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# A BRIEF LOOK AT THE JEWISH LAW OF MANUMISSION

DAVID M. COBIN\*

## INTRODUCTION

David Brion Davis has written,

The ease and frequency of manumission would seem to be the crucial standard in measuring the relative harshness of slave systems. If we had to be slaves and were allowed to choose the time and place of our servitude, we should obviously prefer a society that held out some hope of eventual freedom.<sup>1</sup>

The institution of slavery in Jewish law began in biblical times and continued into the nineteenth century in communities under Ottoman rule.<sup>2</sup> If we apply Davis's thesis, which seems to be a reasonable one, a brief look at the Jewish law of manumission should reveal a good deal about the "relative harshness" of slavery under Jewish law.<sup>3</sup> We will need to look at both the rules of law and their application to specific cases. With such a long history, any conclusion we might reach about "relative harshness" would depend largely on observable trends over this long period. With such a search in mind, we must begin with ancient times.

The Hebrew Bible provides for two kinds of slaves, the *eved ivri*,<sup>4</sup> the Jewish slave, and the *eved canaani*,<sup>5</sup> the non-Jewish slave. Each of these two types of slavery has its own laws.

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1. DAVID B. DAVIS, *THE PROBLEM OF SLAVERY IN WESTERN CULTURE* 54 (1966).

2. For a general discussion of slavery in Jewish life see SIMHA ASSAF, *BEHOLEI YA'AKOV — ESSAYS ON THE CULTURAL LIFE OF THE JEWS IN THE MIDDLE AGES* 223-56 (1953) (in Hebrew); E.E. Urbach, *The Laws Regarding Slavery as a Source for Social History of the Period of the Second Temple, the Mishnah and Talmud*, in 1 *PAPERS OF THE INSTITUTE OF JEWISH STUDIES* 1-94 (J.G. Weiss ed., 1964). The few Jews involved with slavery in the new world did so without regard to the rules of Jewish law. They either operated on the theory of *dina de malkhuta dina* (the law of the land is the law), or they disregarded Jewish law entirely. For a discussion of Jews' involvement in American slavery, see Bertram Wallace Korn, *Jews and Negro Slavery in the Old South, 1789-1865*, in *JEWS IN THE SOUTH* (L. Dinnerstein & M. Palsson eds., 1973).

3. In this Symposium on the Law of Freedom, this look at the Jewish law of manumission focuses on individual freedom rather than general emancipation. No system of slavery can be truly humane. Therefore, the ability to escape the system becomes an important indication of its relative level of inhumanity. For anyone concerned about the character of Jewish law, this study would be incomplete without also considering the simultaneous information the law of manumission provides for judging the relative harshness of slavery under Jewish law.

4. See *Exodus* 21:2-6.

5. See *Leviticus* 25:44-45.

## I. THE JEWISH SLAVE

A male Jew could become a slave either by selling himself into slavery or, in the case of a thief who was unable to make restitution, by order of a court. A Jew could only sell himself into slavery for a period of six years.

For the Jewish slave manumission resulted from the passage of time or the repayment of the unused purchase price. A Jew who sold himself to a fellow Jew would reach freedom automatically after the expiration of six years from the time of sale or at the onset of the Jubilee year (once every 50 years). In addition, a Jewish slave could reach freedom through self-redemption by repayment to the master of his purchase price less the value of service already given. In each of these three cases the manumitted slave did not require the assent of the master.<sup>6</sup> Moreover, a master could voluntarily manumit a Hebrew slave. In such a case the master had to draft a bill of manumission.<sup>7</sup> If a master died without leaving a male descendant, the master's slaves went free.<sup>8</sup>

If a Jew sold himself to a non-Jew or a convert, he became free upon the death of the master without regard to the existence of the master's offspring.<sup>9</sup>

A female Jew could not sell herself into slavery. She could only be sold into slavery by her father, and only during childhood.<sup>10</sup> Like a male Jewish slave, she became free at the end of six years, at the onset of a Jubilee year, by payment of the remaining cost of her original purchase price, or by a bill of manumission drafted by her master. Unlike the male slave, the female slave became free upon the death of her master even if he had a male descendant. Finally, and most significantly, a female Jewish slave became free upon the onset of puberty.<sup>11</sup>

6. MISHNAH KIDDUSHIN 1:2; Urbach, *supra* note 2, at 28-29.

7. THE BABYLONIAN TALMUD, KIDDUSHIN 16a; Urbach, *supra* note 2, at 29.

8. THE BABYLONIAN TALMUD, KIDDUSHIN 17b; THE PRINCIPLES OF JEWISH LAW 234 (Menachem Elon ed., 1974) [hereinafter PRINCIPLES].

9. THE CODE OF MAIMONIDES: THE BOOK OF ACQUISITION (Book Twelve), Treatise Five, Chapter VIII, Slaves 2:12 [hereinafter *Mishneh Torah*].

10. PRINCIPLES, *supra* note 8, at 233.

11. *Mishneh Torah*, *supra* note 9, at Slaves 4:5.

## II. THE NON-JEWISH SLAVE

There is general agreement that the status of "Jewish slave" was essentially eliminated during the period of the Second Temple.<sup>12</sup> The non-Jewish slave, however, continued to a greater or lesser extent as a part of Jewish life whenever the larger society among whom Jews lived had slaves. From the second century until modern times, Jews have always lived as a minority among a non-Jewish majority population. If Jews lived in a society which had slavery, Jews, if permitted, had slaves. When Jews lived in a society without slavery, Jews had no slaves.

The laws of acquisition of non-Jewish slaves do not distinguish between males and females. The methods of obtaining title to a non-Jewish slave were the same as those for obtaining title to land: By the payment of money, by transfer of a deed, or by an act of possession.<sup>13</sup> Examples of an "act of possession" include doing work for the vendee or being physically led by the vendee, as in being pulled by a rope, which was called "drawing."<sup>14</sup> Unlike the Jewish slave, the non-Jewish slave did not gain freedom at the coming of a particular date. In fact, the Bible provides, "They shall be your bondmen forever."<sup>15</sup>

In reality, the Biblical commandment did little to prevent Jewish masters from freeing their non-Jewish slaves.<sup>16</sup> Prior to the destruction of the Second Temple manumission of slaves was encouraged.<sup>17</sup> Slaves were frequently emancipated and the emancipated slave was free to marry a free-born Jew.<sup>18</sup> There is some indication that emancipation was specifically encouraged for the purpose of marriage.<sup>19</sup> The Talmud contains the advice that "if your daughter has become nubile, manumit your slave and give her to him in marriage."<sup>20</sup>

A deed from the Jewish colony of Elephantine in the fifth century b.c.e. gives us an example of manumission in that early period.<sup>21</sup> The

12. PRINCIPLES, *supra* note 8, at 234. See Urbach, *supra* note 2, at 49. The Second Temple Period began with the construction of the Second Temple shortly after the return of the Jews to Jerusalem in 538 b.c.e., following Babylonian exile, and lasted until the Temple was destroyed by the Romans in 70 c.e.

13. *Mishneh Torah*, *supra* note 9, at Sales 2:1.

14. *Id.* at Sales 2:3.

15. *Leviticus* 25:46.

16. See *supra* notes 6-7 and accompanying text.

17. 2 ZE'EV W. FALK, INTRODUCTION TO JEWISH LAW OF THE SECOND COMMONWEALTH 266 (1978).

18. Urbach, *supra* note 2, at 47.

19. See Urbach, *supra* note 2, at 47-48; see also FALK, *supra* note 17, at 263-69.

20. Urbach, *supra* note 2, at 48; THE BABYLONIAN TALMUD, PESACHIM 113a.

21. Ze'ev W. Falk, *Manumission by Sale*, 3 J. SEMITIC STUD. 127 (1958).

deed shows that manumission at that time required a two-step process. The master Zakkur wanted to liberate his slave, Yedoniah. Instead of giving Yedoniah a deed of manumission directly, Zakkur transferred ownership of Yedoniah to a third party, Uriah, on condition that Uriah liberate Yedoniah. The deed contained provisions for severe penalties if Yedoniah remained in slavery.

A passage in *Mishnah Kiddushin 1:3* reveals that, by the second century c.e., a dispute had developed on the proper process for liberating a non-Jewish slave:

A Canaanite slave is acquired by money, by deed or by use. He acquires his freedom by money paid by others or by deed delivered to himself. Thus Rabbi Meir. But the Sages say: [He acquires his freedom] by money paid by himself or by deed delivered to others, provided that the money belonged to others.<sup>22</sup>

Rabbi Meir's view was that the slave could not purchase his own freedom since a slave cannot own property. Rabbi Meir ruled, however, that the slave could accept a deed of manumission directly. The Sages, on the other hand, permitted a slave to purchase his own freedom, so long as the money came from another person for that purpose, but the deed of manumission should be delivered to a third person, not the slave.

If we were to stop at this point and, from the evidence above, judge the harshness of Jewish slavery before the destruction of the Second Temple during the the second century c.e., one might well conclude that manumission of slaves was relatively easy and relatively frequent. Though sources reveal some difficulty determining the proper methods for manumission, when these problems are compared with the limitations on manumission found in American slavery, Jewish slavery during this period could justly be judged a lenient system.

In the period following the destruction of the Temple, the law of manumission of non-Jewish slaves threatened to become more restrictive. The Jewish community was intermittently under threat from hostile Roman rulers. Frequently Judaism had to be practiced in secret. At this time the rabbis saw the presence of the *eved canaani* as a threat to the Jewish family and the Jewish community in two ways. First, the introduction of a non-Jew into the Jewish household threatened Jewish customs and kashrut.

R. Nahman said in the name of Samuel, 'if one buys slaves from foreigners, even though they submit to circumcision and ritual immersion, they still (by their contact) taint ritually pure wine with the

22. MISNAH KIDDUSHIN 1:3.

suspicion that it may have been used for a libation, until idolatry has sunk into oblivion from their lips.' How long does this mean? R. Joshua b. Levi said, 'up to 12 months.'<sup>23</sup>

Second, when the slave had contacts with the non-Jewish world, the slave might tell tales about the Jewish community, true or false, to the detriment of the community. A popular saying of the time, as preserved in the Talmud, was, "[In Babylonia] people say, 'there's no trusting a slave.'<sup>24</sup> Even in a responsum which found justifications for keeping unconverted slaves, Rav Hai Gaon warned,

In a place where [Jews] fear that unconverted slaves will reveal Jewish secrets to those who seek after Jewish souls and blood and bring danger or war upon Jews, unconverted slaves should not be retained at all.<sup>25</sup>

In this context Rabbi Akiba made two rulings which would have limited both the number of slaves entering and those leaving the Jewish community. He required that anyone who purchased an *eved canaani* must convert the slave immediately, at least within the first day, or sell the unconverted slave to a non-Jew.<sup>26</sup> Conversion of the non-Jewish slave involves immersion in a *mikveh*—a ritual bath and in addition for men, circumcision. The status of a non-Jewish slave who converted to become a Jewish slave was to be a Jew for the purposes of handling kosher food, etc., but still an *eved canaani* for the application of slavery law. Thus such a slave would be subject to life service. If manumitted, the converted slave would become a full member of the Jewish community.<sup>27</sup> However, Rabbi Akiba also ruled the manumission of slaves violated a positive commandment—based on the statement in *Leviticus* Chapter 25: "They shall be your bondmen forever."<sup>28</sup>

Strict enforcement of Rabbi Akiba's rulings would have meant that only those slaves who were willing to become Jews and to remain slaves would have been allowed as members of the community. These

23. THE BABYLONIAN TALMUD, ABODAH ZARAH 57a; see Urbach, *supra* note 2, at 55.

24. THE BABYLONIAN TALMUD, BABA METZIA 86b.

25. T'SHUVOT HAGEONIM, No. 431 (A. Harkavy ed., 1887). Responsa are rabbinic legal opinions from highly respected authorities. These authorities were often sent questions from distant communities on subjects where local rabbis were uncertain about the proper answers. Copies of the answers were kept and frequently published by the authoritative rabbis' students. For a discussion of the responsa literature with examples of responsa on many different topics translated into English, see SOLOMON B. FREEHOF, THE RESPONSA LITERATURE AND A TREASURY OF RESPONSA (1973). See also AVRAHAM YAAKOV FINKEL, THE RESPONSA ANTHOLOGY (1990).

26. THE BABYLONIAN TALMUD, YEBAMOTH 48b.

27. See Urbach, *supra* note 2, at 58.

28. THE BABYLONIAN TALMUD, GITTIN 38b.

newly Jewish slaves would have posed little danger, but would have had to serve their masters without any hope of ever becoming free. Such a system could justly be viewed as harsh.

The first of Rabbi Akiba's rulings was accepted into Jewish law with a few exceptions.<sup>29</sup> The prohibition against manumission, however, was never applied with full rigor.<sup>30</sup> On the contrary, the *Mishneh Torah*, Maimonides' twelfth-century compilation of laws, continues to provide for voluntary manumission, even adopting the less restrictive alternatives posed in *Mishnah Kiddushin* Chapter One. Furthermore, the *Mishneh Torah* contains a long series of circumstances where a slave has a right to freedom.

In the case of voluntary manumission, the *Mishneh Torah* follows the view of the Sages on the ability of a slave to redeem himself by payment:

How does a heathen slave acquire his freedom by money? If, for example, someone gives the master money and says to him, "I give to you on condition that your slave shall thereby become free," then the moment the master receives the money or its equivalent the slave becomes free.

Thus also if one gives money to a slave and says, "I give it to you in order that you may acquire your freedom with it," then if the master consents to accept the money the slave becomes free. But if the master refuses to accept the money the slave does not acquire ownership of it, because it was given to him only on the condition that he acquire his freedom with it.<sup>31</sup>

On the question of whether the slave can receive the deed of manumission directly, however, the *Mishneh Torah*, follows the less restrictive view of Rabbi Meir, so long as the deed is witnessed:

How does a slave acquire his freedom by deed? If the master writes for the slave . . . "Lo, thou art free," or "Thou belongest to thyself," or "I have no more dealings with thee," or any similar words of this nature—for such is the essence of a deed of manumission—and he delivers the deed to him in the presence of two witnesses, or if the witnesses are signed on the deed and he delivers it to him in privacy, then the slave becomes free . . . .<sup>32</sup>

29. Male slaves who were reluctant to become circumcised could be kept uncircumcised for a year to give him a chance to accede to circumcision. It was ruled that if the master selling the slave made the sale on condition that the slave not be circumcised, the Jewish master purchasing the slave could keep the slave uncircumcised. See Urbach, *supra* note 2, at 53; THE BABYLONIAN TALMUD, YEBAMOTH 48b. Later, R. Hai Gaon ruled that if local conditions made slave conversion dangerous, Jews could keep unconverted slaves. TESHUVOT HA-GEONIM (A. Harkavy ed., 1887).

30. Urbach, *supra* note 2, at 57.

31. *Mishneh Torah*, *supra* note 9, at Slaves 5:2.

32. *Id.* at Slaves 5:3.

In a series of instances Maimonides concluded the slave would be entitled to freedom without the consent of the master. These included the following:

- If a master intentionally struck a slave and permanently disabled the slave in an apparent way, the slave was entitled to freedom. This damage included the loss of a tooth.<sup>33</sup>

- If the master sold the slave to a non-Jew, the slave was entitled to freedom. The master was required to offer the new master up to ten times the slave's value to repurchase the slave, and then was required to write a bill of manumission.<sup>34</sup>

- If the master lived in the Land of Israel and sold the slave to a Jew outside the Land of Israel, the purchaser was required to free the slave and lose the purchase price.<sup>35</sup>

- If a slave fled from a foreign land to the Land of Israel, the slave was not restored to slavery and the master was forced to give the slave a deed of manumission.<sup>36</sup>

- If a master abandoned his slave, the slave was entitled to freedom and the master had to write a bill of manumission.<sup>37</sup>

- If the master arranged for his slave to marry a free woman, had a slave wear tefillin,<sup>38</sup> ordered a slave to read three verses from the Torah, or in some other way treated the slave in a manner only befitting a free person, the slave was entitled to freedom and the master had to write a bill of manumission.<sup>39</sup>

Finally, in the process of conversion a slave might become free. A consequence of Rabbi Akiba's rule that a non-Jewish slave must convert in order to serve a Jewish master was that the slave was required to immerse him or herself in a ritual bath. The act of ritual immersion to become a Jewish slave was the same act of ritual immersion that was done for conversion to become a free Jew. Maimonides ruled that the status which resulted from immersion depended upon

33. *Id.* at Slaves 5:4. See also *Exodus* 21:26, which provides, "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." Maimonides makes clear that this right to freedom applies to the loss of any projecting part of the body that does not grow back when removed.

34. *Mishneh Torah*, *supra* note 9, at Slaves 8:1.

35. *Id.* at Slaves 8:5.

36. *Id.* at Slaves 8:10.

37. *Id.* at Slaves 8:13.

38. Also known as phylacteries, these are leather boxes with straps containing prayers written on parchment and traditionally worn on a Jewish man's forehead and forearm during week-day morning prayers.

39. *Mishneh Torah*, *supra* note 9, at Slaves 8:17.

the intention of the convert. Maimonides ruled that if the slave preempted the master and immersed him or herself before the master made clear that the immersion was for slavery, the convert became free.<sup>40</sup> To avoid this result, the master was required to order the slave to do an act on the master's behalf while in the ritual bath to demonstrate that the purpose of the immersion was for slavery, not freedom.<sup>41</sup>

The responsa literature is also full of discussions about the various methods of manumission and the rules of evidence for it.<sup>42</sup> These responsa indicate a dominant trend easing the formal requirements for manumission.

For example, a responsum from ninth-century Babylonia presents the case of a member of the Exilarch's family. There an informal deathbed declaration was found sufficient for slaves to become free:

It is related of Nathan ben Shahriar, a member of the family of the Exilarch, that on his death-bed he issued the order, in Arabic, that his male slave N.N., and his female slave N.N., were not to be owned by anyone after his death. There were only these words, no formality customary in such acts were observed, and no written instrument was executed. The matter came fore our lord, the light of our eyes, our master R. Zadok Gaon, may his soul rest in Paradise, and he decided that according to the law they must be set free, and he compelled the heir of Nathan, Shemaiah, who was the son of Isaac, the Resh Galuta, to write a bill of manumission.<sup>43</sup>

Finally, a responsum of Rabbi Shmuel di Medina (the Maharashdam)<sup>44</sup> shows the type of circumstances where a manumission issue came before Rabbis in this late period for Jewish slavery. Responsa from the twelfth century onward show that slavery among Jews largely consisted of a female housekeeper who frequently became the mother of the male slaveholders' children. Sexual relations between Jews and their slaves was always strictly forbidden.<sup>45</sup> Nevertheless Jewish masters had sexual relations with their slaves and, frequently, married them. If the Jewish master manumitted the slave, then the marriage would be kosher and the wife and children would be full members of the Jewish community. If the master did not manumit the slave, then the slave and the offspring of the relationship would be slaves and, at the master's death, pass with the master's

40. *Id.* at Slaves 8:19-21.

41. *Id.* at Slaves 8:19.

42. *See, e.g.,* Urbach, *supra* note 2, at 57-58.

43. 1 LOUIS GINZBURG, *GEONICA* 75 (1909).

44. Salonika, Greece, 1506-1589.

45. *See, e.g.,* TESHUVOT HAGEONIM SHA'ARE TZEDEK, BOOK SIX, 3:13 & 3:42.

property to the master's heirs. The issue brought before the Rabbis was, under the evidence available, should the wife be deemed free. Such was the case in the responsum of the Maharashdam.<sup>46</sup>

The question brought before the Maharashdam indicated the following events were known to the community: A Jewish man had a slave woman and the whole community knew he slept with her. She became pregnant and a son was born. When the time came to circumcise the son, the husband was embarrassed and asked other members of the community to do it. The wife took the husband to a secular court and the court ruled that the husband had the obligations to maintain and protect the wife and child. The wife lived in the house for many years, even after the husband's death. She maintained a kosher home, and behaved as a Jewish woman. She became a midwife and made monetary contributions to the Jewish community, to Israel, and kept some money for her son to inherit. These facts appear through the general knowledge of the community. No documentation was available.

After her death a dispute arose between institutions in the Jewish community and the heirs of the husband. The heirs claimed that she was a slave, that all her earnings, her property and her son belonged to them. The result of the dispute depended upon whether or not she had been manumitted. The Maharashdam ruled that she had been manumitted, that she and her son were free, and that she had properly conveyed her property as a free person. He used four theories to support these findings:

First, the rabbi reasoned that the status of the wife at the time of her original introduction into the community depended upon her immersion in the ritual bath. If she immersed in the bath for the purpose of slavery, she would be a slave. But, if she immersed for the purpose of becoming a free Jew, she would have become a free Jew. Unless there was evidence that she immersed to become a slave, she would be deemed to have become a free Jew.

Secondly, this presumption was justified by the wife's conduct. She acted as a Jewish woman all those years. The rule is that when converts live a Jewish life they are deemed to have converted, even without proof of conversion. That should be the rule here. Slaves don't behave the way this woman behaved.

Thirdly, even if we were to presume that generally immersion was for slavery, we shouldn't do so here because the Turkish authorities

46. 1 TESHUVOT HAMAHARASHDAM, No. 195.

don't permit us to own slaves without special permission. So, no such presumption of slavery should be used here.

Finally, when the husband followed the wife into the secular court the court ordered him to support and protect the wife and son. After this ruling he could not have sold her to another. He had abandoned his property rights over her and she was free.

### CONCLUSION

No system which allows one person to own another person can be deemed humane. For that very reason the ease and frequency of manumission, the opportunity for a slave to escape the inhumane system, serves as an important guide to judge a slavery system's relative harshness. This brief look at the Jewish law of manumission examined slavery under Jewish law over a period of more than two thousand years. The status of *eved ivri*, which ended before the common era, was more like indentured servitude for a term of years than slavery. The status of *eved canaani*, however, was truly slavery, and this status continued in some parts of the world into modern times.

From an early period, before the common era onward, Jewish masters frequently freed their slaves, and the freed slave became a full member of the Jewish community. The Talmud records that in this early period slaves were even deemed particularly good spouses. If one were to examine every legal opinion in Talmudic and post-Talmudic times one would find some authorities who greatly limited the power of the Jewish master to free a slave. Rabbi Akiba himself declared that manumission of an *eved canaani* violated a positive biblical commandment. Yet, the dominant trend in Jewish law, from the Talmudic period onward, continued to permit manumission. The authorities examined here as representative of the dominant trend actually made manumission easier, finding manumission without a deed or any other written record. Using David Brion Davis's criteria, "[i]f we had to be slaves and were allowed to choose the time and place of our servitude," we might well choose to be Jewish slaves, so long as we were willing to become Jews.