Joseph C. Miller Memorial Lecture Series

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Moral Dilemmas in Slave-Owning Societies: Evidence from Early Legal Texts

Throughout much of human history, slavery was a widespread and accepted social fact. Early laws from Mesopotamia, India, China, and Rome all regulated forms of sale and manumission, restricted slaves' rights and capacities, and drew distinctions between different forms of status. The law makers were trying to clarify and regulate the many complicated issues that arose from relations of slavery, both the enslavement of war captives and institutions of debt bondage. But the laws also make it clear that status boundaries were frequently uncertain and people could move between different states of freedom and unfreedom. Not all laws used a single concept of slavery; some made distinctions between slaves, concubines, and types of bound labour; while others used a simple category without being at all specific about who it encompassed.

Law is something that creates order by, among other things, putting people and things into categories, so that relations among them may be clarified (Dresch 2012; Pirie 2013). Yet none of the early laws on slavery attempted to do this in any comprehensive way. Even more puzzling, when they did, the definitions they offered were often simplistic. In imperial Rome, which had an immense slave population, many of whom moved on to become freedmen, neither fully free nor slave, the laws simply declared that everyone was either a slave or not. This was patently not the case. Similarly, Islamic lawyers defined freedom by declaring that a person was free if he or she was not a slave. This hardly clarified anything.

Asking what might account for this apparent reluctance to create more comprehensive definitions, I suggest in this paper that the basic state of chattel slavery arose widely without the need for legal intervention. In the aftermath of wars and conquest, captives were carried away, physically removed from their homes, their circle of kin, and networks of social support and, in the societies of their captors, denied status and rights. None of this needed any legal definition, just the physical

act of capture, transport, and confinement. These were the conditions under which people could be treated as property, setting up the idea of a simple binary between free and unfree. But the status of slavery was not one that endured. Except in extreme cases, such as the plantations of the Caribbean and North America, where slave-owners took extensive measures to segregate their populations, many slaves built up social relations within the populations of their captors. They formed emotional ties, produced children, and developed useful social skills, and it became difficult to continue to treat them merely as property. And most societies felt that people in debt bondage should have rights to manumission.

The law-makers were generally addressing these sorts of situations, but in doing so, they also had to confront the question of what it meant to treat other people as property. Resorting to simplistic binaries may have been the tactic of the privileged and powerful, who wanted to maintain a body of bound labourers to whom they owed few, if any, duties. But confirming that some people were little more than chattels raised fundamental questions about what sort of society they lived in and who they were as civilized people. It may be difficult, now, to imagine a world in which slavery was not morally condemned, but we should also not set aside evidence of historic moral dilemmas. What the laws often reveal, I suggest, are people struggling to conceptualise different, and often cross-cutting, ideas about property, dependence, and freedom, as well as the morality of their own social structures.

In what follows, I examine – necessarily very briefly – laws on slavery from Mesopotamia, Israel, China, India, classical Rome, and the Islamic world. My intention is not so much to explore the social and economic reality of slavery as to ask about the ideas that people held. What do their rules and categories tell us about their moral worlds and are there recurrent themes and ideas within them? And what conclusions can we draw from the fact that they found it so difficult to define what slavery actually was?

Mesopotamia

The earliest known written laws date from the third millennium BC, when the kingdom of Ur dominated the fertile region of Mesopotamia. Its rulers presided over an empire of city states and flourishing trading networks and it was here that scribes first developed cuneiform writing. Among the thousands of clay tablets to have survived, several record fragments of laws. Others are legal documents, such as contracts, and many of these refer to slaves.[1] Tablets from Ur III, dating to the last quarter of the third millennium BC, indicate that a number of temples, along with the king's palace, had built up extensive estates and owned large numbers of slaves. They also record that prisoners of war were being brought in to replace existing slaves who had been drafted into the army. Warfare was common among the Mesopotamian cities and many of their slaves were probably war-captives. Some may have been taken from distant regions – the word for "slave" originally meant man or woman of the mountains – but it is evident that some were eventually integrated and trusted enough to fight for their captors.

The Mesopotamian documents indicate several different forms of servile status, for which the scribes used different terms. These included war captives, people undertaking forms of corvée or bound labour, penal slaves, and people in debt bondage. The most general words indicating slavery could also be used to describe the relationship between an ordinary person and their king, however, or even the king and a god. As a result, relations of economic dependence and chattel slavery are not always easy to disentangle from more metaphorical relations of dependence. Nevertheless, it is clear that chattel slavery was widespread and that debt and debt bondage had accompanied the development of trade and the surpluses it generated, along with the invention of money.[2] Several documents record the sale of family members, presumably by des-

1 There is considerable literature on slavery in early Mesopotamia. Details are mostly drawn from Siegel's (1947) analysis of court records, Reid's (2014) comprehensive study, and Verderame's (2018) overview.

2 David Graeber (2011) gives a sophisticated account of how these dynamics developed in complex societies.

perate peasants who no longer had the resources to maintain them. Debt bondage was a different form of slavery from war capture and generally not permanent. Some rulers declared the general release of people in bondage and several documents record a slave's claim to freedom on the basis that he or she had earned it, presumably by having worked for long enough to pay off the underlying debt. This type of dependence was different from the state of outright chattel slavery, which resulted from capture or birth to slave parents.

Slaves made up a significant proportion of the workforce the Mesopotamian kingdoms of the third and second millennia BC, and the complications that arose from their status are addressed in the surviving laws, as well as a substantial proportion of the court records. A set of laws created by Ur-Namma, ruler of Ur from around 2112 BC, includes several rules on the complications that arose from slave-ownership, including the inheritance of slaves; appropriate responses in the event of escape, hiding, or detention; children of mixed marriages; and injuries by or to slaves (Roth 1995, 13–22). The later laws of Lipit-Ishtar also address slavery (Roth 1995, 23–35). But the most complete set of laws dates from the time of Hammurabi, who ruled Babylon and much of the surrounding region in early second millennium BC (Roth 1995, 71–142). Engaging in constant raids and warfare, the king conquered a vast area and turned Babylon, his capital, into a prosperous city. Many of the slaves in the city were, doubtless, war captives. Towards the end of his life, Hammurabi commissioned a grand law stone, on which over two hundred and eighty laws follow a lengthy introduction, in which the king describes his conquests and declares that he is ensuring justice for all his people. Among these laws, rules on slavery are scattered. Some refer to slaves as the property of their masters. For example, if a slave is killed or injured, the person responsible must pay compensation to the slave's master (rules 199, 219, 231).[3] It is evident that slaves were regarded as property. Further rules make it an offence to assist a runaway slave, another to shave off his identifying mark (rules 16–20, 226). They also indicate that temples kept registers of slaves, presumably because they

[3] I follow the standard numbering for the rules, used by Roth (1995) and others.

were counted as part of the temple's estate. But it is also evident that slaves could, in some circumstances, integrate into Babylonian society. One law provides that the child of a female slave and her master could be adopted by the master and would then be treated as his heir alongside the master's other children (rules 170–171). And, it continues, even if the master does not choose to do this, on his death both the slave and her child are to go free. There were, that is, relatively quick routes out of slavery for some.[4] Other laws limit the period of debt bondage to three years (rule 117–119). One provides that if someone buys a slave outside the city, who subsequently proves that he or she was originally a Babylonian citizen, then the purchaser has to let the slave go free (rules 280–281). Babylonians could not sell their fellow citizens into slavery, that is, and could only keep them in debt bondage for a limited period.

In Mesopotamia slavery was a social fact, then. The populations of conquered cities were captured, transported to the homes of their conquerors, reduced to a state of dependence, and treated as the property of their new masters. This was chattel slavery. It was also a fact that poverty led some citizens into debt bondage. People could effectively sell themselves or their children, to work off a debt. But the Babylonian law-makers recognized that ties of affection could build up between slaves and their masters, they placed limits on debt bondage, and they stipulated that Babylonians, themselves, could not be bought and sold like outsiders.

Here, then, in some of the earliest societies to make written laws, slavery was commonplace. Much of it was simply the result of warfare and debt and did not need legal definition. The laws and legal documents were primarily trying to deal with the resulting complications. But the Babylonian law makers were also concerned to protect their citizens differently from outsiders. They were not exactly defining what it was to be free, but they were marking out what it meant to belong. To be a Babylonian citizen meant having the full protection of the king's justice and protection from enslavement by your fellow citizens.

4 We might also think of the *Iliad* (19.295–300), reflecting Greek society of a slightly later period, in which Patroclus promises to make Achilles marry his concubine, Briseis.

The Pentateuch

Hammurabi's empire did not long survive him, but his laws enjoyed a much longer life. Even after the fall of Babylon, scribes used them as templates, probably when they were learning their craft, and the rules influenced the contents of several subsequent laws (Roth 1995). Among these were the laws of the Pentateuch, which took their final form around a millennium later, in the lands of Israel and Jordan. It is difficult to take the early books of the Old Testament as evidence of any social practices, given the uncertainty that surrounds their creation.[5] They were probably put together over several centuries and quite possibly incorporated rules and texts from earlier periods, when the Israelite tribes had not yet come together in the kingdoms of Saul, David, and Solomon. Still, it is at least possible to draw some conclusions about the ways in which the Israelites thought about slavery.

The first five books of the Old Testament contain numerous references to slaves and it is evident that they were common among both Israelites and their neighbours. The *Book of Exodus* describes how Moses led the Israelites from captivity in Egypt and how, when they had reached the promised land, God summoned Moses and gave him the ten commandments. He also gave Moses a set of laws, now known as the *Mishpatim* (Exodus 19–23). These laws start with rules on slavery:[6]

> 2 If you buy a Hebrew [Israelite] servant, he is to serve you for six years. But in the seventh year, he shall go free, without paying anything.
> 3 If he comes alone, he is to go free alone; but if he has a wife when he comes, she is to go with him.
> 4 If his master gives him a wife and she bears him sons or daughters, the woman and her children shall belong to her master, and only the man shall go free.
> 5 But if the servant declares, 'I love my master and my wife and children and do not want to go free,'

[5] Barton (2019, Ch. 1) gives a useful summary of what we know of the origins of the Pentateuch.

[6] The translations are based on the *Revised Standard Version of the Bible*.

> 6 then his master must take him before the judges. He shall take him to the door or the doorpost and pierce his ear with an awl. Then he will be his servant for life. (Exodus 21)

These rules obviously refer to people in debt bondage, Israelites who had fallen into poverty and sold themselves or members of their family into slavery. The laws restrict the length of time someone could remain in bondage, but they also recognize that at the end of this time some might consider that their prospects of becoming self-sufficient again were slight and that they would prefer to remain with their master. The presumption was, that is, for release, which is why anyone who chose to remain in bondage had to be marked. Different rules applied to women, by implication concubines. The *Mishpatim* continues:

> 7 If a man sells his daughter as a servant, she is not to go free as male servants do. But,
> 8 If she does not please the master who has selected her for himself, he must let her be redeemed. He has no right to sell her to foreigners, because he has broken faith with her.
> 9 If he selects her for his son, he must grant her the rights of a daughter.
> 10 If he marries another woman, he must not deprive the first one of her food, clothing and marital rights.
> 11 If he does not provide her with these three things, she is to go free, without any payment of money. (Exodus 21)

If women were sold as concubines, that is, they did not go free after six years, but they had to be treated reasonably. They could not be sold on to anyone else and had to be properly maintained. The implication is that they were distinguished, in this way, from other slaves, presumably war captives, who could more readily be bought and sold.

In the *Book of Leviticus* we find more explicit rules that slavery, as opposed to debt bondage, should be limited to non-Israelites:

> 44 Your male and female slaves are to come from the nations around you; from them you may buy slaves. […] 46 […] but you must not rule over your fellow Israelites ruthlessly. (Leviticus 25)

Chattel slavery was restricted to outsiders, then. *Leviticus* also provides that Israelites in debt-bondage had rights to redemption, although these rules are not as generous as those in *Exodus*. It directs that:

> 39 If any of your fellow Israelites become poor and sell themselves to you, do not make them work as slaves.
> 40 They are to be treated as hired workers or temporary residents among you; they are to work for you until the Year of Jubilee [50 years].
> 41 Then they and their children are to be released, and they will go back to their own clans and to the property of their ancestors.
> 42 Because the Israelites are my servants, whom I brought out of Egypt, they must not be sold as slaves. (Leviticus 25)

The *Book of Deuteronomy* goes even further, with a requirement that Israelites give refuge to slaves fleeing from elsewhere:

> If a slave has taken refuge with you, do not hand them over to their master. Let them live among you wherever they like and in whatever town they choose. Do not oppress them. (Deuteronomy 23, 15–16)

Debt-bondage was, then, distinct from the enslavement of war captives. For those forced into bondage, their situation must have been bad enough, but at least they had rights to redemption. And the laws made it clear that they should not be treated "ruthlessly."

During the first millennium BC, the lands of Israel and Jordan were the scene of frequent warfare and conquest, as the early books of the Old Testament make clear. Both chattel slavery and debt bondage were obviously common throughout the region (Finley 1964). In this context, the authors of the Pentateuch were primarily concerned with the ways in which members of the Israelites' tribes treated one another. The ritual obligations and dietary restrictions that run throughout these books

were defining what it meant to be an Israelite, scattered as they still were among different tribes and kingdoms. It was their laws and ritual practices that distinguished them from the surrounding gentile populations and the rules on slavery were part of this. By limiting the forms of dependence that Israelites could impose on one another, the laws helped to define what it meant to belong.

Like Hammurabi, then, the Israelites did not feel the need to define what slavery was. It was a social fact. But they were concerned to distinguish chattel slavery from debt bondage and to limit it to outsiders.

China

During the same period, but much further to the east, Chinese rulers were beginning to write down their laws. What is known as the Warring States period, roughly the fifth to third centuries BC, was a time of considerable instability, when the population was divided among different rulers, who were often at odds with one another. Those who did manage to establish some sort of stable government wrote down lists of offences and punishments on long thin bamboo strips. In form, at least, law was a matter of discipline, something to be imposed and enforced through punishment. Unlike Hammurabi's code, the Chinese laws did not attempt directly to regulate relations among their citizens. Nor, like the laws of the Pentateuch, were they trying to guide people towards ritually pure lives. Rather, the Chinese rulers took the view that in order to establish stable polities, they needed to impose order, top down, through a system of crimes and punishments.

There is evidence that war captives were undertaking slave labour by the Warring States period (Pulleyblank 1958). There is also evidence of the sale and purchase of concubines and that people were selling their children at times of famine. This was the Chinese form of debt bondage, almost certainly the result of the social instability generated by repeated warfare.

It was under the Qin, who rose to power in the fourth century BC, that evidence of penal slavery first emerges. While the Qin still ruled lit-

tle more than a state in the west of China, their rulers took advice from a famous scholar, Lord Shang. He told them that China's disunity was attributable to the gap between how people behaved and what the law provided and advised that a harsh new legal regime was the answer. Under his guidance, the Qin expanded their bureaucracy, introduced systems of census taking and household registration, and promulgated a host of new laws (Liu 1998, Caldwell 2018). Documents recovered from the water-logged graves of officials indicate that local magistrates consulted dozens of statutes on a daily basis.[7] These were supposed to be enforced through an extensive system of criminal punishments, ranked according to the severity of the crime. The lowest penalties were fines; next was banishment; then light penal labour as a guard, watchman, or servant; next was more severe penal labour as a "firewood-gatherer" or "rice-sifter," for men and women respectively; next was the most severe form of penal labour, as an "earth-" or "grain-pounder"; and finally there was the death penalty. Many of those convicted of crimes were, that is, sentenced to labour, effectively made into slaves of the state. One statute also allowed officials to arrest the wives and children of the most egregious convicts and sentence them too, albeit to a lesser degree. This rule may have stemmed from the earlier practice of degrading the entire family of a disgraced noble, but it was now extended to convicts of all social classes (Pulleyblank 1958, 197). The principle that children should work as slaves went some way to establishing a hereditary slave class, although this never seems to have become entrenched.

After the Qin defeated the last of their major rivals in 221 BC, they established an empire and embarked on a series of ambitious state-building projects. Their penal system must have been producing large numbers of labourers, which enabled them to construct a large wall to the north and build roads, canals, bridges, and palaces. But these projects required considerable material resources, as well as labour, and put a great strain on the peasantry. Lord Shang's anti-Confucian views, to

[7] Lau and Staack (2016) provide a translation and discussion of a selection of documents from the Qin period, while Barbieri-Low and Yates (2015) describe the discovery of a grave and translate and analyse a number of legal documents from the later Han period.

which the Qin subscribed, also aroused hostility among the nobility. In 207 BC they incited large numbers of discontented peasants to rebel and brought down the government.

The Qin were succeeded by the Han, who ruled for around four centuries. The new rulers criticized the harsh laws of their predecessors, freed Confucian scholars, and made much of the merciful nature of their regime and its laws. But in practice, they only gradually relaxed the harshness of the Qin laws and, although they abolished the practice of arresting a convict's family members, they later changed their minds and reinstated it (Pulleyblank 1958, 202). There is evidence of slave markets during this period, in which children were "penned like cattle," and that high-ranking officials amassed hundreds of household slaves (Pulleyblank 1958, 201–202). Records of legal cases indicate that local officials often had to make decisions about slaves who had absconded, been freed, been beaten to death, or who had entered into sexual relations with their owners (Barbieri-Low and Yates 2015).

Surviving documents also indicate that the Chinese were using a single term, *nu*, to refer to different sorts of slaves, including convicts, their relatives, war captives, and those in debt bondage. But the furthest the law-makers went in terms of a definition was to describe slaves as "base," or "ignoble," compared to the normal population, who were "good." There was no concept of personal freedom in traditional China. All citizens existed in a web of social obligations and the laws confirmed that everyone had extensive obligations towards parents, teachers, government officials, and above all, the emperor. And the recipients of these obligations had corresponding duties. "Good" was, therefore, a very general concept, which seems to have meant little more than "not enslaved" (Pulleyblank 1958, 204–205). The idea that slaves were "base," on the other hand, seems to have suggested that convicts were venal by nature, having offended against the state or being captured barbarians, which may have helped to justify treating their descendants as a class apart. Of course, many of those in debt bondage had simply had the misfortune to be sold by their fathers or husbands at times of extreme hardship (Pulleyblank 1958, 207).

But some people were already asking whether Chinese citizens should ever be treated as property. One third-century BC scholar suggested that only government officials should be allowed to keep slaves, not merchants or other non-officials. This was because, as he put it:

> Although slaves are base, they all contain the five constants (the primary human attributes). They were originally the 'good' people of the sovereign. Is it not wrong that they should be attached to the households of 'small men' to serve at their bidding, so that they fall into pitiful extremities and suffer injustice without any means of seeking redress? [...] Those whose business it is to govern men, they should keep slaves. Farmers, artisans, merchants, and those who obey orders are all those whose business it is to labour and work themselves and to be ruled by others; they ought not to keep them. (*Shu kan*, quoted in Pulleyblank 1958, 217–218)

In this passage, the writer was primarily concerned to distinguish state officials from other citizens, but he was also conceptualizing a minimal sense of freedom, or rights, which belonged to all Chinese citizens. This would have distinguished Chinese citizens in debt bondage and even penal slaves from "barbarian" captives, undermining the simple base-good distinction.

One Han document complicates the categories even further by referring to slaves as just one class among the "lower elements of society." It records the decision of a magistrate who referred to these elements as juvenile delinquents, servants of market traders, male slaves, bond servants, and foreign wage labourers, while black market traders, the homeless, the destitute, and male prostitutes formed an even lower class (Barbieri-Low and Yates 2015, 99–100). One Qin document made clear that a concubine might marry her master and inherit his property, although there was some discussion in that case about whether her slave status endured after her marriage (Lau and Staack 2016, 188–210). Chinese society was obviously becoming elaborately stratified and some slaves were regarded as higher in status than other "lower" elements, while concubines could, at least arguably, change their status on marriage.

After the Han dynasty fell in AD 220, there followed another period of conflict, before the short-lived Sui regime. Finally, the founders of the Tang dynasty managed to centralize power and established a vast empire in the late sixth century, which endured for the next three hundred years. By now, the practice of enslaving the wives and children of convicts had been banned in all but a handful of cases (Pulleyblank 1958, 203). But practices of penal enslavement, the capture of prisoners during warfare, and the sale of family members for economic reasons continued. Early in their regime, the Tang emperors created an immense legal code, which included a number of rules on slavery (Johnson 1979, 1997). Although these did not provide any comprehensive definition, they insisted, more than earlier laws, on an explicit distinction between slaves or "base people" and normal or "good people." This was confirmed by the rules on offences and punishments. Slaves and their family members frequently appear among the categories of people who could be punished, either to the same degree as ordinary people or more harshly (Johnson 1979, 28–29, art. 47). Other laws draw a distinction in terms of the wrongs that could be committed against them. The kidnapping, coercion, or sale of an ordinary person was a serious crime, for example, but it was theft to kidnap a slave, an offence against the slave's owner (explained in the commentary on art. 18).

The Tang lawmakers repeatedly insisted on the fact that slaves were "the same as property." But the case law indicates that those in debt bondage were not regarded as true slaves. One judge explained, for example, that a "good" woman sold into slavery by her father retained her status as "good" and the purchaser could not re-sell her as if she were "base" (Pulleyblank 1958, 207–208). Debt bondage was now being clearly distinguished from chattel slavery. But there were evidently people with intermediate status, between slaves and "good," and the Tang laws were not entirely consistent in this regard. They refer to bound retainers, who could be in the service of either government officials or private individuals, and these retainers were, in turn, classified into different categories, depending on their duties (art. 28). The laws further provide that they could be transferred to a new master, but could not be sold (explained in the commentary on art. 292.4). Other works from

this period also refer to a class of freed slaves, who retained obligations to their former masters (Pulleyblank 1958, 215–216; Lau and Staack 2016, 61).

The status of these different Chinese slaves and retainers was much more complicated than the simple binary slave–good would suggest. So why did the Tang laws insist upon it and state that all slaves were property? The basic term for slave, *nu*, seems originally to have applied to convicts, who were treated as little more than property, providers of slave labour. But by the Tang period those in relations of dependence had a multitude of different rights and duties. As in Mesopotamia and among the Israelites, slavery had emerged without the need for any laws. But as Chinese society became more complex and stratified, types of dependence multiplied and some people insisted that those in debt bondage, and even penal slaves, should have at least some rights. The lawmakers were trying to bring order to a developing social hierarchy and it may have suited the government and its officials to retain unfettered control over a class of slave labourers and domestic servants. This may be why the laws retained the simplistic binary between slaves and ordinary citizens and ignored, at least in definitional terms, the resulting complications.

India

The rules on slavery found in the earliest Indian legal texts are very different from those in the Chinese laws. By the time the Tang emperors established their regime in China, Hindu *brahmin*s had collated centuries of ritual and other learned texts into sets of laws. These were the *dharmaśāstra*s, the oldest of which, commonly known as the *Law Code of Manu*, was probably compiled in the second century of the common era (Olivelle 2004).

The *Law Code of Manu* starts with an introductory passage, which presents a mythical account of how the laws had come to be made, having been dictated by the divine creator to his son, Manu, and thence passed down through lines of transmission to the current author. Much

of the text is descriptive and general, discussing moral issues and general principles of behaviour. In some ways like the biblical laws, Manu specifies the duties and status of all those who adhere to a single religion, in this case the wisdom of the *Vedas*, as explained by the *brahmins*, those we would now call Hindus. But their duties varied dramatically, depending upon caste, gender, stage in life, and marital position.

The *dharmaśāstras* follow older ritual texts in presenting a scheme of four basic castes. At the top are the *brahmins*, the ritual specialists, then the *kshatriya*, the warriors and kings, then the *vaiśhya*, peasants and artisans, and lastly the śū*dra*, servants. There were also people who did not fit within this framework, the outcastes, who included many of the indigenous populations of northern India. Different laws applied to the different castes, but the majority of the text concerns the duties of the *brahmin*s and *kshatriya*. Both had extensive ritual obligations and the *brahmins*, in particular, had to observe complicated rules of ritual purity, while the kings had to follow detailed laws when administering their domains and resolving legal disputes. The rules for the *vaiśhya* and śūdra are much briefer. Both had to be diligent in pursuing their allotted occupations and carrying out their daily tasks and the main duties of the śūdra were to act as servants for the higher castes:

> The king should make *vaiśhya* pursue trade, moneylending, agriculture, and cattle herding, and make śūdra engage in the service of *brahmins*. (Manu 8,410)[8]

Later, the text states that the śūdra were born to do slave labour. While a *brahmin*, it says, must support the *kshatriya* and *vaiśhya* in their occupations, he commits a crime if he forces a fellow *brahmin* into slave labour:

> He may, however, make a śūdra, whether he is bought or not, do slave labour; for the śūdra was created by the self-existent one solely to do slave labour for the *brahmin*. (Manu 8, 413)

8 The extracts follow Olivelle (2004).

And:

> Even when he is released by his master, a śūdra is not freed from his slave status: for that is innate in him and who can remove it from him? (Manu 8, 414)

These laws suggest that slaves were members of the śūdra caste and that all śūdra were slaves. It was an inherited status. But, probably recognizing a more complex social reality, the text goes on to describe seven types of slave. A slave, it says, could be:

> a man captured in war, a man who makes himself a slave to receive food, a slave born in the house, a purchased slave, a gifted slave, a hereditary slave, and a man enslaved for punishment. (Manu 8, 415)

The idea that someone could become a slave through self-sale, effectively debt-bondage, or else by way of punishment contradicts the idea that occupation and social status were intrinsically tied to caste and that it was the *dharma* of the śūdra (alone) to work as slaves. The authors of the *Law Code of Manu* also dealt with the sorts of complications that must have arisen from the status of slavery, including mixed marriages (which were problematic), ownership of children (complicated), whether slaves could give testimony in court cases (in some circumstances), and whether *brahmins* could accept food served by slaves (yes).

Complex relations of servitude and dependence must, in practice, have emerged as Indian societies became more prosperous, urbanized, and stratified. To add to the complications, the rules also make it clear that wives, sons, pupils, and younger brothers, even of high caste men, were in some ways analogous to slaves. One rule provides that:

> When they misbehave, a wife, son, slave, pupil or younger brother may be beaten with a rope or a bamboo strip on the back of their bodies, but never on their head. (Manu 8, 299–300)

And, like slaves, wives and sons could not own property:

> Wife, son, and slave – all these three [...] are without property. Whatever they may earn becomes the property of the man to whom they belong. (Manu 8, 416)

Unlike the Mesopotamian and Biblical laws, then, the *dharmaśāstra*s were concerned to establish status differences within a single society, rather than marking out citizens from outsiders. Manu insists repeatedly on the differences of status between the castes and their consequences. Indeed, it seems to be one of the purposes of the text to naturalize and entrench them. But it also appears as if the authors were still in the process of consolidating the differences, imposing a neat social hierarchy onto more complicated social relations. In the process, the status of slavery, which we can assume was a social fact, arising largely through capture, poverty, and indebtedness, was projected onto the whole of the śūdra caste.

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These examples from Mesopotamia, Israel, China, and India indicate that the status of slavery arose widely without any need for laws or legal definitions. Most frequently, it resulted from capture and debt bondage, along with purchase and, especially in the case of China, punishment. But the status of slavery gave rise to practical problems, which the laws were trying to address. And behind them were often larger projects and purposes. While the laws of Hammurabi and the rules of the Pentateuch were concerned to distinguish between those who belonged or not – as Babylonian citizens or members of the Israelite tribes – the Chinese lawmakers were more concerned to establish and control a class of penal slaves, while the *brahmin*s were naturalizing a class of slaves within their own society.

None of the laws indicate an explicit concern with the morality of slavery, although all tried to limit it and those it could apply to, at least to some degree. In all cases, we can assume that both chattel slavery

and debt bondage were such accepted facts of life that they needed no explicit justification. But setting up simple distinctions between slaves and non-slaves was to ignore more complicated social relations and to attribute the status of property and absolute servitude to categories of people who were, especially as concubines or those in debt bondage, not entirely without rights or social relations. Both the Chinese and Indian law makers were trying to regulate complex societies. By attributing slavery to a hereditary class, they were implicitly recognizing that it was a state that needed some justification. Similar moral concerns are even more apparent in the laws of classical Rome and the Islamic world.

Rome

A great deal has been written about slavery in ancient Rome.[9] It was an institution already well established by the time of the *Twelve Tables*, the first known laws, written in the mid-fifth century BC. These laws include a rule on the compensation to be paid for injury to a slave, which was half that of an ordinary person, and another on wrongs committed by slaves, who the master could surrender by way of compensation (Watson 1987, 46, 67–69). Two centuries later, the Romans were describing their slaves in terms of property and the *Lex Aquilia* (c. 287 BC) provided that the master was to receive compensation for injuries as if the slave a herd animal, as well as containing further rules on injuries inflicted by slaves. This set of laws was of considerable importance and subject to extensive jurisprudential discussion (Watson 1987, 54–ff. 68–ff.) It affirmed the status of slaves as property, an idea that Romans maintained until their empire collapsed many centuries later.

During the early Republic, in the fifth and fourth centuries BC, economic difficulties led to recurrent debt crises and some of Rome's earliest laws address the position of those in debt bondage (Lomas 2017, Ch. 9). It was obviously a strategy resorted to by, or forced upon, the impoverished. But from the third century, Rome's armies enjoyed a series of mili-

9 Classic texts include Finley (1964, 1980) and Watson (1987).

tary victories throughout the Italian peninsular, then moving out across the Mediterranean, where they subjugated rival kings and enslaved many of their subjects. As a result, Rome's economic prosperity soared and large numbers of war captives poured in. Most were sent to work in the silver mines, on agricultural plantations, and as domestic servants, effectively chattel slaves. Soon they outnumbered the Roman citizenry and inevitably this large population reproduced itself, forming a largely self-sustaining class.

During the largely prosperous centuries of the late Republic and early empire, the wealthiest households amassed hundreds of slaves (Finley 1964; 1980, 77, 80). But manumission was a common practice, often stipulated in a slave owner's will, or brought about through adoption. Already in the third century BC, the lawmaking assemblies were addressing the legal consequences, initially by levying taxes on the practice and then ruling on whether freed slaves could vote or be called up for military service (Finley 1980, 83). In contrast to Greek practices, manumission turned a Roman slave into a citizen and it seems to have been routine, at least during the later Republic, to consider manumission once a slave reached the age of thirty. Cicero declared that even careful hardworking war captives could expect to be freed after six years, although this may primarily have applied to domestic slaves (Watson 1987, 33). But even after manumission freedmen still had duties towards their former masters, as the laws also made clear (Watson 1987, Ch. 3). They were not entirely in the position of free men.

Meanwhile, legal scholars developed new rules and legal principles to address the many issues that arose from the activities and status of their slaves. These concerned relations between slaves and citizens and the status of children born to unions between them (Watson 1987, Ch. 1). In Rome, unlike in Mesopotamia, the child of a slave mother generally remained a slave. Other laws concerned forms of sale, the theft of slaves, the conditions for and forms of manumission, how to deal with runaways, and the consequences of wrongs committed by or to slaves (Watson 1987, Chs. 4 & 5).

The only occupations forbidden to Roman slaves were law, politics, and the army (Finley 1980, 81). Many acquired useful skills and some

rose to positions of considerable responsibility, as managers, accountants, and overseers in wealthy households. Here, they often took charge of a defined part of their master's property, the *peculium*, which was, to all intents and purposes, the property of the slave (Watson 1987, Ch. 6). It might include other domestic slaves, to whom they were then in the position of masters. In these ways, some slaves acquired considerable wealth and more privileges than impoverished free peasants and the most successful could hope to build up enough capital to buy their freedom, effectively by paying their master the value of their *peculium*.

However wealthy and independent such slaves became, other laws confirmed their restricted legal capacity. They could not enter into business arrangements that were binding on their master, for example, putting them in the same position as sons, as the laws also recognized (Watson 1987, Ch. 6). For all slaves' powers to deal with their *peculium*, it was a basic legal principle the head of a household, the *paterfamilias*, owned all the family property and had the sole capacity to deal with it. This meant that if he sent a son or a trusted slave to negotiate a business deal, they could not act as his agent and bind the master. Slaves were also not allowed to give evidence in court, except in some circumstances and under torture, in theory to ensure they told the truth (Finley 1980, 102). In these ways, the laws created difficulties for many merchants and property owners, but Roman jurists continued to insist on the status of slaves as property and the consequences of their legal incapacity.

The idea of the absolute power of the head of the household, the *patria potestas*, was a striking and distinctive aspect of Roman society, much considered by the jurists who developed Roman law. It was probably more dramatic in theory than in practice, but legally speaking, slave owners were in no way restricted in how they could treat their slaves. It was only in the first century of the common era, that any law stipulated that a master had to get permission to put his slave to death or provided any sanctions for mistreatment (Watson 1983). Graeber (2011, Ch. 7) suggests that in Rome, the idea of *dominium*, or property ownership, was the foundation of a sense of freedom. A slave owner had unfettered power over his slaves and this crystalized conceptually in the idea of absolute property rights, which in turn formed the basis of a concept of

freedom. Freedom, on this account, was associated with dominion over slaves, rather than the normal flux of social relations.

The Roman laws and juristic opinions on slavery, in these ways, confirmed the fact that slaves were property. But there were many differences among them and degrees of freedom, wealth, and power. During the empire, Roman society became exceptionally complex and stratified and endless complications, both legal and otherwise, arose from the economic, social, and personal relations between slaves and freemen (Finley 1980, Ch. 3; Harper 2012, 361–362). A series of complicated, and not always consistent, juristic opinions recognized that some people, including concubines, had an intermediate status and they made specific provisions for the status of children left to die but then taken up by others, along with practices of re-enslavement, and enslavement by capture (Watson 1987, 9, 13–15). In the second century of the common era, some of the lower classes of free men, the *humiliores*, also became legally liable to corporal punishment and judicial torture, in the same way that slaves were (Finley 1980, 95).

Nevertheless, in the second century of the common era, when the jurist Gaius compiled a legal text, his *Institutes*, he insisted that all the inhabitants of Rome were either slaves or not. And his statement was repeated in the *Corpus Iuris Civilis*, the great compendium of Roman laws compiled for the emperor Justinian in the sixth century. Census takers only noted these two alternatives and court cases were fought over whether someone was free or a slave (Harper 2012, 358). This over-simple binary can hardly have helped to clarify anything and it has caused confusion for legal scholars ever since, as they have tried to work out the implications of the stark distinction. One reason, we might suppose, for Gaius's formulation was not that the distinction between slave and free was so obvious, but that it had, by this stage, become so complicated. As Harper (2012, 363) puts it, the Roman laws of slavery rested on open fictions, gentleman's agreements, lax enforcement, and purposeful ambiguities, and the system became increasingly difficult to manage. Only looking at the most extreme cases of slaves conducting hard labour in the mines and plantations could it have been said that slaves were wholly distinct from freemen. Yet the idea of chattel slavery

was one that the Roman elite, like the Chinese emperors, had an interest in maintaining.

There was also a feeling, among at least some Roman jurists, that they needed to justify slavery, and one of them tried to explain Gaius's simple distinction by saying that natural law had treated everyone equally. It was the *ius gentium*, the laws common to non-Roman citizens, he maintained, that had introduced the institution of slavery into Roman society (Watson 1987, 7). This statement, repeated in the *Corpus Iuris*, suggested, utterly implausibly, that civilized Romans would never have enslaved their own people and that the institution had been imported, like slaves themselves, from elsewhere. Another passage in the *Corpus Iuris* claimed that the etymology for the term for slave, *servi* had been the Latin word meaning "to spare" (Watson 1987, 8). Slaves, that is, were war captives whose lives had been spared by their Roman captors. This may well have been the reality for some, but it also seems to be an attempt to put a moral gloss on the Roman maintenance of a huge class of slaves, which the laws insisted were property.

The simple binary between slave and free masked a complicated set of dependencies and freedoms, then, but it also entrenched the idea that people could have the status of mere chattels. Finley (1980, 99–100) found no evidence of doubt or guilt on the part of Romans about the status and condition of their slaves, but the juristic explanations suggest that at least some were troubled by the idea that Romans had reduced anybody to the status of things. The idea that other people could form part of a man's of *dominium*, for all its pleasing conceptual clarity, had become morally problematic.

The Islamic world

Similar legal concerns about the status of slavery are apparent in the medieval Islamic world. By the time of Justinian, the eastern Roman empire had expanded into Asia, where the Byzantine, Yemeni, and Sasanid rulers contended for territory, razed cities, and enslaved captives. In the seventh century, slavery was a fact throughout the Middle East.

Wealthy Arabs kept domestic slaves, so it was also natural that Muhammad's message for the followers of his new religion should include directions on how to deal with them.

The *Quran* addresses slavery as an existing social fact. It uses a simple concept of ownership to refer to war captives, concubines, and other slaves and uses slaves as an example when discussing the nature of property (Freamon 2012, 46–47). As in Rome, an idea of property seems to have crystallised around the notion of slavery. But the Quran, along with other early Islamic literature, also emphasizes that freeing slaves was an act of benevolence. It promotes what one scholar has called an 'emancipatory ethic', while also advocating the abolition of distinctions amongst humans based on ethnicity, language, and class (Freamon 2019). These ideas do not sit easily alongside the other Quranic verses that refer to the subordinate position of slaves as 'those whom your right hand possesses', thereby sanctioning a form of inequality. These contradictory tendencies were to work themselves out in complicated ways over the following centuries.

The slave trade, already flourishing when Islam was born, continued under the Umayyad and Abbasid caliphates and large numbers of slaves were brought from the east, Central Asia, Nubia, and sub-Saharan Africa. In contrast to Greek, Roman, African, and Sasanid systems of slavery, the new religion drastically reduced the ways in which people could be enslaved, limiting them to war captives (taken during a legitimate conflict, a *jihad*) or birth to two slave parents.[10] The new religion also created a distinction between Muslims and infidels, or other 'people of the book', which became increasingly important after the dramatic territorial expansion of the Umayyad caliphate (7th–8th centuries). Insisting on the distinction, legal scholars declared that a believer could not enslave a fellow Muslim, even a war captive. As it had been among the Israelites, the status of slavery was one way to mark the distinction between insiders and outsiders. Unlike Hammurabi's citizens and the Israelites' tribes, however, the numbers of Muslims increased dramatically under the expanding 'rule of Islam' and in practice, the prohibition on enslav-

[10] Most of the details in this section are drawn from Lewis (1992), Franz (2017), and Freamon (2919).

ing fellow Muslims was often ignored, although conversion may have made emancipation easier (Freamon 2019: 156).

Initially, most slaves became domestic servants. The Quran insisted that their masters should treat them kindly and the jurisprudential texts known as *fiqh* elaborated on the resulting relations. In these texts, the legal scholars often used concepts of property to describe slaves and the ways in which they could be dealt with (Freamon 2019, 153). But they emphasized that masters had duties to care for their slaves and that manumission was a virtue.[11] Owners could manumit their slaves in their wills, and often did, and slaves could buy their freedom and marry non-slaves. The *fiqh* dealt with the children of mixed marriages, whether slaves could act as guardians for minor children, the question of whether they formed part of their master's property for the purpose of calculating the *zakat*, the religious tax, and the position of emancipated slaves. They also stipulated that someone who injured a slave had to pay compensation, although this was less than the amount payable after injuring a freeman. Over the centuries, the legal scholars debated and formulated rules about how to treat slaves who converted to Islam (they could not be sold to infidels), whether slaves could give testimony in court (occasionally), whether they could perform religious functions (generally not), and whether they could act as judges (also not).

Although the majority of the slave population remained in domestic service, expanding economic activities in the Islamic caliphates created a demand for labour. Slaves of east African origin, the Zanj, worked on agricultural estates, almost certainly in miserable conditions (Franz 2017, 100). Meanwhile, from the ninth century, the Abbasid caliphs sent officials to purchase boys of Turkic origins to be trained as soldiers, assuming that they would form a loyal army once converted to Islam (Franz 2017; Freamon 2019: ch. 4). Their policy was highly successful and the new recruits soon rose to positions of command, coming to dominate all ranks in the imperial army. Technically slaves, due to their origins, the Mamluks – as they became known – were emancipated once they reached the end of their training and their offspring were born free.

[11] The Quran nowhere attributes the state to natural conditions, in contrast to Greek ideas (Franz 2017, 68).

Revered for their support of Islam, not least by the fourteenth-century writer Ibn Khaldun, they eventually took advantage of the weakening caliphate and established their own regime in Egypt. An anomaly within the broader class of Muslim slaves, the Mamluks also became an exception to the legal rules that denied slaves decision-making powers (Freamon 2019: 235).

Over the centuries, the Quranic principles and the rules on slavery developed by the early legal scholars became increasingly outdated. The boundaries of the category were never clear, particularly as the uses and capacities of slaves expanded, and there was always a tension between the egalitarian ideals of the Quran, the practicalities of warfare, the demands of an expanding economy, and the goals of imperial hegemony (Freamon 2019). The Quran, itself, gave no definition of slavery and the rules of the *fiqh* offered no clear overview of the institution. The combination of being both human and a chattel continued, as one scholar has put it, to present an unresolved tension (Franz 2017, 68). But Islamic writers, like their rulers, never seriously questioned the institution or advocated abolition of slavery until faced by the wider reformist movements of the eighteenth century, and their legal categories became more and more anachronistic (Freamon 2019, ch. 7). Nevertheless, like the Roman scholars, some Islamic jurists continued to insist on a simple distinction between slaves and freemen. In the fourteenth century, one influential scholar defined freedom in terms of slavery. To be free, he explained, was not to be a slave, either socially or morally (Freamon 2012, 41). This meant being neither subject to the authority of another person nor in the grip of bad personal qualities. But this apparently simple distinction between slave and free masked a much more complex set of ideas, social relations, and moral principles.

The concept of slavery provided a useful metaphor with which Muslim writers could explain emotional or intellectual freedom, then. Slaves also provided an opportunity for benevolence in a society that found it useful, and natural, to maintain a population of bound servants. Avoiding the problem of definitions may have helped to mask the legal and moral difficulties raised by the Quranic egalitarian ethos and emancipatory ideals, particularly in the face of the more extreme forms of slavery

exemplified by the Zanj and the anomaly presented by the Mamluks. But the jurists clearly found it difficult to conceptualize what slavery was, as much as what it meant to be free.

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Many medieval Islamic societies maintained a population of chattel slaves, as did ancient Babylon and China, Hindu India, and classical Rome. These were often war captives, obtained either directly or via the slave trade, and their offspring. And the laws on slavery developed in all these societies either stated or assumed that at least some people had the status of chattels that they were people without rights, whose owners could treat them as they pleased. Slaves were conceptualized, legally, as property, particularly in the case of compensation for injuries or abduction, where the loss was deemed to be that of the master. But most laws also made a basic distinction, express or implied, between chattel slaves – usually outsiders – on the one hand, and those in debt bondage – who might include fellow citizens – on the other. And the latter generally had more rights, including carefully delineated entitlements to manumission. It must have been practically difficult for most slaves to insist on such rights if powerful masters wanted to resist, but the laws offered them at least a language in which they could make a claim, like the Mesopotamian debtors, whose successful cases were recorded in some of the earliest written documents.

In practice the status of slavery was always unstable. Slaves built up personal relations with non-slaves, they reproduced, they acquired useful skills and took on positions of responsibility, and en route to manumission they might acquire an intermediate status, between freeman and slave. Most laws dealt with the resulting complications, the different degrees of dependence, ambiguities in status, and the extent of slaves' rights, along with the complications and offspring produced by relations between slaves and citizens. But while the laws often tried to limit the status of slavery, none tried to abolish it.

And all the laws maintained a basic conceptual distinction between slaves and freemen. Sometimes this was linked to a sense of belong-

ing. Only outsiders could be chattel slaves – non-citizens in the case of Mesopotamia, Israel, and Rome, and non-believers among the Muslims. The concept of slavery defined those who belonged morally, who were entitled to protection, and who could not be reduced to a state of utter dependence. But Chinese rulers and Hindu brahmins found it more expedient to maintain a class of slaves within their own societies, using the notions of venality and punishment, on the one hand, and caste, on the other, as justifications.

Almost everywhere, these distinctions eventually gave rise to moral problems. From quite an early date, Chinese writers were expressing the idea of a common humanity, rules about manumission proliferated in Rome, and Muhammad declared it to be a moral act. Many of these developments were a function of increasing social complexity and a long history of the practical complications produced by the state of slavery. But this, in turn, forced them to reflect upon the moral implications of their practices. Creating laws on slavery meant that people had to face the fact that they had the capacity to treat other people as property, and were actually doing so.

Denying slavery

During the Middle Ages, both Muslims and Christians continued to own slaves, but the moral difficulties this presented became more acute. For a Muslim, manumission was a moral act, although scholars did not try to abolish slavery outright. Early Christian thinkers also did not condemn slavery, but their theology sharpened the dilemmas it produced (Lewis 1992, 4; Cluse and Amitai 2017, 13). These religious concerns troubled many in the Middle Ages, and find parallels in Buddhist Tibet.

The elaborate Roman practices and institutions of slavery largely died out with the collapse of the Western Roman economy in the fifth century (Finley 1980, Ch. 4; Harper 2012, 10). But they were, to a large extent, replaced by other forms of dependence. What has come to be described as serfdom, characterized by agricultural obligations, developed over the course of the following centuries (Rio 2017). But more

extreme forms of slavery, where people were unambiguously treated as property, enjoyed a resurgence in around the twelfth century, as wars and trade routes brought captives into the eastern Mediterranean. Here, religious outsiders, such as Muslims, Slavs, Bulgars, and even Orthodox Greeks, were bought and sold in thriving slave markets (Rio 2017, 1).[12]

Dubrovnik, a port city on the eastern coast of the Adriatic, was one of these, its merchants dealing profitably in both textiles and slaves.[13] Regular warfare and epidemic disease in the countryside to the east meant that there was a plentiful supply of the latter and slave owners and traders, like their Roman predecessors, looked to law to regularise the many complicated issues that inevitably arose. As in most of medieval Europe, the local rulers recognized the *ius commune*, the civil laws that largely derived from classical Roman law. These provided that slaves must have been born to a slave mother or captured in battle, or that they could sell themselves into bondage to pay a debt. By the thirteenth century, much of Dubrovnik's population was literate and slave owners recorded many of their transactions in writing, in texts which recognized these rules. These included contracts for the sale of slaves and the arrangements by which debtors sold themselves or their family members into bondage.

Surviving documents commonly include a clause indicating that the slave, him- or herself, had consented to the transaction. One document, for example, provides that:

> I Dabrenus son of Zeutas from Trogir record that I gave and sold myself, of my own free will (*mea bona voluntate*), as a slave to Elias, son of Blasius of Rastus for four and a half gold coins, valid until my death, so that the said Elias can do with me as he pleases. (Skoda 2017, 244)

Another declares that:

> Juannus son of Clapota, sold his slave Constanisclava from Bosnia, who was present and consenting (*presentem et consentientem*), to Michael

[12] Writers coined new terms to designate the 'dominium' of the slave-owner and used ethnic labels for their slaves (Cluse and Amitai 2017, 14).

[13] Most of the detail on medieval Dubrovnik is based on Skoda (2017).

> Lucaris for five and a half gold coins. Valid until death. (Skoda 2017, 244)

It seems highly unlikely that the slaves in question were actually consenting to these transactions, at least in any meaningful way. In her analysis of these documents, Skoda (2017, 244–249) asks why those who drew them up, presumably scribes employed by the owners and purchasers, should have gone to such lengths to claim that the slaves had consented to the transactions. The power relations behind them can hardly have meant that the contracting parties actually needed the slaves' consent. But, like medieval judges, who went to great lengths to secure confessions from the accused (Whitman 2008), they may have felt that they needed the moral comfort of a written statement of consent. It is possible, Skoda suggests, that the new owners were afraid that a slave could later claim that he or she had been wrongfully enslaved, something that did on occasion, happen. But the recording of ostensible consent probably also indicates moral unease with the fact of slavery. It suggests that medieval Europeans were concerned about freedom, in terms of the ability to exercise at least some choice over one's context and conditions of labour.

Christian thought had now developed in Europe to such an extent that it was presenting ethical dilemmas in many areas of traditional social life. As Skoda (2017) explains, canon lawyers accepted the fact of slavery, but the Fourth Lateran Council, held in 1215, introduced the sacraments of baptism and marriage, and this created problems if slaves were Christians or converted to the faith. The clergy could not, then, deny them the sacraments, but slaves were not entitled to enter into contracts, including contracts for marriage. And how were churchmen to deal with the child of a free master and slave mistress, who would be born a slave, but ought to be baptized? As Skoda (2017, 248) puts it, the new religious ideas encouraged a growing sense that people mattered, even if they were slaves.

The documents that indicated slaves giving consent to a sale or transfer may have helped to neutralise the discomfort of those who were driving the arrangements. If the slave had ostensibly consented, it might

salve the conscience of an owner or trader. Even if everyone knew that the slave had effectively been forced into the new arrangement against his or her will or out of desperation, a written document that indicated otherwise may have made the transaction seemless morally problematic. And the clauses became ever more elaborate as time went on. A later document provides not just that the slave had consented but declares that the new owner may "do whatever he wants with me, as he would with his purchased slave girl or his other property." It appears, Skoda (2017, 249) suggests, to indicate increasing moral unease.

There is evidence of similar moral concerns and legal tactics, albeit less extensive, from pre-modern Tibet.[14] Until the mid-twentieth century, central Tibet was still largely an agricultural society, with large landed estates in which many farmers, in effect, lived as serfs. Those who suffered a bad harvest or other misfortune often had to borrow grain at extraordinarily high rates of interest and, not surprisingly, could become hopelessly indebted. The result, for many, was that they had to sell themselves, or a family member, into debt bondage. Bischoff (2017) analyses one document, which originated in a village close to Lhasa, which records that four siblings had inherited a large debt from their mother. They had divided the obligations among them, but one son was unable to pay his share of the debt, or so the document claims, so the children were jointly giving him to a wealthy man, in return for clearing the debt. The document records that the boy was to become the man's servant for life, presumably because the debt was so large that there was no prospect that he could ever work it off. As typical of many Tibetan contractual documents, one of the first clauses reads:

> We, whose names and seal are clear below, have submitted completely, voluntarily, and unalterably to these obligations. (Bischoff 2017, 172)

[14] Most of the details on Tibet are drawn from Bischoff (2017).

Later it records that:

> Out of great gratitude [our brother] is given voluntarily and completely for his whole life to [the wealthy man]. (Bischoff 2017, 173)

As Bischoff puts it, expressions of gratitude by the poor to the rich, from servants and serfs to wealthy landowners and members of the higher classes, were common in Tibetan documents. These frequently acknowledge the "benevolence" of the wealthy, something that served both to confirm and to strengthen the social hierarchy, adding a moral dimension, at least nominally, to the economic stratification. They mask what were probably more like relations of dominance and coercion. It seems likely that expressions of gratitude and voluntary submission to the status of servitude were ways to address underlying moral concerns. They masked the fact that some people were effectively being forced into slavery and made the property of others. Although Buddhist teachings did not forbid slavery, they also did not expressly sanction it, and the arrangements sat uneasily alongside the moral ideas, including the principle of non-violence to all sentient beings, to which all Tibetans, at least nominally, subscribed.

In both these cases, the practice of debt bondage was obviously common and accepted by the majority of the population, as was the slave status of war captives in Dubrovnik and relations of serfdom in Tibet. However, once the related transactions were made explicit, when they were confirmed in writing, people had to face up to the fact that they were reducing fellow men and women to a state of dependence. They were treating them as pieces of property, with all the moral issues that that entailed.

Conclusions

In the 1980s, a number of scholars debated the nature of slavery. Anthropologists of contemporary Africa challenged the model of slavery developed by those who worked on the North Atlantic slave trade. This

model, the anthropologists maintained, presented an over-simple picture of what it meant to be a slave, drawing too stark a distinction between slavery, which involved treating people as property, and freedom. Igor Kopytoff (1982, 219–224), in particular, argued that although it is easy to describe slaves as a form of property, it is less easy to specify what this means. Property is never a simple concept, he pointed out. At best, it involves a bundle of rights, and these can vary enormously. In some African societies, family members, especially wives and sons, could also be treated as chattels. They were not able to own property and could be forced to work in certain ways by the head of the household. Similar patterns, as I have described here, characterised family relations in Hindu India and classical Rome. In many other societies, daughters could effectively be exchanged as marriage partners, or given over in return for "bridewealth," effectively a payment for the woman's labour. While we would not want to describe all these arrangements in terms of slavery, Kopytoff concedes, they do indicate that dependence is a matter of degree.

Kopytoff pointed out the great variety in statuses, even among those we would unambiguously call slaves, in terms of what tasks they performed, how they had come into that state, and the fact that the status was often unstable. Typically, those who started as complete outsiders, war captives utterly dependent on their captors, gradually became more like insiders. They built up relationships and acquired rights, as is also evident in most of the examples described here. The concept of freedom is equally unclear, as examples in this paper also indicate. Slavery might be contrasted with citizenship, the enjoyment of certain protections, or membership of a higher caste, and it is rarely possible to draw a clear line between slavery and freedom.

Kopytoff was arguing against, among others, the Marxist anthropologist Claude Meillassoux (1971), who had objected to the blurring of the line between slaves and kin. Both may involve some form of subordination, he acknowledged, but slavery results from alienation. It involves depersonalization, leading to the social incapacity of the slave to reproduce socially, to ever become kin. In a similar vein, the sociologist, Orlando Patterson (1982, 2012) has described slavery as an extreme

state. He emphasized the elements of violent domination, alienation, and dishonour. Slaves are "socially isolated and parasitically degraded" (Patterson 2012, 329) because, as David Graeber (2011, 165) puts it, slaves have been "ripped from their contexts."

There is, I would suggest, something in both these views. What Meillassoux, Patterson, and Graeber are describing is the more extreme form of chattel slavery, the result of capture. This is what leads to the most complete state of dependence, when people are, literally, removed from their contexts and denied the support of kin and social networks. The most notorious example of this is, of course, the Atlantic slave trade, but over the course of human history this has been the reality for many, from the citizens of Hammurabi's defeated rivals, to the penal slaves working on the Great Wall of China, and the East Africans transported to the Muslim caliphates of the Middle East. In these cases, enslavement was a physical act, which did not need legal definition.[15]

But the evidence of the early laws also supports Kopytoff's view that slavery is a state that it is difficult to maintain. Slaves built up social relations, particularly concubines, and especially if they had children with freemen. Meanwhile, economic distress pushed many ordinary people into debt bondage, a state that many societies felt they should treat differently from chattel slavery. In these circumstances people repeatedly turned to the law to define different relations, rights, and distinctions in status. When the laws proposed a simplistic, and implausible, distinction between slavery and freedom, this may have been an attempt to confirm the status of slaves, to keep at least some people in a state of dependence, in the face of these complications. And this was something that was generally in the interests of the privileged and powerful.

But writing laws on slavery also, I have suggested, forced people to think about what it meant to be a slave; and this meant facing fundamental moral issues about themselves and their societies. How could they justify slavery? What were its limits? Could they reduce their own people to a state of dependence? To what extent were people already in this

[15] According to Graeber (2011, Ch. 7), it set the tone for a host of other social relations, including ideas about property and dominion, the idea that people and their lives had prices, and ultimately the nature and meaning of money and debt.

state? Insisting on a simple binary between slave and free might have entrenched useful social relations in the interests of the powerful, but it also forced law-makers to face up to the nature of their social structures. And their justifications varied, from notions of a venal class or slave caste in China and India, to the insistence that slaves must be outsiders or non-believers in the Muslim world, or simply that poor Tibetans had consented to their state "completely, voluntarily, and unalterably."

Laws on slavery, more particularly restrictions on enslavement, also defined what it meant to belong, to be a Babylonian citizen, an Israelite, or a Muslim. Meanwhile, brahminical and Roman rules on slavery helped to define the status of the upper castes and freemen, along with the position of the head of household. But they also made it clear that even members of the upper castes, typically women and children, could be akin to slaves in their inability to hold and deal with property. The laws, that is, confirmed complicated relations of hierarchy and domination, even as they asserted a simple binary between slave and free and that the latter had the right not to be enslaved.

Attitudes towards slavery eventually became a way of defining moral behaviour. Muhammad declared that manumission was an act of benevolence and European campaigns to abolish slavery were pursued in moral terms. And in the contemporary period, of course, the aim of most slavery legislation is to criminalize and eliminate it. But modern law makers have also faced definitional difficulties and, like their historic counterparts, have sometimes avoided definitions or resorted to simplistic binaries.[16] The concept of slavery has become a way of making simplistic statements about what it means for a whole society to be civilized. As Kopytoff (1982, 221) puts it, slavery can be an evocative, as much as an analytic, concept.

For the most part, relations of dependence arise without the need for any legal definition, through capture, transportation, and debt, as much today as in ancient Rome and Mesopotamia. Historic laws trying to deal with the resulting complications, like their modern counterparts that attempt to eliminate the practice, have all found it difficult to define

[16] This is, for example, evident in the UK's *Modern Slavery Act* of 2015, which resorts to a self-referential definition.

clearly what slavery is. But whether they seek to confirm, limit, or ban relations of dependence, their attempts force us, as law-makers or law-users, to face up to the moral fact of what it means to treat another person as a piece of property.

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Slavery is not a natural state. It arises when people or classes in a society assume the right to treat others as their property. And yet the status of slaves has rarely been defined by law, even when slavery was an accepted social fact. This publication examines the laws that did deal with slavery, from the earliest written rules in Mesopotamia, India, China, Rome, and the Islamic world, to medieval Europe and Tibet. It is evident that, rather than offering comprehensive definitions, the lawmakers were dealing with the complications that arose from the instability of the state, including issues of manumission, legal capacity, and the status of children. People could become slaves without the need for legal intervention, as a result of warfare or debt, but many slaves acquired freedoms, presenting complications that the lawmakers tried to address. They also, in many cases, hint at moral discomfort, suggesting that the act of lawmaking forced slave-owners to face up to the fact that they were treating other people as property.

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