, were not Muslim-born, and in all Europe the Ottoman Empire alone possessed no hereditary nobility. A *kapikulu* was cut off from his true parents by the gulf of faith and place; he was severed from his children because they were free, and his career could never beat a path for theirs. [Goodwin, p. 56]

We don't know much about palace slaves or publicly owned slaves in Ancient Israel. The relevant legislation in the Torah concerns privately owned slaves. In-group slaves were to be manumitted according to the laws unless a man chose to stay with his master. Out-group slaves were not manumitted.

CONCLUSION

The task of appraising biblical slavery is made complicated for two reasons. First, the text itself is layered and complex and second, it was read and applied by people living in times, places and under circumstances distant from the authors. The Bible is, as the expression goes, 'a curriculum, not a book.' The first five books alone constitute a mélange of history, legend, lore, law, custom and cult practices. It is as if a Babylonian had gotten up one morning and gotten it into his head to mix together the Code of Hammurabi, the Epic of Gilgamesh, the Enuma Elish and a few hymns to Baal. So on the one hand, the entire book of Exodus is permeated with the theme of yearning for freedom from slavery, and on the other hand it contains a set of very practical laws on the purchase, ownership and treatment of slaves. Congregational rabbis and leaders in the community tend to preach and promote the grander themes of the going out of Egypt while Talmudic scholars fret over whether or not a *kohen* is permitted to have his ear bored if he remains with his master after the sixth year. The preacher and the Talmud student equally miss the main point. The first sees only the sermon and the second reads it through the eyes of later Jewish law that has been strongly, inextricably influenced by Roman law. Neither of these approaches have much to do with the legislation presented in Exodus, Leviticus and Deuteronomy.

A few incidental details on customs may be garnered from reading the accounts of the patriarchs in Genesis, but these stories are included in the whole in order to provide the Jewish people with ancestors to praise and a distinguished provenance to boast. Many of the laws in the Torah are simply reworkings of laws and customs long practiced in the area. This begs the question, what is biblical about biblical slavery? If most of the laws on slavery are simply rewrites

of sections in the Code of Hammurabi, what makes our text unique? I think the answer lies in three areas: the custom tailoring of the laws to conform with Israelite cultic practice; the genuine humanitarian feelings for those suffering the bonds of slavery; and a xenophobia unequaled by other civilizations of antiquity. The cultic overlay shows itself in the use here of the typical numerology of the Torah. Instead of the three years of debt servitude described in the Code of Hammurabi, the Torah requires six, with the Hebrew slave going free on the seventh year, conforming to the sabbatical theme of the entire work. Likewise, instead of slaves being freed and land reverting to its original owners during the first year of the reign of a new king, as happened with the *misharum* acts of Mesopotamia, such restoration periods in the Torah were timed after 49 years, or 7x7 years, also conforming to the sabbatical idea. The boring of the ear specifically at the place of the mezuzah also shows a bow to religion. The doorpost has deep religious significance. It is mentioned in the Passover Mitzrayim and in the V'ahavta. This otherwise secular deed is thereby overlaid with specifically Jewish significance. The second uniquely biblical aspect of the slave legislation is its concern for the plight of the slave. A genuine desire to prevent the abuse of mastery is present, and this is evident in the biblical narrative as well as the legislation. The careful consideration for the Hebrew maidservant shows a sensitivity to the need for Hebrew women to be protected from abuse and humiliation. Laws protecting a Canaanite slave from maiming as well as the most liberal fugitive slave laws in the ancient world all point to a shift from unlimited power of the head of the household to certain limited rights of women and slaves.

Set against this encouraging picture is legislation and a narrative whose entire purpose is to prevent the mixing of races. Idolatry is high treason in the Torah, and the fear of it sparked the

enactment of the most xenophobic laws in the ancient world. The Greeks didn't think much of barbarians but if you were low class enough to marry one no one dragged you into the public square and stoned you. Because of the need the Ancient Israelites had to separate themselves wholly from the Canaanites, all of the laws in the Torah are directed toward preventing any form of mixing. This is one possible explanation for the absence of any evidence of an ordinary method for the manumission of Canaanites in the Torah, either in the legislation or in the narrative. We stayed us and they stayed them for ever, and this attitude has never entirely died out.

So the report is mixed. Some good news and some bad news. One must always remember to judge the Torah within its own historical context first before expecting it to apply without emendation to our own day. It was left for later generations to abolish the dreadful institution of slavery. May we always have the wisdom to go forward in protecting the helpless, the poor and those everywhere who have no rights.

APPENDICES:
translated by Patricia J. Stevens

- Appendix A:** Excerpts from Maimonides' Commentary on the Mishnahs
Tractate Kiddushin, 14b and 22b
- Appendix B:** Excerpts from Ehrlich's Commentary on Exodus
Exodus 21:1-11
- Appendix C:** Tur Sinai Comments on Exodus 21:10

Maimonides' Commentary on the Mishnahs from Tractate Kiddushin
Based on the first printing in Naples in the year 1893

14b: "A Hebrew slave is acquired by money or by writ and he acquires himself..."

It is written in the Torah concerning a Hebrew slave, מכסף מקנתו, "out of the money he was bought for," [Leviticus 25:51] teaching that he was purchased with money. And as it is said concerning a Hebrew maidservant, והפדה, "then shall he let her be redeemed," [Exodus 21:8] teaching that she deducts from her ransom price and he lets her go free. And it says, או העבריה, "If thy brother, a Hebrew man, or a Hebrew woman, be sold unto thee..." [Deuteronomy 15:12], [teaching that one can] apply the [laws pertaining to a] Hebrew man to a Hebrew woman. And as it is said with regard to the Hebrew maidservant, אם אחרת יקח לו, "If he take him another wife...", is applied to another [case]. What is the other? The case of the writ--just as a Hebrew maidservant can be acquired by a writ, so one analogizes the case of a Hebrew slave from the case of the Hebrew maidservant [and applies the ruling of the latter to the former] so that he can be acquired by writ just like she. And he [as well] goes out by a prorating of the money. And we learn [likewise, laws pertaining to] a Hebrew maidservant from [those which are stated about] a Hebrew slave, [namely, that] she can be acquired by money just as he and that she goes out [after she has fulfilled her] years [of service]. And what is meant by ששנים is labor of six years from the day that she was sold until the six years are up. And even when the six years of Shmita are in that period of time, what it means when it says "six years he shall work *and* on the seventh" is that he works on the seventh year [i.e. the Shmita year]. But if the Jubilee year happens to fall in the middle of the six years [of his servitude] then he goes free [on the Jubilee year even if he hasn't completed the six years].

The way to calculate the "reduction of the price" [that he pays if he buys his freedom before the six years are up] would be calculated by the purchaser by making an accounting of the years that [the slave] labored on [the purchaser's] estate and reducing what [the slave] has already brought them [from his labor] from his cost and [then the slave] gives [his master] the remainder and goes out [free]. How does this work? [Let's say] they purchased him for 60 *dinarim* and he worked for two years. He would then give [his master] 40 *dinarim* and go out a free man. And this is hinted at with [the case] of the Hebrew maidservant when it says והפדה "then shall he let her

be redeemed," [Exodus 21:8] [Therefore, a Hebrew slave can also be redeemed in the same manner.]

And by סִמָּן, "signs of puberty," what is meant is [the appearance of] two hairs after she has reached 12 years old and a day. And this is based on [Rabbinic] tradition. [When it says] "and she goes out free" this is when she reaches her majority. "Without money" refers to the time [i.e. the six months usually measured from age 12 to 12 and a half] of young womanhood. And the period of young womanhood takes place from the time she shows two hairs for six months as I have explained in Perek 3 of Ketubot (q.v.). And regarding the boring of the ear it says, "And also unto thy bondwoman thou shalt do likewise." [Deut. 15:17]. And she goes free at the death of [her] master [as would a male slave]. And the Tanna [of the Mishnah] does not mention her [case] because she is included with the [case of the slave whose] ear is bored in this matter. However, a Hebrew slave, when his master dies, if he is survived by a son, [the slave] serves the son until he has fulfilled the six years. If [the master] is not survived by a son he is let free and serves neither the daughter [of his late master] nor his brother nor any other surviving heirs. And you should take note, that a Hebrew slave when he sells himself because of poverty he is, as it is said about him in the Torah, "If thy brother, a Hebrew man, or a Hebrew woman, be sold unto thee," [he shall serve thee six years]. [Deut. 15:12] And when the Bet Din has sold him it says, "And he shall be sold for his theft." [Ex. 22:2] And if his net worth is more than the remaining amount of the value of what he stole, he is not sold [into slavery]. And this has already been covered for you in chapter 3 (q.v.) in Sotah, where [it is explained that] a man can be sold for his theft but a woman is not sold for her theft. Rather, her father sells her, if she is still a minor, just as we explained in the third chapter of Ketubot (q.v.). And as to who writes the writ of the Hebrew maidservant, they say that [her] father writes it. For example, he writes to the [purchaser], 'My daughter is sold to you. My daughter is acquired by you.' And he gives [the purchaser] the writ in front of witnesses. (Now that we have mentioned a few of the laws pertaining to the Hebrew slave, we will complete [our discussion of] them after mentioning that one who is sold to an idolater is also freed at the death of the master.) And [getting back] to the matter [at hand], it is just as they have said, [namely], that someone who sells himself is sold for six years [in one case] and more than six [years in the second case]. [When] the Bet Din sells him

he is only sold for six [years]. The one who sells himself is not bored [in the ear]. [Nor does] the one who sells himself get the manumission gifts [Deut. 15:14]. [When] the Bet Din sells him, [his master] does give him his manumission gifts [upon the completion of his six years of servitude]. [Regarding] the one who sells himself, his master can not hand him over to a non-Jewish maidservant [to sire additional slaves for his master]. [When] the Bet Din sells him, his master can hand him over to a non-Jewish maidservant, and she is permitted to him the entire time that he is a slave. And the children that she bears are slaves. And that is what is says in the Torah, "the wife and her children shall be her master's." [Ex. 21:4]. And the master is permitted to force him [to sire slaves] even if the slave does not want to.

And they say, these are the ones who qualify for manumission gifts--the one who goes out after he has completed his service of six years, [the one who goes out] on the Jubilee year, [the one who goes out at the] death of his master, and the Hebrew maidservant who has shown signs of puberty. But, the one who goes out early by paying a prorated amount to buy back his freedom does not qualify for the manumission gifts. And the value [of the manumission gifts] that [the slave] receives should not be less than 30 *selayim*--and a *sela* is worth 4 *dinarim*. And we have already explained in the immediately preceding section the value of a *dinar*. And they said, from where do we learn the case of the one who flees, that he is still obligated to complete [his years of servitude]? As it is said, "six years shall he labor." [Deut.15:12]. And they say that the manumission gifts due to a Hebrew maidservant, as well as anything she finds, go to her father since she is still in the period of young womanhood, just as we have explained, and is in the *potestas* of her father. And if her father dies, she is *sui iuris*. Because we follow this principle, 'No man can bequeath his daughter's property to his son,' therefore her brother, [in the event of the death of their father], gets nothing [of hers]. The manumission gifts due to a Hebrew slave go to [the slave] himself and his creditors have no right to it. Nor can one collect his debt from it. And in a case where the Hebrew slave is ill while he is still at his master's house, if he is ill less than 4 years, whether consecutively or not consecutively, the time of his disability is [yet] counted among the six years. But if his illness lasts four [or more] years he is obligated to pay back according to the wages of a wage earner. And see what is written in the Torah, "for double of the hire of a hireling hath he served thee." [Deut. 15:18]

And you already know the language of the Torah concerning the Hebrew maidservant, "[...her master,] who has espoused her to himself." [Ex. 21:8] And they say, how is this betrothal formalized? He says to her before two witnesses, 'Behold, you are sanctified to me; behold you are betrothed to me; you are my wife'--she is his wife and even during the entire six years of her servitude, right up to the sun setting on the last day, he should treat her according to the custom of wives not according to the custom of non-Jewish maidservants. And it is written in the Torah, "And if he espouse her to his son," [Ex. 21:9] then he would say to her, 'Behold, you are sanctified to my son,' but only if the son has reached his majority and he wants to [marry her]. For as they have said, 'There is no betrothal except with [a fellow who has reached his] majority.' Neither is there a betrothal without her [sic] consent. And the sale of a Hebrew maidservant is considered valid only if she has been acquired by someone who can either take her in marriage himself or whose son she can marry. And even in a case where she can not marry him, such as when he sells his daughter to his [own] father where he could only betroth her to another son because she is the daughter of his brother, it says, "to a maidservant," which means [she can in this case] be sold to those who are forbidden to marry her. And when he designates her for himself or for his son she does not go out except with a writ of divorce. But, she can go out in all sorts of ways if she had been betrothed neither to [the master] himself nor to his son. And know that they obligate a father to redeem his daughter that he has sold because of the blemish [that this causes] to the family name. And this is what is meant by 'they cause her to be redeemed against his will.' And as they say, 'she can not be sold and resold a second time.' And you should know what you need to know [to understand this principle] that the thief who has stolen from Reuben and is sold for his theft, and then after that he steals once again from Reuben, he is not sold for his theft a second time because Reuben can not sell him twice, as they say, 'once he has been sold by someone, that one can not sell him again.'

The boring instrument can only be made of metal and they only do the boring at the height of the ear. The Hebrew slave who is a *kohen* may not have his ear bored because we don't make a blemish [on a *kohen*] but [a *kohen*] can take a non-Jewish slave woman because she is permitted to him for the duration of the servitude. And they say, 'with every Hebrew slave, if he has a wife and children, his master [can still] hand over to him a non-Jewish maidservant [to sire slaves].'

[If] he has a wife and children and his master does not have a wife and children, his ear is not bored because it says, "because he loveth thee and *thy house*." [i.e. thy wife] [Deut. 15:16] [And as well, if] his [master] has a wife and children and he does not have a wife and children his ear is not bored because as it is said, "[I love my master,] *my wife* and my children." [Ex 21:5] [If] he loves his master but his master does not love him, his ear is not bored, as it is said, "because he fareth *well* with thee." [Deut. 15:16] [If] his master loves him but he does not love his master, his ear is not bored, as it is said, "because *he loveth thee* and thy house." [Deut 15:16] [If] he is sick and his master is not sick, his ear is not bored, as it is said, "because *he fareth well* with thee." [ibid] [If] his master is sick but he is not sick, his ear is not bored, as it is said, "with *thee*." [ibid] Our rabbis teach, "because he fareth well *with thee*," [that is,] with you in food, with you in drink, [which teaches us] that you should not be eating white bread while he is eating coarse bread, nor drink aged wine while he is drinking new wine, nor sleep on a soft mattress while he sleeps on straw. From this they conclude that 'one who purchases a slave is like one who purchases a master for himself.' And they say, 'the master is obligated to feed the wife and the children [of his slave'] and therefore, it says, "then his wife shall go out with him." [Ex 21:3] [And it says] "[Then shall he go out from thee,] he and his children with him," [Lev. 25:41] because [the master] is not their *potestas*. But that is to say, they go out at his loss. And in addition, [the master] is not permitted to make his slave labor, during the entirety of his servitude, at tasks which are demeaning, for example, putting on his [the master's] shoes or carrying his clothes to the bath house, just as it says, "They shall not be sold as bondmen are sold." [Lev. 25:42] And they say, 'Hebrew servitude is not operant except when the Jubilee year is operant.'

22b: A Non-Jewish slave is acquired by money or writ or by ritual of ownership (חזקה)

It is written in the Torah concerning a non-Jewish slave, "And ye may make them an inheritance for your children after you, to hold for a possession," comparing slaves to land, [for] just as land is acquired by money, writ and ritual of ownership--as will be explained now--so, too, is a non-Jewish slave acquired in these same ways. And pay close attention to these two principles: 1) 'We can benefit him without his consent but we can not obligate him except with his consent.' 2) And the second principle is a dispute between Rabbi Meir and the sages which can be

found in the first chapter of Gittin (q.v.). On the matter of the manumission of a slave, Rabbi Meir says this 'puts him in a state of obligation' [and therefore manumitting him requires his consent] and the sages say the ['it is] to his benefit' and therefore [the master] does not need his consent.

And it is known, that what a woman acquires her husband acquires, and what a slave acquires his master acquires. And there is no legal dispute about this. Rabbi Meir is of the opinion that when someone gives money to a slave and says to him 'take it so you can free yourself,' the [slave's] master acquires the money and the slave does not go free because at the time that the man gave [the slave] money his master acquired it and [the slave] gets no benefit from the condition [attached to the gift of the money] that he will be free afterwards. Therefore Rabbi Meir said that he only goes free by money by the hands of another, for example, if a third party gives money to the [slave's] master in order to redeem him [in this case he would go free]. But the sages say that the condition of the original case is valid and the slave does not acquire the money [he is handed by someone] until he acquires his freedom and therefore it is possible, according to their reasoning, that [the transaction is valid when] money is given to [the slave] himself and [the transaction] is all the more so [valid] when the money is given to others. Rabbi Meir is also of the opinion that the slave does not go free until the writ of manumission comes into the possession of the slave. But if a third party is given the writ of manumission he does not go free, following Rabbi Meir's [earlier stated principle] that [acquiring freedom] is an obligation [and must therefore be with the slave's consent].

And therefore, Rabbi Meir says regarding the writ of manumission that [the slave] himself must receive it, whereas the sages say that [the slave] acquires [his freedom] by writ even if it is given to the hands of a third party, [i.e. without the slave's consent]. And the law follows the sages.

And when it says, 'by ritual of ownership' [what is meant] has already been explained [by the sages]. They said, 'How is this ritual of ownership [effected']? He took off his master's shoe, or he put on his master's shoe; he followed him to the bathhouse carrying his clothes; he undressed him; he bathed him; he anointed him; he scratched him; he dressed him; or, he lifts him up or the master lifts *him* up.

Idelsohn claims that although Lichtenstein was "accounted musically trained," he "lacked knowledge of harmony."⁷¹ According to Idelsohn, Lewandowski therefore needed to arrange Lichtenstein's *chazzanut* for four-part choir. To what music does Idelsohn refer when writes about Lichtenstein's "*chazzanut*?" Mus.125 does not contain a single example of *chazzanut* arranged for four-part choir. The choral pieces are more accurately described as examples of Western art music in four-part harmony.

I have discussed the distinction between *chazzanut* and "Western Art Music" throughout my description of Mus.125. *Chazzanut* can sometimes be used as an all-encompassing term, denoting all music from the Jewish cantorial tradition. This would include *musach* sung in a *parlando* style and set in one of the Jewish prayer modes, as well as more formal and extensive compositions (often for central texts such as "*Hin'ni*" or "*Ki K'shimcha*" from the High Holiday liturgy). *Chazzanut* may also refer to specific (in most cases virtuosic and improvisatorial) passages within a musical setting of the Jewish liturgy. None of the music of Mus.125 that fits this description of *chazzanut* has been harmonized, although many of these pieces include simple four-part responses.

Did Idelsohn believe that Lewandowski wrote these choral responses for Lichtenstein's *chazzanut*, as well as the full-length compositions such as "*U-ma-avir Banav*" and "*Mi Chamocha*" for the new service aesthetic developing in the mid nineteenth century? It is demonstrable that Lewandowski adapted much of Lichtenstein's *chazzanut* for the new service on Oranienburgerstrasse. Many of the major themes in Lichtenstein's *musach* (for example, his *musach* for the Shabbat *Shacharit* service and his

⁷¹ Idelsohn, *Jewish Music*, 276.

Avot for the *Musaf* Service of the High Holidays) appears—in a revised form—in Lewandowski's collections.

If we conclude in the end that all of the four-part music in Birnbaum's transcription was written by Lewandowski, how do we account for the two remaining choral compositions, namely the fine "*Todtenfeier*" in Booklet 15, and the three part "*Adon Olam*" in Booklet 16? It is possible that Lewandowski wrote these two pieces as well, and they did not make it into his publications. Or, if Birnbaum's transcriptions represent a compendium of music written in several different hands, then a third person could have written this music.

At this stage of research, it is reasonable to conclude that Abraham Jakob Lichtenstein was not only a master of traditional *musach* and *chazzanut* and one of the finest tenors and *chazzanim* of his day, but also a respectable composer of Western art music set in a Jewish liturgical context. He was a trained violinist, and sang tenor roles in the oratorio in Stettin, where he was no doubt exposed to a great deal of western Romantic music. The music director and significant nineteenth century composer, Carl Loewe, observed that Lichtenstein had "composed prettily for his purposes."⁷² Loewe had been impressed and inspired by Lichtenstein's singing and overall musicianship, and heartily recommended the young cantor for the position created in Berlin. Lichtenstein's biography reveals an erudite personality, who in addition to impacting his congregation, inspired some of the foremost musicians of his day. In addition to Lewandowski and

⁷² Friedmann, 57.

Loewe, Lichtenstein came in contact with the composer Max Bruch, and is believed to have inspired the famous "*Kol Nidre*" for 'cello.⁷³

There is no reason to believe, then, that Lichtenstein did not possess enough of a fundamental knowledge of harmony to compose the "*Todtenfeier*" and the "*Adon Olam*," as well as several of the other compositions found in Mus.125 traditionally attributed to Lewandowski.⁷⁴ Many of the questions posed in this thesis will remain unanswered unless we are able to obtain the original manuscripts from which Eduard Birnbaum made his transcriptions. The Heidereutergasse Synagogue no longer exists, and it is possible that many or all of the originals were destroyed during World War II.⁷⁵ The magnificent Oranienburgerstrasse Synagogue was almost entirely destroyed during the war as well (ironically, by Allied bombs). It has been partially rebuilt, and made into a museum of the history of the Berlin Jewish community.

In addition to attempting to obtain Lichtenstein's original manuscripts, further research will be achieved through the study and dating of Lewandowski's extant manuscripts, as well as delving deeper into Birnbaum's transcriptions. It would be satisfying to prove, beyond a shadow of a doubt, that Lichtenstein was the true composer of the entire collection Mus.125. This would show that Lichtenstein had a significantly larger role in the development of synagogue music than anyone had realized. Whether or

⁷³ Idelsohn refers to Lichtenstein's relationship to Bruch in *Jewish Music*, p.276, and in a footnote that contains a letter from Bruch to E. Birnbaum (p. 513). This relationship is also discussed in Sabine Lichtenstein, "Abraham Jacob Lichtenstein: eine jüdische Quelle für Carl Loewe und Max Bruch," *Die Musikforschung* 49, no.4 (1996): 349-367.

⁷⁴ This assessment does not even take into consideration the collection Mus.126, which may also contain harmonizations attributed to Lichtenstein.

⁷⁵ The article cited in the footnote above was written a woman named Sabine Lichtenstein. Dr. Israel Adler has informed me that Sabine Lichtenstein is a living relative of Cantor Abraham Lichtenstein, and that she may have information on the

not Lewandowski "copied" some of Lichtenstein's music is ultimately not important. The composer of the masterpieces "*Enosh K'yatzir Yamav*," "*Zacharti Lach*," "*U'v'nuchy Yomar*," "*Tzaddik Katamar*" and so many others will always remain a giant in the annals of Jewish music.

The nature of "ownership" in the domain of traditional Jewish music is difficult, if not impossible, to define. Both A. Z. Idelsohn and Eric Werner observed the deep influence that Abraham Lichtenstein had upon Louis Lewandowski. Idelsohn commented that Lewandowski had completely absorbed Lichtenstein's *chazzanut*—to the point where he could no longer tell where Lichtenstein's *chazzanut* left off and his own compositions began. However, we must remember that Lichtenstein's *chazzanut* was not completely Lichtenstein's own either, but a combination of *shalshélet ha-kabbalah* (the chain of tradition), and creative genius. Nobody "owns" the *musach* for the *Amidah* for the Shabbat *Shacharit* service. *Chazzan* Adolph Katchko has written his own version, as have Israel Alter, Jack Mendelson, and many others. These *chazzanim* have composed their services according to the traditional Jewish modes, melodic formulas, and affect that many of us claim as our unique ethnic heritage; each service, at the same time, bears the unique, personal stamp of these great musicians.

Whereas many of Lewandowski's cantorial lines were deeply influenced by Lichtenstein, these melodies also reveal his skill as a unique and original craftsman. Lewandowski has been credited with evolving a "*cantabile*" style of synagogue song, appropriate for the grandeur of the services of the "New Synagogue" on

whereabouts of the original manuscripts.

Oranienburgerstrasse: both Lichtenstein and Felix Mendelssohn can be counted among his chief creative influences.

It is my hope that this paper, and further research in this area of the Eduard Birnbaum Collection, will contribute to our understanding of the evolution of the synagogue service during this formative period in Jewish music history. More than this, I hope that I have done justice to one of the great musical personalities of the nineteenth century—a man that inspired and touched so many—Cantor Abraham Jakob Lichtenstein.

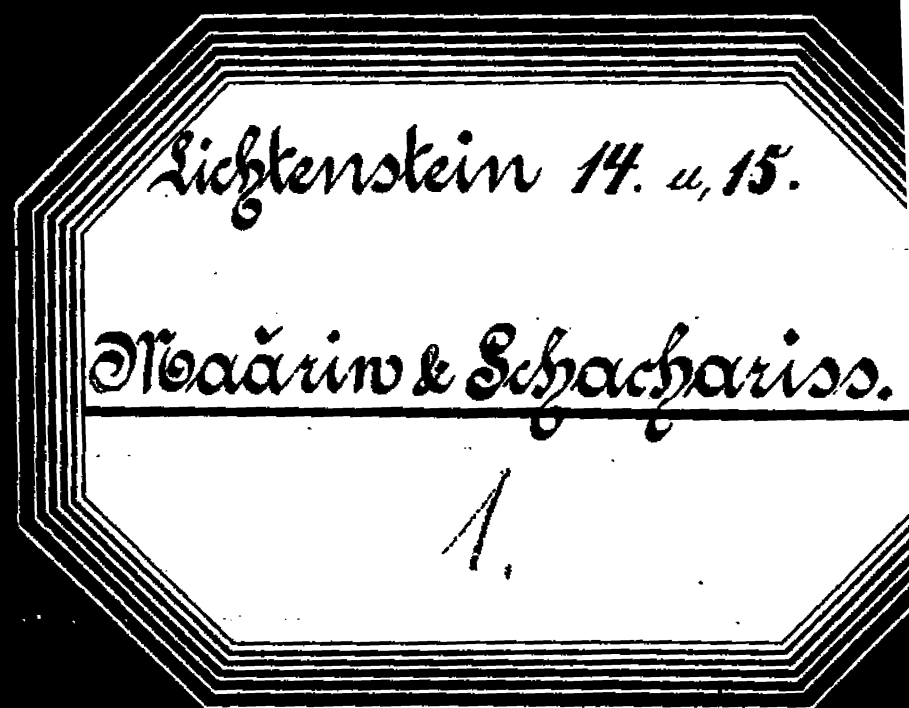
APPENDIX I

MUSICAL EXAMPLES

- #1—Title Page to Eduard Birnbaum's transcription of Mus. 125, booklet 14/15
- #2—Mus. 125, from Yom Kippur Aravit
- #3—Abraham Baer, Ba'al T'fillah
- #4—Mus. 125, "atanu al shim'cha," from Yom Kippur Aravit
- #5—Baer, "atanu al shim'cha"
- #6—Israel Alter, "S'lach na," from Yom Kippur Aravit
- #7—A. Baer, "Dark'cha Eloheinu," from Yom Kippur Aravit
- #8—Mus. 125, "Dark'cha Eloheinu"
- #9—Salomon Sulzer, Schir Zion I, "Kadosh,"
- #10—Mus. 125, "Kadosh"
- #11—Sulzer, Schir Zion I, "Yimloch"
- #12—Mus. 125, "Yimloch"
- #13—Mus. 125, from K'dusha of Shacharit (High Holy Days)
- #14—Baer, "K'vodo," from K'dusha of Shacharit (H.H.)
- #15—Mus. 125, "K'vodo," from K'dusha of Shacharit (H.H.)
- #16—Mus. 125, "Adir Adireinu," from K'dusha of Shacharit (H.H.)
- #17—Mus. 125, "Todtenfeier," for Hazkamat N'shamot
- #18—Baer, "Ashrei Ha-am"
- #19—Mus. 125, "Y'hal'lu"
- #20—Baer, "Echad Hu"
- #21—Baer, "Uma-avir Yom," from Ma-ariv of Shabbat
- #22—Adolph Katchko, "Uma-avir Yom" (Lithuanian Tradition)
- #23—Mus. 125, "Uma-avir Yom"
- #24—Mus. 125, "Hama-avir Banav," from Ma-ariv of Shabbat

- #25—Mus. 125, "Hama-avir Banav," continued
- #26—Mus. 125, "Magein Avot," from Ma-ariv of Shabbat
- #27—Mus. 125, M'ein Sheva, conclusion, from Ma-ariv of Shabbat
- #28—Mus. 125, "Adon Olam," from Ma-ariv of Shabbat
- #29—Mus. 125, "Tov L'hodot," from Shacharit of Shabbat
- #30—Mus. 125, Shacharit...
- #31—Mus. 125, excerpt from "Y'chad'sheihu"
- #32—Mus. 125, Chatzi Kaddish for High Holiday Musaf
- #33—Mus. 125, Avot for High Holiday Musaf
- #34—Mus. 125, metrical melody "Im T'matze"
- #35—Mus. 125, "Asei L'ma-an Sh'mecha"
- #36—Mus. 125, "V'hacohanim,"
- #37—Mus. 125, opening of Chatzi Kaddish for N'ilah
- #38—Baer, Chatzi Kaddish for N'ilah
- #39—Mus. 125, "M'chalkeil Chayim"
- #40—Mus. 125, "Mi Chamocha"
- #41—Louis Lewandowski, Kol Rinnah U't'fillah, "Mi Chamocha"
- #42—Mus. 125, "Ein Keiloheinu"
- #43—Lewandowski, Kol Rinnah, "Ein Keiloheinu"
- #44—Lewandowski, Todah W'Simrah, "Ein Keiloheinu"
- #45—Julius Freudenthal, "Ein Keiloheinu"
- #46—Mus. 125, "Asei L'ma-an Sh'mecha"
- #47—Todah W'Simrah, "Asei L'ma-an Sh'mecha"
- #48—Todah W'Simrah, "V'Sham'ru"
- #49—Mus. 125, "V'Sham'ru"

EXAMPLE #1—Edward Birnbaum's Title Page for first book



EXAMPLE #2 (Mus. 125)

Martins.Lichtenstein 14. (150. 41.)



 1. *Ball u nicht ka-cha-ue vernicht - so - o mid - r - chd l - so -* (9.40.)

me-cho a - dau-moj all - spei-me.

Ball u sch. a - rino b - spei-de chd-yei-rall-foe-bisf - hi - so, haue-de (9.41.)

haue - bot-cha sch - mau.

Hi-mei bot-cha es a-dau-moj hot ant-dei a-dau-moj ha-

aum-dim breisf a - dau-moj ha - lei - leusf.

Baer, Babel Tfillah

EXAMPLE #3

שבע תפלה

Nº 1307.

Solo.

Sehe - me -

- a t'fil - lah o - de - cho kol bo - sur jo - wo - u.

Chor.

Jo - wo u chol bu - sur

l' hach - ta - che vos l' fo - me - cho a do - noj.

Solo.

Jo - wo u w'isch - la - che wa l' fo - me - cho a do - noj wi - chab - b' du lisch - me - cho.

l' fo - me - cho a do noj a lo - kenu jich - r' u w'ijp po - lu w'lick' wad echim' cho j' kor jit - te - nu.

Nº 1308.

Solo.

Han - n' scho - mo - lah lech w' bag - Guf po a lech chu - so al a me - lah

תפלה

EXAMPLE #4 (From Mus. 125)

13

me-cho; ba-a-mut ha-mal'achim cho ki eil cho mun v'otz cham ach-

nu al achim-cho a-cha moy a'fei lenu - am ach-

(9.36)

EXAMPLE #5 (Baer)

No. 1809.
Solo.

חננו נחמנו
Han-n' schenoch loch w' bag - guf

scheloch a do - noj

me - cho o - so - nu al schim' - cho a do - noj a sch i' ma - an ach

EXAMPLE #6 (Israel Alter, High Holiday Service)

Si-lach no laa-von ho om ha-ze ki


go del chas de cho v'cha-a-sheer no so da lo - om ha-ze


EXAMPLE #7 (Baer)

Minhaz Polen.


No. 1311. מְנַחֵם פֹּלֵן


Solo, dann Chor.

1. W.  Dark'cho : lo - ho - nu i' ha s'rich ap - pe - cho

2. W.  laro - im w'latte - win w'ni e'hil - lo - se - cho.

EXAMPLE #8 (Mus. 125)

 Gar - k - cho e - lacc - hei - nu e - ha - a - rich a -

 poe - cho lo - nu im no - la - huu - nuim so hi s'phi - la - ope - cho.

