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SLAVE AND MASTER IN ANCIENT NEAR EASTERN LAW

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I. SCOPE OF STUDY

The purpose of this Article is to examine the legal aspects of the relationship between slave and master in the world's oldest recorded legal systems.1 It will concentrate upon the creation and termination of slavery and the transfer and treatment of slaves by their masters. The legal capacity of slaves (marriage, contract, litigation, etc.) and liability to and of third parties in delict must be reserved for a later study.

The geographic area bounded by this study is the Fertile Crescent of the ancient Near East, from Mesopotamia in the East, through Anatolia in the North, to Syria-Palestine in the West, but, for the most part, excluding Egypt. The time period covered extends from approximately the twenty-fifth century B.C., when the earliest legal documents concerning slavery were found, to the fourth century B.C., when, with its conquest by Alexander, the area became part of the larger Hellenistic world.

II. HISTORICAL BACKGROUND

The sources are mostly written in cuneiform script (in various languages),2 with the exception of the Hebrew Bible and a few documents in Aramaic. They are very unevenly divided in space and time. As the history of this period is not generally familiar to legal scholars, this Article begins with a brief historical survey of the societies and cultures which form the background to the legal institutions that we are about to study.

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1. By "master" we refer to private owners of slaves. Slaves could also be owned by public institutions, namely the palace and the temple. Special features attach to public slaves, especially temple slaves: see M. Dandamaev, Slavery in Babylonia, DeKalb 1984, 469-584.

2. Note on abbreviations. Sigla such as YOS 8 91 are standard abbreviations used by Assyriologists to refer to publications of copies of cuneiform texts (Yale Oriental Series, Babylonian Texts, Vol. 8 no. 91). They are mostly drawn from the Provisional List of Bibliographical Abbreviations of the Chicago Assyrian Dictionary, where the full titles are given. Where there exists a published edition or translation of the text, it will be given after an = sign following the siglum.

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The sources from the third millennium are mostly in Sumerian, a language with no known cognates, which was spoken by a people who founded an urban civilization in southern Mesopotamia. The sources primarily date from the Old Sumerian period (twenty-fifth century through twenty-second century), characterized by independent city-states, and the Neo-Sumerian period (twenty-first century), characterized by a highly bureaucratic and centralized empire. In between these periods is the Sargonic Empire (twenty-fourth century), whose rulers spoke Akkadian, a Semitic language.

In the first half of the second millennium, Akkadian divided into two dialects, Babylonian and Assyrian. Sources from this period are classified as either Old Babylonian, when their provenance is the city-states of southern and central Mesopotamia, or Old Assyrian, which mostly comprises the records of Assyrian merchants in Anatolia.

The second half of the second millennium was a period of great empires, namely Egypt, Babylonia, Assyria, Mitanni, and Hatti. The population of Mitanni spoke Hurrian, a non-Semitic language, but wrote their legal documents in Akkadian. The inhabitants of Hatti, the Hittites, spoke an Indo-European language which they wrote in cuneiform. Mesopotamian sources from this period are referred to as Middle Babylonian or Middle Assyrian. Syria-Palestine consisted of many small states, divided between the Hittite and Egyptian spheres of influence. Their legal records are mostly in Akkadian.

The early centuries of the first millennium were marked by Assyria's rise to universal dominion. At its zenith in the eighth and seventh centuries, the Assyrian Empire controlled the entire Fertile Crescent. Sources from this period are referred to as Neo-Assyrian. Most of biblical law can be dated to this and the subsequent period. The Assyrian Empire collapsed in 612 B.C. and was replaced by Babylonian hegemony. The term "Neo-Babylonian" encompasses sources from the subsequent Persian period (from 539 B.C.), since the cuneiform sources from Mesopotamia continued to be written in the same Akkadian dialect, although Aramaic had in fact become the lingua franca of the region.

The legal sources that we shall be applying are of three main kinds: law codes, royal edicts, and documents of practice.

The extant law codes are as follows:

2. Codex Lipit-Ishtar (CL): Twentieth century, from Isin in southern Mesopotamia. Written in Sumerian.

Although modern scholars call these law codes, I subscribe to the view that these documents are not legislation in the modern sense, but rather academic treatises on law expressed in casuistic form. Kings occasionally decreed the cancellation of existing debts and related transactions. These are genuine examples of legislation, if somewhat narrow in scope. We shall refer to four such edicts: by King Uru-inim-gina (Sumerian, twenty-sixth century), Ammi-šaduqa (Babylonian, seventeenth century), Tudhaliya IV (Hittite, thirteenth century), and Zedekiah (Hebrew, sixth century).

The documents are mostly records of legal transactions such as sale, hire, redemption, etc., with a much smaller number of litigation records and miscellaneous records such as letters. Most of those documents date from the Old Babylonian and Neo-Babylonian periods. The Middle Babylonian period contains a number of small but significant archives, from Nuzi in Mesopotamia, a city in the Empire of Mitanni, and from Emar, Alalakh, and Ugarit, cities in Syria. The Neo-Sumerian period has yielded a number of litigation records, a relatively rare genre.

In total, there are, by a conservative estimate, more than twenty thousand such documents already published, any of which might touch upon the question of slavery. A comprehensive view of slavery in the ancient Near East is not attainable in the present state of research. At most, one may hope to ascertain the salient features of that institution’s legal framework. On the other hand, the task is made

easier by the fact that, in spite of the huge distances of time and space and the many different languages and cultures involved, the societies of the ancient Near East did share a common legal tradition which persisted throughout the period in question with no radical change and is particularly noticeable in the academic tradition of the law codes.\(^4\) We may be confident therefore that throughout the gamut of sources, from Old Sumerian to Neo-Babylonian, we are dealing with essentially the same underlying laws of slavery.

III. Definition

In law, a slave may be defined as a person who is owned by another in the manner of a chattel, subject only to special considerations that may arise from his humanity. Such considerations may affect the extent to which the rules of property law are applied and may vary from system to system, but they do not derogate from the basic status. Applying this definition to the systems of the ancient Near East, however, is complicated by two factors: 1) the ambiguity of native terminology, and 2) the plethora of servile conditions that share some of the characteristics of slavery but were nonetheless distinct in law.

A. Terminology

The native terminology can be misleading. In the strongly hierarchical societies of the region, the term ‘slave’ was used to refer not only to a person owned in law by another but to any subordinate in the social ladder. Thus, the subjects of a king were called his ‘slaves’ even though they were free citizens. The king himself, if a vassal, was the ‘slave’ of his emperor, and kings, emperors, and commoners alike were ‘slaves’ of the gods. A social inferior, when addressing a social superior, referred to himself out of politeness as ‘your slave.’ Context is the only criterion for determining which nuance of the term is implied, and in a legal context that will normally be the legal meaning. Also, slaves can usually be identified by the lack of a patronymic, but this is by no means always the case. The names of free persons were not always written with a patronymic, while slave names with a patronymic are occasionally encountered.

Akkadian sources also occasionally use the terms ‘boy’ and ‘girl’ for slave and slave-woman, with no indication except context to indi-

cate whether a free child or a slave, who may well be an adult, is meant.5

B. Slavery and Servitude

Slavery is to be distinguished from the following servile conditions:

1. Family

The authority of a head of household over other members of the family gave him powers that were, in some cases, analogous to those of a property owner. He could sell his children into slavery or hire out their labor, or he could hand over his wife or children by way of pledge to secure a debt. A son owned no property while his father was alive and a wife's dowry was subsumed into the marital assets that were controlled by her husband.

On the other hand, this is one area where terminological differences are maintained. Although a husband is often called the 'master' of his wife, neither wives nor children are ever referred to as the 'slaves' of the head of household. Furthermore, a son had a vested interest in his father's property, of which he could not be divested except for cause and by a court order (CH 168-169). In addition, if a father chose to allot his son his share in the father's lifetime, the son became present owner of that property and did not lose his status as a son. Similarly, a wife remained the theoretical owner of her dowry, as a fund which was to be restored to her on termination of the marriage, and might have legal possession of certain items of it, such as clothes, jewelry, and personal slaves. A wife who was guilty of certain marital offenses could be divorced without compensation or, if the husband chose not to divorce her, she would dwell in his house "like a slave," i.e., deprived of her status as a wife and of her dowry (CH 141).

Although members of the family other than the head of household held a subordinate status, it was a separate status in law with its own special rules, which only occasionally coincided with those of slavery.

2. Serfdom

At various periods there is evidence of classes of workers attached to an institution (palace or temple) or to an estate, whom modern scholars have classified as serfs. The native terms attributed to this status are manifold and varied greatly from society to society. While economically they may have shared the condition of slaves, it is doubtful that these classes of persons shared their legal status, although it is impossible to state to what degree they lacked freedom. The few references in law codes do not contrast their legal treatment with that of free men, as is regularly the case with slaves.

3. Pledge

Debtors could give themselves or persons under their authority to creditors by way of pledge. The resulting conditions were analogous to those of slavery: the pledge lost his personal freedom and was required to serve the pledgee, who exploited the pledge's labor. Nonetheless, the relationship between debtor and creditor remained one of contract, not property. Since the pledgee did not own the pledge, he could not alienate him, nor did the pledge's property automatically vest in the pledgee. It was in the nature of a pledge that it could be redeemed by payment of the debt, at which point the pledge would go free. During the period of his service, failure by the pledge to fulfill his duties led to contractual penalties, not punishment under the general disciplinary powers of a master. The contract could, however, contain a forfeiture clause whereby the pledge was reduced to slavery. A Middle Assyrian example reads:

A. and B. have borrowed 5 homers of barley, the property of C., from C. They shall pay the capital, the barley, within x months. When the due date is past they shall pay 2½ mina of tin. As pledge (šapartu) for this tin, C. holds their field or house or threshing-floors or wells or sons or daughters. When the due date is past, their

6. I. Gelb compares 20 distinct features of slaves and serfs: From Freedom to Slavery, Gesellschaftsklassen 81-92 (cf. ibid., Definition and Discussion of Slavery and Serfdom, Ugarit-Forschungen 11 (1979) 283-297). I. Diakonov points out, however, that most of these features are non-essential and lists 18 features himself: Acta Antiqua Academiae Scientiarum Hungaricae 22 (1974) 45-78, esp. 55-63.

7. E.g. gurš, erin in Sumerian texts; miqtum, našti biltim in Old Babylonian; hupparas, LÚ šTUKUL in Hittite; ikkaru, šasānu in Neo-Babylonian.

8. Diakonoff, op. cit. 58-59, includes in his list four “legal” features. They are not very revealing. Only “Alienability” differs; slaves are alienable, serfs are not or seldom so. The others are “Freedom of movement” (no), Emancipation (rare), Legal rights (limited/subject to change).

9. CL 15-16 (miqtum); HL 40, 41 (LÚ šTUKUL).

pledges are acquired. . . . A. and B. have received the tin as purchase price of their pledges.

Any children given as pledge could presumably then be sold. The alienability of the former pledge is made explicit in an Old Babylonian contract:

(Corning a loan of \(6\frac{1}{4}\) shekels) C. wife of B. has been handed over to A. as a pledge (mazzazzānu). If he (B.) does not pay the silver in two months, C. wife of B. may be sold.

Pledge frequently had an antichretic character. In other words, the person pledged was employed by the creditor in lieu of payment of interest on the loan. The result could be a form of service that lasted for many years, even for life. An antichretic pledge contract from Nuzi reads as follows:

Thus says A. son of X. Before witnesses he declared as follows: “I have received 12 mina of tin, I have caused myself to enter the house of B. as pledge (tidennātu) and do his work. When I have done his harvest, I shall return 12 mina of tin to B. and cause myself to go out of B’s house. If I neglect the work of B. for a single day, I shall pay one seah of barley to B as a penalty.” He who violates the agreement shall pay one ox.

The period of service here is relatively short—until the end of the harvest. In other such contracts, however, the period could be up to fifty years, and it is to be noted that the stated period was a minimum. A. had to wait until after the harvest to free himself. If he did not then pay, he remained in service. Note that the penalty for absence was contractual and that repayment was by the pledge himself.

4. Distraint

Where a debtor was in default, the creditor was entitled to distress his property, including slaves, as well as members of his family. In the Old Babylonian period, this power (nepātum) is the subject of letters and of some legal regulations. Persons distrained could be held prisoner and possibly forced to work for the creditor, but the evidence suggests that they could not be sold to satisfy the debt. The purpose of distraint appears rather to have been to put pressure on the debtor to repay:

After you went away on a journey A. came and, with the statement “He owes me one-third of a mina of silver,” distrained your wife

and daughter. Come and get your wife and daughter released before they die from being kept in detention. Please!

5. Kiṣṣātum

Like distraint, this Old Babylonian term refers to a non-consensual form of servitude, but in this case it arose ex delicto. It appears to have been the penalty for certain minor offenses, such as petty theft.

The basic system of retribution for offenses that would be regarded as crimes in modern legal systems was a dual right that accrued to the victim (or his family): 1) revenge against the culprit (or his family), or 2) the acceptance of a payment by way of ransom in lieu of revenge. This right was a legal right, regulated by the courts who intervened to fix not only the appropriate level of revenge but also, in less serious cases, the appropriate ransom. In the latter case, revenge was only available if the ransom was not duly paid. Kiṣṣātum reflected this duality, falling at the lower end of the scale. Revenge was loss of freedom; if the culprit could not pay the ransom (fixed or negotiated according to the circumstances of the case), the victim was entitled to take the culprit or members of his family or possibly one of his slaves into servitude. In a sense it was servitude for debt, because if the ransom were ever paid, the person was released. There is indirect evidence, however, that the perpetrator could not be sold to a third party to realize the ransom. According to CH 117, family members given for kiṣṣātum were to be released after three years, but CH 118 provides that a slave given for kiṣṣātum was not released. Instead, the slave could be sold by the creditor if not redeemed within a three-year period. The permission accorded by CH 118 to sell slaves after a grace period assumes an incapacity to sell free persons in the same condition.

C. Categories of Slavery

The status of slavery itself was not monothetic. The legal regime applied might differ in some aspects as between categories of slaves and even as between individual slaves. Three principal factors were responsible:

1. Social Justice

The legal systems of the ancient Near East contained various laws and measures of social justice for the relief of debtors. They applied not only to persons held by way of pledge, distraint, etc., but often explicitly included persons sold into slavery, where the sale arose from indebtedness. The rationale was that sale in such cases was merely an outward legal form, the true transaction being forfeiture for debt, which should be treated in the same way as pledge or distraint.\(^\text{15}\) The effect of these rules was to create in practice two classes of slavery, debt-slavery and chattel-slavery, with different consequences in terms of manumission. A third class was constituted by what we shall term famine-slavery. The law intervened, to a more limited extent than with debt-slavery, to protect persons who entered into slavery under duress due to famine at a time of general calamity. Restrictions on the maltreatment of slaves also differed according to class of slave.

2. Contract

A characteristic feature of legal transactions recorded in cuneiform is the use of contracts ancillary to the creation of a legal status. Although contractual agreements could not directly annul or amend the rules that defined a status, it was possible for contractual terms to achieve the same purpose indirectly. For example, the status of marriage gave a wife the right to divorce her husband at will, but the marriage contract would impose a penalty on the wife for her exercise of that right.\(^\text{16}\) Where slavery was created by contract, especially where self-sale was involved, the rules of the status could be affected in an analogous way. The terms of the contract could ameliorate the slave's condition, making it closer to other types of servile condition such as pledge, or they could reduce it, for example by stultifying the effect of rules of social justice.

3. Citizenship/Ethnicity

Foreigners in the ancient Near East were in a precarious situation. They had no legal rights outside of their own country or ethnic group unless they fell under the local rulers' protection. Even their lives were not safe. When the Egyptian envoy Wen-Amon was ship-


wrecked on Cyprus, the inhabitants sought to kill him, and he only saved himself by forcing his way through to the local ruler and claiming her protection. Similarly, Gen. 12 narrates that when Abraham and his wife Sarah went down to Egypt, Abraham asked his wife to pretend to be his sister, for fear that the Egyptians, seeing her beauty, would kill him in order to take her from him. Involuntary enslavement was therefore a distinct possibility.

Protection could be acquired in several ways. Between states enjoying friendly relations, the rules of international law obliged the local sovereign to forbid and to punish crimes against the citizens of the other state committed on his territory, and he would be held accountable by the victim's own sovereign. A foreigner who had no allied sovereign to support him would seek to be designated a resident alien, a status that gave him protection against involuntary slavery, but not necessarily the benefit of social justice measures that citizens enjoyed. Many such measures were expressly limited to citizens or to members of the local ethnic group. Furthermore, even within a state, the privileges of residence might have had only local validity. As a Babylonian proverb remarks: "A resident alien in another city is a slave." Inevitably, foreign slaves were heavily represented in the category of chattel-slaves.

D. Biblical Law

The slave laws of the Bible offer a special complication because biblical Hebrew does not appear to have had special terminology for servile conditions apart from slavery. As a result, not only debt-relief laws, but all laws protecting pledges, etc., were applied to slaves. The main distinction was between native and foreign slaves, it being assumed for the purposes of social justice measures that all native slaves were debt-slaves.

IV. CREATION

A. War

Foreigners captured in war were booty, which could be dealt with as the captor saw fit. They could be held for ransom, exploited as
labor, or resettled. They were not automatically slaves, but they were without rights and therefore potential slaves. Indeed, they were without the legal complications of domestically created slaves, since their enslavement was in the nature of acquisition of ownerless property.

Although war might be expected to be a prime source of slavery, there is very little mention of slaves from this source. In the cuneiform writing system, the Sumerian ideograms for slave and slave-woman were originally pictograms composed of the signs MAN+MOUNTAIN and WOMAN+MOUNTAIN respectively, suggesting that in early times (i.e., the fourth millennium) the mountains to the East of the Tigris-Euphrates Valley, which, in Sumerian eyes, were populated by hostile barbarian tribes, were raided for slaves. At the end of the third millennium, a Neo-Sumerian king, Shu-Sin, boasted:

He blinded the young men whom he captured in their cities and gave them as... in the orchard of (the gods) Enlil and Ninlil and in the orchards of the great gods. And the young women whom he captured in the cities he devoted to the weaver's mills of Enlil and Ninlil and to the temples of the great gods.

Such slaves were regarded primarily as a royal resource, the male prisoners being blinded as a security measure, and therefore of limited usefulness. Some Old Sumerian contracts were for the sale, at a discount, of “blinded men” (igi-nu-du₈), the sellers being orchard-keepers and in one case a state employee. They may then allude to some traffic of royal prisoners in the private sector. There is more positive evidence for the private acquisition of captured girls, who would obviously be more suited for private domestic service. A contract from Nuzi contains the declaration:

(Ms.) A. of the land of Arrapha I took from the land of Kukapshuhena as booty (??) to my chariot and sold her to B. son of X.

Similarly, a Neo-Babylonian contract reads:

A. son of X. has voluntarily sold to B. son of Y. his slave-woman C. and her daughter of 3 months, an Egyptian from his booty of the bow, for 2 mina of silver as the full price.

Dt. 21:10-14 laid down rules for a soldier wishing to marry a woman that he had captured:

23. JEN 179 = A. Saarisalo, New Kirkuk Documents Relating to Slaves, Helsinki 1934, no. 28.
When you go out to war against your enemies and the Lord God gives them into your hand and you take captives: if you see among the captives a beautiful woman and you desire to marry her, you shall bring her into your house and she shall shave her head and pare her nails and remove the garment of captivity and sit in your house and mourn her father and mother for one month and thereafter you may consummate the marriage with her. But should she not please you, you shall send her out where she will (i.e. be divorced and leave as a free woman); you shall not sell her, you shall not reduce her status (hit'ammer) because you have shamed her.

The Hebrew verb here translated 'reduce her status' is found elsewhere in the Bible only in Dt. 24:7, where it refers to the act of selling a kidnapped free man into slavery. The basis of the present law is therefore that a prisoner was not yet a slave, but had the potential to be one. Here the intervening marriage interfered with the normal rights of the captor, and rendered it unjust for him to exercise them should he then terminate the marriage.

B. Kidnapping

Involuntary enslavement applied only to foreigners. With respect to one’s fellow citizens, the law codes contained stern injunctions against kidnapping free persons for the purpose of reducing them to slavery:

CH 14: If a man steals the young son of a man, he shall be killed.
Ex. 21:16: A man who steals a man and sells him, and one in whose hand he is found, shall be put to death.

The safest course was to sell the kidnap victim abroad, as is illustrated by the story of Joseph. Judah urged Joseph’s brothers not to kill him but to sell him to a caravan of foreign merchants on their way to Egypt, a transaction which was ultimately made by some passing Midianites (Gen. 37:25-28). An Old Babylonian administrative order alludes to the misadventures of a child sold abroad due to the fortunes of war but apparently later acquired in ignorance by a local citizen:

A free lady, a native of the city of Idamaraz, was deported by the Elamites with the general population but without her family. Her wet-nurse sold her. Her city has attested that she is a free lady. Her present owner, (in) the city of Muti-abala, has not freed her; he has detained her in his house. Judgment should be given according to the order.

25. R. Frankena, Altbabylonische Briefe Vol. 6, Leiden 1974, no. 80. B. Siegel suggests that her freedom was made possible by reconquest from the Elamites of the area in which she lived: American Anthropological Association, Memoirs 49 (1947) 44, 46.
C. House-born

In Old Babylonian slave-sales it was occasionally noted that a slave is "house-born" (wilid bitim).26 In one such document, the slave-girl was said to have been 'born on the roof.'27 Such slaves could have been the offspring of a union of master and slave, as attested in the law codes (CL 25, CH 171) or of slaves. In a Neo-Sumerian court record a slave claimed to be a free man, but was proved to have been born in the late master's house as the son of a slave of the latter, and was therefore assigned to the late master's heirs.28

D. Debt

If a debt fell due and the debtor was unable to pay, the creditor could seize goods or members of the debtor's family in order to force him to pay the sum owing. In the latter case the Old Babylonian law codes spoke of the creditor detaining the distrainee in his house and imposed severe penalties should the distrainee have been killed there by beating or abuse (CE 23, CH 115-116). The selection of this special situation, rather than slavery in general, as the locus of a discussion of abuse suggests to us that the simple alternative of selling the distrainee to realize the sum of the debt was not available to the creditor. Enslavement for debt required a voluntary act by the debtor, at least in law. Contracts of sale into slavery for debt made efforts to emphasize the voluntary nature of the sale, especially where the debtor was selling himself. In practice, the debtor may have been left with no choice. CH 117 speaks of a loan 'seizing' a man, so that he sells his wife, son, or daughter.

The realities of the situation may be reflected in the ambiguous statement in 2 Kings 4:1:

One of the wives of the prophets cried out to Elisha: "Your servant my husband has died . . . and the creditor comes to take my two children as his slaves."

Was the creditor acquiring slaves by distraint, something that we have argued was not possible in neighboring legal systems? Given the absence of special terminology in biblical Hebrew, it may indeed be that two legal institutions were fused in law. On the other hand, this non-legal text may merely be alluding to the widow's helplessness in the

situation. The same circumstances are described in the opening lines of a court record from Emar:

Before X. and the city elders: A. owed B. 25 shekels, then A. died and his two children entered B.'s house and he released the 25 shekels. Now B. has produced the two children of A. before X. and the elders and before their (paternal) uncles and declared: “Take your two nephews and repay me my 25 shekels. . . . These two nephews have entered voluntarily into slavery with me.”

Where a sale took place, it could be to the creditor himself or to a third party. We have already seen that pledge contracts could contain a foreclosure clause converting the pledge into sale to the creditor or allowing the creditor to sell the pledge. In the absence of pledge, direct reference to the loan could be made in the contract of sale, as in a Neo-Assyrian document:

A. has purchased and acquired B. daughter of C. from C. in lieu of 30 shekels of silver belonging to A. and to (the goddess) Ishtar of Arba'il. In lieu of his debts he has given his daughter to A. That woman is paid for and acquired.

An Old Babylonian document where the purchaser was a well-known financier expresses the same in the case of a self-sale:

Balmunamhe has purchased A. and B., the sons of X. . . . from themselves. He has paid one-third of a mina of silver for their loan as their full price.

An Emar document records sale to a third party who effected a purchase of the debtor's loans:

Before the elders of the city of Ur, A. son of X. stated thus: “I was indebted for 100 shekels of silver, and B. son of Y. has paid my debts. In exchange for my debts that he paid for me, I, together with my two wives . . . have of my own free will entered into the slavery of B.” This is the silver for which he entered: 70 shekels of silver given to C., 10 shekels of silver given to D., 20 shekels of silver given to E.

Debt did not only arise from loans. Certain types of delict created a debt in the culprit to the victim or his family which, if not paid, might be satisfied by sale of the culprit into slavery. Thus CH 53-54 ordered that where a negligent farmer had managed to flood the whole district and did not have the means to compensate all his neighbors for their loss, the latter could sell him and his property and divide the proceeds among themselves. Similarly, in Ex. 22:2 a burglar

caught breaking in had to pay the householder a ransom for his freedom, and, if he could not, was to be sold "for his theft." The same rule would seem to lie behind a Neo-Sumerian trial report which recorded the sale of the culprit's family:

A. gave B. wife of C., his daughter D., and E., the slave of C., to E. and F. in slavery because C. had robbed him (A.).

In another of these records, the victims elected to keep the culprit's family for themselves as slaves, after the culprit's death (execution?):

It was established before the grand vizier that A. son of X. had killed B. Y. was presiding officer when, because A. was killed, his estate and wife and daughter were handed over to B.'s sons. In the fifth year A.'s wife and daughter ran away from B.'s sons, but B.'s sons caught them.

Finally, in a document from Emar, a person accused of theft reached a settlement whereby he avoided slavery for himself:

A. stole the slave of B. and was caught with that slave. They brought him to judgment before the king and the king gave the nobles of the town of S. to the oath. The king declared: "If the nobles swear, A. shall remain to B. as a slave." A. did not wish to agree to the nobles swearing; he gave his sister to B. as a slave in exchange for himself. In the future A. may not raise claims against B.

E. Famine

In contracts written in the town of Nippur when it was under siege by Nabopolassar, children were sold into slavery in exchange for their being kept alive and for money for food for their parents:

A. spoke thus to B.: "Take my ... daughter C. and keep her alive. She shall be your slave. Give me 6 shekels of silver so that I may eat."

Enslavement for famine was similar to enslavement for debt, but was not always identical. The sale of a child in times of famine could always be regarded as a sale made under duress with the price being a debt. Sometimes, however, there was no price. Rather, free persons gave their children or themselves into slavery in return for being kept alive until the famine was over. A small group of contracts among the

33. For an analysis of this law, see R. Westbrook, Studies in Biblical and Cuneiform Law, Cahiers de la Revue Biblique 26, Paris 1988, 124-126.
34. Falkenstein, NSG no. 42.
35. Falkenstein, NSG no. 41.
36. Arnaud, op. cit., no. 257.
Middle Babylonian records from Nuzi, mostly from the business archive of a single financier, Tehip-tilla (and his son Enna-mati), involved persons who voluntarily entered his house as slaves. The reason was not stated and no money changed hands. Some of the contracts describe the subjects as habiru, referring to a marginal category of people who would, for the most part, have been landless, or as being of foreign origin. It is reasonable to assume therefore that such contracts concerned self-enslavement by reason of famine. They contained some remarkable clauses, some of which are typical of famine-induced slavery and others which are best explained as attempts to avoid the rules of social justice that applied in that situation. A neo-Babylonian contract is more explicit:

[1]In that time, A. spoke thus to B., the scribe of Sippar: "Keep me alive and I will be your slave." B. agreed and established food rations for her.

The question then arose whether such a person was to continue in slavery once the famine was over. If not, how long was he to serve? If he could be redeemed, at what price, since there was no debt to provide a criterion? The legal principles that applied to famine-induced contracts will be discussed below under the heading "Termination."

Famine also resulted in the abandonment of children. If a passerby saved an abandoned child, he might adopt him, as was the good fortune of Moses, or he might take him as a slave. We have little evidence on the latter case, but in an Old Sumerian slave sale the slave's name was "Found-in-a-well" (tul-ta-pad-da) which was a standard mode of describing a foundling. A slave taken as a foundling would presumably be ownerless property, like a prisoner of war. In the case of adoption, the possibility of the natural parents reclaiming the child under certain circumstances was considered in the law codes. Whether the same applied to an enslaved foundling is an intriguing, but as yet unanswerable, question.

39. For a detailed discussion, see Bottéro and Greenberg, op. cit.
41. Edzard, SRU no. 43.
F. Penalty

Slavery also arose from the operation of contractual penalty clauses. A Sumerian-Akkadian dictionary of legal phrases (mid-first millennium) contains the following standard clause:\textsuperscript{43}

If a son says to his father “You are not my father,” he will shave him, place the slave-mark (\textit{abbuttu}) upon him and sell him.

The words quoted are the \textit{verba solemnia} dissolving adoption. A wife who pronounced the divorce formula might be visited with the same penalty. An Old Babylonian contract contains the clauses:\textsuperscript{44}

If A says to his wife B, “You are not my wife,” he shall pay half a mina of silver.
If B says to her husband A, “You are not my husband,” they will shave her and sell her.

Similar clauses are also occasionally found in commercial agreements. An Old Babylonian labor contract reads:\textsuperscript{45}

A. and his son shall make their labour available to B. Yearly B. shall give them 1 kor of barley, 1 garment, and a shirt. A. and his son have sworn by (the god) Ninurta that if they abandon the work, B. may sell them.

Such a delinquency clause is even found in a slave sale contract, as part of the seller's warranty:\textsuperscript{46}

A. has purchased a slave-woman named B. from her brothers C. and D. If she abandons (her work), they will become slaves (in her place).

In an unusual case, a Neo-Babylonian document reveals that a young woman called the penalty of slavery upon herself for immoral conduct:\textsuperscript{47}

If A., daughter of X., is seen with B. son of Y. and he leads her to himself under false pretenses . . . but she does not say to the master of the house “Inform Y. the father of B.,” then A. will receive the mark of slavery.

\textsuperscript{43} Landsberger, MSL I, 7 III 23-28.
\textsuperscript{44} BE 6/2 48 = Westbrook, Marriage Law, 115-116.
\textsuperscript{45} B. Kienast, \textit{Die altbabylonischen Briefe und Urkunden aus Kisurra} Pt. 2, Wiesbaden 1978, no. 88.
\textsuperscript{46} P. Steinkeller, \textit{Sale Documents of the Ur-III-Period}, Stuttgart 1989, no. 45 (Neo-Sumerian).
\textsuperscript{47} Cyr. 307 = Dandamaev, \textit{op. cit.}, 105.
V. Termination

A. By Manumission

The Neo-Sumerian records of litigation include a number of disputes between slaves and the heirs of their owners. For example,48

The heirs of A. sued the daughters of B., slave of A. C., daughter of B., brought before the vizier a tablet of A. (stating) that A. in his lifetime had appeared and declared: "By the king's oath! I free the daughters of B., my slave." The daughters of B. severed themselves from the heirs of A. In spite of the wording of the oath, it appears that manumission was only to be postmortem, leading to disputes when the heirs sought to claim their inheritance.49 In Falkenstein, NSG no. 99:15-51, on the death of the slave-owner, his heirs claimed a slave from their mother, but she was able to prove that their father had given her the slave as a gift during his lifetime. She then freed that slave's daughters and the heirs swore an oath not to "change their mother's word." The reference is to respecting her testamentary dispositions when they eventually inherited from her.50

The motivation for manumission in these cases is not mentioned and it may well have been pure liberality on the owner's part. But documents of manumission from later periods for the most part record reciprocal arrangements whereby the slave was freed in return for continuing to look after his master, especially in old age. These arrangements were of two kinds. In the first, the master manumitted the slave upon his death, in return for support during the rest of his life, as in a document from Elephantine:51

A. son of X., a Jew of Elephantine the fortress of the Iddinnabu detachment, said to B., his slave-woman who is marked on her right hand 'Belonging to A' thus: "I took thought of you in my lifetime. I have set you free at my death and I have freed C., your daughter whom you bore me. A son or daughter of mine or brother or sister, near or distant (relative) . . . has no right to you or to C., your daughter whom you bore me, has no right to brand you or sell you. Whoever lays claims to you or to C., your daughter whom you bore me, shall be liable to you for a penalty of 50 karsh of silver. . . . You are freed, from shadow to sun, and your daughter C., and another

50. Cf. CL 31: If a father in his lifetime has made a gift to a favourite son and drafted a sealed tablet for him, after the father's death the heirs shall divide the father's estate but they shall not claim his share; they shall not . . . their father's word.
has no right over you and your daughter C.; you are freed to God.”
And B. and her daughter C. said: “We shall serve you as a son or
daughter supports his father during your lifetime and upon your
death we shall support your son D., like a son who supports his
father, as we shall have been doing for you during your lifetime. If
we arise and say: ‘We will not support you like a son who supports
his father nor your son D. after your death,’ we shall be liable to
you and your son D. for a penalty of 50 karsh of silver.”

According to CH 171, a master’s slave-concubine and his issue by her
were to be freed automatically upon his death. That surprising piece
of liberality was not widely emulated, and here we see that it had to be
achieved through an express contractual clause.

Three further points should be noted with respect to this docu-
ment. First, the manner of the slaves’ service was to be like that of a
son caring for his father. Second, the slaves’ obligation continued af-
fter their master’s death with respect to his son even though they were
free; they were bound by contract, not status, from that point on.
Third, even during their remaining period of slavery, the grant of free-

dom was irrevocable. Their misconduct would result in a contractual
penalty, not in cancellation of the grant. The contract thus mitigated
the effects of slavery, at least in law. In practice, however, the impos-
sibility of paying the huge penalty would inevitably lead to their re-
enslavement.

The second method was to free the slave immediately and adopt
him, thereby ensuring for the manumitter the duties of support im-
posed by analogy in the Elephantine contract. The duty thus arose
from status, but the status of a son, not a slave. According to an Old
Babylonian contract:52

A. is the son of B. His mother B., the priestess, daughter of X., has
purified him, she has placed his face to the sunrise.53 If A. con-

inues to support B. as long as she lives, after her death no one shall
have any claim upon A; he is purified. No-one from among the
children of X. or the children of Y. shall raise a claim against him.

Failure to support was a breach that would lead to the loss of his
status as son. He would then be liable to be reclaimed as a slave by
his mistress’s heirs. An Old Assyrian contract provides further
details:54

52. CT 8 48a = M. Schorr, *Urkunden des altbabylonischen Zivil—und Prozessrechts*,
Vorderasiatische Bibliothek 5 (henceforth UAZP) no. 27.
53. This is a reference to a ritual of manumission, see M. Malul, *Studies in Mesopotamian
54. K. Veenhof, *A Deed of Manumission and Adoption from the Later Old Assyrian Pe-
A. son of X. has purified the forehead of his slave B. As long as his father A. and his mother C. live, he shall support them and serve them. After (the death of) his father A. and his mother B. he shall receive x. acres of land and one ox. If A. reclaims him, he shall pay 2 mina of silver, and if B. repudiates A. and C. and leaves, he shall be sold in the town market where he is spotted.

It can be inferred that the slave was adopted upon manumission. The contract was unusually favorable to the slave. He was allotted an inheritance share, which is unusual in this type of manumission. The penalty on his former master for attempting to reclaim him as a slave was very large while the penalty on the former slave was standard for repudiation by an adoptee.

Occasionally, a contract manumitted forthwith and stipulated service without adoption of the freed slave. In such cases, it would appear that the obligation to serve once free was based on contract alone. The consequences of a breach would not have differed significantly, as a Neo-Babylonian document reveals:

A. son of X. descendant of Y. sealed a tablet of free status of his slave B. (in return) for giving food and clothing. After he had sealed the tablet of free status, B. ran away and did not give him food, oil and clothing, but C. daughter of Z. etc., the wife of D. son of A., served, honoured and looked after him. A. voluntarily annulled B.‘s tablet of free status and sealed a tablet assigning (B.) to C. and her daughter F., the daughter of D. son of (A. descendant of) X. C. and her daughter F. shall serve (A.) and after C.’s death he (B.) will pass to F.

A document from Ugarit records a contract wherein an owner manumitted his slave-woman and married her off, receiving from the groom the betrothal payment that would normally be paid to a parent or guardian:

As of this day before witnesses A. has freed B., his slave-woman . . . (declaring) thus: “I have poured oil on her head and I thereby purify her. As the Sun is pure, so B. is pure for ever.” Furthermore, C. has taken her as his wife. C., her husband, has brought 20 (shekels of) silver and has given them to A.

It is not clear from the document whether he received the payment by way of owner or parent (in which case we would need to assume an

55. E.g. 3N—T 845 = M. Roth, *Scholastic Tradition and Mesopotamian Law*, University Microfilms 1979, 108-109: A. has freed [his slave-woman B.]. He has purified her forehead, he has broken the pot of her slavery, he has executed a document concerning her purification. As long as she lives, she shall serve him. A., the father, while still alive, has sworn by the king that after A. dies, A.’s heirs shall not claim her for slavery.


intervening adoption). In an Old Babylonian document, the mistress manumitted her slave-woman, adopted her, and gave her in marriage. No betrothal payment is mentioned in its very summary text.\(^{58}\)

**B. By Redemption**

1. Debt-Slavery

If property was pledged for a loan, by the nature of things that property would be released to its owner upon payment of the loan. The courts of the ancient Near East, however, extended that principle by way of equity to sales, where the sale was in effect a forced sale at under-value to pay off a debt. The seller was, under certain conditions, allowed to buy back, to ‘redeem’, that property at the original price, as if it had merely been pledged. This equitable principle applied only to certain types of property, in particular family land, but also to members of one’s family sold as slaves.\(^{59}\) As Lev. 25:47-49 puts it:

> If a resident alien obtained means and your brother grows weak with him and is sold to the resident alien . . . after he is sold he shall have (the right of) redemption: one of his brothers may redeem him, or any of his relatives from his clan may redeem him or he may obtain the means and be redeemed.

The circumstances are graphically portrayed in an Emar document:\(^{60}\)

> Before X. and the city elders: A. owed B. 25 shekels, then A. died and his two children entered B.’s house and he released the 25 shekels. Now B. has produced the two children of A. before X. and the elders and before their (paternal) uncles and declared: “Take your two nephews and repay me my 25 shekels. . . . These two nephews have entered voluntarily into slavery with me.”

Their father’s brothers refused to give the 25 shekels of B. and they confirmed by sealed tablet, voluntarily, the enslavement of their two nephews to B. Dead or alive, they are B.’s slaves. In the future, if C. and their father’s brothers say: “We will redeem our two nephews”, they shall give two souls for D. and two souls for E., the blind one, to B. and they may take their two nephews.

In, CH 119 the principle is extended to a slave concubine:

> If a debt has seized a man, and he sells his slave-woman who has borne him children, the owner of the slave-woman may pay the silver that the merchant paid and redeem his slave-woman.

Note that in this case the result was not freedom for the slave but return to her former master. A right of redemption based on owner-

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59. See Westbrook, *loc. cit.* n.15 above.
60. Arnaud, *op. cit.*, no. 205, discussed in part above.
ship will return property to its previous owner or to one with a right to inherit it. That is how the system worked with redemption of family land. In the case of a previously free debt-slave, however, the right of redemption in a relative would seem to be based not on ownership or inheritance, but on family authority. Thus, a slave who reverted to the authority of the head of household, for example a son redeemed by his father, would thereby be freed but once more be subordinate to his father. It is an open question whether a more distant relative acting as redeemer, such as a cousin, also acquired family authority over the family member redeemed. The redeemer certainly acquired the rights of a creditor, but with a loan that was now unsecured.

If the line of relatives was exhausted, there existed the possibility that the public authorities could intervene. A broken Neo-Assyrian document contains the following clause:

61 Whenever, tomorrow or the day after, his brothers or the prefect or his people or his governor or his prefect or the mayor of his city shall come, he shall pay . . . seventy shekels of copper and cause the man to go out.

Evidently, not every debt-slave was eligible, and the circumstances under which the authorities would choose to intervene are not known. It is reminiscent of the duty of the local authorities in CH 32 to pay the ransom of a captured soldier if he did not have the means to do so himself. Ideologically, the king was the "father of his people" in matters of social justice, a role to which being a redeemer was eminently suitable.62 In a series of transactions from the Old Babylonian stratum at Alalakh, the king of Alalakh redeemed various debt-slaves from their creditors by paying their debts.63 It appears that the relation between the former slaves and their new creditor was changed to one of antichretic pledge.64

An outside redeemer might be motivated by altogether different considerations. In a remarkable Middle Assyrian case, a slave, with his master's authority (and presumably his funds), redeemed a slave-woman from a different master, manumitted her, and married her. She was to be subordinate to her husband's master in some way, but

61. J. Kohler and A. Ungnad, Assyrische Rechtsurkunden, Leipzig 1913, 133: 4-10. The clause is apparently preceded by a previous redemption and duty to serve for the lifetime (of the redeemer?). The clause is too fragmentary to draw any conclusions.
62. CH Epilogue Col. XLVIII 20-24. It is not surprising that the God of Israel, the ultimate king and father, is referred to as the redeemer of his people, e.g. Psalm 103:4.
64. This is stated expressly in no. 28 and is inferred in the other documents by the statement that the capital bears no interest.
the contract expressly prohibited the master from enslaving her or her children.\textsuperscript{65} Prior to his marriage, the redeemer appears to have had no standing that would have given him a right to redeem, irrespective of the owner's consent. We must assume, therefore, that this special arrangement was made with the consent of all the parties concerned, including the slave-woman.

The final resort, according to Lev. 25:49, was for the slave to find the means to redeem himself. That arrangement was recorded in a Neo-Sumerian contract:\textsuperscript{66}

\begin{quote}
A., the slave of B., has redeemed herself from B. She has paid him one-third of a mina of silver as her full price. As long as B. and C. live she shall do service with their spouses and children. After B.'s and C.'s death, A. may go where she pleases; no-one shall raise claims against her.
\end{quote}

What was the source of funds for the slave's redemption? If a slave could own no property of his own, how could he repay his master? In an Old Babylonian document, a slave was manumitted after she had "brought in" ten shekels of silver to her mistress, which suggests an outside source.\textsuperscript{67} One can speculate that it might have sometimes been in the master's interest to allow the slave, by his work or through his peculium,\textsuperscript{68} to accumulate sufficient funds for his redemption. The paradox of the Neo-Sumerian contract just discussed, namely that the slave has paid the full price of her redemption but must still serve under a contractual obligation in the manner of a manumitted slave, may be explained by supposing that at least a part of the payment was fictitious, being the capitalization of her future work. An Old Babylonian document is even more suggestive of this possibility:\textsuperscript{69}

One slave, A. by name, the slave of B., redeemed himself. He (B.) has purified his forehead and smashed his foot fetters. He established his freedom and gave him towards the Sun. As long as B. lives, A. shall support him. After B. dies, if any of B.'s sons declare as regards A.: "(He is) my slave," he shall pay two minas of silver.

\textsuperscript{65} The transaction is recorded in two documents: KAJ 167 = M. David and E. Ebeling, \textit{Assyrische Rechtsurkunden}, Stuttgart 1929, no. 7 (redemption), and KAJ 7 = ibid. no. 1 (marriage). The husband to all appearances remains his master's slave.

\textsuperscript{66} UET 3 51 = Falkenstein, \textit{op. cit.}, Vol. 1, 95.

\textsuperscript{67} BE 6/2 8 = Schorr, UAZP no. 28. Antichretic pledge documents, by contrast, sometimes make express mention of the debtor's land, which may be seized by the creditor if he absents himself from work, \textit{e.g.} Eichler, \textit{op. cit.}, nos. 33, 34.

\textsuperscript{68} On the slave's peculium, see M. Dandamaev, \textit{The Economic and Legal Character of the Slave's Peculium in the Neo-Babylonian and Achaemenid Periods}, \textit{Gesellschaftsklassen}, 35-39.

\textsuperscript{69} Speleers Recueuil 45 = Roth, \textit{op. cit.}, 110-111.
2. Famine-Slavery

Where a person enslaved themselves in return for sustenance in a year of famine, there was no obvious price for their redemption. HL 172 set a standard tariff:

If a man saves a free man’s life in a year of famine, he shall give his substitute. If it is a slave, he shall give 10 shekels of silver.

The provision of a substitute appears to be the usual contractual practice. In the Middle Assyrian marriage arrangement just described, where the bride had originally been taken into slavery “for keeping alive and for acquisition,” the receipt of “a Subarian girl” (i.e., a foreign slave) by her owner is described as “her redemption payment (iptablesa).”

Other contractual arrangements were, however, possible. A price in silver could be set by the contract, as in an Old Assyrian example:70

A., in a time of famine, gave B. and his wife to C. In a time of famine he kept them alive. B. is his slave; his wife is his slave-woman. If anyone should claim them, he shall pay two mina of silver to C. and cause them to go out.

The document does not provide sufficient background information to explain the basis for the price set. The relationship between A., the couple B., and C. is not specified.

In the small group of contracts of the financier Tehip-tilla from Nuzi that we have identified as famine-induced, several stipulated the provision of a substitute,71 but others imposed harsher terms. For example, in one case a father had to give ten slaves in order to redeem his son.72 Some contracts sought to delay the possibility of release:73

A. son of X. the scribe, an Assyrian, has caused himself to enter the house of B. son of Y. for slavery. As long as B. lives A. shall serve him and when B. dies A. shall give B.’s son a scribe as his substitute and he may depart. B. shall furnish A. with food and clothing. If A. leaves now, he shall pay 10 mina of silver and 10 mina of gold.

This contract restricted the slave’s service to the lifetime of his first owner, entitling him to redeem himself from the latter’s heir. In this respect the contract gave slavery features typical of certain types of

71. JEN 458 = Greenberg no. 43; JEN 463 = Greenberg no. 42; JEN 611 = Greenberg no. 65. Curiously enough, the first two refer to the payment as being for breach of contract.
72. JEN 455:8-16 = Greenberg, op. cit., no. 46.
73. JEN 456:9-13+613 = Greenberg nos. 59 & 60. The translation is a composite of the two sources, which are a shorter and longer version of the same transaction.
antichretic pledges. Compare an antichretic pledge from Nuzi not involving slavery:74

Thus A. declares: "I caused myself to enter the house of B. together with my sons and the people of my house." As long as A. lives he shall not leave B.'s house. When A. dies, A.'s sons shall give one boy of 2½ cubits and one girl of the same height and they themselves may leave. If A. leaves B.'s house, he shall pay B. one mina of silver and one mina of gold. If A. quits the work of B. for one day he shall pay the hire of a slave.

In antichretic pledges from Emar, the resemblance is closer. The pledge typically had to serve for the lifetime of the creditor, after which he could redeem himself from the creditor's heir, and penalties were imposed upon both parties for attempting to end the relationship prematurely.75

The penalty for premature termination in the Nuzi slavery contract—ten minas of silver and ten minas of gold—is absurdly large and clearly in terrorem, but it is still by no means the harshest in this group of contracts. As we shall see, cruel physical punishments were also possible. On the other hand, the contractual penalty could be even milder than the norm set by the Hittite Laws. In one contract, Tehiptilla's son Enna-mati supplied the person who entered into slavery with him a peculium and a wife. The slave had to serve Enna-mati and his successor, but his penalty for premature termination was nothing more than forfeiture of the wife and property received.76

Famine-slavery therefore occupied an intermediate position between debt-slavery, where redemption was a right and the price was predetermined by the original debt, and chattel-slavery, in which a slave could not unilaterally end his slavery and no contractual penalty was necessary, since any attempt by the slave to end his slavery would have no legal consequences. In famine-slavery it appears that a person saved from famine had an underlying right to redeem himself from his benefactor's service. The terms of the right of redemption could be determined by contract. Supplying a substitute was the equitable arrangement, but the enslaver was allowed a great deal of freedom to impose terms. These terms ran the gamut from milder than the standard set in the Hittite Laws to incomparably more severe.

74. JEN 312:5ff. = Saarisalo, op. cit., no. 34; Eichler, op. cit., 20.
75. Arnaud, op. cit., no. 16. Cf. also an innominate form of servitude recorded in a document from Emar which specifically mentions famine (Arnaud, no. 86): A. son of X. said thus: "B. son of Y. kept me alive in a year of famine and paid my debt of 2½ shekels of silver. As long as I live I shall serve you" (apallakha). If in the future A. says to B.: "I will leave your house," he may pay B. 10 shekels of silver and go where he pleases.
76. JEN 610 = Greenberg no. 64.
The grounds for the terms in a particular case are hidden from us. It is not known whether there was a natural market, even in times of famine, in which the poor and their creditors competed among each other for the best terms,\textsuperscript{77} or whether there were restrictions based on the equitable jurisdiction of the king and the courts that could only sometimes be evaded. In many of the contracts with Tehip-tilla, it is stressed that the people entering into slavery with him were foreigners, which may be the reason why their rights could be so drastically curtailed by contractual clauses. Paradoxically, those clauses are at the same time evidence that the protection of social justice measures was to some extent available to foreigners as well, since there would have been no point in inserting in the contract a penalty for the exercise of a non-existent right.

C. By Debt-Release

If the debtor was so impoverished that he could not find the funds to redeem himself or his family, even at the reduced price of their original debt or sale, then redemption was a hollow right for him. The social and economic consequences of the debt-burden were such that rulers felt obliged to intervene with more drastic measures. Not surprisingly, the benefit of these measures was generally confined to citizens or members of the ethnic group.

First, the courts might decree the automatic release of a debt-slave after a certain number of years of service. According to CH 117:

\begin{quote}
If a debt seizes a man and he sells his wife, son or daughter or gives them for \textit{kissātum}, they shall work three years in the house of their purchaser or holder in \textit{kissātum}; in the fourth their restoration (\textit{andurārum}) shall be established.
\end{quote}

\textit{Andurārum} is an important term, which is generally translated as 'freedom.' Charpin has shown, however, that the basic root of the word means "to return to the point of origin."\textsuperscript{78} In terms of slaves, a return to their original status would generally mean freedom, as is certainly the case here, but in certain circumstances, it would only mean a return to their previous master.

\textsuperscript{77} In an Emar document (Arnaud, \textit{op. cit.}, no. 216), the contract relates the statement of a woman that she sold her daughter to another woman in order to keep her other children alive in a year of famine. A second contract, however, (Arnaud, \textit{op. cit.}, no. 217) reveals that payment on the first agreement was not made, and so instead of selling one child for 30 shekels, the couple sold all four of their children to another financier for 60 shekels.

\textsuperscript{78} D. Charpin, Les Décrets Royaux à l'Époque Paléo-Babylonienne, \textit{Archiv für Orientforschung} 34 (1987) 36-41.
The same mechanism is found in the Bible in Ex. 21:2 and Dt. 15:12-17. The first of these reads:

If you buy a Hebrew slave, he shall work six years and in the seventh he shall go out free for nothing.

The phrase 'for nothing' indicates that debt-slavery is at issue because the slave does not have to pay redemption. A remark in Dt. 15:18 justifies the measure by suggesting that, as we have seen inferred in some redemption documents, the slave's service was deemed to have amortized the loan:

It shall not seem hard to you to set him free, for he has served you twice the hire of a hired man, six years.

Although the above texts from law codes give the impression of a universal rule that was applied automatically, they are, in my view, to be interpreted as indications of the courts' equitable discretion. The law codes were not normative legislation and there is some suspicion that rules of this nature were more ideal standards than standard practice. On the other hand, the king did have power to correct injustices even if the acts in question were within the letter of the law. There is copious evidence of the king's exercise of this equitable role in individual cases, usually in response to petitions.79 We suspect, therefore, that the above limits on the length of debt-slavery represent criteria that the king might have applied in exercising his discretion in response to an individual petition. Indirect evidence for exercise of discretion in this regard comes from the slave contracts of Balnumamhe, a slave-owner of the Old Babylonian period. A number of transactions involving debt-slaves contained clauses making sureties, sometimes identified as the slave's relatives, liable to pay compensation to Balnumamhe if the slave "seeks/turns to the palace, or to an influential or important person."80 In other words, if the slave gained his freedom by petitioning the king or one of his officials, the surety had to compensate the owner for his loss.

When exercised on a universal basis, the king's equitable discretion led to a more drastic solution to the plight of debt-slaves. It was the practice of kings throughout the ancient Near East to decree on their accession to the throne, and occasionally at other times, a general cancellation of existing debts. This retrospective measure—"establishing equity"—also brought to an end the service of persons

79. The king's equitable powers are discussed in R. Westbrook, Studies in Biblical and Cuneiform Law, 9-38.
pledged or sold for non-payment of debts. Thus, in the prologue to his law-code, King Lipit-Ishtar boasted:

I restored the freedom (lit. obtained the restoration) of the sons and daughters (i.e. free citizens) of Nippur, of Ur, of Isin, Sumer and Akkad (upon whom) . . . slavery . . . (had been imposed).

Note that the release applied only to the citizens of certain towns. The edict of King Ammi-ṣaduqa of Babylon contained several express provisions concerning release from debt-slavery. According to paragraph 20:

If a debt binds a son of the cities of Numhia, Emutbalum, Idamaraz, Isin, etc., and he sells himself, his wife or his children or gives them for kiṣṣātum or in pledge, because the king has established equity for the land, he is released, his restoration (andurarum) is established.

The wording is very similar to that of CH 117, but whereas the latter applied after a fixed period of debt-service, here the release intervened at an arbitrary point, regardless of how long the individual debt-slave may have served. Note also that those pledged, as well as those sold for debt, qualified for release.

Paragraph 21 provided an exception to the foregoing rule:

If the house-born slave of a son of a Numhia, etc. is sold or given for kiṣṣātum or in pledge, his restoration shall not be established.

A house-born slave was apparently not sufficiently a member of the family to qualify for the privileges of the release. His release would, in any case, have returned him to slavery with his former master, which was probably not the equitable result that the decree sought to obtain.

This edict also released debts which arose from kiṣṣātum, which was a type of debt ex delicto resulting from the system of revenge and ransom. An early reformer, King Uru-inimgina, expressly included such debts:81

The sons of Lagash who were living in debt due to interest . . . he cleared them of . . . barely taxes, theft, murder, of those . . . and established their restoration.

The Hittite King Tudhaliya IV, on the other hand, made certain distinctions in his edict:82

And if someone has given ransom for blood and he has purchased himself from you; whether the ransom be a field or a person, no one

slaves in ancient Near Eastern law shall release it. If he (the ransom-holder) has taken those things along with his (the offender's) wives and sons, he will release him/it to him.

The edict distinguished between two cases. In the first, a person had committed homicide and had paid a ransom for his own life: he had "bought himself." This raised the question as to whether the property that he had handed over as the price of his life could be released by the decree. The edict answered in the negative, even if the property was land or persons, which referred to slaves as well as dependent members of his family.

The second case is more difficult to determine because of the ambiguity (for us) of its phrasing. We tentatively suggest that the creditor, the avenger, has made a general seizure of the culprit's property and family. The edict decreed the release of "him/it to him," which presumably referred to the release to the culprit himself of the aforementioned property and of his family.

The Bible also has laws concerning debt-release and the concomitant release of debt-slaves. According to Lev. 25:10:

You shall sanctify the fiftieth year and decree a restoration (dror) in the land, for all its inhabitants. It will be a Jubilee for you and you shall return, each man to his family estate and to his family.

In v. 54 the particular situation of the debt-slave is considered:

If he is not redeemed by any (of the above), he shall go free in the Jubilee year, he and his sons with him.

Release in the Jubilee year is emphatically confined to Israelites (vv. 44-46):

As for male and female slaves that you have—you may acquire slaves from the nations around you. You may also acquire them from aliens resident with you and from their families who are with them, who have been born in your land. You shall have them as heritable property. You shall give them by way of inheritance to your children after you, to acquire permanent title in them.

The Jubilee release of debt-slaves differed from the cuneiform edicts in one vital respect: it was cyclical, coming every fifty years, and thus amounted to a prospective, as opposed to retroactive, cancellation of debts. This made it unworkable in practice, since no one would give credit under those conditions as the Jubilee approached.

Why, then, did the biblical jurists remove the very factors that made a debt-release workable: its unpredictability and its retroactivity? Precisely because it was in the hands of kings of flesh and blood, who could not be relied upon to act when men of religion thought it necessary. The prophets furiously berated the kings of Israel and Ju-
dah for not doing justice and equity, among which they meant releasing debts and debtors. Just such an incident occurred during the reign of King Zedekiah (Jer. 34:8-11):

The word that came to Jeremiah from God after king Zedekiah had made a covenant with all the people to decree for them restoration (dror): for each man to free his Hebrew slave and slave-woman so that no man would enslave his brother in Judah. All the princes and people, who entered into a covenant to release etc., agreed and freed (them). But afterwards they reneged and took back the slaves and slave-women whom they had released and re-enslaved them.

The king at first followed the prophet’s advice and decreed a release, using his prerogative in the customary manner of ancient Near Eastern kings. But the decree was ineffective and the ruling classes re-enslaved their debtors. Jeremiah was enraged with the king for breaking his word, and predicted divine punishment in consequence:

Thus says the Lord: “You did not obey me and declare a restoration, each man for his brother and each man for his neighbour; now I declare a restoration for you, says the Lord—to the sword, to pestilence and to famine. . . .”

It is a small wonder that the circles who were responsible for drafting the Levitical law adopted an approach that avoided the pitfalls of human discretion, but nevertheless fell into the trap of utopian economics.

VI. Transfer

A. Alienability

Slaves were treated as ordinary chattels and could be sold, pledged, hired, given as gifts, inherited, and forfeited. Although the law codes and debt-release decrees portray them as leaving the house of the original owner, there is no reason to suppose that debt-slaves, as opposed to other types of slaves, were inalienable. As Yaron points out, there is no theoretical difficulty since any transfer would be subject to the debtor’s power of redemption. The creditor would not be

83. Jer. 34:17. In his polemic, Jeremiah quotes the seven-year slave release law as if it were the rule to be applied by Zedekiah in this case (v. 14). But that law is inappropriate to a general release, being measured by each individual slave’s term of service, and the text cited is a garbled version of the Deuteronomic law. It is probably an editorial gloss designed to harmonize Jeremiah’s words with the provisions of the Torah.
able to grant any better title than he himself had.84 A Middle Babylonian document describes redemption from a transferee:85

A., the prefect, took a slave-woman86 named X. from B, the prefect, . . . and later C. took her from A. and gave her to D., the weaver, for spinning, and since she is the wife of Y., the brewer, Y. approached C., the prefect of the land, and they entered in to E., the prefect, and E. released X. to her husband and gave Z. as redemption-payment for X. to D., the weaver, and gave back X. to Y.

This may have been a case of famine-slavery rather than debt-slavery, but the principle is the same. A Neo-Assyrian contract provides an example of debt-release affecting transferred slaves:87

A. has sold and delivered to B. 6 persons in total, X., Y., Z., etc., belonging to A., in consideration of 2 minas of silver by the mina of the merchants. The full price is paid, the people are paid for and acquired. If those people leave in a restoration (durari), A. shall return the silver to its owners.

Important, if indirect, evidence on the alienability of debt-slaves comes from MAL Tablet C+G 3:

[If a man] sells into a foreign land [either a man's son] or a man's daughter who [is residing in his house] by way of sale or antichretic pledge . . . he shall forfeit his silver [and] he shall pay . . . But if the man whom he sells dies in the foreign land, he shall pay a life. He may sell into a foreign land an Assyrian man or an Assyrian woman who had been taken for full value.

We have seen that the equitable principle of redemption applied not only to pledges, but also to forced sales at under-value to pay off a debt. It also applied to forfeiture of pledges, which purported to turn a pledge into a sale after the due date for repayment of the loan had passed. The natural corollary is, however, that where full value was given, the principle no longer applied. A pledge for whom the creditor gave full value, either at the time of the loan or (if the contract so allowed) by paying the balance after default,88 was no longer pro-

85. O. Gurney, The Middle Babylonian Legal and Economic Texts from Ur, British School of Archaeology in Iraq 1983, No. 1, pp. 17-22.
86. Sumerian SALTUR = Akkadian suhartu which, as we have pointed out, could mean a female child, rather than a slave. It is, however, unlikely in this case, since the subject is a married woman.
88. An example is David and Ebeling, Assyrische Rechtsurkunden quoted above, where in spite of appearances the forfeiture clause only allows the creditor to pay the difference between value of the loan and value of the pledge in order to acquire full title. See R. Westbrook, Property and the Family in Biblical Law, 107-110.
tected once the forfeiture clause had operated. He was no longer regarded as a pledge or a debt-slave, but as a chattel-slave. Therefore, the underlying distinction is between pledges, who could not be sold at all, and chattel-slaves, who could even be sold abroad. We may conclude that in the intermediate case of debt-slaves, they could be sold domestically but not abroad.

The same rule is applied in Ex. 21:7-8, where a girl was sold by her father as a slave-concubine, but the new owner changed his mind as to her attractiveness. He was ordered to allow her redemption, but at the same time forbidden from selling her to a foreign people. Again, the intermediate case would have been a domestic sale, which appears to have been allowed and was not affected by the right of redemption.

B. Special Terms

Special features relating to slaves are found in contracts of sale. The earliest slave sale documents (in Sumerian) date to the Sargonic period. A typical example reads:

A. son of X. has received one-third of a mina of silver as the purchase-price for B. son of Y. C., the Prefect, has paid the silver, he has caused him to climb over the wood.

Payment of the price was followed by a ceremony special to slave sales, whereby the slave was made to climb over a wooden bar. The significance of this symbolic act is not clear. It is generally assumed that it signified a transfer of ownership from the seller to the buyer. Throughout Mesopotamian sale law, however, ownership passed with full payment of the price, which was always recorded, even when the wooden bar ceremony was not. Two possible explanations are that it either indicated the transfer of possession, or a recognition of the slave's potential volition in obliging him to submit to the authority of a new master. Its occurrence in the Sumerian-Akkadian dictionary of legal phrases as a measure taken after recapture of a runaway slave might be taken as evidence in favor of the latter explanation. In the Neo-Sumerian period, the wooden bar became a pestle. The phrase

89. Edzard, SRU no. 49.
91. MSL 1, 2 IV 7'-14'.
continued into the Old Babylonian period, by which time, however, it had become a frozen formula, not representing an actual ceremony.\textsuperscript{92}

Special warranties applied to slave sales, arising out of the slave’s character as a living creature with volition. We have already seen an example of a warranty against a slave’s delinquency. Liability could also fall on the seller if the slave ran away, as a Neo-Sumerian record of litigation reveals:\textsuperscript{93}

A. bought from B. and his wife C. one woman, her price being $2\frac{2}{3}$ shekels of silver. Because the slave-woman escaped, C. swore by the king’s name to deliver (another) slave-woman.

Some of the liabilities of a seller of slaves are set out in CH 278-279:

If a man purchases a slave or slave-woman and, his month not being completed, epilepsy attacks him, he shall return him to his seller and the buyer will take the money that he paid. If a man purchases a slave or slave-woman and he acquires a claim, his seller shall be liable for the claim.

These paragraphs are probably intended to indicate fair standards of practice in slave sale agreements, and do in fact reflect in part the standard Old Babylonian contractual warranty (e.g. YOS 13 5):

Three days “search”; one month epilepsy; he (seller) is liable for claims upon him according to the order of the king.

Whereas the legal meaning of the first warranty is not known,\textsuperscript{94} the warranty against epilepsy and the warranty of good title match the provisions of the law code.\textsuperscript{95}

By the advent of the Neo-Babylonian period, the warranty-clause had expanded considerably. NBL added a rider to the basic statement of liability in CH 279:

A man who has sold a female slave and a claim arises upon her and she is taken away: the seller shall pay the buyer the silver in full according to the promissory note. If she has borne children, he shall give half a shekel of silver for each.

As many as fifteen different warranties are recorded in sale contracts, although almost never together in the same document.\textsuperscript{96} The seller

\textsuperscript{92} See M. Malul, The bukannum-Clause—Relinquishment of Rights by Previous Right Holder, Zeitschrift für Assyriologie 75 (1985) 66-77.

\textsuperscript{93} Steinkeller, op. cit., no. S.3, 333-334.

\textsuperscript{94} A recent suggestion is that it refers to investigation of the possible free status of the person purchased: M. Stol, Epilepsy in Babylonia, Groningen 1993, 134-135.

\textsuperscript{95} The import of the enigmatic phrase “order of the king” (\textit{simdat} \textit{sarrim}) is not known. It is tempting to assume that it refers to the rules of the law code, but such an assumption would be anachronistic and does not accord with the many occurrences of the phrase. The most recent study (F.R. Kraus, Akkadische Wörter und Ausdrücke, XII, Revue d’Assyriologie 73 (1979) 51-62), fails to reach a satisfactory conclusion.

\textsuperscript{96} Dandamaev, op. cit., 182-194; Mendelsohn, op. cit., 38-39.
had to warranty against false claim, vindication, the slave being sold having the status of a free person, a temple slave, a royal slave or a serf (šušānu), or having certain obligations to perform royal service. All of these warranties were stated as being in perpetuity. Additional warranties against flight or sudden death were for one hundred days. A contemporary document recorded a claim before the court by A. that his slave X. had run away and that he had later seen the slave at the home of B., who had given him another name and subsequently sold him to C. The judges ruled that, if A.’s statement was confirmed, he could take his slave away “according to the order (data) of the king.”

A clause found to date in a few Neo-Assyrian sale documents added further conditions:

- Seizure(?), epilepsy up to 100 days, criminal record in perpetuity.
- Seizure(?), epilepsy up to 100 days, criminal record in perpetuity.

The vagueness of the time limit in the final provision is unusual for a legal document—it may have been a question of reasonable delay in determining the condition.

CH 280-281 contained special provisions concerning stolen slaves purchased abroad:

- If a man has bought another’s slave or slave-woman in a foreign land, and when he returns home the owner of the slave or slave-woman identifies his slave or slave-woman; if that slave or slave-woman is a native of the land, their restoration (andurarum) shall be established without (payment of) silver.
- If they are natives of another land, the purchaser shall declare before the god the silver that he paid, the owner of the slave or slave-woman shall give the merchant the silver that he paid and redeem his slave or slave-woman.

The second provision is clear: a merchant travelling abroad innocently purchased a foreign slave. Upon his return home it is revealed that the slave belonged to a local owner. The local owner could not simply reclaim him, however, as he could in a domestic case. The merchant had to be rewarded for his pains with the price of the slave. As Driver and Miles point out, the merchant would normally have had recourse against his seller under the warranty against eviction, but since the seller was in a foreign land and the merchant could not have been

97. Dar. 53 = Dandamaev, op. cit., 223.
expected to suppose that a foreign slave bought in a foreign country had a Babylonian owner, there was a measure of fairness in the law.\textsuperscript{100}

Interpretation of the first provision has been complicated by the word \textit{andurārum}, conventionally translated “freedom,” which is certainly its meaning in many other contexts. Earlier commentators were puzzled as to why native slaves would be freed by this chance circumstance of their being taken abroad and back, and why their master would identify them when he had no hope of recovering them. Driver and Miles already suggested, however, that in this context \textit{andurārum} meant only release to the original owner.\textsuperscript{101} The basic meaning of the word is restoration to one’s previous status, which in this case meant a return to the slave’s previous master. A merchant abroad, therefore, should have been on his guard when he bought a fellow countryman as to the possibility that he was stolen goods.\textsuperscript{102}

Finally, it is to be noted that slaves could be used as a mode of payment, especially as compensation or penalties for delict. In a Neo-Assyrian contract settling the blood-money payable for a killing, it is provided:\textsuperscript{103}

\begin{quote}
A. son of B. shall give C. the slave-woman, the daughter of D., the scribe, together with her family, in lieu of the blood. He shall wash the blood. If he does not give the woman, they will kill him on top of B.’s grave.
\end{quote}

In a Middle Babylonian homicide case, the king ordered one of the parties to pay the other seven slaves.\textsuperscript{104} HL 1-4 set tariffs in payment of slaves for homicide in various circumstances.

\section*{VII. Treatment}

\section*{A. Principles}

MAL A 44 reads as follows:

\begin{quote}
MAL A 44 reads as follows:
\end{quote}

\footnotesize
\begin{enumerate}
\item \textsuperscript{100} Driver and Miles, \textit{op. cit.}, 482-484.
\item \textsuperscript{101} Driver and Miles, \textit{op. cit.}, 482-484, with a review of the earlier commentators.
\item \textsuperscript{102} Driver and Miles (\textit{loc. cit.}, 486) saw no reason for discrimination against the merchant in para. 280, arguing that it would discourage him from bringing home Babylonian slaves. But merchants faced far higher risks in their domestic purchases—they could be liable not only to return stolen goods, but also to pay the owner a penalty, which they would then have to recoup from the seller (see R. Westbrook and C. Wilcke, \textit{The Liability of an Innocent Purchaser of Stolen Goods in Early Mesopotamian Law}, \textit{Archiv für Orientforschung} 25 (1974-1977) 111-121). As recouping from a foreign seller was difficult, the law in fact offers some relief in restricting the merchant’s liability to restitution.
\item \textsuperscript{103} ADD 321 = NALK 341. Our interpretation differs slightly from Kwasman’s.
\item \textsuperscript{104} L. King, \textit{Babylonian Boundary-Stones and Memorial-Tablets in the British Museum}, London 1912, no. 9.
\end{enumerate}
If an Assyrian man or woman who is dwelling in the house of a man as a pledge for their value is acquired for their full value, he may beat, tear out hair, crush his ears or pierce them.

The principle is that where a pledge was acquired for full value, in this case evidently by operation of a forfeiture clause in the contract of loan, he no longer enjoyed the right of redemption. By forfeiture he became a slave, but so far from being a debt-slave, his status was that of a chattel-slave, and he could be treated accordingly.

This paragraph illustrates the difference between the permissible treatment of pledges, slaves, and, by implication, debt-slaves. A pledge could not be punished by physical maltreatment nor marked as a slave (by piercing his ear). The same restrictions would appear to apply to a debt-slave. These measures applied to chattel-slaves only, but at the same time they acted as limitations, since they marked the limit of what could be done to such a slave.

Let us now consider other evidence for the two measures taken in the Assyrian law: marking and punishment.

B. The Slave-mark

Since wearing earrings through pierced ears was widespread in the ancient Near East, piercing a slave's ear was presumably for the purpose of inserting an ownership tag of some sort. The purpose of the exercise, as we learn from the only other source where piercing is mentioned, was to mark him as a chattel-slave. Ex. 21:5-6 discusses the case of a debt-slave due to be released after six years of service but who had received a wife from his master:

If the slave says, "I love my master, my wife and my children; I will not go free," his master shall bring him to the door or door-post of the shrine(?) and bore his ear with an awl and he is his slave for ever.

105. This paragraph has generally been understood as a list of punishments, of which piercing the slave's ear is but one. This is incorrect. Ear-piercing is not especially painful, nor was it regarded in the ancient Near East as disfiguring or degrading; it was common for free men and women to wear earrings in pierced ears. Confirmation of our interpretation comes from paragraph A 59 of the same code, which is explicitly a list of punishments that a man may inflict on his wife. The list is identical to that of our paragraph, except for the last verb; instead of 'pierce' (upallas) with respect to her ears, it has a broken verb which cannot be identical and which almost certainly is to be restored 'touch' (ulappat). The latter verb in Akkadian is a known euphemism for 'to strike, hurt.' (See Chicago Assyrian Dictionary Vol. 9, 91, sub lapatu, mng. 4e).

106. There is no doubt that the purpose of the paragraph is restrictive: the parallel paragraph 59 discussed in the previous note lists the punishments that a husband is allowed to inflict on his wife apart from those allowed in specific situations in the other paragraphs of the tablet.

107. Lit.: "to the god/gods, to the door or doorpost." This is only one explanation among many that have been proffered. See most recently A. Viberg, Symbols of Law, Stockholm 1992, 77-81.
Other sources mention different types of slave-marks: in Old Babylonian the *abbuttum*, which was a mark or tattoo applied to a slave’s shaven head, and in Neo-Babylonian the *šindu*, a tattoo or brand which could mark the status of slavery or the identity of a particular owner.\(^{108}\) In contractual penalty clauses that imposed slavery, marking was frequently mentioned as well, to emphasize that the person would become a chattel-slave, not subject to redemption. Nonetheless, by no means were all chattel-slaves so marked. It appears to have been used where the status or owner of the slave might be called into question, or where the slave was likely to run away.

**C. Punishment—licit**

In the law codes, the only mention of punishment besides MAL A 44 is CH 282, which allowed a master to cut off his slave’s ear for denying that he was his slave. Like the Assyrian law, it implies that a master did not have a general right to disfigure his slave. For the same offense, however, some of the contracts in the Tehip-tilla archive from Nuzi applied a remarkably severe penalty:\(^{109}\)

If A. breaks the contract and leaves B.’s house and declares thus: “I am not a slave-woman and my sons are not slaves,” B. shall put out the eyes of A. and her children and sell them.

The purpose of blinding was so that they could be sold as chattel-slaves, not famine-slaves who would be subject to redemption. But it is not clear what circumstances in these particular cases allowed the slave’s owner to change their status in such a drastic manner.

Another contract from the Tehip-tilla archive is milder. It merely allowed the owner to treat the slave who denied his ownership and left ‘as he pleases.’ In other words, the owner had the discretion to treat the famine-slave as a chattel-slave.\(^{110}\) The same clause is found in an Emar contract, with the further provision that the owner ‘has the locus standi of their case’ (*bēl dinišunu šūt*). The reason is that the contract was one of purchase of a slave from a third party and the

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109. JEN 449 = Greenberg, *op. cit.*, no. 58; similarly JEN 452 (without denial, ‘goes to the house of another’ = Greenberg 45), JEN 457 (= Greenberg 63).

110. JEN 462 = Greenberg, *op. cit.*, no. 61.
slave's denial was in favor not of freedom but of the previous owner.  

D. Punishment—abusive

We have seen that the law codes severely punished the killing of a distrainee. In CH 116, if the distrainee was the debtor's son, the distrainer's son was to be killed. In our opinion, Ex. 21:20-21, following the tendency of biblical law not to distinguish between slavery, at least debt-slavery, and other servile conditions, applied the same rule. Our translation reads:

1 If a man strikes his slave or slave-woman with a stick and he dies under his hand he shall be avenged. But if he survives a day or two he shall not be avenged, but it is his silver.

The vengeance in question is taken to have been the appropriate vicarious revenge as in CH 116. The last phrase we understand to mean "it (the revenge) is his silver (the loan)." In other words, the creditor/master forfeited the right to repayment of the loan for which the slave was security, by way of fixed ransom in lieu of revenge. The same applied to v. 26:

2 If a man strikes his slave's or slave-woman's eye and destroys it, he shall set him free for his eye.

If the ransom was fixed at the level of the debt, thereby annulling it, it would automatically release the debt-slave.

E. Exploitation of Labor

In the context of the Jubilee laws, Lev. 25:39-40 enjoins:

If your brother grows weak with you (i.e. becomes insolvent) and is sold to you, you shall not make him work the work of a slave; he shall be like a hired man or dependent with you and shall work with you until the Jubilee.

We have already drawn attention to the fact that the Jubilee slave-release was a utopian measure. The impractical character of this provision is even more obvious. It is interesting, however, for the distinction that it drew between treatment of the Israelite slave—"your brother"—and foreign slaves. Of the latter, v. 46 states:

111. Arnaud, op. cit., no. 211. Cf. an Old Babylonian letter (AbB 1 27:16-26), where a correspondent reports to X. that his slave-girl screamed hysterically, "I am the slave of X! My mistress gave me to him!" and had to be physically restrained from running away.

112. For the philological arguments in support of our translation, see R. Westbrook, Studies in Biblical and Cuneiform Law, 89-100.

[Y]ou shall make them work, but your Israelite brother you shall not pursue with harshness.

F. Sexual Abuse

The Hittite laws considered sexual offenses like sleeping with a woman and her daughter to be "abominations," the penalty for which was usually exile or death (191). But if the women in question were slaves, it was no sin (194). The Bible, on the other hand, in the curious case of Lev. 19:20-22, regarded an act of sexual abuse of one's slave as a sin but no delict. Our translation differs from the accepted one, and gives a completely different law:114

If a man has sexual intercourse with a married woman, she being a slave pledged115 to the man and not redeemed or given her freedom, an action lies for her return. They may not be put to death because she was not freed. But he shall bring a guilt-offering . . . .

Adultery was an offense against the husband for which revenge could be demanded. But where the wife was a debt-slave in the hands of his creditor, the husband had no right to revenge because of her unfree status, which acted in mitigation of the offense. Instead, he was limited again to ransom fixed at the level of the debt, and thus to an in rem action for her return. As the sexual act remained a sin against God, the creditor nonetheless had to bring an offering to the Temple in atonement.

G. Furlough

A number of texts from the archive of an Old Babylonian slave and land-owner named Balmunamhe provide evidence that home leave was sometimes possible for slaves.116 In these transactions, Balmunamhe temporarily released a slave into the custody of a third party, sometimes identified as a relative, who acted as a surety for the slave not absconding or ceasing work.117 For example, in YOS 5 141 parents sold their son to Balmunamhe, and in YOS 8 35 (five years later) they received him back on the following terms:


115. The combination of slavery and pledge is a further example of the special character of biblical slave law that we have noted: its failure to distinguish between slavery and other servile conditions. It is his wife that the man pledged, not his slave.


117. The recurrence of transfers involving the same slave reveals them to be provisional: Van Der Mieroop, op. cit., 12.
X., his father, and Y., his mother, received in the capacity of sureties one slave named A., the slave of B., from his owner B. If he absconds, X., his father, and Y., his mother, shall convey their house and orchard to B.

Balmunamhe received no payment for the transfer, but it has been pointed out that most such transactions took place in the winter months when there was insufficient agricultural work on his estate and the price of grain for feeding his slaves was high. It was therefore in the slave-owner's interest during the low season to release some of his slaves to their family, who stood surety for their eventual return to work.

H. Abandonment

Mendelsohn asserts that sick slaves who could no longer perform the duties expected of them were cast out and abandoned to fend for themselves. There is, however, no real evidence on this question. Mendelsohn cites a single source, 1 Sam. 30:11-15, where a slave found half-starved by David declared that he was abandoned by his master "because three days ago I fell sick." But the circumstances were anything but normal. The master was a member of an Amalekite raiding party being pursued by David's troops.

I. Flight

As Renger has pointed out, flight was a social phenomenon that affected not only slaves, but many of the lower economic strata, where it was seen as an escape from oppressive debt and fiscal or feudal burdens. In the case of slaves, counter-measures were directed both against the slave himself and against third parties from whom he might seek assistance or refuge. A Neo-Sumerian document records:

A., the slave of B., ran away. They caught him. He appeared and said: "The king's oath! The day that I run away a second time, may I perish!" X., Y., and Z. were the judges. The sons of Nippur. (Date).

118. See Van De Mieroop, op. cit., 11-12, 23-24.
120. J. Renger, Flucht als soziales Problem in der altbabylonischen Gesellschaft, Gesellschaftsklassen, 167-182, referring to the Old Babylonian period. For biblical society, compare the malcontents who gathered around the renegade David: "There gathered to him every man in distress and every man who had a creditor and every man who was discontented" (I Sam. 22:2).
121. M. Cig and H. Kizilyay, Neusumerische Rechts—und Verwaltungsurkunden aus Nippur—I (NRVN I) 1.
The oath was a powerful deterrent, since breach of it brought down divine sanctions. The difficulty was that it could only be taken voluntarily. On the other hand, it was undoubtedly a preferable alternative to punishment (the procedure in the present document is before a court) or to the physical impediments that were available to an owner. Some are listed in the Sumerian-Akkadian dictionary of legal phrases:

He fled from the house of his master. After he had fled from his master's house, they brought him back. After they had brought him back, he placed hobbles on his feet, he put him in chains, he caused him to cross the pestle, he engraved on his face: “Fugitive, seize!”

The normal slave-mark was not so dramatic, but still had the purpose of revealing the slave's status to third parties. CH 226-227 imposed severe penalties on a corrupt barber who excised the slave-mark or on an accomplice who tricked an innocent barber into excising it. Even fetters were no guarantee against escape, as CE 51 reveals:

A slave or slave-woman of Eshnunna, upon whom are placed fetters, shackles or the slave-mark, may not go out of the city-gate of Eshnunna without his master's permission.

It is not clear to whom this prohibition was directed, but the free citizenry were expected to cooperate in the re-capture of fugitive slaves. According to CH 15-16:

If a man causes a fugitive slave or slave-woman of the palace or of a private citizen to go out through the city-gate, he shall be killed.
If a man conceals a fugitive slave or slave-woman of the palace or of a private citizen in his house, and does not bring him out at the herald's call, that householder shall be killed.

Other law codes were less harsh in their punishment of one who harbored a fugitive slave. According to HL 24:

If a slave or slave-woman runs away, the one at whose hearth his master finds him shall give x shekels of silver as the wages of a man for one year, and y shekels of silver as the wages of a woman for one year.

If the culprit was not caught in possession of the slave, CL 12-13 rules:

If a slave-woman or a slave of a man has run away from the city and it has been proved that she dwelt in the house of a man for one month, he shall give slave for slave. If he has no slave, he shall pay 15 shekels of silver.

122. Cf. Gen. 24:2-4, where Abraham uses the same device to ensure that his slave Eliezer will fulfill his mission.
123. MSL I 2 IV 7'-14'.
By the same token, one who brought back a fugitive slave was entitled to a reward from the slave’s master, set by the law codes at between two and six shekels of silver.\(^{124}\)

The fugitive slave’s best chance of freedom was to escape the country altogether. If he had been sold abroad, he would have attempted to return home, as in an Old Babylonian case:\(^{125}\)

A., whom B., his master had sold to (the city of) Eshnunna for one and a half mina of silver, after he had served as a slave for five years in Eshnunna, fled to Babylon. C. and D., the army officials, seized A. and said, “You are cleansed, your slave-mark is shaved off. You shall serve in the armed forces.” A. replied: “I will not serve with the soldiers; I will perform the feudal service of my father’s house.” His brothers X., Y., and Z. swore the oath of (the god) Marduk and king Ammi-ditana. There is no claim upon their brother A. for service;\(^ {126}\) as long as he lives, A. will perform the feudal service of their father’s house with his brothers.

A slave who fled in the other direction, to a foreign county, could not be sure of the welcome he would receive. His hope for free status rested on being granted the status of resident alien, a privilege entirely at the discretion of the local ruler. There might also have been a treaty between two states, providing for the extradition of fugitive slaves. A Middle Babylonian treaty between King Idrimi of Alalakh and King Pillia of Kizzuwatna provides:\(^ {127}\)

When Pillia and Idrimi swore the oath of the gods and made this treaty between them:

They will always return fugitives between them. If Idrimi seizes a fugitive of Pillia, he shall return him to Pillia, and if Pillia seizes a fugitive of Idrimi, he shall return him to Idrimi. Anyone who seizes a fugitive and returns him to his master, if it is a man, he shall be given 500 (shekels of) copper as his reward; if a woman, he shall be given 1000 (shekels of) copper as his reward. If a fugitive of Pillia enters the land of Idrimi and no one seizes him, but his master seizes him, he need not give a reward to anyone; and if a fugitive of Idrimi enters the land of Pillia, etc.

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124. CU 14 (two shekels), CH 17 (two shekels), HL 22-3 (up to six shekels, according to the distance involved).
125. CT 6 29 = N. Yoffee, The Economic Role of the Crown in the Old Babylonian Period, Bibliotheca Mesopotamia 5, Malibu 1977, 57-59. Yoffee suggests that A. had been adopted by B. (post mortem) and B.’s death while A. was in Eshnunna had automatically freed A. This scenario assumes that i) B. is the father of X., Y., and Z., ii) B. adopted A., iii) B. died. None of these assumptions can be verified from the text. The content of the brothers’ oath is not stated; it may refer to their not contesting A.‘s right to a share of the estate in return for feudal service.
126. \(\text{ana re} \text{ša} \text{šum}.\) It is not clear whether this unusual term means slavery or public service: see Akkadisches Handwörterbuch 976. We incline to the view that it means the latter—in this case, the military service from which A. was excused.
In any town in which a fugitive is concealed, the mayor and five men of good standing shall swear the oath of the gods.

The same reward system was applied as in domestic law, but punishment was collective. A similar treaty between Alalakh and Tunip reveals the context of the oath and specifies the consequences of breach:128

The mayor and five elders shall swear the oath of the gods: “Your slave does not live among us and we do not conceal him.” If they are unwilling to take the oath, but return his slave (... they are not liable ...). If they swear and afterwards he discovers his slave ... they are thieves: their hands are cut off; they shall give 6000 (shekels) of copper to the Palace.

The last phrase suggests that the Palace may have indemnified the foreign owner for the loss of his slave.

The above treaty provisions put in perspective the injunction in Dt. 23:16-17:

You shall not surrender to his master a slave who has fled to you from his master. He shall live with you in your midst where he chooses in one of your settlements as he pleases; you shall not oppress him.

It was recognized by early commentators that this provision could not apply to domestic slavery, since it would have undermined the right to recover property upon which the whole institution depended. It makes perfect sense, however, when applied to the international sphere, where no right of recovery existed unless expressly authorized by treaty. The passage can therefore be seen as a polemic against such treaty provisions, and a prohibition on the authorities in Israel against ever including an extradition clause in their treaties with neighboring states. Mendelsohn suggested that it applied only to a Hebrew slave fleeing a foreign master.129 The terms of the law which granted the fugitive a choice of dwelling in any city negate this interpretation. A Hebrew slave would have returned to his home, not picked a city to dwell in. By that grant of choice of dwelling and the injunction not to oppress him, the foreign fugitive was being granted the status of resident alien without geographical limitation, which would protect him from being enslaved by an Israelite.

VIII. SUMMARY AND CONCLUSIONS

The legal systems of the ancient Near East recognized persons as a category of property that might be owned by private individuals. It was pursuant to the normal rights of ownership that a master could exploit the slave's labor, restrict his freedom, and alienate him. Nonetheless, the relationship between master and slave was subject to legal restrictions based on the humanity of the slave and concerns of social justice. In spite of the impression given by certain law codes, those restrictions were not imposed in a systematic manner, but derived mainly from the equitable discretion of the courts, in particular the king (or his officials), who, as the font of justice, had the power (and the divine mandate) to intervene in order to alleviate injustice, even where it arose from arrangements that were within the letter of the law. As a result, the "rights" of slaves were uneven in quality, varying from system to system and from period to period, and even as between individual cases within the same society. The basic principles, however, were the same in all the societies in question.

In determining who should benefit from measures of social justice, the legal systems drew two main distinctions: between debt-slave and chattel-slaves, and between native and foreign slaves. The authorities intervened first and foremost to protect citizens who had fallen on hard times and had been forced into slavery by debt. The tendency was to assimilate them for these purposes into the class of pledges, persons whose labor might be exploited under a contractual arrangement but who remained personally free in terms of status. At the other end of the scale, foreigners who had been acquired by capture or by purchase abroad received very little succor from the local legal system.

The benefits of the law related to (a) enslavement, (b) length of service, and (c) conditions of service. Under the first aspect, enslavement, the prime distinction was between native and foreign slaves. A person who was ethnically or by birth a free member of a particular society could not be enslaved against his will if independent or without the permission of the person under whose authority he was if a subordinate member of a household. The only exception was enslavement by court order for commission of a delict. Although, in practice, economic circumstances would often force a person into slavery, in law his act was voluntary.

The foreigner, by contrast, could be enslaved through capture in war, kidnapping, or force, unless protected by the local ruler, either
under the rules of customary international law which applied between friendly states or as a resident alien. In the latter case, protection still might have been only partial.

Under the second aspect, length of service, three means were available for the slave to gain his freedom. First, a slave could gain his freedom through redemption, that is, payment of the original debt. Where found, this appears to have been a legal right, which attached to the slave, binding subsequent purchasers. It vested in both the slave himself and in close relatives, and possibly also the king.

Second, freedom could be attained through manumission after a period of service. The law codes where this means is attested set different periods of service, one as short as three years, which if it had applied automatically would have made all other measures superfluous. We therefore consider that it was not a right like redemption but a discretion of the authorities to intervene in individual cases and free a debt-slave after a reasonable length of service in relation to his debt. The fixed periods in the sources are attempts to set a "fair" standard.

Third, freedom could be achieved through release under a general cancellation of debts. This was the most radical measure, but was unpredictable, being entirely dependent on the king's equitable discretion. It was confined to native debt-slaves.

Under the third aspect, conditions of service, the slave was protected against three forms of maltreatment. First, slaves were protected against excessive physical punishment. Even chattel-slaves appear to have benefited to some extent from this protection.

Second, protection was afforded against sexual abuse. Sexual intercourse with a woman amounted to an offense in the ancient Near East when it was an infringement of the rights of the person under whose authority she was, for example, her father or her husband. Ownership of a chattel-slave eliminated that authority, but there is evidence that it did not entirely do so in the case of a debt-slave.

Third, slaves were protected from sale abroad. Only native debt-slaves were protected by this prohibition, which must in any case have been difficult to enforce in practice.

Between the debt-slave and the chattel-slave we have identified a third category, which we have termed the famine-slave, where a person entered into slavery in a year of famine in return for being kept alive. This category shared some of the benefits accorded to the debt-slave, albeit in a lesser measure. There appears to have been a right of redemption after the end of the famine, at a reasonable price set by
the law, and possibly even to manumission after a period of service, but it also seems that these rights could be restricted or overridden by contract. The contracts in question often make specific mention of the foreign origin of the person enslaved, which paradoxically both points to their being able to share these rights with natives and suggests a reason why their rights could be restricted by private agreement.