

Course Reading

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been added after the initial composition of the text, but instead point to a formula stemming from the oral tradition and quoted *in extenso*.⁶⁹ The phrase 'life for life' alone fits the offense contemplated here, that is miscarriage. The rest of the sentence does not concern the pregnant woman, and is designed to lay down in a written document the whole oral provision.

This brief picture of the Near Eastern sources about abortion shows that there is no definitive pattern fitting all of the texts. The diversity of the enforceable rules is an essential feature of these laws. The fact that they belong to the same cultural whole is nonetheless fundamental. The existence of immutable values common to all these texts seems hardly reconcilable with the diversity exhibited in the documents. It might then be hazardous to build up global and systematic judicial constructions. Part of the oriental judicial mechanisms still eludes us, because the lack of doctrine specifying the thought of the legislators prevents us from understanding their inner logic. We are then limited to the observance of the paradox of unity in diversity.

THE ANTHROPOLOGY OF SLAVERY IN THE COVENANT CODE

Victor H. Matthews

The primary issue to be raised in this study regards the social purposes of law and of complex legal systems. Since legal systems or individual laws are never created in a social vacuum, one of the major questions to be raised about the law is its original intent within the community that formulated it. Specific events spark the need for restriction by or protection under the law. Recurring events (i.e., crimes or business transactions) require the setting down of legal precedents, which existed first as part of the culture's oral tradition, as well as the establishment of legal procedures—judges, witnesses, rules of evidence. Some evolution in these procedures would be necessary to meet the needs of a culture as it evolves from a village to an urban society. To be sure, such evolution in the ancient Near East was often quite slow, but the cultures in this region cannot be described as totally static. Thus laws would eventually have to be altered or augmented to respond to changes in economic and/or living conditions and to reflect more complex forms of political leadership.

These developments, which are designed to handle changing legal situations, raise the question of why formal legal codes are compiled and what purpose, if any, they serve within the society. Hamilton¹ summarizes some of the possibilities² by listing three groups of

1. J.M. Hamilton, *Social Justice and Deuteronomy: The Case of Deuteronomy 15* (SBLDS, 136; Atlanta: Scholars Press, 1992), pp. 56-58.

2. See also J.J. Finkelstein's discussion of the 'laws' in Hammurabi's Code in *The Ox that Gored* (Transactions of the American Philosophical Society, 71/2; Philadelphia: The American Philosophical Society, 1981), pp. 15-16. Here he defines them as 'a larger or smaller collection of posed hypothetical situations or actions involving one or several persons'. In his interpretation, enforcement is not an issue, only the 'conceptual framework and moral standards implied. . . in these law collections'.

theories: (1) the law code as addendum to common law, (2) the law codes as enumeration of case decisions around a series of themes with the purpose of serving as a guide to judges, and (3) the law codes as self-justification of the king to posterity concerning the just character of his reign.³ It is my contention that the second of these theories best fits the case in the ancient Near East. It allows the law codes, which of course become technically out-of-date almost as soon as they are formulated, a useful function within society. They can provide direction in the courts, thereby creating a sense of continuity while not dictating the course of justice. They also function as the basis for a process of continual re-evaluation of the legal system, a social commentary, which does not discount previous legal statutes, but rather builds upon them. These practices do not, however, preclude the political use of law codes by monarchs who wish to enhance their status by proclaiming themselves to be 'law-givers'. They simply provide a larger social dimension for the codes than as simple propaganda or antiquarian curiosities.

There is also contained here the likelihood that the various biblical law codes have their own textual originality within their social context.⁴ While they may not be totally dependent upon each other, or on cuneiform predecessors, certainly it is clear from formulaic and situational similarities that their authors were aware of the corpus of existing ancient Near Eastern legal materials.⁵ This allows for borrowing and editing of original legal texts. In that sense, then, law is not restricted to one locale or culture. It is also not canonized until the society or the court system chooses to make it so.

In his discussion of the formulation of the Covenant Code, Westbrook notes only one example within the Bible of the same law existing in an earlier and later version (p. 35)—the slave release law of Exod. 21.2 and Deut. 15.12. He sees this as insufficient evidence for systematic editing of the legal corpus and holds to the premise that 'the Covenant Code is a coherent text comprising clear and consistent laws, in the

same manner as its cuneiform forbears' (p. 36). He further argues that it is our lack of understanding of the social and cultural background of the laws which prevents scholars from recognizing this fact. I will argue, using a social scientific evaluation of the institution of slavery and of the slavery laws in the biblical text, that the biblical law codes did not become static until the text was canonized. I suggest that there was, on occasion, a conscious attempt to modify legal texts found in the Covenant Code by later biblical writers. And this does not represent, as Westbrook asserts, a different intellectual path, but rather the natural social evolution of legal development in Israel.

Slavery as a Social Institution

Slaves provide the state with the laborers and children it needs.⁶ Free citizens are encouraged 'to be fruitful and multiply' while slavery subsidizes childbirth by increasing the population available to serve as farmers, herders, childbearers or prostitutes.

Slavery exists in societies which have labor-intensive economies and a birth rate which cannot cope with the need for laborers. It is also found when labor service needs are coupled with a weak economy or marginal environment which drives households into debt which they cannot manage. The purpose of keeping chattel or slaves is to supplement the labor force and to provide additional workers through the birth of children. In the ancient Near East there was both permanent as well as temporary slavery. The former was due primarily to warfare and the latter to economic exigency. The Bible, as well as texts from the ancient Near East, contain both, although debt slavery is by far the more common factor in legal materials.

Prisoners of War as Slaves

Warfare was one factor in the development of the institution of slavery in the ancient Near East. Very often wars begin because the aggressors need additional laborers to enhance the infrastructure, expand agricultural production, or compensate for losses due to disease or some other calamity.⁷ Prisoners taken in war and raids

3. A point which R. Westbrook, 'Biblical and Cuneiform Law Codes', *RB* 92 (1985), p. 253, also advocates.

4. Hamilton, *Social Justice*, pp. 80-81.

5. See E. Otto, 'Town and Rural Countryside in Ancient Israelite Law: Reception and Redaction in Cuneiform and Israelite Law', *JSOT* 57 (1993), pp. 3-22, for a convincing explanation of the rooting of Israelite legal drafting techniques in cuneiform legal tradition.

6. G. Feeley-Harnik, 'Issues in Divine Kingship', *Annual Review of Anthropology* 14 (1985), p. 292.

7. R.B. Ferguson, 'Explaining War', in J. Haas (ed.), *The Anthropology of War* (Cambridge: Cambridge University Press, 1990), pp. 38, 48, 52.

became slaves (see Amos 1.6, 9). This may be a permanent condition, or may end with the ransoming of the prisoner by his tribe or his state.⁸ For example, Lot is taken captive when Sodom is raided (Gen. 14.12). It may be presumed that if Abram had not rescued him from this form of slavery, Lot would have been sold as a slave.⁹

There is no conscious choice made by prisoners to become slaves except in the sense that they agree, not always freely, to serve in the military in the first place or to live within the boundaries of the victimized nation. Slavery as a result of warfare and raiding was most common in Mesopotamia where war between the city states was quite frequent throughout that region's history. Egypt, on the other hand, did not develop a large body of slaves during its early history. The state relied on its own households to do the bulk of the agricultural and construction work and on a smaller number of personal slaves which were devoted to domestic service.¹⁰ This may have changed somewhat after the 15th century BCE when the expulsion of the Hyksos was followed by increased international interests and conflicts which sparked battles in Nubia and in Syria-Palestine.¹¹ The result was large numbers of prisoners of war who in many cases were assigned along with other booty to military commanders in Egypt.

Despite the increased numbers of persons taken in warfare, the idea of permanent chattel status, on the North American model (c. 17th–19th centuries CE), was unknown in the ancient Near East. Rather, those persons who survived the transition from freedom to slavery were generally returned to semi-free, serf status, a more productive condition since it included payment of taxes and was more conducive to establishing a family.¹²

In Syria-Palestine, large scale warfare was less common simply because the states were smaller. However, raiding for economic and

political reasons did occur, which resulted in the taking of animals as well as prisoners, both male and female (Deut. 20.14). For instance, there is a woman in the Stories of Elisha who advises her Syrian owner, Na'aman, to seek help from the prophet to cure his leprosy (2 Kgs 5.2-3). This woman came to be in the household of Na'aman as a result of a border raid on Israel by the Syrians.

In the stories of Jacob, Levi and Simeon take the women and children of Shechem as slaves (Gen. 34.29). In the book of Deuteronomy, some women captured as prisoners of war became house slaves.¹³ Others, however, served as wives, providing an heir or simply increasing the fertility of the group. These women, however, enjoyed more rights than those taken simply as domestic slaves, and could actually be freed if not treated properly (Exod. 21.7-11; Deut. 21.10-14). The worth of slave women as potential concubines or wives required their persons to be protected by threat of fine (i.e., guilt offering—Lev. 19.20-22) in a similar fashion to laws protecting betrothed women (Deut. 22.23-27). In both instances, the principle of protection of property rights and values is safeguarded.

Slave Trade

The trade or purchase of slaves, evidenced in ancient legal texts, also contributed to the growth and mobility of the slave population.¹⁴ Wars and raids generally provided slaves ethnically different from the slave owners. Racial differences allowed everyone quickly to identify who was a slave and who was free in a society. Few racially distinct (i.e., foreign) slaves were ever emancipated. Their only hope of liberation from the captive country was to escape or be repatriated to their country of origin with the payment of ransom (see CH 32).

This would most often involve persons of a nationality other than that of the seller and serves as another example of weaker population groups being preyed upon by more aggressive or advanced cultures.¹⁵

8. V.H. Matthews, 'Legal Aspects of Military Service in Ancient Mesopotamia', *Military Law Review* 94 (1981), pp. 146-47; and I.J. Gelb, 'Prisoners of War in Early Mesopotamia', *JNES* 32 (1973), pp. 72-73.

9. I.J. Gelb, 'From Freedom to Slavery', in D.O. Edzard (ed.), *XVIII^e Rencontre Assyriologique Internationale* (Paris: P. Geuthner, 1972), p. 84.

10. I.J. Gelb, 'Quantitative Evaluation of Slavery and Serfdom', in B.L. Eichler (ed.), *Kramer Anniversary Volume: Cuneiform Studies in Honor of Samuel Noah Kramer* (AOAT, 25; Neukirchener-Vluyn: Neukirchener Verlag, 1976), p. 201.

11. W.W. Hallo and W.K. Simpson, *The Ancient Near East: A History* (New York: Harcourt Brace Jovanovich, 1971), pp. 260, 265.

12. Gelb, 'From Freedom to Slavery', pp. 86-87.

13. Gelb, 'From Freedom to Slavery', p. 83.

14. Gelb, 'Quantitative Evaluation', p. 197.

15. T. Gibson, 'Raiding, Trading, and Tribal Autonomy in Insular Southeast Asia', in Haas (ed.), *The Anthropology of War*, pp. 127-28. See also B.S. Jackson, 'Biblical Laws of Slavery: A Comparative Approach', in L.S. Archer (ed.), *Slavery and Other Forms of Unfree Labour* (London: Routledge, 1988), pp. 86-89, for a review of Greek and Roman sources on debt slavery and war captives.

These slaves would have most likely been sold into the service of temple communities, royal estates, or the estates of high ranking nobility rather than to the private households of average citizens.¹⁶

The story of the sale of Joseph by the Midianites to Potiphar in Egypt (Gen. 37.38) may serve as an example of the transfer of persons into new regions as slaves. Potiphar is described as a military commander, one whose estates required a foreman to manage its work force (Gen. 39.1-6).

Temporary Debt Slavery in Ancient Israel

At the heart of every economic situation are resources and labor. For example, the earth and the prevailing climate provide the resources for an agricultural economy, but human labor is needed to clear fields, build terraces, plant, cultivate, and harvest crops. In the marginal environment of Syria-Palestine, not every household could work its fields successfully. This could be due to a climactic catastrophe such as a drought, or to a labor shortage brought on by infertility, a plague which killed off a significant number of the able-bodied workers, or a war which took the men of the household away to fight for long periods of time.

Ancient Israel considered permanent slavery the most inhumane condition possible. Debt slavery, however, became a rich metaphor by which the Hebrews came to understand their own social development. The Hebrews were keenly aware of their own heritage as strangers without rights in a foreign land. In the beginning they were debt slaves temporarily without land and without children until Yahweh delivered them, and they became Hebrews—free people blessed with land and children (Gen. 12).

Although eventually any foreigner was accorded the honorable status of a 'stranger in the land' (Hebrew: *gēr*), originally this label was assigned to a debt slave temporarily living and working in a creditor's village.¹⁷ Since debt slaves were members of the same culture as their creditors, the book of Deuteronomy is especially conscientious about allowing them to participate in the celebrations

16. Gelb, 'Quantitative Evaluation', p. 198.

17. See F.A. Spina, 'Israelites as *gērīm*, "Sojourner"', in C.L. Meyers and M. O'Connor (eds.), *The Word of the Lord Shall Go Forth* (Winona Lake, IN: Eisenbrauns, 1983), pp. 321-25.

and festivals of their creditors while they are paying off their debts (Deut. 16.11-14).

The biblical injunction for Israel as a state is to protect the weak, the helpless, and the poor. The book of Deuteronomy reinforces these statutes by reminding the people that 'you were a slave in Egypt' (Deut. 15.5; 24.18, 22). These laws reflect an understanding of the reasons for poverty and try to deal with its victims non-violently. The poor had the right to glean harvested fields (Ruth 2), and injunctions appear against oppressing the poor, such as by withholding their wages (Deut. 24.14-15). One sign of this concern may be seen in the practice which allows a household to pledge the work of its members as collateral when it borrowed goods or services from another household. To avoid confiscation of their land and children, the members of a household in default would work off their debt one day at a time. Each day the laborers of the household in default would take off the clothes or cloak which identified them as free, and work the day semi-naked as slaves. They would turn their outer garments over to their creditors for the day. These garments, however threadbare, tie them just as strongly as a sworn contract to the households of their creditors and require them, in what may be their last attempt to remain free, to carry out the agreed upon task. These laborers, who become slaves for a day, agree to become fully fledged slaves if they do not complete the tasks which their creditors set before them.

For instance, in the Yavne-Yam inscription, a slave indicts his creditor for confiscating his cloak for alleged failure to work as contracted. Should it not be returned, he would have no recourse but to sell himself into slavery since the one guard against that status, his garment, has been confiscated (Exod. 22.26-27; Deut. 24.12-13; Amos 2.8).

Let my lord the governor pay heed to the words of his servant! Your servant was reaping in Hasar-asam. The work went as usual and your servant completed his reaping and hauling before the others. Despite the fact that your servant had completed his work, Hoshaihu son of Shobai came and took your servant's garment. All my fellow workers will testify, all those who work in the heat of the day will surely certify that I am not guilty of any breach of contract. Please intercede for me so that my garment will be returned and I will (as always) do my share of the work. The governor should see to it that the garment of your servant is returned and that no revenge be taken against your servant, that he not be fired.¹⁸

18. V.H. Matthews and D.C. Benjamin, *Old Testament Parallels: Laws and*

For a similar reason, the book of Deuteronomy also prohibits using a millstone as collateral (Deut. 24.6). A creditor cannot deprive a household of the means of making a living and thus avoiding debt slavery.

The requirement that the garment be returned during the night as a guard against the evening chill speaks to a society which recognizes those citizens who are on the economic edge. It is also suggestive of a society which is not above violating its own social code¹⁹ and needs to be reminded of its obligations to the community as a whole.

As a state, Israel tried to prevent debt from accumulating to the point where slavery was the only option.²⁰ Thus the laws against charging interest on loans worked in most cases to aid the poor (Exod. 22.24; Deut. 23.20; Lev. 25.35-37; Ezek. 18.13).

In these cases, a household could become destitute, and at the insistence of its creditors sell members of the household into slavery to pay debts (2 Kgs 4.1; Neh. 5.1-5). Slavery in this case is defined by the legal codes of the ancient Near East as temporary debt slavery since the law restricts the number of years a man may be held in slavery to six (Exod. 21.2-11; Deut. 15.12-18).

Regulations also restrict the sale or the enslavement of Israelites by other Israelites according to the laws in Lev. 25.35-42. In this case, the Israelite, who is in financial difficulties would be reduced to the status of a hired hand or indentured servant rather than a slave.²¹ However, this is a late legal code and probably reflects a reaction against previous practice.²² It should be noted that this statute is a further reflection of the fact that law is 'a category of social phenomena and, consequently, changes with time'.²³

Both the book of Leviticus and the Code of Hammurabi (CH 1) place limitations on a debt slave's term. The most likely explanation

for this is because the debt slaves and their owners both belong to the same race and culture. The interests shared by people of the same origin is so strong as to prevent creditors from permanently enslaving their own people.²⁴

The book of Jeremiah indicts the slave owners in Jerusalem who swore during the siege of Jerusalem to free their male and female slaves.²⁵ After the siege was lifted, they returned them to slave status. The storyteller here draws a further connection between the failure of the people to keep their oath to the slaves and their failure to keep the covenant with Yahweh (Jer. 34.8-22). While this is an attempt to darken the character of those in power at that time, it very likely is indicative of actual abuse as well. Thus it can be seen that law codes, whether ancient or newly formulated, only provide guidance. The enforcement of the law must receive its primary impetus from the society itself.

A further reflection of this legal reality is found in the book of Leviticus, which only speaks of foreigners as permanent slaves (Lev. 25.44-46). This principal is based on an ideal which probably did not exist in the period before the exile. In any case, the law does not protect any Israelite, of any class or status, from being enslaved for debt should his economic circumstances justify it.²⁶

In the Covenant Code slave statutes, which served as the legal foundation for both the Deuteronomic and Holiness Codes, the issue of citizenship is also raised. In this case members of a household might be temporarily sold into slavery to pay its debts (Exod. 21.2-11), based on the statement that after six years service (a period with the sabbath sequence in mind)²⁷ the man shall return to free status, 'without debt' (Exod. 21.2b; NRSV) or 'without payment' of additional fees.²⁸ However, there is a question of citizenship highlighted in this text by the use of the term Hebrew ('*ibri*') in v. 2a. Lemche,²⁹ among others,³⁰

Stories from the Ancient Near East (Mahwah, NJ: Paulist, 1991), p. 133.

19. I. Mendelsohn, 'Slavery in the Ancient Near East', *BA* 9 (1946), pp. 85-91.

20. A. Phillips, 'The Laws of Slavery: Exodus 21.2-11', *JSOT* 30 (1984), p. 54.

21. B.A. Levine, *The JPS Torah Commentary: Leviticus* (Philadelphia: Jewish Publication Society, 1989), p. 179.

22. N.P. Lemche, 'The "Hebrew Slave": Comments on the Slave Law Ex. xxi 2-11', *VT* 25 (1975), p. 138.

23. L. Pospisil, *Anthropology of Law: A Comparative Theory* (New Haven: HRAF Press, 1974), p. 22.

24. Gelb, 'From Freedom to Slavery', p. 86.

25. R.P. Carroll, *Jeremiah* (Philadelphia: Westminster, 1986), pp. 648-49.

26. Phillips, 'Laws of Slavery', p. 64 n. 16.

27. S.R. Driver, *The Book of Exodus* (Cambridge: Cambridge University Press, 1911), p. 210; and Phillips, 'Laws of Slavery', p. 61.

28. J.I. Durham, *Exodus* (Waco, TX: Word Books, 1987), pp. 320-21.

29. Lemche, "'Hebrew Slave'", pp. 138-39.

30. A. Alt, 'The Origins of Israelite Law', in *Essays on Old Testament History and Religion* (Oxford: Oxford University Press, 1966), pp. 93-95; and M. Noth,

raises the question of whether Hebrew = Israelite in this social context. He defines the Hebrew as 'a person who sells himself as a slave for debt' and compares this contractual arrangement with those mentioned in documents from Nuzi involving the labor service of 'apirū. Similarly, Na'aman³¹ describes the ḥābirū as 'uprooted immigrants' who live as resident aliens on the margins of society, often band together, and are ultimately absorbed into the general population.

It may well be that originally Hebrew, like Ḥābiru, was a generic term for land-less, state-less persons, who contracted themselves as mercenaries, laborers, and servants.³² However, I am not convinced that this is necessarily a 'pejorative designation', as Childs suggests. There are some negative connotations present, since persons in the ancient world tended to identify themselves with a group or place. But considering the fact that the first 'Hebrew', Abram was a landless immigrant, it is doubtful that the term held stereotypical meaning such as the modern 'tramp' does today.

Certainly, by the time the Covenant Code was formulated, the Israelite villagers considered themselves to be ḥopšī, free landowners. To be termed an 'ibrī, therefore, would mean a ḥopšī who had become destitute (compare Jer. 34.9) or was living in foreign lands (Judg. 19.16).³³ The Hebrew had to work his full six year term in order to regain his mortgaged land and ḥopšī status.³⁴ Thus the 'ibrī in Exod. 21.2, Deut. 15.12, and Jer. 34.9 would be an Israelite,³⁵ who, unlike the non-Israelite, could not be sold into permanent slavery.³⁶ It was his right to release that distinguished him from the non-Israelite.³⁷

Lemche suggests that the status change from 'ibrī to ḥopšī

Exodus (Philadelphia: Westminster, 1962), pp. 177-80.

31. N. Na'aman, 'Ḥābirū and Hebrews: The Transfer of a Social Term to the Literary Sphere', *JNES* 45 (1986), pp. 271-75.

32. B.S. Childs, *The Book of Exodus* (Philadelphia: Westminster, 1974), p. 468.

33. Na'aman, 'Ḥābirū and Hebrews', p. 286.

34. J.A. Thompson, *The Book of Jeremiah* (Grand Rapids, MI: Eerdmans, 1980), p. 610.

35. Hamilton, *Social Justice*, p. 84.

36. Phillips, 'Laws of Slavery', p. 64 n. 16. Jackson, 'Biblical Laws of Slavery', p. 93 also makes the argument that 'ibrī in this passage relates to debt slavery.

37. Phillips, 'Laws of Slavery', p. 62.

(= Akkadian ḥupšū) really involves movement into a client, rather than a truly freedman condition.³⁸ However, having once contracted himself and proven his willingness to make good on his debts, it seems more likely that Israelite society would have restored the Hebrew slave to full citizen status as a ḥopšī. Clientage would only apply in the monarchy period when all citizens were subject to the state, paying taxes and serving in the corvée.³⁹

Permanent Slavery as a Social Remedy

Further strengthening the argument that slavery provides both labor and children is the stipulation in Exod. 21.3-6 regarding permanent slavery. The text describes an option given to debt slaves when their six year term has been completed to remand themselves into permanent slavery to their owner. This option may be exercised through a ritual transformation of their status (Exod. 21.5-6). The ritual, similar to other status changing rituals in biblical law (Deut. 21.18-21), involves the following steps:

1. He makes a public declaration of love for his owner and his family, which he acquired while a slave. It is unlikely that this represents an emotional attachment to the master personally, but rather to his service.⁴⁰ By this statement he firmly designates his obligation and allegiance to persons other than himself.⁴¹ The social significance of this statement, denying self and citizenship, is similar to that made by Ruth in transferring her allegiance to Naomi, the Israelites, and Yahweh (Ruth 1.16-17). There is no mention of family or love for owner in the public statement made in Deut. 15.16. Love for owner and his household are qualifiers here, but are not a portion of the oath he takes. This may be attributed to the removal of social barriers at the end of the six years of slavery, typical of the

38. Lemche, "'Hebrew Slave'", pp. 141-42. See also the argument of S.M. Paul, *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law* (VTSup, 18; Leiden: Brill, 1970), pp. 45-46.

39. See on this N.K. Gottwald, *The Tribes of Yahweh: A Sociology of the Religion of Liberated Israel, 1250-1050 B.C.E.* (Maryknoll, NY: Orbis, 1979), p. 769 n. 412; Phillips, 'Laws of Slavery', p. 55; and E. Lipiński, 'L'Esclave Hébreu', *VT* 26 (1976), pp. 120-23.

40. Childs, *Exodus*, pp. 468-69.

41. This provision is not included in Deut. 15.12-18. It may reflect, as Lev. 25.39-42 appears to do, a growing distaste for debt servitude and its public rituals.

egalitarianism of the Deuteronomic Code. The freedman is thus a 'brother' (= equal) of his owner until he undergoes the ritual of permanent enslavement and is therefore free to make choices for himself.⁴² The still later Holiness Code (Lev. 25.39), takes this a step further by removing the label of slave from an Israelite altogether, terming the debtor a 'hired or bound laborer'.⁴³

2. He makes a public renunciation of the right 'to go out a free person'. In doing this, he gives up the fundamental right of all free citizens to own land, conduct business transactions, and pass freely back and forth through the city gate (see CH 15).

3. He is brought before God (i.e., in the presence of the judges/elders) as witness. This aspect of the ritual is very similar to legal procedure in the Code of Hammurabi where an oath is taken 'before the god' (see CH 20, 103, 106, 120, 126). The participants would have probably gone to the temple to perform this oath.⁴⁴ Both human and divine witnesses are drawn in to certify this transaction and to determine that it is in fact a voluntary decision on the part of the slave. This provision is deleted from the Deut. 15.12-18 version. Phillips⁴⁵ suggests this may be the result of the Josianic reform which banned the use of household gods (2 Kgs 23.24), but it is more likely the Deuteronomic restriction on local temples and shrines which is at the heart of this omission in Deuteronomy 15.⁴⁶

4. At the door of their owner's house, a nail is driven through their earlobe with an awl. This final step achieved two aims. It enhanced the significance of the ritual by adding place to action.⁴⁷ In addition, it,

42. M. Weinfeld, *Deuteronomy and the Deuteronomistic School* (Oxford: Clarendon Press, 1972), p. 282.

43. See J. van der Ploeg, *Slavery in the Old Testament* (VTSup, 22; Leiden: Brill, 1972), p. 82; and Levine, *Leviticus*, p. 179.

44. F.C. Fensham, 'New Light on Exodus 21.6 and 22.7 from the Laws of Eshnunna', *JBL* 78 (1959), pp. 160-61; and O. Loretz, 'Exod. 21.6; 22.8 und angebliche Nuzi-Parallelen', *Bib* 41 (1960), pp. 167-70.

45. Phillips, 'Laws of Slavery', pp. 55-56.

46. B.M. Levinson, *The Hermeneutics of Innovation: The Impact of Centralization upon the Structure, Sequence, and Reformulation of Legal Material in Deuteronomy* (Ann Arbor, MI: University Microfilms, 1991), pp. 310, 359-60, notes that the phrase could also refer to a local temple and that 'before God' refers to a judicial oath in that temple.

47. V.H. Matthews, 'Entrance Ways and Threshing Floors: Legally Significant Sites in the Ancient Near East', *Fides et historia* 19 (1987), p. 33.

like circumcision, distinctively scarred the individual.⁴⁸ A ring or tag of ownership, similar in purpose to the livery worn by Joseph while in Potiphar's service (Gen. 39.12-16), could then be inserted for easy identification of the person's status.⁴⁹

The Exodus 21 text specifically notes that this action is taken because the slave does not wish to leave his wife and children. The wife, presumably also a slave, had been given to him by his owner and any children they had would remain the property of the owner. It would be difficult to make the decision to abandon them and it would probably have been nearly impossible for him to raise the funds to purchase their freedom. The practice of supplying a term-servant with a wife very likely had two intents:

1. It was done by the owner to keep a man as a slave rather than lose him after only six years service.⁵⁰ The Deuteronomic Code (15.12-18) addresses this issue by promising the owner that God would prosper him for aiding the slave to return to free status after the 'full six years' service' was completed.⁵¹ Concern that the contract was fulfilled (both the period of slavery and granting of freedom) is therefore coupled with an awareness of economic loss and a benediction (Deut 15.18). Such a commentary on a previous statute suggests the ease felt by the biblical writers to put a new interpretation or enhancement on the law to fit their current understanding of covenant obligations.

2. Even if the man chose to leave his service, the owner retained the woman and any children she might produce, thereby materially increasing the strength of the household. Phillips⁵² notes a reversal of intent in the Deuteronomic legislation. In this case there is a conscious promotion of the idea of the return to free status for the slave, resulting from the granting of a subsidy and the removal of marriage status as a legal or moral criterion. It seems unlikely, however, that the owner would be so altruistic that he would grant freedom to the former slave's family if they were born during the period of slavery.

48. Mendelsohn, 'Slavery in the Ancient Near East', p. 49, compares this scarring to tattooing.

49. Phillips, 'Laws of Slavery', p. 51.

50. Childs, *Exodus*, p. 468, contrasts this 'cruelty' to the concept of marriage in Gen. 2.24 and Mt. 19.6.

51. Phillips, 'Laws of Slavery', p. 58.

52. Phillips, 'Laws of Slavery', pp. 56-57.

That would have negated the slave's use as a propagator of additional slaves for the master.⁵³ The elimination of this section of the law in Deuteronomy seems to be only an attempt to simplify the choice made by the slave to return to freedom or to continue his/her slavery.

The other side of this drama is the opportunity afforded to the Hebrew slave who may not wish to leave the security of his owner's house. There is a distinct possibility that he would not be able to make a livelihood for himself as a free man and might slip back into the indigent condition which had caused him to be labeled a 'Hebrew' in the first place.⁵⁴ This might be due to the fact that the Covenant Code did not provide a subsidy to the newly freed slave by his former owner (a provision which is included in the revised form of the law in Deut. 15.13-14). Still, the 'easy' way, even with the possibility of subsidy in the later period, would have been to choose the certainty of his slavery to the uncertainty of a future in which he would have to manage for himself as a free man.

The decision to permanently reduce oneself to slave status, however, should also be recognized as a risk. The slave who becomes a permanent addition to the household faced the possibility that he could be sold to pay the debts of the owner (see CH 119) or transferred as part of an inheritance at the death of the owner.⁵⁵

The Rights of Female Slaves

Unlike males, females do not have the option of selling themselves into slavery. They do find themselves in this condition, however, as a result of the action of their fathers or husbands⁵⁶—either as a way of obtaining a marriage without a dowry or by joining their husbands as slaves to meet the debt obligations of the head of the household (Neh. 5.5).⁵⁷

Legislation regarding female slaves changes from the time of the Covenant Code to the Deuteronomic Reform. In the Exod. 21.7-11 passage, the woman may or may not leave slavery at the end of six

years. Her term may be shortened by the failure of the owner to treat her with due respect, provide for her needs, or uphold her legal rights (Exod. 21.9-11). These designated rights include food, clothing, and the marital rights of the first wife. If they are not provided, even when the owner takes another wife, then the slave woman has the right to leave that household a free woman without the payment of the debt which had led to her original enslavement (Exod. 21.11).⁵⁸ No such provisions are included in the Deuteronomic Code since both men and women are extended equal rights under the law⁵⁹—both able to go out free at the end of six years or to choose permanent slavery (Deut. 15.12, 17).

However, there is a humanitarian provision in Deut. 21.10-14 which is similar to the injunctions in Exod. 21.9-11, which protects the rights of a slave woman taken in war. If preparations have been made to marry this woman, including a physical transformation involving shaving the head,⁶⁰ and then she is rejected, then she can go free and cannot be sold. This relates to breach of contract and a dishonoring of person when such a breach occurs (see Deut. 22.18-19). She therefore cannot be used, as the male slave is in Exod 21.4, as a sexual breeder without changing her status.⁶¹

If a man sells his non-betrothed daughter as a slave (Exod. 21.7-8), this gives her owner first claim on assigning her to himself or his son as a wife.⁶² If she does not please her owner, who has taken her as a wife, then she can be 'redeemed' (i.e., have her contract voided for a price), but not sold 'to a foreign people'. Apparently, the right to sell her or other slaves outside the household was possible or the stipulation against such a sale would have no meaning. The restriction on such a sale may reflect an attempt to improve the basic conditions of

58. Compare Deut. 21.10-14 for the rights of captive women.

59. Phillips, 'Laws of Slavery', pp. 56 and 60.

60. Shaving the head, paring the nails, discarding of garments, and a month of mourning are all associated with a change of social condition. See for example Tamar's transformation in Gen. 38.14, Joseph's new condition defined by a change of clothing in Gen. 41.37-43, and the other Tamar's shame reflected in the tearing of her 'virgin's robe' in 2 Sam. 13.19.

61. Jackson, 'Biblical Laws of Slavery', p. 94.

62. B.J. Schwartz, 'A Literary Study of the Slave-Girl Pericope: Leviticus 19.20-22', in S. Japhet (ed.), *Studies in Bible* (Scripta Hierosolymitana, 31; Jerusalem: Magnes Press, 1986), p. 245.

53. Jackson, 'Biblical Laws of Slavery', p. 93.

54. T.J. Turnbaum, 'Male and Female Slaves in the Sabbath Year Laws of Exodus 21.1-11', in *SBL Seminar Papers* (Atlanta: Scholars Press, 1987), p. 548.

55. Phillips, 'Laws of Slavery', p. 51.

56. Turnbaum, 'Male and Female Slaves', p. 545.

57. Phillips, 'Laws of Slavery', p. 63 n. 15.

slavery, thereby insuring better service during the period of slavery,⁶³ or it may be a further example of humanitarian legislation.

A similar piece of humanitarian law appears in the Holiness Code in Lev. 19.20-22, in which a slave girl, betrothed as a wife to one man but not yet 'redeemed' (i.e., had the bride price paid and freedom granted), has sexual relations with another man. This may imply concubinage⁶⁴ or perhaps may simply imply that steps which ordinarily would be taken to give her her freedom had not yet been completed. The couple, however, cannot be executed for adultery since she is not officially married until she has been redeemed.⁶⁵ Because her status is still technically that of a slave, intercourse with her does not require the same penalty (stoning) that would otherwise be the result of rape of a betrothed woman (Deut. 22.23-27). Interestingly, in this way both property rights and the rights of persons are protected.

Conclusion

Slavery as an institution in ancient Israel, unlike that in ancient Greece and Rome, probably did not account for a large percentage of the labor force.⁶⁶ However, indenture, tenant farming, and temporary debt slavery (for a day or six years) were common enough to require legal definition and constraints. The general force of these laws is to protect the rights of both the owner and slave so that neither party would be physically or economically abused.

Slavery is an institution which best serves the interests of the state, with its monumental construction projects and needs for a ready surplus labor supply. In the village setting, however, its primary function is to provide an option for debtors and for those who fail to maintain the economic viability of their households. The upshot of the above legislative survey is to show that the principal influence on the formulation and evolution of law in ancient Israel was the social context. The movement from village to state culture is the prime determinant here in requiring changes and additions to the law.

63. Gelb, 'From Freedom to Slavery', p. 86.

64. See Exod. 21.8-10 which suggests a sexual relationship and a legal obligation greater than that due to a slave.

65. Schwartz, 'Slave-Girl Pericope', p. 248.

66. Van der Ploeg, *Slavery in the Old Testament*, p. 83.

While the Covenant Code may have originated, at least in part, as a coherent set of statutes, as Westbrook suggests, it was not set in stone throughout its existence. Changes in the social world of ancient Israel required this code, as well as the Deuteronomic and Holiness Codes, to take into account ethical as well as economic considerations which were not a part of the village culture prior to the establishment of the monarchy. Thus the practice of continuously reshaping or redefining the laws, including the law codes, is a clearly acceptable one throughout Israelite history. While this study has concentrated on the slavery statutes, it seems clear that additional evidence for this process can be found through philological and literary examination of the other legal materials.