Dissertation #2

Title: **Die Stellung der Sklaven bei den Juden in rechtlicher und gesellschaftlicher Bedeutng nach talmudischen Quellen** (The Legal and Social Status of Slaves Among the Jews According to Talmudic Sources)

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Summary

Executive Summary: The dissertation belongs to the area of Halakhic scholarship (legal history) and of social history. The author, who had studied, first, at the (Orthodox) Berlin Rabbinical Seminary and, then, at the (positive-historical) Breslau Jewish Theological Seminary, relates the legal regime that applied to Israelite ("Hebrew") slaves (part A), and the legal and social status of so-called Canaanite slaves, i.e. slaves who were not Jewish at the time of their purchase (part B), based primarily on classical rabbinic literature up to the Babylonian Talmud. The worldview of the dissertation is informed by a historicist approach to the oral law and it stresses the relative humanity of the legal status and of the public attitude towards the enslaved in Judaism if compared with the treatment accorded to slaves by other cultures, notably the Roman one.

Introduction (pp. 1 -9)

The introduction presents slavery as contradicting the principle of equality located at the core of the worldview of the Hebrew Bible and as a legal institution that was only reluctantly accepted by biblical law and even to a lesser degree by Talmudic law (which is seen by the author as a subsequent development in the history of Halakha). According to the author, biblical law made the enslavement of Jews already impossible in the strict sense: the Hebrew concepts *'aved 'ivri* and *amah 'ivriah* do not designate slaves as understood by Roman law but refer to a temporary-limited servant status which did not entail the loss of property rights or other rights for those subjected to it. Therefore, these terms, Aved (Abed) and Amah, are employed by the author in the dissertation as such without translating them into a German equivalent. At any rate, this status had already been abolished at the very least in the "later Talmudic period", though.

The enslavement of Non-Israelites, however, remained permitted in both biblical and rabbinic law, so the author explains, due to the impossibility of unilaterally abstaining from the universal custom of selling enemy war prisoners into slavery (which served as a major deterrent in ancient warfare): as per Talmudic nomenclature, the Non-Hebrew slave was called *'aved can'aani*. Nonetheless, the author claims that slavery remained rare and generally deplored among the Jews. In addition, the status of slaves in Halakha is said to have been significantly more advantageous compared to their status in Roman or pre-civil war American law due to the respect paid by Judaism (as opposed to paganism) to the manual worker and to the principle of humanity.

Part A: The Legal Treatment of the Hebrew Aved / Amah (pp. 10 – 23)

1. Establishment of a Servantship

Due to the value accorded to personal freedom in Judaism, the cases in which a male Israelite could turn into an Aved were restricted to two: he could either sell himself when suffering from dire need, or be sold by a court if convicted of theft and unable to return the value of the stolen item, so as to

compensate the victim (the author also recapitulates a Halakhic dispute regarding the requisite price of the thief). In contrast, a female Israelite could only become a servant, Amah, if sold by her father due to material need before the onset of puberty.

2. Length of a Servantship

For thieves sold into servitude by courts or for daughters sold by their fathers, the servitude was temporally limited to six years (but thieves could agree to serve a longer period). No such time limits existed for those who due to poverty gave away themselves into bond service. Those who served their master for more than six years were marked by piercing one of their ears. Even they were freed, though, with the onset of the jubilee year or after the death of their master.

On the other hand, only during the first six years of the servitude, so the author, with the death of the master, the law stipulated that his son (but not his daughter) inherited a male Aved (but not a female Amah). In addition, the servants could redeem themselves by reimbursing the owner and an Amah was set free upon reaching puberty if her owner did not marry her himself or make his son marry her.

3. The Legal Regime of the Servantship

This section focuses on the rights and obligations of the Aved / the Amah and of his or her owner, portraying their status as identical to that of the unenslaved population regarding most aspects. In the beginning, the author contends that Hebrew servants could acquire property under certain conditions and that - in criminal law - infractions committed against them were sanctioned exactly like those committed against free victims. In some respects, Hebrew servants were also in a more advantageous position than free hired day laborers since their master could not force them to perform humiliating, especially manual, work in public. Masters had to cater for their servants (with respect to food, shelter etc.) in exactly the same way as they did for themselves, and to provide for their servants' family members who themselves remained free. However, masters could give their married male servants a Non-Israelite concubine - the author does not state if consent from either the servant or the concubine was needed - and children emerging from this union became as (Non-Jewish) slaves the property of the master (the author attempts to defend the morality of this rule). With regard to a female Israelite servant, the Amah, the particularities of the law are, then, detailed and presented as corresponding to the general principle that the Amah was destined to become the wife of her acquirer (or of his son). The section ends with some remarks on the rules applying to gentile masters in Jewish law: gentiles were prohibited from acquiring female Israelite servants and males sold into servitude by courts, but they could purchase those Jews who sold themselves of their own will.

Part B: The "Heathen" Slave

Section A. The Legal Status of the Slave

1) The Slave as Property (- 32)

Non-Israelite slaves were treated as property of their master, though – according to the majority view in the Mishnah and the Talmud - not as movable but as immovable property, a construction which, so the author, had various consequences, especially causing to treat every object in the possession of the slave as if it were located on the land of the master: everything in the hands of the slave is, therefore, considered to be in the possession of his or her owner. Being property, rules applying to property usually apply to slaves, too: the owner can sell them freely and has to be compensated financially if someone else inflicts damage to the slave, for example. Everything created by slaves belongs to the owner, including children of female slaves (though not children of free mothers fathered by male slaves).

According to the Talmud, the owner is forbidden to relinquish ownership and to set a slave free. This is seen by the author as a "strange" departure from original biblical law and even Mishnaic law – which he interprets as having permitted the liberation of slaves - due to the influence of social and political factors (the author cites approvingly Zadoc Kahn, the French chief rabbi and founder of the French school of Jewish Studies, and Isaac Hirsch Weiss, the *maskilic* historian of Halakha influenced by Zacharias

Frankel, who both speculated that this rule was a result of Roman pressure). This prohibition of setting free slaves, was, however an imperfect rule which did not make acts of liberation invalid. According to the author, Jewish law even actively promoted the liberation of slaves.

The section ends with a detailed discussion of various legal consequences of the inability of slaves to acquire property themselves.

2. The Slave as a Person

In this section, the author shows the limitations to the master's property rights with regard to their slaves. Killing a slave is punished like the killing of a free person, even though the master is not sanctioned if after beating a slave the slave lives on for a short while before dying. Injuries caused by a slave's master led, however, to the slave's liberation, a rule which protected him or her against corporal punishment. This rule was – in keeping with the principles of Talmudic Halakha – only enforceable if at least two witnesses could testify to having seen the master beating his slave. The author gives, then, other examples of how slaves were treated equally to free persons with respect to criminal law.

The respect accorded by Jewish law to the personhood of the slave manifests itself also in the irrevocability of a slave's manumission on the deathbed of his or her owner – even if the master recovered, this act could not be taken back (unlike other donations or transfers of property). In addition, the author stresses the freedom of "religious self-determination" accorded to slaves: masters were forbidden to force their slaves to accept Judaism. A dispute between sages whether it was permitted to own unconverted slaves led to a compromise that allowed masters to keep heathen slaves in cases when this was explicitly stipulated during the purchase, otherwise the slave unwilling to convert had to be sold to a Non-Jew. Conversion to Judaism did in general not lead to the liberation of the slave (who technically remained an *'aved can'aani* even after conversion) except in cases where the slave explicitly declared to convert out of his or her free will (the author suggests, however, that there were ways for masters to prevent this liberation). Afterwards, some further restrictions of the master's property rights regarding converted slaves are mentioned. Subsequently, the author explains the reasons for the rule that a slave owned by two masters could be unilaterally set free by one master only.

The last part of the subsection deals with the manumission of the slave. The saying of R. Akiva that liberating slaves constitutes a sin is said by the author to not have been taken seriously. It follows a discussion of whether a written confirmation of the liberation had to be issued in order for the act to be valid (the author contrasts Talmudic law as more stringent if compared with Mishnaic and biblical law – but the presentation is somewhat confusing).

3. The Marriage of the Slave

Here, the author elaborates on the rule that in Jewish law slaves cannot enter into marriage, especially with regard to their children. Children born to female slaves became slaves, too, while children of male slaves and free Israelite women were considered free but their status was, nonetheless, inferior to that of ordinary Jews (according to some sages they were bastards who were forbidden to enter into marriage with Israelites, others prohibited at least marriages between those children and priests). The author defends this apparent discrimination as an attempt to preserve conjugal morality since "heathens" and their descendants were always suspect of sexual licentiousness.

Section B. The Social Status of the Slave

The last section aims at showing the actual situation of slaves as reported in Talmudic sources which in practice was, so the author, significantly more favorable than the law and, sometimes, even in contradiction to it.

Even though slaves could not enter into legally sanctioned marriage, slave owners had to prevent indecent behavior by their female slaves and were forbidden to prostitute them, therefore, in practice masters usually provided female slaves with a male slave as a permanent cohabiting partner.

As to property, slaves were incapable of legally owning anything, but in fact their ability to keep riches (including even other slaves) was widely respected.

The most important factor contributing to the social integration of slaves was, according to the author, their participation in Jewish religious rites: with the exception of time-bound commandments, (converted) slaves had to conform to all religious obligations. The Talmudic prohibition to instruct slaves in the Jewish religion is interpreted by the author restrictively – in explicit agreement with Zadoc Kahn - as referring only to formal public schooling.

In the next paragraphs, the author gives several examples of the types of labor that were performed by slaves (such as crafts or domestic services). He then continues with remarks on the duty of owners to feed their slaves: a legal obligation to do so existed initially – as the author attempts to prove by analyzing various passages from classical rabbinic literature in detail – but was abrogated in later Talmudic times. In fact, however, masters almost always provided their slaves with food and had it, therefore, better than many poor free Israelites.

The social reputation of slaves was low though, according to the author. Slaves were suspected of dishonesty and, especially, of stealing. Therefore, they were disqualified from the ability to testify in court. Above all, their sexual licentiousness was notorious – thus, even liberated slaves remained unwelcome marriage partners. On the other hand, individual slaves could earn much respect on account of their owners' piety or due to their own personal conduct: the section ends with various examples of respected slaves taken from the Talmud, so the unnamed female slave of Rabbi or the slave pair Tavi and Tabita, owned by R. Gamaliel II.