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Slave Systems of the Old Testament and the American South: A Study In Contrasts

Nathan Andersen

Though a sketchpad of the Israelite slave system is available in Old Testament text, it is still difficult to ascertain exactly how biblical masters and slaves related to one another on a daily basis. How should modern biblical readers understand slavery in the Bible? They should understand that slavery did exist and probably flourished in ancient Israel. However, biblical slavery can be distinguished from Southern slavery in important ways. The Old Testament slave laws established a threshold level of humanity and dignity, which the Israelites were obligated not to cross, whereas the Southern slave system negated the existence of the person, evidencing a total devaluation of humanity. The check that prevented the Israelite slave system from paralleling the Southern slave system was the realization by each Hebrew master that they too were slaves to their God.

Language is not static but, in fact, changes over time. Culture, demography, and historical circumstance all influence how societies define the words they use. Thus, for a proper reading of ancient texts, it is imperative for modern readers to take into account the way in which a given term was defined in the ancient context.

The word “slave,” as used in Old Testament text, is a term often misunderstood by contemporary readers of the Bible because contemporary readers seek to understand the biblical slave system by overlaying a modern definition upon it. One scholar has noted, “The problems attending the use of the term slavery are basic to the very nature of language. The meaning of the term

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‘slavery’ is determined not only by the spoken or literary setting, but also by the effective history of a given people.”¹ Modern notions of slavery are complicated by the fact that in many ancient societies, the term “slave” was used to refer to many different forms of servile conditions,² not just the chattel slave familiar to modern readers of the Bible.

Modern readers of the Old Testament³ may equate modern notions of slavery with the forms of slavery practiced in ancient Israel. Such modern notions of slavery are heavily influenced by the American civil rights movement, the American Civil War, and the African slave trade,⁴ and have recently experienced a public revival of sorts via dialogue regarding slave reparations. Putting the two slave systems on an equal footing, without a proper comparison, denies modern Bible readers a full understanding of the legal and religious ramifications of slavery in the Bible.

This paper juxtaposes the slave laws in the Old Testament with those of the pre-Civil War American South. Part II introduces various ancient Near Eastern laws that may have influenced

¹ Dexter Callender, Jr., “Servants of God(s) and Servants of Kings in Israel and the Ancient Near East,” *Semeia* 83/84 (1998): 67–68.

² Raymond Westbrook, “The Development of Law In the Ancient Near East: Slave and Master In Ancient Near Eastern Law,” *Chicago-Kent Law Review* 70 (1995): 1631, 1634, 1640. Westbrook explains, “[T]he term ‘slave’ was used to refer not only to a person owned in law by another but to any subordinate in the social ladder” (1634). Professor Westbrook provides several examples of servile conditions that may have been encompassed under the ancient term “slave.” Such examples include: subjects of a king, subjects to God, heads of households, “classes of workers attached to an institution (palace or temple) or to an estate, debtors who volunteer themselves into servitude to repay a debt, and non-citizens in a foreign nation” (1634–38).

³ The purpose of this article is to contrast the slave system of the Old Testament Israelite nation with the slave system in place in the Antebellum South. Evidence of slavery may be found in the New Testament; however, it is not the intent of this article to expound upon those connections.

⁴ *Ibid.*

the slave laws of the Old Testament. Part III discusses the legal mechanisms by which individuals were initiated into servitude—how individuals became slaves in the Old Testament as well as in the South. Part IV compares the legal status of Old Testament slavery to that in the American South by analyzing the master/servant relationship, laws regarding property ownership, the duration of servitude, manumission laws, and fugitive slave laws. Part V examines the legal parameters regarding the treatment of slaves in each respective legal system, and finally, Part VI offers a brief conclusion.

Ancient Near Eastern Laws

Old Testament texts clearly reveal that slavery existed as a vibrant Israelite institution. The Code of the Covenant (Exod. 21–22),⁵ the Holiness Code (Lev. 25), and the Deuteronomic Code (Deut. 15) collectively provide much of what modern scholars know and understand regarding the legal rules and regulations of

⁵ The extent to which the Code of the Covenant is one coherent legal code or the result of multiple redactions is an issue modern scholars have yet to resolve. For example, Raymond Westbrook argues that the Code of the Covenant is “part of a widespread literary-legal tradition and can only be understood in terms of that tradition. The starting point for interpretation must therefore be the presumption that the Covenant Code is a coherent text comprising clear and consistent laws, in the same manner as its cuneiform forbears.” Raymond Westbrook, “What is the Covenant Code?” in *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development*, ed. Bernard M. Levinson (Sheffield, England: Sheffield, 1994) 15, 36. Others refute Professor Westbrook’s theory that diachronic analysis is “methodologically invalid,” arguing that the inconsistencies and incoherency in the Covenant Code evidence the existence of many different influences on the text itself and substantial textual reworking. See, e.g., Bernard M. Levinson, “The Case for Revision and Interpolation within the Biblical Legal Corpora,” in *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development*, ed. Bernard M. Levinson (Sheffield, England: Sheffield, 1994) 37–39.

slavery in biblical society.⁶ These texts, however, fail to adequately explain where the slave tradition in the Old Testament originated. Considering that the Israelites viewed themselves as the subjects of harsh Egyptian servitude,⁷ it is somewhat surprising that slavery existed as such a dominant aspect of Israel society. What factors contributed to this irony? How was the institution of slavery transposed from a harsh institution into the societal norm? Many scholars suggest that the slave traditions of neighboring ancient Near Eastern societies may have significantly influenced the conception of slavery in ancient Israel.⁸ Thus, before the Southern and Old Testament systems of slavery can be effectively compared, it may be helpful to identify how ancient Near Eastern slave laws influenced the sources, legal status, and treatment of slaves in the Old Testament.

Sources of Slavery in the Ancient Near East. Much of what modern scholars know regarding the laws of ancient Near Eastern societies comes from ancient law codes,⁹ which one scholar described as “academic treatises on law expressed in casuistic form” rather than the legislatively enacted legal codes familiar to

⁶ Modern biblical scholars present varying conclusions as to how these three code sections relate to each other. For example, Adrian Schenker argues that “the [collective] laws for the release of slaves form a coherent system.” Adrian Schenker, “The Biblical Legislation on the Release of Slaves: The Road from Exodus to Leviticus,” *Journal for the Study of the Old Testament* 78 (1998): 23, 33.

⁷ Exodus 1:14 describes Israelite servitude to the Egyptians as “bitter with hard bondage.”

⁸ See, e.g., Schenker 23–41 (asserting that political pressure from foreigners living within Israelite society greatly influenced the shaping of the Israelite laws regarding debt-slavery).

⁹ The main law codes and sources of law relied upon in this article are as follows: The Code of UrNammu (CU), the Code of Lipit-Ishtar (CL), the Code of Eshnunna (CE), the Code of Hammurabi (CH), the Hittite laws (HL), the Middle Assyrian Laws (MAL), and the Neo-Babylonian Laws (NBL). For a summary of many of the scholarly questions that have arisen with respect to these law codes, see Jeffries M. Hamilton, *Social Justice and Deuteronomy*, Society of Biblical Literature Dissertation Series, no. 136 (Atlanta, Georgia: Scholars Press, 1992) 56–62.

contemporary society.¹⁰ Another scholar referred to them as an “enumeration of case decisions around a series of themes with the purpose of serving as a guide to judges.”¹¹ Regardless of the exact purpose behind these law codes, they serve as an invaluable porthole into the legal and social world of the ancient Near East and perhaps help to explain the origin of certain Old Testament slave customs.

There are essentially four general ways in which slaves were acquired in the ancient Near East. First, the majority of slaves were most likely prisoners of war¹² or chattel slaves, who were carried back to the capturing nation to work manual labor.¹³ These slaves were often purchased “into the service of temple communities, royal estates, or the estates of high ranking nobility rather than the private households of average citizens.”¹⁴ Such may have been the case with Joseph who was sold by the Midianites to Potiphar in Egypt (Gen. 37:38).¹⁵ Foreign slaves, used to replenish the slave supply during times of peace, were often granted different rights and privileges than native slaves.¹⁶

The second source of slaves was that of a debt-slave. Debt slavery was often limited by a specific duration of anywhere from

¹⁰ Westbrook, “The Development of Law in the Ancient Near East,” 1631, 1633.

¹¹ Victor H. Matthews, “The Anthropology of Slavery In the Covenant Code,” *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development*, ed. Bernard M. Levinson (Sheffield, England: Sheffield, 1994) 119, 120.

¹² *Ibid.*, 122 (“Despite the increased numbers of persons taken in warfare, the idea of permanent chattel status, on the North American model . . . was unknown in the ancient Near East”).

¹³ Muhammad A. Dandamayev, “Ancient Near East,” vol. 6 of *The Anchor Bible Dictionary*, ed. David Noel Freedman (New York: Doubleday, 1992) 58, 59. These slaves were mainly used to construct canals, roads, palaces, and other public improvements (58–59). See also James Moss, *Slavery in the Book of Mormon*, 3 (forthcoming).

¹⁴ Matthews, 124.

¹⁵ *Ibid.*

¹⁶ See Moss, 3–4.

three to fifty years,¹⁷ as well as by a general release for all slaves and their families.¹⁸ Westbrook asserts that, where a debtor pledged himself or another in order to repay a debt, the creditor understood that “[t]he seller was, under certain conditions, allowed to buy back, to ‘redeem,’ that property at the original price.”¹⁹ A debt-slave who had been redeemed was usually not exonerated from all liability but merely became subordinate to a new creditor.²⁰

Destitute and impoverished freemen could sell themselves²¹ and sometimes their children²² into slavery during times of famine:

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.²³

¹⁷ Dandamayev, 59. The Code of Hammurabi, CH 117, provided that a man could sell his wife or son to pay a debt. The wife and/or son would serve in the house of the creditor for three years, only to be released into freedom on the fourth year. In Nuzi, debt slavery often lasted up to fifty years. However, no such law limiting the duration of a debt slave existed in Assyria.

¹⁸ Ibid. “[T] Babylonian king Ammisaduqa in the 17th century issued an edict, according to which all inhabitants of his kingdom who had been compelled by debt to become slaves should be released together with their families” (59).

¹⁹ Westbrook, 1651.

²⁰ Ibid., 1652. These new creditors were often family members.

²¹ Dandamayev, 59. See also Moss, 7–15.

²² Dandamayev, 59. See also Moss, 5–7.

²³ Sadly, some impoverished parents, normally during times of famine, abandoned their children, hoping a passerby would pick the child up and raise it. See, e.g., Westbrook, 1646; Dandamayev, 59.

Additionally, a man who lacked inheritance rights might sell himself into slavery in order to secure some form of inheritance upon the death of his master.²⁴ In “Neo-Babylonian documents and Aramaic papyri of the fifth century B.C. from Egypt, slaves were sometimes freed with the stipulation that they continue to serve the master or provide him with food as long as he was alive.”²⁵

Third, an individual could be born into slavery.²⁶ “Such slaves could have been the offspring of a union of master and slave . . . or of slaves.”²⁷ For example, the Code of Hammurabi (CH 171) provides that a child born to a slave woman and fathered by the slave’s master does not inherit with the master’s freeborn children, but may be freed upon the master’s death.

Fourth, free persons could become enslaved by breaking the law.²⁸ For example, the Law Code of Hammurabi (CH 53–54) provides that “where a negligent farmer had managed to flood the whole district and did not have the means to compensate all his

²⁴ Professor Westbrook suggests that these “reciprocal arrangements whereby the slave was freed in return for continuing to look after his master” took several forms: “[F]irst, the master manumitted the slave upon his death, in return for support during the rest of his life.”

Second, the slaves’ obligation continued after 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 freedom 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 impossibility of paying the huge penalty would inevitably lead to their re-enslavement. (“The Development of Law in the Ancient Near East,” 1648)

²⁵ Dandamayev, 61. A Sumerian law (LS 4) provided that an adopted son who estranged himself from his adopting parents by saying “You are not my father; you are not my mother,” would be disinherited.

²⁶ Russ VerSteeg, *Early Mesopotamian Law* (Durham, North Carolina: Academic Press, 2000) 153; Westbrook, “The Development of Law in the Ancient Near East,” 1643.

²⁷ Westbrook, “The Development of Law in the Ancient Near East,” 1643.

²⁸ Dandamayev, 59.

neighbors for their loss,” the neighbors could sell the negligent farmer into servitude and divide the proceeds.²⁹ This type of law was presumably an equitable remedy necessary to compensate the surrounding farmers for the man’s breach of contract. Another example, found in the Hittite Laws (HL 35) states, “If an overseer or a shepherd elopes with a free woman and does not bring the bride-price for her” that he was legally obligated to pay, the woman becomes a slave for three years to the man who was legally entitled to receive the bride-price. Additionally, according to Sumerian law, “[t]he wife and children of a murderer who had been sentenced to death, were also condemned to slavery.”³⁰

Legal Status of Slaves in the Ancient Near East. Introducing every aspect of a slave’s legal status is beyond the scope of this analysis. Nevertheless, there are several important aspects of a slave’s legal status that reveal what a slave’s day-to-day rights were in comparison to his or her ancient Near Eastern master. This section will briefly introduce laws relating to the following general topics: alienability, property ownership, manumission, and fugitive slaves.

Generally, slaves in the ancient Near East were “chattels and could be sold, pledged, hired, given as gifts, inherited, and forfeited.”³¹ However, some scholars assert that debt-slaves and famine slaves were more protected from alienability than the ordinary chattel slaves due to their rights of redemption.³² Logically, if a debt-slave was able to redeem himself, he must have been able to earn and hold some forms of property.³³ Most likely, slaves in the ancient Near East were only permitted to hold property if “the[ir]

²⁹ Westbrook, “The Development of Law in the Ancient Near East,” 1644.

³⁰ Dandamayev, 59.

³¹ Westbrook, “The Development of Law in the Ancient Near East,” 1660.

³² *Ibid.*, 1662; VerSteege, 155.

³³ Dandamayev, 61, stating that “[s]ometimes slaves were permitted to possess various kinds of property (peculium).”

master took an interest” in the slave.³⁴ A master who had accepted a slave under the slave’s debt repayment plan may have been more willing to allow the slave to accumulate property in order to hasten ultimate satisfaction of the debt.

There are many reasons why a slave in the ancient Near East would have most been able to hold property. Because of the rights of redemption and the law regarding the general release, slaves were often not slaves for life, and therefore would have, at some point in time, the opportunity to reenter society as free individuals.³⁵

Some scholars even argue that such slaves could serve as witnesses and parties in legal proceedings.³⁶ However, it is important to note that even though an ancient Near Eastern slave could mortgage/buy/sell their property, they could not mortgage/buy/sell themselves; they “remained the property of their masters, at whose whim they could be deprived of their property and influence.”³⁷

Many ancient Near Eastern laws dealt with the issue of fugitive slaves. As Westbrook explained, “flight was a social phenomenon. . . . 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.”³⁸ The first general group of laws imposed punishments for housing or assisting a fugitive slave.³⁹ The Law Code of Hammurabi (CH 16) may have imposed the most serious penalty for aiding and abetting

³⁴ Ibid.

³⁵ The following quote describes activities in which a slave could participate:

In 1st-millennium Babylonia enterprising slaves owned land, houses, and considerable amounts of movable property. They actively participated in all spheres of economic activity, were engaged in trade, ran taverns and workshops, taught other persons various trades, pawned and mortgaged their property, and they themselves received the property of others as security for loan. (Dandamayev, 61)

³⁶ Ibid.

³⁷ Ibid.

³⁸ Westbrook, “The Development of Law in the Ancient Near East,” 1670.

³⁹ See, e.g., HL 24, CH 16, CH 15, LI 13, LI 12.

a fugitive slave—death. Another law (LE 49–50) imposed a monetary “fine of two times the value of the slave . . . for the concealment of a fugitive slave.”⁴⁰

The second group of laws provided rewards for returning a slave to his master.⁴¹ One law (LU 17) established a reward of two shekels of silver for returning a runaway female slave to her master. Another law (CH 17) provided a similar reward for returning any slave to his or her master. The Hittite Laws (HL 22–23) based the amount of the reward on the extent to which a person had to go to retrieve and return a slave. These laws evidence the economic necessity of being able to retain and control property in ancient Near Eastern society.⁴²

Treatment of Slaves in the Ancient Near East. What measures could masters take to control and subvert their slaves into submission? In some ancient Near Eastern societies like Assyria, a debt-slave, enjoying the right of redemption, could not be treated as harshly as a chattel slave.⁴³ Nevertheless, the laws regarding the treatment of slaves in ancient Near Eastern societies were not uniform. Some laws imposed penalties on those who harmed another’s slave. For example, the Laws of Eshnunna (LE 23) imposed a fine of two slave girls on a man who detained another man’s slave girl in his house, causing the slave girl to die. Slaves were usually not the beneficiaries of such laws; masters of the harmed slaves reaped the benefits.

Further, some laws prevented masters from abusing their slaves while disturbingly, other laws codified such mistreatment. Westbrook argues that—with the exception of MAL A44 and CH 282, which allowed masters to cut off the ear of their disobedient slave—“a master did not have a general right to disfigure his

⁴⁰ Dandamayev, 60.

⁴¹ See, e.g., LU 17, CH 17, HL 22.

⁴² See also VerSteeg, 154, for other examples of fugitive slave laws.

⁴³ Westbrook, “The Development of Law in the Ancient Near East,” 1666; see also VerSteeg, 155–56.

slave.”⁴⁴ Other scholars agree, however, that “[s]ome slaves were subjected to cruel forms of exploitation.”⁴⁵ In particular, Chattel slaves were most likely the recipients of maltreatment. Aside from the actual treatment slaves received from their masters, most slaves were marked or branded, whether physically or by wearing a tag, for identification purposes.⁴⁶

Becoming Slaves in Ancient Israel and in the American South

Old Testament Sources of Slavery. Modern scholars suggest three source divisions of ancient Israelite slavery: chattel slaves, debt-slaves and forced slaves. First, the laws regarding the purchase of chattel slaves were different depending on whether the slaves were foreigners or Hebrews.⁴⁷ Israelites were instructed that they could only purchase chattel slaves from foreigners (Lev. 25:44).⁴⁸ Hebrew slaves were never to be purchased in fee.⁴⁹ God explained the reason for this policy: “For [the Israelites] are my servants, which I brought forth out of the land of Egypt; they shall not be sold as bondmen” (Lev. 25:42). The Israelites, per God’s scriptural instructions, believed that God was to be their master because he had redeemed them from their Egyptian masters. It

⁴⁴ Westbrook, “The Development of Law in the Ancient Near East,” 1667.

⁴⁵ Dandamayev, 60–61.

⁴⁶ Moss, 17.

⁴⁷ Ultimately, a slave’s legal status in Old Testament times was probably more closely aligned with “that of a *filius-familias* than to that of a mere chattel” depending on whether the slave was a Hebrew or a foreigner. Although chattel slavery did occasionally exist in the Old Testament, most scholars agree that the Israelite economy was not dependent upon the practice, and therefore, the practice, most likely, did not flourish for sustained periods of time in ancient Israel. Ze’ev W. Falk, *Hebrew Law In Biblical Times* (Provo, Utah: Brigham Young University Press, 2001) 114.

⁴⁸ See also Callender, 74.

⁴⁹ Efraim Elimelech Urbach, *The Laws Regarding Slavery* (New York: Arno Press, 1979) 28.

was therefore contrary for any Hebrew to be the master of another Hebrew in fee simple absolute when God, in fact, owned them: “For unto me the children of Israel are servants” (Lev. 25:55). As a result of this public policy against Israelites owning Hebrew slaves in fee, the term of servitude for a Hebrew slave was limited to six years (Exod. 21:2, Deut. 15:12). A Hebrew master was to release his slave “in the seventh” year “for nothing” (Exod. 21:2). Although such a practice may have been the ideal,⁵⁰ it makes sense that ancient Israel would frown upon extended periods of servitude for members of their own community, for Israel had experienced the shackles of extended servitude in Egypt for over 430 years (Exod. 12:41). On the other hand, foreign slaves, unlike Hebrew slaves, could be owned “forever” (Lev. 25:46). Although the law of the jubilee, which provided for a general release of all slaves every fiftieth year (Lev. 25:10)⁵¹ seems, on its face, to apply to both foreigner and Hebrew alike, the Jubilee probably only applied to Hebrew slaves (see, e.g., Lev. 25:46).

Interestingly, there seems to be some textual inconsistency between the seventh-year release of slaves and the general release of the jubilee every fiftieth year. Both seem to apply to the release of a Hebrew slave. Falk offers two explanations for this discrepancy: First, “the law of Exodus 21:2–6 was perhaps unknown at the time of Lev. 25:10, or, [second,] . . . the former rule was not obeyed.”⁵² Falk believes that the most probable explanation was

⁵⁰ The account in Jeremiah 34:8–16 illustrates that, perhaps for economic reasons, the Israelites found it difficult to strictly adhere to the manumission laws recorded in the Holiness Code and the Code of the Covenant.

⁵¹ Lev. 25:10: “And ye shall hallow the fiftieth year, and proclaim liberty throughout all the land unto all the inhabitants thereof: it shall be a jubile unto you; and ye shall return every man unto his possession, and ye shall return every man unto his family.” This concept of the jubilee year originates in “the religious framework of the periodical *restitutio in integrum* where all things come back to the original creation and to the original founding order. It is a periodical eschatology and a periodical purification of human society from the distortions of life and bad luck” (Schenker, 37).

⁵² Falk, 87.

that the seventh-year release was simply not obeyed.⁵³ This belief is supported by the account in Jeremiah 34 in which Jeremiah rebukes the Israelites for having neglected to release “their Hebrew slaves, male and female,” every seventh year (Jer. 34:9). Ancient Hebrew prophets, such as Jeremiah, repeatedly rebuked the Israelites for failing to comply with the laws of their God. The slave laws would have been, and in fact were, sometimes ignored. Nevertheless, prophets repeatedly reminded the Israelites of the impetus behind the public policy of limiting terms of servitude: If the people wanted God to keep them free, they, as a people, must be willing to keep their slaves free (see, e.g., Jer. 34:16–17).

It may be instructive to discuss the factors that would have motivated a Hebrew or a foreigner to voluntarily subject themselves into servitude (Exod. 21:5). Such a concept would be completely ludicrous today. Nevertheless, voluntary servitude was practiced in Old Testament times. A person lacking any rights of inheritance may have voluntarily given himself to a master who, in the absence of legal heirs, would gift inheritance rights to the trusted slave.⁵⁴ Such a symbiotic relationship most likely benefited both parties, the master and the slave. The master received a legal heir and someone to take care of him in his old age. The slave received an inheritance upon the death of the master. Additionally, individuals in extreme poverty were able to voluntarily give themselves into slavery (Lev. 25:39–40). Such individuals would be held as a “hired servant” rather than a “bondservant” and would be subject to the release of the jubilee (Lev. 25:39–40).

The second source of biblical slavery was that of a debt-slave. “Israelites who became heavily indebted could be forced to surrender or sell children or themselves” to appease the demands of their creditors.⁵⁵ Scriptural clarification of the law surrounding

⁵³ Ibid.

⁵⁴ See Falk, 115.

⁵⁵ Callender, 74; see also Westbrook, “The Development of Law In the Ancient Near East,” 1631, 1651–54.

debt-slavery is limited at best. There is, however, one example of how these laws were applied:

Now there cried a certain woman of the wives of the sons of the prophets unto Elisha, saying, Thy servant my husband is dead; and thou knowest that thy servant did fear the Lord: and the creditor is come to take unto him my two sons to be bondmen. (2 Kings 4:1)

Either the borrower or the borrower's sons could become a servant to the creditor (see Prov. 22:7). This type of servitude was subject to the seventh-year release provision found in the Covenant Code as well as the general release in the jubilee year. A debt-slave could, however, extend his term of servitude beyond the sixth or forty-ninth year for life (see Exod. 21:5)—a relationship similar, if not identical, to chattel slavery. Thus, under these circumstances, “debt-slaves were extremely vulnerable to being forced into chattel slavery.”⁵⁶ During harsh economic conditions, including times of famine, the difference between those that “wax-eth poor” and those that couldn't pay their debts was probably insignificant. Hebrews would have been forced to sell themselves into slavery for life—a close cousin to selling title to a person in fee simple.⁵⁷ Even though this may have been the general practice, Old Testament prophets, like Nehemiah, continually brought the Israelites back to the ideal principle of debt forgiveness (see, e.g., Neh. 5:1–13). Although absolute forgiveness may not have been frequently granted, biblical law also provided for redemption of the

⁵⁶ Callender, 74.

⁵⁷ One author noted, “All that scholars have written regarding enslavement through debt loses much of its importance once it is appreciated that the borderline between the enslavement of debtors and the voluntary sale of children or self is one that is very easy to obscure” (Urbach, 12–13).

debt by a debtor's next of kin⁵⁸ or possibly even by the debtor if the debtor was wealthy enough (Lev. 25:47–49).⁵⁹ Most likely, redemption did not completely exonerate the debtor; it merely transferred the debt to a more charitable master. “It must be presumed that . . . the majority of those who redeemed Jews who had been sold as slaves to Gentiles retained them as slaves in their own service.”⁶⁰ This presumption is valid due to the way in which Jehovah redeemed the children of Israel: “For I brought thee up out of the land of Egypt, and redeemed thee out of the house of servants” (Mic. 6:4), “and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God” (Mic. 6:8). Jehovah was the new debtor and set the new terms of servitude.

Finally, at certain times in Israelite history, captives of war provided a significant source of forced labor.⁶¹ Of course, this source proved more fruitful during times of war than during times of peace. This may explain why Hebrew masters in Jeremiah 34 found it so difficult to release their Hebrew slaves—the supply of captured slaves had been depleted and so the Israelites were relying upon Hebrew slaves to replace prisoners of war in the economic societal structure. During monarchical periods, forced labor was used to build the temple and other large-scale projects.⁶² Forced servitude upon Hebrews was contrary to biblical law and policy: “For unto me the children of Israel are servants; they are

⁵⁸ The previously referenced example in 2 Kings 4:1–6 provides an example of the symbolic significance of Jehovah as the ultimate redeemer. Although the prophet Elisha is the pronouncer of redemption in the story, the reader recognizes that his calling as Jehovah's servant (or agent) makes Jehovah the redeemer, not Elisha. Jehovah is the one who provides the means whereby the debt is repaid. Therefore, the woman would have been the servant of Jehovah thereafter.

⁵⁹ See also Falk, 117.

⁶⁰ Urbach, 14.

⁶¹ Falk, 114.

⁶² Callender, 75.

my servants whom I brought forth out of the land of Egypt: I am the Lord your God” (Lev. 25:55).

Southern Sources of Slavery. In America there was not the same distinction between a foreigner and a community citizen as there was in biblical law: The primary source of slaves was from the African slave trade. Slavery in America became a legal institution during the 1660s. Prior to 1660, legal records and statutes referred to negro laborers as servants, not slaves.⁶³ In 1664, a Maryland statute declared, “[A]ll negroes or other slaves already in the Province, or to be imported thereafter, should serve for life.”⁶⁴ Such laws constituted the initial passport of the African slave trade in America.

It has been suggested that even the most ardent supporters of the slave trade itself “admitted that the slave trade was barbaric and immoral.”⁶⁵ The maritime journey from Africa to the American colonies was so arduous that only one out of every three slaves survived.⁶⁶ Nevertheless, despite this high mortality rate, the slave trade continued to produce significant profits.⁶⁷ The slave trade was a point of debate in the Constitutional Convention of 1787; yet, due to the bipolar positions of the Northern and the Southern states, the Convention chose to table the matter in hopes of obtaining other compromises.⁶⁸

By the time the Constitution was ratified in 1789, most states, both Northern and Southern, had outlawed the slave trade. For example, a 1787 Rhode Island statute “censure[d] [the slave trade]

⁶³ Robert B. Shaw, *A Legal History of Slavery in the United States* (Potsdam, New York: Northern Press, 1991) 4. Act XVI of Virginia statutes (1659–1660) was the first statute to grant colonists a specific right to “import ‘negro slaves’” (Shaw, 4).

⁶⁴ *Ibid.*, 5.

⁶⁵ Paul Finkelman, *Slavery in the Courtroom* (Washington, D.C.: Library of Congress, 1985) 211.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

in strong terms, as contrary to the principles of justice, humanity, and sound policy”⁶⁹ and imposed a pecuniary penalty “on every citizen who as master, agent, or owner shall buy, sell or receive on board his ship for sale any slave.”⁷⁰ Nevertheless, despite the Slave Trade Prohibition Act of March 2, 1807, which prohibited the slave trade on a national level, slave traders continued to operate on a limited basis,⁷¹ and slavery continued to flourish.

The elimination of the slave trade did not, by any means, eliminate slavery or its source. The slave trade had been, in principle, eliminated, or at least drastically reduced. Nevertheless, by the early part of the nineteenth century, there were hundreds of thousands of negro slaves in the South, increasing for their masters in perpetuity. Slaveholders were not as dependent on the slave trade to supply them with slaves because of the natural increases in the negro population. However, race perpetuated what the slave trade had started.

Although race has historically been an irrelevant factor in slave systems throughout the world (e.g. the slave system in the Old Testament), it played a central role in American slavery.⁷² Historians recognize that, for the most part, “in other times and places enslavement was never confined to a single race or ethnic group.”⁷³ Not until the American slave system did such a peculiarity occur.

This principle of selecting slaves based upon race evidences one of the most significant differences between the Israelite slave system and slavery as it took place in the South. In the South,

⁶⁹ John Codman Hurd, *The Law of Freedom and Bondage in the United States*, vol. 2 (New York: Negro Universities Press, 1968), 49.

⁷⁰ *Ibid.* The following state statutes express a prohibition on the slave trade: Delaware (1789); South Carolina (1792); Georgia (1798); Mississippi (1798); Alabama (1823); Louisiana (1804) (Hurd, 49, 75, 95, 101, 143, 150, 156).

⁷¹ Finkelman, 211–12.

⁷² Paul Finkelman, “The Centrality of Slavery in American Legal Development,” in *Slavery and the Law*, ed. Paul Finkelman (Madison, Wisconsin: Madison, 1997) 5.

⁷³ *Ibid.*

“[o]nly blacks could be slaves; no one else, however great their misfortune.”⁷⁴ On the other hand, the Israelite slave system provided not only for the enslavement of its own people but also limited the terms of enslavement in order to prevent misfortune from involuntarily enslaving an individual for life; debts could be paid or redeemed, providing the Israelite citizen with an opportunity to regain social status and respectability. The American slave system denied blacks this opportunity. Even free blacks in the South⁷⁵ were prevented from full social equality simply because of their race.⁷⁶ The United States Supreme Court, in *Dred Scott v. Sandford* summarized the peculiar race-based system driving slavery in America:

[Blacks] had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to

⁷⁴ Ibid., 6.

⁷⁵ Ibid. Despite only referring to free blacks in the South, the author of this paper does recognize that blacks living in the North were also not treated equally as whites. Nevertheless, blacks in the North were granted much more social equality than blacks in the South.

⁷⁶ See Mark V. Tushnet, *The American Law of Slavery* (Princeton, New Jersey: Princeton University Press, 1981), 142–47 (suggesting that there were conceptual problems in the South with a presumption based on race).

[I]t was administratively inefficient to create presumptions flowing from race, and, despite the conceptual problems entailed by the need to adjust those presumptions to the rule that status and not race was dispositive, the pervasive racism of Southern society supported the move away from status and toward race as a categorizing device. (Tushnet, 147)

dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion.⁷⁷

Chief Justice Taney further asserted “that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as part of the people, nor intended to be included in” the Constitution.⁷⁸

There was no legal mechanism to prevent race-based slavery in America. America’s slave system was never clearly defined in statutory form; rather, it merely evolved according to the social policy and economic demands of American society. Because the American slave laws were never conclusively established before the practice took root in American society, trying to embrace subsequently established slave laws within the already established body of common and statutory law was like trying to fit a square peg into a round hole.⁷⁹ The slave laws in America simply did not harmonize with the constitutional principles that people in the United States, even immigrants from other European countries, had been “created equal” and “endowed by their Creator with certain inalienable rights.”⁸⁰ There was a serious disconnect between the laws governing slavery and the accepted body of common and statutory law.⁸¹

⁷⁷ *Dred Scott v. Sandford*, 60 U.S. 393, 407 (1856).

⁷⁸ *Ibid.*

⁷⁹ See, e.g., Finkelman, “The Centrality of Slavery,” 14.

⁸⁰ The Declaration of Independence, para. 2.

⁸¹ See, e.g., Eugene D. Genovese and Elizabeth Fox-Genovese, “Slavery, Economic Development, and the Law: The Dilemma of the Southern Political Economists, 1880–1860,” *Wash. & Lee L. Rev.* 41 (1984): 1–3. (They argue that slavery constituted the very foundation upon which Southern society rested. The slave system of the South produced a conflict between political and economic principles. Accordingly, slavery in the South “created a bifurcation of Southern law, as if to render the economy unto Caesar and social relations unto God.”); see also Tushnet, 71–90.

It may be helpful at this point in the analysis to point out that the biblical slave system did not suffer from such a disconnect between the laws themselves and the legal policies of the society. Although current ambiguities exist regarding the interpretation of biblical slave laws, the laws corresponded with the lodestar policy that Jehovah was the ultimate master, and that because he provided mercy to the enslaved Israelites in Egypt, the Israelites themselves should provide mercy to their fellow citizens.

Points of Legal Comparison

In addition to the differences regarding how individuals were enslaved, the Old Testament and the South granted slaves varying levels of legal status, the analysis of which presents a plethora of complex legal and social issues. Among the issues researched by scholars today are (1) the extent to which male and female slaves were treated differently under the law,⁸² (2) the slave's right to vote and participate in local and national government processes, (3) the slave's legal right to file and/or be a party to a lawsuit, (4) the extent of the master's sexual rights over the slave, and (5) the slave's right to marry and have children. Extensive research has been done with respect to each of these elements of legal status. However, this paper attempts to narrow the scope of the analysis by examining Hebrew law and the laws of the American South with respect to (a) the master-servant relationship, (b) the duration of servitude, and (c) the slave's ability to own property.

The Master and Servant in the Old Testament. As stated earlier, the master-servant relationship in biblical law was symbolic of the relationship between Jehovah and his people. On numerous occasions in the Old Testament, Jehovah explains to the children of Israel that he is their master and they are his servants (or slaves),

⁸² See, generally, Matitiah Tsevat, "The Hebrew Slave According to Deuteronomy 15:12-18," *JBL* 113-4 (1994): 587-95.

and should therefore be submissive to doing His will (see, e.g., Lev. 25:42, 55; Mic. 6:4; Deut. 5:15, 7:8, 9:26, 13:5, 21:8). Moreover, the temporary nature of the master–slave relationship between a Hebrew master and a Hebrew slave “provided for a friendly relationship between master and servant.”⁸³ Thus, the slave system of the Old Testament, like many other aspects of the Hebrew Law, had a tendency to remind the Israelites of their relationship to God as they interacted socially with their slaves or masters.

The Lord’s continual reminder to the Israelites that He had “brought [them] out of Egypt, from the house of slavery” (Deut. 7:8), reinforces the notion that the children of Israel are servants “and therefore cannot rightfully be ‘servants’ of others, whether another god, a domestic or foreign king, or another Israelite.”⁸⁴ As servants of Jehovah, the Israelites were required to strictly obey the Lord’s commandments (see Lev. 25:18).⁸⁵ Failure to do so would subject the Israelites individually and collectively to the Lord’s punishment. Nevertheless, the master–servant analogy in Israelite society begins to break down with respect to the master’s power over the agent. In theory and practice, the Hebrew master did not have unlimited power.⁸⁶ But, God had unlimited power over his people. Perhaps this break in the symbolism was strategic in eliciting humility and submission from the Israelites, from both the masters and the slaves. The Hebrew master was not above the law but was obligated to adhere to it, whereas the Southern master actually molded the law in order to maintain the divisive social structure.

The Master and Servant in the South. In *Chastain v. Bowman et al.*, the court held “that a master may constitute his slave his

⁸³ Falk, 116.

⁸⁴ Callender, 79.

⁸⁵ Lev. 25:18: “Wherefore ye shall do my statutes, and keep my judgments, and do them; and ye shall dwell in the land in safety.”

⁸⁶ See Part IV for further elaboration on the limitations placed upon Hebrew masters.

agent,” and that there was no “distinction between the circumstances which constitute a slave and a freeman an agent. They are both the creatures of the principal, and act upon his authority.”⁸⁷ Despite this court’s assertion that the agency laws of the freeman and the Southern slave were the same, in reality they were quite different in the extent to which the master could punish the agent and the extent to which the agent could seek redress for unlawful punishment.

Wheeler notes that because a Southern slave was considered the master’s property, the master could exercise “unlimited power” over the slave.⁸⁸ It is a weak argument indeed to suggest that a white agent during the same time period was the legal property of his master. But was the master’s power really unlimited? Many Southern states enacted laws that limited the types of punishments a master could render to his slave.⁸⁹ However, most scholars agree that these limits were without any real practical effect: “If limitations to [a master’s power] have, at some points, and in some of the [s]tates, appeared to be interposed, it has been found, on a close scrutiny, to be only an appearance, and not a reality.”⁹⁰

⁸⁷ Jacob D. Wheeler, *A Practical Treatise on the Law of Slavery* (New York: Negro Universities Press, 1968) 228. “A slave is one who is in the power of a master to whom he belongs. The master may sell him, dispose of his person, his industry and his labor. He can do nothing, possess nothing, nor acquire any thing, but what must belong to his master” William Goodell, *The American Slave Code* (New York: Negro Universities Press, 1968) 23 (quoting a Louisiana statute, Civil Code, Art. 35).

⁸⁸ Goodell, 155.

⁸⁹ See Part IV for examples of slave laws that, on their face, limit the master’s power to punish.

⁹⁰ Goodell, 155.

In the vitally important matters of absolute purchase, sale, seizure for debt, inheritance, distribution, marriage, (or rather, no marriage,) annihilation of family sanctities, incapacity to possess property, to make a contract, or to receive wages in the appointment of labor, supply of food, clothing, and habitations, we have seen the power of the master every thing, the rights, the protection, the defense, the redress, and the power of the slave, nothing!

The only real limitation to a master's power was that "he had to live under rules designed to protect all of Southern society."⁹¹ For the most part, "Judges refused to interfere with the master-servant relationship if other free persons benefited from a shareowner's actions," but Judges would quickly interfere when the master's actions posed a threat to the protection of the slave system in the South.⁹² For example:

[M]asters could beat their slaves but could not withhold food. People could host parties to distract slaves from daily burdens or to keep slaves busily making quilts or foodstuffs, but they usually could not give slaves drums, horns, or guns. Slave owners could trust slaves to convey and receive certain goods, but they could not ask slaves to whip white trespassers masters could beat their slaves but could not withhold food. People could host parties to.⁹³

Additionally, in Southern society, black agents were restricted from bringing actions against their masters; black agents had no legal method of recourse. The 1856 *Dred Scott*⁹⁴ decision illustrates this principle, holding that a black man could not bring an action against a white master because the Constitution did not grant citizenship to a black man.⁹⁵ There was no set of laws that protected the Southern slave from abuse or mistreatment. State courts and legislatures in the South failed to provide protections for the black minority class.⁹⁶ Thus, in all reality, slave laws in the South failed

⁹¹ Jenny Bourne Wahl, *The Bondsman's Burden: An Economic Analysis of the Common Law of Southern Slavery* (Cambridge: Cambridge University Press, 1998) 8.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ See, e.g., *Dred Scott v. Sandford*, 60 U.S. 393 (1856).

⁹⁵ *Ibid.*, 454.

⁹⁶ See Goodell, 157–58. Goodell suggests that the slave laws were, in fact, elevated above the courts and the legislature, giving a Southern master supreme authority over his slaves.

to impose any real restrictions on a master's power over his agent (slave) other than those societal restrictions that were required to maintain order within the established slave system.

Duration of Servitude in the Old Testament. As previously discussed,⁹⁷ Hebrew slaves were required by law to be released after six years of service: "And if thy brother, an Hebrew man, or an Hebrew woman, be sold unto thee, and serve thee six years; then in the seventh year thou shalt let him go free from thee" (Deut. 15:12; see also Exod. 21:2–3, Jer. 34:13). And, although the law of the jubilee supposedly granted a release to "every man unto his possession" (Lev. 25:10) every fiftieth year, Leviticus 25:44–46 supports the notion that the jubilee release only applied to the Hebrew slave.

On the other hand, the Holiness Code makes it clear that the duration of servitude for a foreign slave (a heathen) could extend for the lifetime of the slave and beyond (Lev. 25:44–46). Accordingly, heathen slaves could be purchased "as bondsmen" or a chattel slaves (Lev. 25:42), and could therefore be passed in perpetuity in the estate of the master: "And ye shall take [your heathen slaves] as an inheritance for your children after you, to inherit them for a possession." (Lev. 25:46). It follows that in order to pass through inheritance, heathen slaves would have been classified as property. There is no indication as to whether the Israelites viewed their heathen slaves as real property or personal property. Nevertheless, heathen slaves were bought and sold on the open market (Lev. 25:42, 45). One assumes the Israelites did not journey to a foreign land simply to purchase foreign slaves. Thus, one can deduce that there was probably some kind of international commerce (or slave trade) that transported foreign slaves to Israelite masters. However, it is debatable just how extensive this slave trade was. Jeremiah 34:8–16, however, suggests that, approximately 600 B.C., foreign slaves were very rare; thus, the

⁹⁷ See Part II.

Israelites had resorted to holding their Hebrew slaves beyond the year of the jubilee.

The Hebrew laws regarding fugitive slaves are not explicit. Nevertheless, they provide some guidance as to how fugitive slaves were treated under the law. There seems to be some indication that a Hebrew slave owner had the right to repossess slaves that had fled from his rightful possession (see, e.g., 1 Sam. 30:15; 1 Kings 2:39). However, as Falk suggests, there is also scriptural support for the notion that “the land of Israel, being a divine domain, was therefore an asylum for fugitive slaves.”⁹⁸ This argument seems impractical because slaves served an important labor function in Israelite society. Slaves had a fair market value and were relied upon for social progress. Nevertheless, the laws regarding the seventh year release and the jubilee release may have decreased the need for a Hebrew slave to flee from his master. The foreign slave, however, did not enjoy such temporary servitude. In any event, it was permissible for a Hebrew master to manumit⁹⁹ his slaves without restriction.¹⁰⁰ Falk even suggests, “we may assume some manumissions to have taken the form of a dedication to God and to have been witnessed by a deed.”¹⁰¹

Duration of Servitude for Southern Slaves. Perhaps the greatest reason American slavery flourished even after the elimination of the slave trade was that slavery continued in perpetuity, thereby allowing Southern masters to increase their slave populations internally rather than having to solely rely on external sources for increase. Southern law and policy makers justified this rule, reasoning that “the hereditary nature of slavery [had] probably been an incident of the institution in every age and among every

⁹⁸ Falk, 121, note 37.

⁹⁹ For a general discussion regarding the structure of the manumission laws in Deuteronomy 15, see Hamilton, 19–31.

¹⁰⁰ See *ibid.*, 117.

¹⁰¹ *Ibid.*

people where the institution [had] been tolerated.”¹⁰² Therefore, issue born to a slave woman was the property of the master and continued to be the property of the legatee in the master’s estate.¹⁰³ Because slaves were considered personal and real property they passed through the master’s will,¹⁰⁵ and if the master had no will through intestate succession.

Many Southern states passed legislation, declaring slaves to be the property of their masters. For example, Virginia passed a law in 1792–1793 in which slaves were adjudged to be part of the “personal estate” of their masters.¹⁰⁶ A 1798 Kentucky statute deemed slaves to be real estate.¹⁰⁷ Louisiana passed a statute in 1806 defining slaves as “real estate.”¹⁰⁸ Although states had legislatively defined black slaves as property, enforcing them as such was altogether another matter.

Relying upon Article IV, Section 2, clause 3 of the Constitution,¹⁰⁹ Congress passed the Fugitive Slave Act of 1793, which authorized the arrest of fugitive slaves who had fled from their masters and prescribed procedure for the slaves’ eventual return to their masters.¹¹⁰ The Fugitive Slave Act of 1850, which

¹⁰² George M. Stroud, *A Sketch of the Laws Relating to Slavery* (New York: Negro Universities Press, 1968), 41.

¹⁰³ Wheeler, 23.

¹⁰⁴ For further information regarding the classification (real or personal) of slave property, see Wheeler, 36–39; Goodell, 23–24.

¹⁰⁵ Wheeler, 37; see also Goodell, 69–76.

¹⁰⁶ See Hurd, 5.

¹⁰⁷ See *ibid.*, 15.

¹⁰⁸ See *ibid.*, 157.

¹⁰⁹ U.S. Const. art. IV, § 2, cl. 3:

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

It is interesting that the word “slave” is inconspicuously left out of this clause.

¹¹⁰ For a brief history of the fugitive slave laws, see Stroud, 110–17.

replaced the 1793 Fugitive Slave Act, essentially increased the powers to apprehend fugitive slaves. Southern states, especially those that bordered the North, demanded some type of enforcement mechanism for apprehending fugitive slaves. Southern masters “recognized that the influence of escapes on those remaining in slavery was considerable.”¹¹¹

Similar apprehensions existed in the South regarding the manumission of slaves. “Although the [Southern] legal system countenanced kindness to slaves, it curtailed masters’ indulgence of their slaves if such behavior infringed on the well-being of the community.”¹¹² In most states, a master was prevented from manumitting his slaves unless legislation permitted doing so. For example, an 1852 Louisiana law permitted a master to manumit his slave “only on condition that [the slave] be sent out of the United States.”¹¹³ An 1834 Alabama statute stated, “County courts may authorize owners for meritorious causes to emancipate, provided that the emancipation shall remove out of the State ‘never more to return.’”¹¹⁴ From the perspective of Southern society, the manumission of slaves would produce unwanted social consequences: “By setting one’s slaves free, one might release an agitator, weaken the profitable system of forced labor, dump a nonproductive individual on the state, or remove the value of slave property from the tax base or the reach of creditors.”¹¹⁵ Although this reasoning seems ludicrous today, it existed in the minds of Southern policy makers and judges.¹¹⁶ Ultimately, holding people

¹¹¹ Larry Gara, “The Fugitive Slave Law: A Double Paradox,” in *The Law of American Slavery*, ed. Kermit L. Hall (New York: Garland Pub., 1987), 230.

¹¹² Wahl, 160.

¹¹³ Hurd, 165.

¹¹⁴ *Ibid.*, 151.

¹¹⁵ Wahl, 160. Wahl suggests that “most manumission laws clearly aimed to deter masters from shifting costs onto the public after previously enjoying the economic benefits of slavery” (161).

¹¹⁶ See Tushnet, 150–53.

as chattel property required Southern masters to claim title not only to the body but also to the soul of the slave¹¹⁷—a despicable proposition.

Property Rights of Old Testament Slaves. Israelite slave law suggests that Hebrew slaves had limited property rights.¹¹⁸ Even while the Israelites were enslaved in Egypt they were allowed to own property: “And the Lord shall sever between the cattle of Israel and the cattle of Egypt: and there shall nothing die of all that is the children’s of Israel” (Exod. 9:4). The Israelites were able to own cattle during their enslavement in Egypt. After the Code of the Covenant was received, Hebrew slaves continued to have some property rights. A Hebrew slave who was heavily in debt and had become enslaved to a creditor could either be redeemed by a relative “or if he [was] able, he [could] redeem himself” (Lev. 25:49). This suggests that Hebrew slaves were not prohibited from owning property even during the time of servitude.¹¹⁹ Additionally, a Hebrew master was commanded to give of his personal property to a slave upon the slave’s release:

And when thou sendest him out free from thee, thou shalt not let him go away empty: Thou shalt furnish him liberally out of thy flock, and out of thy floor, and out of thy winepress: of that wherewith the Lord thy God hath blessed thee thou shalt give unto him. (Deut. 15:13–14)

It is possible that the master would have been at liberty to distribute some of his property to his slave prior to the slave’s release.¹²⁰

¹¹⁷ See Goodell, 69.

¹¹⁸ See, e.g., Ezek. 46:17 (giving a servant a life interest in a gift made by a prince); Prov. 17:2 (stating the possibility that a servant can have a part in the inheritance of his master); Prov. 29:21 (suggesting that a master who raises a servant from childhood has a duty to provide for the servant).

¹¹⁹ See Falk, 116.

¹²⁰ The author of Ecclesiastes 10:7 states “I have seen servants upon horses, and princes walking as servants upon the earth.” If this scripture is to be taken literally, it suggests that there may have been some Israelite slaves that owned horses or other articles of personal property.

Neither the Code of the Covenant, the Holiness Code, or the Deuteronomic Code indicates whether foreign slaves were entitled to own property. Because the Israelites themselves had been granted the privilege of owning and acquiring personal property while enslaved in Egypt, it is likely that they would have continued this practice to a limited extent with their own foreign slaves.

Property Rights of Southern Slaves. Southern slaves laws, on the other hand, prevented slaves in America from owning any property, real and personal. This rule was established in both the Southern common law as well as in Southern legislative acts. For example, in *Brandon et al. v. Planters' and Merchants' Bank of Huntsville*, the court held that a slave was prevented from acquiring or possessing property.¹²¹ An 1806 Louisiana statute states, "As the person of a slave belongs to his master, no slave can possess anything in his own right or dispose in any way of the produce of his industry without the consent of his master."¹²² In the event that a slave was able to acquire any property, the property instantly belonged to the master.¹²³ In some Southern states, it was unlawful for the master to even allow the slave to be hired out for the personal gain of the slave. For example, in Virginia, if the master permitted "his slave to hire himself out, it is made lawful for any person and the duty of the sheriff, &c. to apprehend such slave, &c.; and the master shall be fined not less than ten dollars nor more than thirty."¹²⁴ The purpose of the Southern slave laws regarding property, both the laws defining slaves as property and the laws preventing them from acquiring it, were calculated to keep the slave in complete subjection to the master. The master was

¹²¹ Wheeler, 6.

¹²² Hurd, 157. Other states enacted similar laws. For example, a law passed in 1740 in South Carolina provided, "It shall not be lawful for any slave to buy, sell, trade, &c. without a license from the owner" (Stroud, 30).

¹²³ Stroud, 29, 31.

¹²⁴ *Ibid.*, 31.

elevated above the law and was the supreme authority over his slaves—able to do with them as he pleased.

Treatment of Slaves

Old Testament Treatment of Slaves. Modern knowledge of how Israelite masters, in fact, treated their slaves, both Hebrew and foreign, is extremely limited. What is known, however, is how the Egyptian masters treated their Israelite slaves and the laws contained in the Covenant Code, the Holiness Code, and the Deuteronomic Code regarding the treatment of slaves.

The Israelites were treated very harshly by their Egyptian masters: “And the Egyptians made the children of Israel to serve with rigour: And they made their lives bitter with hard bondage, in mortar, and in brick, and in all manner of service in the field: all their service, wherein they made them serve, was with rigour” (Exod. 1:13–14). The account of Moses killing the Egyptian who was caught “smiting an Hebrew, one of his brethren” (Exod. 2:11) is also illustrative that Egyptian masters beat and whipped their slaves into submission.

The Hebrew Law regarding the treatment of slaves suggests that the Israelites did not forget their misery under their heavy-handed Egyptian masters. In general, the Israelites were instructed not to “oppress one another” (Lev. 25:17): “Thou shalt not rule over [thy slave] with rigour; but shalt fear thy God” (Lev. 25:43). Hebrew masters were not to treat their slaves as to incite fear in them; that was the job of Jehovah – their supreme master. This general principle was applied in several specific instances. One law provided that if a master smote his slave, and the slave died within two days, the master would be put to death (see Exod. 21:12, 20–21). The presumption was that proximate cause did not exist after the two-day period lapsed.¹²⁵ If a master put out the eye of his slave, the slave would be set free without any compensation to the master (Exod. 21:26). The same was true if a master knocked

¹²⁵ See Falk, 116.

out his servant's tooth (see Exod. 21:27). Finally, the requirement that a master freely impart of his substance to a departing Hebrew slave (see Deut. 15:13–15) suggests that the ultimate objective of the biblical law was not subjection to the master but liberation from servitude. A Hebrew master “could beat his slave and punish him for alleged misconduct,”¹²⁶ but, because the slave would most likely return to equal standing in the community with the master after the slave's release, it was in the master's best interest to treat his slaves kindly. There was no social or economic pressure to do otherwise, at least not ideally. This ideal may not have always reflected reality.¹²⁷

Southern Treatment of Slaves. Southern society saw a great contradiction in the laws regarding the treatment of slaves and the actual treatment of slaves. Many Southern states passed laws that, on their face, required masters to treat their slaves humanely. For example, a 1799 Tennessee law prescribed the death penalty for any person who “willfully or maliciously kill[ed] any negro . . . [and] shall be deemed guilty of murder, as if such person so killed had been a freeman.”¹²⁸ However, a proviso is added to the act, stating, “this act shall not be extended to any person killing any slave in the act of resistance to his lawful owner or master, or any slave dying under moderate correction.”¹²⁹ The Georgia Constitution contained a similar provision.¹³⁰ How moderate was “moderate correction”? Most likely, very severe treatment was justified as moderate correction.¹³¹

¹²⁶ Ibid., 115.

¹²⁷ See Neh. 5:1–13 (suggesting that servitude was often harsh and definitely not the desired way of life even for the poor, indebted Israelites).

¹²⁸ Stroud, 23; see also Hurd, 150 (describing a similarly drafted Alabama statute enacted in 1819).

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ In 1740, South Carolina passed a law prohibiting a master from willfully cutting out his slave's tongue, putting out the slave's eye, castrating, scalding, burning, or doing any other form of cruel punishment to the slave, “other than by whipping, or beating with a horsewhip, cowskin, switch, or small stick, or by putting irons on, or confining or imprisoning such slave” (Goodell, 159–60).

It may be helpful to examine several more typical state statutes that, on their face, provide some protection to the slave, but in reality leave the door open for master brutality. An 1852 Alabama law provided that “[t]he master must treat his slave with humanity and must not inflict upon him any cruel punishment.” Yet, the master was also permitted to “enforce obedience on the part of the slave to all his lawful commands.”¹³² A Louisiana statute stated, “The slave is entirely subject to the will of his master, who may correct and chastise him, though not with unusual rigor, nor so as to maim or mutilate him, or to expose him to the danger of loss of life, or so as to cause his death.”¹³³ Here again, if what is “unusual” is defined by the customary norm, then the slave could be treated extremely harshly and it would not be done with “unusual rigor.”¹³⁴

In addition to the law not providing adequate protection against master abuse, the law also failed to protect a slave against cruel and unusual criminal punishment. Shaw contends that, in general, slaves were penalized much more severely than their white counterparts.¹³⁵ He refers to the extreme example in Virginia where there were three crimes (treason, first degree murder, and arson) for which the death penalty was invoked on a white man but sixty-eight crimes for which a slave could be put to death.¹³⁶ There were two principle reasons for this oddity:

First of all, it was one of the techniques for keeping slaves in absolute subjection to the white community and imbuing them with a spirit of docility and instant obedience. Secondly, for persons already bound to life-long servitude, imprisonment by itself was not a particularly strong deterrent.¹³⁷

¹³² Hurd, 153.

¹³³ Goodell, 161.

¹³⁴ For a more detailed explanation of this argument, see Goodell, 161–62.

¹³⁵ Shaw, 175–76.

¹³⁶ *Ibid.*, 176.

¹³⁷ *Ibid.*

However well intentioned the Southern slave laws may have been in protecting the slave from mistreatment, the real evil of the system was its inability to enforce the laws.¹³⁸ Stroud asserts that this situation arose because black slaves were not permitted to testify against their white masters at trial.¹³⁹ Indeed, the possibility of convicting a white master in the South was very slim if all black testimony was excluded from trial. In the end, state statutes failed to protect slaves from mistreatment by their masters.

Conclusion

Modern scholars know much more about the slave laws in the American South than they do about the slave laws in ancient Israel. Though a sketchpad of the Israelite slave system is available in Old Testament text, it is still difficult to ascertain exactly how biblical masters and slaves related to one another on a daily basis. It is therefore inappropriate for modern readers to apply modern notions of slavery to biblical texts. How should modern biblical readers understand slavery in the Bible? Need modern readers ignore the biblical institution of slavery altogether? Such a question should be emphatically answered in the negative. The reality is that slavery did exist and probably flourished under the Law of Moses. Slavery was most likely a dominant aspect in biblical society.

But, biblical slavery can be distinguished from Southern slavery in important ways. The Southern slave system negated the existence of the person, evidencing a total devaluation of humanity, whereas the Old Testament slave laws established a threshold level of humanity and dignity, which the Israelites were obligated not to cross. The check that prevented the Israelite slave system from paralleling the Southern slave system was the realization by

¹³⁸ See Stroud, 20.

¹³⁹ *Ibid.*

each Hebrew master that they too were slaves—slaves to their God: “Behold, we are servants this day, and for the land that thou gavest unto our fathers to eat the fruit thereof and the good thereof, behold, we are servants in it” (Neh. 9:36). God had given the Israelites the land; therefore, the land belonged to the Lord—their master: “Behold, as the eyes of servants look unto the hand of their masters, . . . so our eyes wait upon the Lord our God until that he have mercy upon us” (Ps. 123:2). Ultimately, Israelite slavery, if practiced according to divinely established law, was more than an economic social structure; it was a daily reminder of an Israelite’s identity—for the slave and the master.