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## ARTICLE II.

## SAALSCHÜTZ ON HEBREW SERVITUDE.

BY PROF. E. P. BARROWS, ANDOVER, MASS.

AN exhibition of the subject of Hebrew servitude from the Jewish point of view has long seemed to us eminently desirable. For this purpose we had selected the 101st chapter of Prof. Saalschütz's Treatise on the Mosaic Law, entitled "*Dienende.*" Before we had found leisure to complete the translation of this chapter, our design was in part anticipated by the appearance in the American Theological Review<sup>1</sup> of Prof. H. B. Smith's translation of Dr. M. Mielsziner's work on "Slavery among the ancient Hebrews, from biblical and Rabbinic sources." By this translation Prof. Smith has rendered to the Christian public an important service. We proceed, nevertheless, to carry out our original plan, and that for two reasons. First, because Saalschütz differs in some important points from the common Rabbinic view, to which Mielsziner in general adheres; so that by a comparison of the two the reader will have the matter more fully before him in its various aspects. Secondly, because we propose in a series of consecutive articles to discuss the whole subject of slavery, in its relations to the Bible, the State, and the Church; and to such a series the subject of Hebrew servitude constitutes the most suitable introduction.

In Saalschütz's Treatise on the Mosaic Law<sup>2</sup> the numerous foot-notes are numbered consecutively from the beginning to the end of the work. In the translation of the present chapter it was important to retain this numbering for various reasons, especially for convenience of reference

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<sup>1</sup> In the April and July numbers for 1861.

<sup>2</sup> Das Mosaische Recht, nebst den vervollständigenden thalmudisch-rabbinischen Bestimmungen. Für Bibelforscher, Juristen und Staatsmänner. Von Dr. G. L. Saalschütz. Berlin. 1853.

to the notes appended to other chapters. The few brief notes of the translator are always indicated by brackets. To the translation are appended some general remarks, to which the reader's attention is respectfully called.

TRANSLATION.

§ 1. The Mosaic law knows nothing of *slavery* in the sense of considering *freeman* and *slave* as beings holding an opposite relation to each other in respect to their dignity as men, and on a scale of civil and social rights. The Hebrew language has no word for stigmatizing by a degrading appellation one part of those who owe service, and distinguishing them from the rest as "slaves," but only *one* term for all who are under obligation to render service to others. For males this is *Ebed*,<sup>897</sup> *servant, man-servant*; properly *laborer*;<sup>898</sup> for females, *Shifchah, Ama*,<sup>899</sup> *maid-servant, maid*. Among a people who occupied themselves with agriculture; whose lawgiver, Moses, and whose kings, Saul and David, went immediately from the herd and from the plough to their high vocation, there could be nothing degrading in an appellation taken from "labor." "Servant of God" is also applied to Moses and the pious as a title of honor. The laws, moreover, respecting servants protect in every regard their dignity as men, and their feelings, as will be manifest from what follows. They by no means surrender these to the arbitrary will of the masters, as in other ancient and modern states in which slavery and thralldom have prevailed.

§ 2. The body of servants consisted in general of the following classes: 1, debtors who were obliged to render service to the creditor; 2, Hebrew men-servants and maid-servants bought with money; 3, heathen men-servants and maid-servants; 4, children of both sexes brought up in the master's house, that had been either taken in war, or were

<sup>897</sup> עֶבֶד.

<sup>898</sup> The verb *abad* (עָבַד) signifies *to labor* in general, as may be plainly seen from its use in the law of the Sabbath, Ex. xx 9: "Six days mayest thou labor."

<sup>899</sup> שִׁפְחָה, אָמָה; see § 9, note 911.

the offspring of men-servants or maid-servants; 5, such as were hired for wages.<sup>900</sup>

§ 3. (I. a) The laws relating to *Hebrew servants* are as follows:

If any one buys a "Hebrew servant" (עֶבֶד עִבְרִי, *Ebed Ibri*) he shall serve six years, but in the seventh he shall go out free for nothing. If he came in single he goes out single. If he is the husband of a wife she goes out with him. Ex. xxi. 2, 3.

If his master has given him a wife,<sup>901</sup> and she has borne him sons or daughters, the wife and her children remain to the master, and the servant goes out by himself. If the servant says: I love my master, my wife, and my children: I will not go out free; then his master shall bring him before the judges, and fetch him to a door or a door-post, and bore his ear through with an awl, and he shall serve him forever, vs. 4-6.

In Deut. xv. 16, 17, where this symbolic indication of permanent servitude is once more prescribed, it is stated still more definitely that the ear is to be fastened by the awl to the door. The manifest dishonor which lies in this symbolic act agrees perfectly with the whole spirit of the law; for this seeks to protect personal freedom in every way, and always to re-establish it; and cannot therefore approve of one's giving himself over to perpetual servitude. It is true that in the case before us he had, in his love for his family, an apparently good reason for the act. But who bade him at the outset to enter into these relations, and take for his wife a maid in the ownership of her master?

<sup>900</sup> At a later day the *Nehinim* constituted a peculiar class. § 16.

<sup>901</sup> From the specifications that follow it appears that she is a *heathen* maid-servant, who has not the right of going out at the end of six years. — Bertheau, *Sieben Gruppen Mos. Gesetze*. S. 22., as also before him, Salvador, *Institutions de Moïse*, L. VII. ch. V., assume that she is a Hebrew maid, whose six years of service do not end at the same time with those of her husband. But this seems to be altogether excluded from the law, which could not, in the case supposed, have said in general terms that the maid and her children belong to the master (according to the law for heathen maids, Lev. xxv. 44-46. See § 12). and that the servant, in order to be with them, must remain forever in servitude.

There has been, moreover, a difference of opinion respecting the meaning of the words: "he shall serve him forever," Ex. xxi. 5; or, as it reads, Deut. xv. 17, "he shall remain thy servant forever." The question is, whether they actually signify an unlimited period of time, or only one that lasts till the year of jubilee. The latter opinion has, as a general rule, prevailed. But we do not believe it to be the original meaning. For, in the first place, there is no ground why we should here take "forever" in this sense. Then, again, this word is plainly used, Lev. xxv. 46, of a servitude not limited by the year of jubilee. (See below, § 12.) Still further, in Lev. xxv. 40-42, no degradation is attached to a service that ends with the year of jubilee. That only which lasts beyond this limit is characterized as an actual bond-service. Finally, it does not appear how the year of jubilee, without a single intimation of the law-giver on the subject, should give the servant the right previously renounced by him of taking with himself his wife and her children, when she is a maid-servant in the ownership of her master. But without this the departure must then also be distasteful to him. Without controversy, then, the words: "he shall serve forever," mean, he and his remain the property of his master (perhaps his hereditary property. Compare Lev. xxv. 46).<sup>808</sup> Possibly this will help us, further on, in the solution of greater difficulties connected with the passages pertaining to the law in question.

In Deut. xv. 12-18, the same law is repeated with some additional particulars:

(I. b.) The "Hebrew brother" who goes out free on the seventh year shall not be sent away empty; but is to be furnished from the flock, the threshing-floor, and the wine-press. Deut. xv. 13, 14.

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<sup>808</sup> According to the law of the Mishnah, the Hebrew servant who has been appropriated by the ceremony of boring his ear becomes free at the year of jubilee, or upon the death of his master, without being obligated to render further service to his son, as he certainly is obligated when the master dies within the six years of service. But this duty, again, holds good only in respect to the son, not to the daughter or other heirs. — *Qiddushin*. 1, 2.

In Ex. xxi. 2, it is simply directed that the servant shall go out for nothing; that is, without being obliged in any way to indemnify his master. According to the passage of the law just quoted, he is also required to present him with a gift, in thankful remembrance, as is added v. 15, of the redemption from Egyptian bondage wrought by God for Israel. In v. 18 of the same passage, it is further added, in respect to his release: "Let it not seem hard to thee, when thou sendest him away free from thee, *because double the wages of an hireling*, he hath served thee six years; and Jehovah thy God shall bless thee in all that thou doest." In rendering the words in italics, we have sought to preserve the ambiguity of the original, which leaves it doubtful whether the lawgiver meant to say: Let it not grieve thee to release him, *since* he has rendered to thee double the service of a hireling, inasmuch as he has been wholly in thy house, and thou hast had him more at thy disposal; or, Let it not grieve thee, *although* he has served thee for double the wages of a hireling; that is, although, from thy having been obliged to purchase and maintain him, he has cost thee twice as much as a hireling who is paid in proportion to his labor. We prefer the latter explanation, since the literal meaning must plainly be, "for double the wages of a hireling."<sup>(a)</sup>

According to this law, the servants (and also the maid-servants, of whom more hereafter) are to be released in the *seventh* year; whence it follows, as already remarked, chap. 14. § 1, that we are here to understand not the general sab-

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<sup>(a)</sup> [The words of the original are: בִּי מִצְנֵה עֶבֶד עֶבֶד שְׁשֵׁי שָׁנִים, which our author has endeavored to render with verbal literalness: *da das Zwiefache vom Lohne des Mehlings er dir sechs Jahre gedient hat*. The ambiguity lies in the particle בִּי, which may either *assign the reason* why the master should not be grieved,—"for he hath served thee," etc.,—or may *specify the thing* in view of which he might be in danger of being grieved—"that he hath served thee; i. e. in view of the fact that he hath served thee, etc. In the former case, עֶבֶד עֶבֶד מִצְנֵה עֶבֶד will mean, *double the worth of the wages of an hireling*; in the latter, *for double the wages of an hireling*. The author prefers the second interpretation. We should prefer the first, as in our version: "for he hath been worth a double hired servant to thee."] — Tr.

batical year, but the seventh year from the beginning of the service, which might not coincide with the sabbatical year; for it says expressly that *he shall serve six years*.

§ 4. A third enactment of the law brings those who owe service into connection with the year of jubilee. It is as follows:

(II. *a*) "If thy brother, dwelling by thee, become poor, and be sold to thee, thou shalt not lay upon him the service of a servant. As a hired servant, as a sojourner, shall he be with thee. Till the year of jubilee shall he serve with thee. Then shall he go out from thee, he and his children with him, and shall return unto his own family, and to the possession of his fathers. For they are my servants whom I have brought forth out of the land of Egypt; they shall not be sold according to the sale of a servant. Thou shalt not rule over him with rigor, but shalt fear thy God." Lev. xxv. 39 - 43.

By "the sale of a servant" is plainly meant that for continual, hereditary service, and for rougher sorts of labor; for he immediately proceeds to speak of this kind of service in connection with heathen servants. We also have for the coarser and finer kinds of work different servants. Now a man who had himself once been a landed proprietor, and retained, moreover, this character since the year of jubilee restored to him the patrimony which he had sold, certainly had a claim to indulgent treatment in this unusual relation. He was then to be regarded as the hired servant, who was bound to no master, and was not to be subjected to any severe treatment.

§ 5. When he who buys the servant is a foreigner, another turn is given to the specifications of this law.

(II. *b*.) If a stranger in the land has become rich, and "thy brother" who lives by him has become poor, and shall be sold to him,<sup>(6)</sup> or to a foreign family settled in the land,<sup>(7)</sup>

<sup>(6)</sup> [The Hebrew is וְיָמַעַר, which our version renders "and sell himself." So also Gesenius and De Wette. See below, under § 8. TR.]

<sup>(7)</sup> See the grammatical note to § 100. [The Hebrew is יָמַעַר מִמְּצֻתוֹ, which our version renders, "to the stock of a stranger's family," apparently mean-

he shall have, after he has been sold, the right of redemption, whether he find the means to redeem himself, or one of his relations redeem him (compare chap. 107), Lev. xxv. 47-49. In redeeming him, the sum for which he has been sold is to be divided by the number of years intervening between the sale and the year of jubilee, and thus the price for a single year computed. Then, according as "more years," or fewer, remain till the year of jubilee, the sum which the purchaser receives back is to be larger or smaller, chap. xxv. 50-52.

It is, then, as if he received wages from his master, year by year, as a hired servant, and so he is to be dealt with. His brethren are to see that he is not subjected to harsh treatment, after the custom of heathen masters, vs. 50, 53. If he is not redeemed in the manner just stated, he goes out free, with his children, in the year of jubilee, v. 54. It is then added once more: "For unto me the children of Israel are servants, whom I brought forth out of the land of Egypt, v. 55. Notice has already been taken, chap. 14, of the circumstance that the right of being redeemed is allowed in the case of a heathen master, but is not mentioned when the master is an Israelite."<sup>(a)</sup>

§ The law now under consideration in its twofold form (II. a. b.) compared with the two passages quoted under the preceding head (I. a. b.) Ex. xxi. 2-6, Deut. xv. 12-18, has always offered difficulties which have not yet been satisfactorily solved; difficulties, namely, growing out of the entire difference in respect to the time of service. For while, according to I. a. b. the servant is to go out free in

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ing, as the Sept. (*ἐκ γενετῆς προσήλυτος*) and the Vulgate (*cuiquam de stirpe ejus* [peregrini]), a descendant of a foreign family. The author, for reasons which he has stated in the note to chap. 100, understands either a family whose ancestors of foreign origin have long since settled in the land, or a family of the heathen, occupying the land before the coming of the Israelites.] — TR.

<sup>(a)</sup> [In the chapter referred to, the author, assuming that the redeemed Hebrew owed service to him who had redeemed him, suggests that it might have been more painful for him to serve a relative than an Israelite who stood in no specific relation to him; while redemption from a heathen master would be always a gain.] — TR.



the seventh year, according to II. a. b. he serves till the year of jubilee; that is, either fewer than six years, when the jubilee fell at an earlier time, or, if he should happen to have been bought immediately after it, well-nigh forty-three years longer. This contradiction Michaelis seeks to remove by the assumption that the lawgiver had in view precisely the first case, that of the arrival of the year of jubilee before the seventh year.<sup>(a)</sup> But this is getting over the difficulty in a very superficial way. It is impossible that a law should have been given containing such a perilous ambiguity. Moreover, in the law that immediately follows respecting the Israelite who sells himself to a stranger, Lev. xxv. 47, seq., the possibility is assumed that there may yet remain "many years" to the jubilee, v. 51; a period, therefore, which we cannot conceive of as lying within the compass of six years. Others, again, have wished to refer to this law the case of the servant who *chose* not to go out free in the seventh year. But we have already endeavored to show that then he probably remained in the service of his master, not till the year of jubilee, but forever. This case, moreover, constitutes an exception to which the general language of the law in question cannot well be restricted. Michaelis supposes there may have been other cases in which the servant did not become free till the fiftieth year; for example, when one had been sold for debt or theft. But the lawgiver does not say for what causes he might be sold who was to go out free *the seventh year*; and that in (II. a.) Lev. xxv. 39, seq., he does not have theft in view is manifest, since he expressly speaks of the brother that has been brought low (reduced to poverty).

Perhaps, now, by a more particular examination of the words of the law, we may succeed in removing the contradiction after another manner. It would seem, in the first place, that, in interpreting these two classes of laws, men have entirely overlooked the pretty clear intimations con-

<sup>(a)</sup> [Michaelis gives the view entertained by the Rabbins generally. (See below, note 917.) It is also maintained by Mielziner, see Am. Theol. Review for April 1861, pp. 243, 244. — TR.]

tained in them, that they treat of entirely *different classes of persons*. In Lev. xxv. 39, where the law speaks of being sold to an Israelite (II. a.), and just so in v. 47, where the sale is to a foreigner (II. b.), the subject of the sale is introduced with the words: "If thy brother by thee be brought low," and, "If thy brother by him (the foreigner) be brought low." He is then (as also appears with special clearness from the added clause, v. 42, "for they are my servants, whom I have brought out of the land of Egypt") an *impoverished Israelite*, who has sold his patrimony till the year of jubilee, Lev. xxv. 41. This man is in no way called "servant." On the contrary, the very thing forbidden is that he should be treated as a servant, and put to servile labors. On the other hand, in Ex. xxi. 2 (I. a.) the law runs thus: "If thou buyest a Hebrew *servant*." It is scarcely credible that this law and the other just adduced refer to persons identical with each other. *To buy for one's self a servant* is an expression that hardly applies to the acquisition of one who up to this moment has been no servant, but a possessor of landed property, and in respect to whom it is expressly said, Lev. xxv. 42 (II. a.), that the sale of a servant is unsuitable. The law, then (I. a.), Ex. xxi. 2, seq. relates to an *actual Hebrew servant*, who has been *already* held to service as such; and the different relations of the two classes of persons are the ground of the difference in the two sets of laws. In order to make this perfectly clear, a few additional remarks are needed.

§ 7. In the first law relating to the purchase and sale of a servant, Ex. xxi. 2, seq., compared with Deut. xv. 12–18 (I. a. b.), we are not at liberty to understand the re-sale of the man spoken of in Lev. xxv. 39, seq. (II. a. b.); for this is flatly contradicted by the treatment prescribed in his case. This leads to the idea that by the term "Hebrew" servants, an altogether peculiar class of servants is designated, not belonging to heathendom, and yet not to be regarded as proper Israelites; but *born in a state of servitude*, and constituting a middle class between the impoverished *Israelites*, that appear in the second law (II.), and proper servants

bought of *heathen*. To this class might belong, first of all those descended from a maid-servant given in marriage by the master to his servant, to which allusion is made, Ex. xxi. 5 (I. a), since, according to the express direction of the lawgiver, these remained with the mother in servitude when the servant went out in the seventh year. Once more, according to Ex. xii. 44, the servant bought with money was permitted, if he desired it, to become fully incorporated with the household by circumcision, and to obtain naturalization, at least so far as was compatible with his relations. That many must have found this to be for their advantage, can hardly be doubted.<sup>904</sup> These persons, and certainly their children, and those of other heathen servants born in the house, as also the servants taken in war who had grown up in the house, — these all could not possibly be regarded any longer as gentiles, but rather as those who had been introduced into the universal national fellowship,<sup>905</sup> with the right of participating in all the ritual services. But since now the lawgiver does not intimate by a single word that this grade of naturalization had of itself the effect to make

<sup>904</sup> That the circumcision of servants was a rule enjoined as of universal obligation, as Michaelis assumes, in accordance with Gen. xvii. 13, 27, is incorrect. In the passage referred to it is to be regarded only as a special obligation imposed upon Abraham, which, according to the Mosaic law, is of no further obligation. On the contrary, from Ex. xii. 44 it expressly follows that the circumcision of servants was left optional. According to the later Rabbinical view, the servant bought of Gentiles was by all means to be induced through the influence of persuasion to receive baptism and circumcision; or, if he refused these, to be again resold into a foreign land. Nevertheless, one can have in his house as a resident proselyte (גֵּר תַּרְבּוּכָה, *proselytus inquilinus*), [more commonly called *proselyte of the gate*, who was subjected to neither baptism nor circumcision, but simply obligated himself to avoid idolatry, and to keep the so-called seven precepts of Noah. — TR.], a servant whom he has bought under the express condition of non-circumcision. — *Jebammoth*, 48. b. : Maimonides, Tract. *Issure Biah*, Chap. XIV. § 9; comp. XIII. §§ 11, 12.

<sup>905</sup> For this view no mean voucher is found, as it would seem, in the fact that in Deut. xxix. 11, among those who are present or are represented in the general congregation, the *hewers of wood* and *drawers of water* are also introduced, who can hardly have been Israelites, especially at so early a period, but must rather have been the servants brought with them from Egypt, Ex. xii. 44, who were originally of heathen origin.

them immediately free,<sup>906</sup> we can hardly make any other assumption than that they remained in their former relation of servitude to the master's house, where they belonged in a certain measure to the household. This servitude, in itself light, was now made lighter, especially for those born in the house, or that had entered it when very young. Here, then, we should have a great multitude of "Hebrew servants," for whom the law in question must have been a kindness; that is, when we refer it to the case of their *leaving* their *first* master's house. If their original master did not manumit them (which, however, may have happened in the majority of cases), but sold them, then what might originally have been regarded as a hardship became also the road to their freedom, since their second master had no longer the right which the first enjoyed over them, but, according to the law provided in the case (I. a.), was obliged to let them go free in the seventh year, and that, too, without being permitted to demand of them any redemption-money. More than this, he was required also to furnish them with a present to help them on in life, perhaps to assist them in procuring a small flock of their own.

It might seem strange, according to this explanation, that the person sold should be designated as "thy brother, a Hebrew man, or a Hebrew woman," Deut. xv. 12 (I. b.). But in Lev. xxv. 35, the term "brother" is expressly used of a stranger also. On the other hand, the expression "Hebrew man and Hebrew woman," which is used in both statements of this law (I. a. b.), but *not at all* in the other law (II.), Lev. xxv. 39, seq., instead of which we have "children of Israel," v. 55, — this expression, we say, intimates

<sup>906</sup> According to Rabbinic law this certainly did not take place. The servants who are received by circumcision and the baptismal bath, pass in this way out of the domain of heathendom, without being, however, fully introduced into the commonwealth of Israel. This does not happen, except by full manumission. Until then, free Israelites of both sexes are forbidden to enter into marriage with them. But a servant [that is, an Israelitish servant, — TR.] *sold under process of law* (see below in note 917) may do this, even if he have been a priest, if his master gives him a Canaanitish maid. *Sanhedrim*, 58. 6. Maimonides, *Tract. Issure Bi'ah*, Chap. XII § 11. comp. *Tract. Abadin*, Chap. III. § 3, 4.

that the subject spoken of [in the former class of passages, Tr.] is no original *Israelite*, but one received only in a general way, by naturalization, into the *Hebrew commonwealth*, and belonging, accordingly, to an altogether peculiar class of servants. For elsewhere the term *Hebrew* is never used in laws, and in the Pentateuch the constant usage is to employ it *only where* foreigners speak of Israelites, or Israelites to foreigners.<sup>97</sup> Peculiar is the exhortation (I. b.), Deut. xv. 15: "Remember that thou wast a bondman in the land of Egypt, and the Lord thy God redeemed thee: therefore I command thee this day to do this." Exactly the same form of exhortation appears, Deut. v. 15, after the command that the *heathen* man-servant and maid-servant be allowed to rest on the sabbath-day. Elsewhere, also, it is customary to mention the Egyptian bondage for the purpose of inculcating clemency towards the *stranger*; for example, that he shall not be oppressed, Ex. xxiii. 9; that he shall be loved, Lev. xix. 34; that he shall receive loans without usury, Lev. xxv. 35, 38. On the other hand, in both statements of the law now under consideration (I. a. b.), we miss the reference to the fact that they who have been redeemed from Egypt are God's servants; which, nevertheless, appears twice in the other law, Lev. xxv. 39, seq. (II. a. b.), and likewise indicates that only in the latter case (II.) does the lawgiver speak of Israelites actually such by original descent, but not in the former case (I). There is a further consideration that deserves attention. In Ex. xxi. 4, seq., it is presupposed that the servant came into the service of his master unmarried, and formed a connection there with a bond-maid belonging to the household, though he

<sup>97</sup> Michaelis also has felt the singularity of the expression "Hebrew" in this place, a term elsewhere not used; and he is almost inclined to understand under the term "Hebrews" all people who had originally the same habitations, "the other side of the Euphrates," as did the forefathers of the Israelites. This, however, is not to be thought of. Rather did the word "Hebrew" indicate always rather the general political relation; the word "Israelite," the religious and religious-patriarchal relation; so that, when one wished to speak of a person not connected by descent with the patriarchal commonwealth, but who had nevertheless been fully introduced into it by naturalization, in the manner above described, the term "Hebrew" offered itself as more suitable than "Israelite."

knew that upon his departure he could not take her with him, and that, as the final result, he requested his master to retain him in his service. From this, also, we may perhaps infer that he was a descendant of heathen ancestors, who, on the ground of their being more accustomed to the relations of servitude, found it not so hard to bear, especially when mildly treated, and who, when they left their master's house, could not so easily maintain themselves as could the Israelite, who must sooner or later return to his patrimony, who found shelter among his kindred, who probably, also, was previously married, and, therefore, could hardly have come into his master's service without a family. All these latter particulars the law in Lev. xxv. 39, seq. (II.) presupposes in respect to the impoverished Israelite who enters into servitude. Finally, we may adduce the fact that in neither statement of the law concerning *servants* (I), is any mention made of redemption by kinsmen, not even in the case where the servant decides to remain for ever in the service of his master; though there may well have been relatives in circumstances to redeem with him the wife and children also to whom he cleaved, rather than suffer their brother to go into a condition of slavery. *This circumstance*, which must always excite surprise, is certainly explained upon the supposition that the man was by descent a foreigner and had no Israelitish kinsmen.

§ 8. Altogether different are the relations touched upon in the law (II.), Lev. xxv. 39, seq. It follows in the train of the general laws relating to the sabbatical year and year of jubilee, and refers back to what has been already indicated, v. 10, that the fiftieth year is to be hallowed, liberty is to be proclaimed in the land, and every one to return to his inheritance and his family. This law, therefore, is closely connected with the general ordinances made by the lawgiver for that part of the population which was free and possessed landed estate. The question immediately arises here, In what way did the man who was designated as one "impoverished" come into the relation of servitude? The word

*minkar*,<sup>908</sup> vs. 39, 47, 48, has been translated, *he sells himself*, instead of the rendering adopted by us, *he is sold*. If this were correct, it could be understood as meaning that, on account of his poverty, he engages himself to service.<sup>(a)</sup> But how should he then receive in advance the wages for the whole period of service, which must yet be liable to interruption, as, for example, by his death? What is the object of the directions for his redemption, especially since he is to be treated as a yearly hired servant (see above)? The rendering of *מָכַר*, *he sells himself*, is, moreover, not so well established as the other, *he is sold*.<sup>909</sup> There remains, then, only the assumption that the impoverished Israelite has fallen into debt, and thus come into the power of his creditor. This seems to be hinted in the words, "if thy brother have been brought low by him"<sup>(b)</sup> (the stranger), where there is also indicated a close relation between the two, which can be here no other than that of debtor and creditor. The seller is then the law, and the civil tribunal acting in its name. For to this there must plainly be a final resort, unless the debtor, by his own voluntary action, anticipate such a procedure. The word "sell," then, is to be here understood not altogether in a proper sense; but the debtor is delivered over to the creditor, to serve out the amount of the debt. Compare 2 Kings iv. 1; Isa. l. 1; Neh. v. 5.

It agrees now well with this relation that the time of service should be extended to the longest limit; since in the case of a loan which amounted perhaps to a considerable sum, the creditor could not well be required to content himself with six years of service. Such a rule in its final result would also have been very unpleasant to the

<sup>908</sup> מָכַר.

(a) [That is, for a pecuniary consideration (Dienste nehme). — Tr.]

<sup>909</sup> As an example of the certain use of *מָכַר* in this sense, take the law concerning the thief, Ex. xxii. 2 (Eng. Vers. xxii. 3), "If he have nothing (to pay), he shall be sold for his theft," where it cannot possibly mean he shall sell himself.

(b) [וְהָיָה אֵלָיו כְּעַבְדוֹ]. The word *אֵלָיו* does not necessarily indicate any other than the general relation of proximity — "by him." So our English version: "and thy brother that dwelleth by him wax poor." — Tr.]

poor man who wished to effect a loan. For, at the end of every six years, he would have incurred continually new debts and come into the hands of new creditors, while there would have been no relief for him except the return of his hereditary patrimony in the year of jubilee.<sup>90</sup> In the case of the purchase of a *servant*, on the contrary, his master knew beforehand that he must release him at the end of six years, and governed himself accordingly in respect to the price.

To us it appears manifest throughout that these two sets of laws refer to different classes of persons,—the second (II.) to the *free* landholder who had been reduced to poverty and would be without means till the year of jubilee, the first (I.) to the servant who had been already in a state of servitude,—and that thus the difficulties and contradictions above referred to find their solution.

§ 9. The law in respect to “Hebrew maid-servants”<sup>91</sup> is in a certain manner interpolated into the ordinances for Hebrew servants, Deut. xv. 12–17, of which the introductory words are as follows: “If thy brother, a Hebrew man or a Hebrew woman, be sold unto thee, six years shall he serve thee, and in the seventh year thou shalt let him go free.” Hence it appears that the Hebrew maid-servant also

<sup>90</sup> The year of jubilee might, however, have been specified here only as the longest period to which the service could extend, without its being the intention of the law to say that the poor man *must* remain so long in service; since we must certainly assume that he might leave the Israelitish master also at an earlier period, if he was redeemed, or was in a condition to redeem himself.

<sup>91</sup> These, as already remarked above, are called *Shifchah* (שִׁפְחָה) and *Amah* (אָמָה). Wherein the distinction between the two terms lies is the more difficult to investigate, because the etymology and proper signification are wholly uncertain. One might, perhaps, say that *Shifchah* is a maid who has not yet entered into a state of marriage, but that this has happened in the case of the *Amah*. Compare Gen. xvi. 1 with xxi. 10. Yet it must be admitted that the usage is not altogether consistent with itself, although in laws it is especially customary to speak of the son of the *Amah*, and the word, moreover, is certainly connected with *em* (אִמָּה), *mother*.

[Mielziner dissents from this view. He thinks that *Amah* “probably means bond-women in general;” while *Shifchah* “probably designates a class of bond-women who performed the most menial service, and were under the special orders of the mistress.” See Am. Theol. Review for April; note to p. 238. — T<sub>R</sub>]



was to serve only six years, and go out free on the seventh. After the further direction that the servant upon his departure shall receive a present; but that, if he prefer to remain, his ear shall be bored; then follow, v. 17, these words: "And also unto thy maid-servant thou shalt do likewise. These words certainly do not mean to affirm that her ear shall be in like manner bored,"<sup>92</sup> since here the proceedings are based on wholly different relations. They rather refer immediately to the preceding direction respecting the presents that are to be given in connection with the departure. It is, however, possible that she also might prefer to remain in service. In this case the words just quoted might include also what has been said in the clause immediately preceding them: "And he shall be a servant to thee for ever;" so that she also would lose, like the man-servant, the right of any further release. If, now, in this law, Deut. xv. 12-17 (I. b.) compared with Ex. xxi. 2-6 (I. a.), the reference is to one who was already a man-servant, and possibly of gentile origin, the same must also be assumed respecting this maid-servant.

§ 10. Immediately following the law above quoted in respect to men-servants, Ex. xxi. 2-6 (I. a.), though not standing in any other connection with it, we find another law respecting maid-servants, which, as compared with that above stated, has been another source of difficulties.

"If a man sell his daughter for a maid-servant, she shall not go out as the men-servants do. If she be not pleasing in the eyes of her master, who hath espoused her to him-[self],"<sup>93</sup> he shall cause her to be redeemed. To sell her

<sup>92</sup> According to Rabbinic law also, this does not take place. Maimonides, Tract. *Abadim*, chap. III. § 13.

<sup>93</sup> The particle here rendered "to him[*self*]" has in the original two different readings, אֵלָיו, *to, not*, and לְאֵלָיו, *to, to him, or to himself*. The reading אֵלָיו, *not*, stands in the text; but the old marginal gloss indicates in its stead לְאֵלָיו, *to him[*self*]*. Many decide in favor of the first reading. It makes no great difference in the meaning, since, in the former case, we must render: "If she be displeasing in the eyes of her master, so that he does not betroth her (to himself, as we naturally understand, cannot decide to enter into the relation of marriage with her). No one, however, can fail to see the forced character of this construction. We prefer, therefore, the latter explanation, according to which the words of v. 8,

unto a foreign people he shall not have power, seeing he hath dealt deceitfully with her. And if he betroth her to his son, he shall deal with her after the manner of daughters. If he take him another [wife], her aliment, her raiment, and her duty of marriage he shall not withdraw. And if he do not these three unto her, then shall she go out free without money." Ex. xxi. 7-11.

The three things mentioned in the last verse are apparently these (compare § 11): that he should — (1), take her to himself as a wife; or (2), should give her to his son; and (3), that when he (or his son also) afterwards takes another wife, she shall experience no neglect. For the first case, that of aversion to her, the readiest expedient is that he cause her to be redeemed. Precisely how he is to accomplish this is not said; but we may apparently regard it as a thing understood of itself, that he must either induce the father to take her back, upon the condition, perhaps, of his refunding a part of the sum received for her, or find another to whom she is not displeasing, and who is ready to marry her. The direction that he shall not sell her to a *foreign people*,<sup>914</sup> consequently only to an Israelite or (naturalized) foreigner in the land, seems to indicate this, that the father has not the right to insist in the matter, that the present master himself retains her as his own, while at the same time he is at liberty to release himself from her by finding another suitable marriage for her to an Israelite, or also to a naturalized foreigner. If, now, he does not concern himself about the matter of her redemption, or is not able to accomplish it; if he does not give her to his son, or

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"he betroths her to him[self], and of v. 9, he betroths her to his son, agree well with each other.

<sup>914</sup> This expression, which plainly is intended to exclude individuals of foreign nationality, has seemed strange to expositors of former days. The Rabbins connect with it the rule that in general, nothing further can be said of the sale of the aforesaid maiden, whether on the side of her master or of her father; which latter, indeed, had originally the power of giving her only to one who was not hindered (as, for example, by consanguinity) from taking her as his wife. See Rashi on the passage; Maimonides, Tract. *Abadim*, Chap. IV. § 10, 11; *Qid-dushin*, 18. a. 20. a. On the expression itself compare Geiger in his *Zeitschrift für Jud. Theol.* IV. I. § 22 ff.

if another is preferred before her and she is neglected, she has, in all these three cases, the right to go out free, without the repayment of the price paid for her.

It is manifest, now, that this law is most palpably inconsistent with that before adduced, Deut. xv. 12–17. *There* the maid-servant is placed in the same category with the man-servant. *Here*, in this latter law, it is expressly said: “She shall not go out as the men-servants do.”<sup>916</sup> *There* it is precisely the case of a *maid-servant* who has no further claims beyond the reception of a present upon her departure; *here* she is not at all destined for *service*, but instead of this, to enter into a matrimonial relation with the master, or with his son; in which latter case his father is to provide for her as for a daughter. Nothing is or can be said, consistently with this relation, concerning her going out in the seventh year. On the contrary, she has, in specified circumstances, the right to go out immediately, and this on the ground that the conduct of the master in deceiving her with respect to these three particulars is to be considered as an act of “deceitful dealing.” There is, then, a radical difference in the two laws. They cannot be brought into agreement with each other; nor can one say, with Michaelis, II. § 88, that the law in Deut. xv. 12–27, as compared with that in Ex. xxi. 7–11, exhibits a progress towards clemency. The very opposite is true. After the lawgiver had in the earlier law directed that the master should provide for her as for a daughter, and one who could claim the fulfilment of all matrimonial obligations, to have then treated her in the latter law, as a mere maid-servant who might be sent away from the house without ceremony, would have been a hard proceeding.

§ 11. We hesitate not, therefore, to pursue a course here similar to that which has been followed in reference to men-

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<sup>916</sup> The Rabbins, it is true, explain: “As *Canaanitish* men-servants,” who become free on account of a bodily injury [see Ex. xxi. 26, 27. — Tr.]; which, as they allege, does not set the Hebrew man-servant or maid-servant free, but is to be punished in accordance with the general laws for bodily damages. See *Maimonides*, Tract. *Abadim*, chap. IV. § 6.

servants, and to assume that here also, as there, we have to do with different relations and classes of persons. In the law, Deut. xv. 12–17, the subject is in fact an actual maid-servant, who has also been previously such, and whom her owner sells to another. If, now, she was of gentile descent (see our remarks above, on the term “Hebrew woman,” applied to her), there accrues to her, from this transaction, the high advantage that, after six years service with the *second* master, she obtains her perfect freedom, and can in all cases return to her kindred. In the law, Ex. xxi. 7–11, she of whom it speaks has manifestly never been a maid-servant, but has dwelt only in her father’s house. He is probably a poor man, who, by the so-called sale of his daughter, gains something, but who, nevertheless, surrenders her only to enter into relations suitable for her, and in which he has a guarantee for her future condition. We have then again in the *former* case, Deut. xv. 12–27, a *maid-servant*; in the *latter*, Ex. xxi. 7–11, a *free* woman. Whether her father is an Israelite, or a foreigner, the text does not say; and it is, moreover, well-nigh a matter of indifference, since in the case of women this distinction was not so very important. It is, perhaps, more natural to think of the latter,<sup>916</sup> if our conjecture is right that, in the law *immediately preceding*, the “Hebrew” servant is not of Israelitish descent. Perhaps, moreover, we ought not to leave altogether out of account the fact that the law in respect to captive *heathen women* contains provisions in certain respects similar; those, namely, which direct that, if the master treat with neglect a woman of this class in her matrimonial relation to him, he must let her go free, and neither sell her for money, nor compel her to perform bond-service. Deut. xxi. 14. See chap. 98, § 5.

It is further a weighty consideration, as well perhaps with reference to the case just adduced as in a general point of view, that we have here a relation altogether different from

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<sup>916</sup> According to this view, therefore, the lawgiver would rest here, not proceeding at all to the further assumption that an Israelite could surrender his daughter after this manner.

that of a regular marriage; inasmuch as the woman whom the master takes to himself is called, not wife, but maid-servant, is dismissed without a bill of divorce, and receives no marriage dower. The difference is, then, somewhat of the same kind that appears in other books of the scriptures, between wives and concubines. To this latter relation the lawgiver is not, as it would seem, favorably inclined. See chap. 103, § 3. Hence, perhaps, the solicitude which he manifests, Ex. xxi. 9, 10, to secure for this maid-servant the rights of actual marriage. Accordingly, one might better refer the tenth verse also to the son alone, and understand the whole passage in the following manner: The master originally intended this maid for himself. With him—perhaps a man already advanced in years—she claims only the place of a concubine. As such he must, first, take her to himself; or, secondly, provide for her redemption; or, thirdly, he can give her to his son, although this was not the original stipulation. In this last case, however, she is not obliged to be connected with him in the relation of concubine, with the expectation of being thrust into the background by the subsequent introduction of a regular housewife; but the master must treat her as a *daughter* (in-law), not as a maid-servant, and give her to his son as an actual wife, so that, should he take another wife, she may not be disparaged. If the *original purchaser* did not do in her behalf one of these three things above specified, she went out free immediately and returned to her father. But the son of the father [if he had taken her] could not send her away without ceremony, but only on the condition of giving her, as in the case of other regular wives, a writing of divorce, when he was, moreover, bound to assign a reason.<sup>917</sup>

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<sup>917</sup> After the exposition of our views respecting the possibly different reference of the different laws concerning Israelitish and "Hebrew" servants, we must not omit stating that the views of the Rabbins know nothing of such a difference. With them the Hebrew servant is an Israelite whom the judicial tribunal has sold against his will, or who has sold himself,—the former case only on account of theft, Ex. xxii. 2, the latter from absolute poverty. A Hebrew maid-servant is a girl yet in her minority, who has been given away on account

§ 12. In connection with the law relating to the impoverished Israelite who enters into service, the manner of acquiring *heathen men-servants and maid-servants* is also indicated, as well as the relation which they hold to the Israelites. The impoverished Israelite is not to be sold as a perpetual servant, nor to be employed in (the rougher kinds of) bond-service, but to be treated as a hireling. But from the people who live round about, men-servants and maid-servants can be bought. So also from the children of resident foreigners, and from their descendants and families born in the land. These may be put to (bond) service, treated as a perpetual possession, and also transmitted as an inheritance to children. Lev. xxv. 44–46. Compare vs. 39, 42.

Here then we have to a certain extent a condition of slavery,<sup>918</sup> which however merits this name only in the mild-

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of pressing poverty (see on this subject the note to chap. 108). The obligation to serve till the year of jubilee is assumed as possible only in those cases where it arrives before the close of the six years, or where the servant prefers to remain. See Maimonides, Tract. *Abadim*, chaps. I.–IV. What difficulties lie in the way of this view have been indicated above. It may be, however, that the relations of a later day hardly permitted any longer the appearance of a special class of "Hebrew" servants in the sense above given. Against our attempted explanation, as applicable to the times of Jeremiah, the alternate use by him of the terms *Hebrew* and *Jew* might also deserve consideration, Jer. xxxiv. 9.

In the case of a Hebrew servant, the right of master is gained [according to the Rabbins, — TR.] by purchase or document [אָבֵב, which Buxtorf defines to be, *scriptum obligationis vel contractus, instrumentum literarum vel contractus.* — TR.], and he becomes free again by the expiration of the six years, or still earlier by the arrival of the year of jubilee, or by the reimbursement of that part of the purchase money which has not yet been paid off by service. The Hebrew maid-servant becomes, moreover, free by the appearance of the signs of puberty (since then the right of the father over her ceases, comp. *Kethuboth*, IV. 4). The servant whose ear has been bored with an awl becomes free in the year of jubilee, and upon the death of the master. *Qiddushin*, I, 2; Maimonides on the same.

<sup>918</sup> Michaelis introduces into his discussion respecting servants an unprofitable misapprehension, when he gives not only to this particular section, but to the whole the title of "Slavery," although he labors to show how strongly the law-giver has expressed his disapprobation of the slavery prevailing among other people, and how carefully he has mitigated it. With what right can a man-servant who becomes free the seventh year, or even he who goes out in the year of jubilee, or a maid-servant when her master, upon his failure to perform certain obligations to her, is required immediately to send away free, — with what right can all these be called *slaves*? [*Leibeigne* = the Latin term *mancipia*. — TR.]

est sense. For all the powers which we are accustomed to connect with this word, in ancient and modern times, — the absolute surrender of the slaves to the arbitrary will of the master, his right to chastise them without limit, to employ them in unremitting toil, and even to kill them with impunity, — all these are set aside by the Mosaic law, inasmuch as this class of servants is carefully protected by the law,<sup>919</sup> and is in no way left without rights. In addition to this they were at liberty, as remarked above, to become naturalized, a step which must sooner or later have resulted in their independence and complete fusion with the nation. No prejudice, such as existed, and still exists, among other nations, according to which slaves are regarded as a sort of inferior beings, — no such prejudice opposed itself among the Hebrews, even to a family connection with servants. An example in point may be found in 1 Chron. ii. 34, 35, (see chap. 109), where an Israelite gives his daughter to an Egyptian servant, whereby he becomes heir to his master. In the same manner Abraham has no scruples about installing his servant Eliezer as heir to his great possessions and his dignity as an emir, Gen. xv. 2, 3. These regulations could not but be followed by the most salutary results. By their means those who, under the title of “slaves,” constitute in other nations a class distinct from the rest of the population, extremely dangerous, and capable of being kept in order only by the most severe, sometimes the most barbarous, laws, were among the Israelites received more intimately into the patriarchal family-circle; the feeling of distance and hostility which they naturally brought with them was, as it were, gradually dried up; and the general free spirit of the Mosaic institutions operated continually to soften down the contrast, otherwise so odious, between the condition of master and that of servant.<sup>920</sup> Hence, as Michae-

<sup>919</sup> Precisely the same view is taken by the law of the Mishnah; although in some particulars this has apparently not kept itself entirely free from the influence of that feature of the Roman jurisprudence which regards the slave as chattel property.

<sup>920</sup> One of the earliest and most touching memorials of the manner in which

lis has already remarked, in the history of the Hebrew state during its existence of fifteen centuries, we hear nothing respecting servile wars, as in the Roman empire, or any other dissatisfaction on the part of the servants. In these circumstances no better fortune could befall one destined to slavery than that he should be sold into Palestine, where the mildest lot awaited him, and where also, by means of a special law, Deut. xxiii. 16, 17, forbidding the surrender of the servant who had escaped from his master and permitting him to settle at pleasure in the land, he found, as now in England (to which also *Michaelis* and *Wallon, droit d'Asyle*, refer) a protecting asylum the moment he set his foot on the soil of Palestine.

In the passage of the law now under consideration, purchase is named as the manner in which gentile men-servants and maid-servants were acquired, just as in the case of Hebrew servants.<sup>921</sup> Elsewhere also, as for example, Ex. xii. 44, the servant is designated as "one bought for money" (מִקְנָתוֹ כֶּסֶף, *mignath keseph*). In addition to these were those born in the house" (*yelide bayith*<sup>922</sup>), Gen. xvii. 23. These are the children of the men-servants and maid-servants who have come into the master's possession, as also (§3) the children of the maid-servant married to a Hebrew servant who remained with her master. These we find also designated by another term, "the son of thy handmaid," Ex. xxiii. 12.<sup>923</sup>

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servants were treated in the Hebrew family offers itself in the circumstance that the oak under which Rachael's handmaid was buried received the name of the oak of weeping. Gen. xxxv. 8.

<sup>921</sup> The average price of a servant or handmaid appears from Ex. xxi. 32, (see chap. 73 §1) to have been thirty shekels. Compare the valuation of persons, Lev. xxvii. 2, seq., chap. 43. § 4.

<sup>922</sup> יְלִידֵי בַיִת.

<sup>923</sup> According to the law of the Mishnah the right of master over a Canaanitish servant is acquired (just as in the case of immovable estate) by purchase, by document, or by actual appropriation (having one's self served by him). [The words of the Mishnah are: עֶבֶד כּוֹנֵנִי נִקְנָה בְּכֶסֶף וּבַשְּׂטֵר וּבַחֲזֻקָה; a *Canaanitish servant* is acquired by money, by document, and by possession. The latter mode of acquisition is thus explained by Maimonides as quoted by Surenhusius, Mishna, *Qiddushin*, I. 3; "If he has taken off or put on his master's shoes, or carried his garments after him to the bath; undressed, washed, anointed, rubbed, dressed, raised him up; or if the master has raised up the servant, he



Respecting servants and handmaids acquired in war (chap. 98) the lawgiver in these regulations makes no declarations. It is natural to suppose that those acquired in this way came under the same rules. A special law, indeed, Deut. xxi. 10-14, makes mention of the female captive. But in her case it is presupposed that her master takes her to wife (chap. 98, § 5). And in general the female captives on whose virginity a special stress is laid, Numb. xxxi. 18, had undoubtedly the same destination.

§ 13. We come now to the particular laws relating to servants, in which we notice in general a tendency to secure for them a mild condition of servitude.

On the sabbath the servants and handmaids are not to labor, Ex. xx. 10. This law given on Sinai is once more mentioned, Ex. xxiii. 12: "On the seventh day thou shalt rest, that the son of thy handmaid and the stranger may be refreshed." When the decalogue is repeated, Deut. v. 14, 15, the law of the sabbath in respect to servants and handmaids is as follows: "In it thou shalt not do any work, thou, nor thy son, nor thy daughter, nor thy man-servant, nor thy maid-servant, . . . . nor thy stranger that is in thy gates; that thy man-servant and thy maid-servant may rest as well as thou."<sup>24</sup> For remember that thou wast a servant in Egypt, and God has set thee free; therefore he commandeth thee to keep the sabbath." In the freedom, then, which God had conferred upon them they were to recognize a demand that they should treat others with mildness, compare Ex. xxiii. 9.

The general national festivals were also holidays for the servants; and it is repeatedly enjoined that they share in

has gained possession of him." — Tr.] The servant, on the other side, becomes free by redemption or by a certificate of freedom. *Qiddushin* I. 3. Maimonides, Tract. *Abadin*, chap. 5.

The servant whom his master sells to one not an Israelite, or into a foreign country, thereby passes in the view of the law, out of the condition of servitude. If then he escapes from his new master, the former has no disposal of him. Nay more, the government may compel the seller himself to redeem him, in order to set him free. *Gittin*, IV. 6. Maimonides, Tract. *Abadin*, chap. viii.

<sup>24</sup> The thought that servants and handmaids hold to the master the relation of children of the same God, and can therefore lay claim to receive perfect justice, is prominently set forth in Job, chap. xxxi. 13, 14.

these feasts. The standing form of expression in reference to this is: "rejoice before thy God in thy feast, thou, thy son and thy daughter, *thy man-servant and thy maid-servant*, etc., Deut. xvi. 11, 12, 14, compare xii. 18.

The master had no power over the body and life of his servant and handmaid. The infliction upon them of mild chastisement was unquestionably permitted, as it is now also, even in those countries where the servants are completely free. For those who had grown up in the house, this was as necessary as for the master's own children, Prov. xxix. 19, 21, compare xiii. 24. But if the master smote them so as to injure them in respect to any one of their members, for example, if he smote out one of their teeth, he was required immediately to set them free. If the servant dies on the spot from an unfortunate blow, the master is to be punished for this.<sup>925</sup> For the particulars see chap. 72, § 2; chap. 76, § 3. For the protection which the Mosaic law extends to captives taken in war, see chap. 98, § 5.

It is a characteristic mark that in all these cases the first thing kept in view is the freedom of the inferior, in preference to any other punishments imposed on the master, as if it were the endeavor of the lawgiver, first of all, to attain this end for all servants, and by all the means in his power.

If one had seduced a maid-servant who was already espoused to a man,<sup>926</sup> but had not yet obtained her freedom, neither of the two was to be punished with death, as was otherwise appointed for both in the case of the seduction of a free woman. Instead of this they were only to be chastized, Lev. xix. 20. This, again, is in a certain sense a

<sup>925</sup> It is strange that De Wette, who is elsewhere so cautious, should say in reference to Hebrew "slaves:" *Archæology*, § 160: "Corporal chastisement to the extent of death was *allowed* to be inflicted upon them, provided only that it was not instantaneous." Where does the lawgiver say this? For maltreatment he appoints penalties, but in no case approves of it.

<sup>926</sup> According to the Talmud, *Kerithuth*, II. 5; comp. *Gem. II. a.*, she is a maid-servant betrothed to a man-servant; whether a Hebrew or Canaanitish maid-servant to a Hebrew man-servant, or the former to a Canaanitish man-servant, is a question respecting which the different opinions are propounded and considered. The decision arrived at is that she is a half-free woman, betrothed to a Hebrew servant. Maimonides Tract. *Issure Biah*, chap. III. § 13.

demand that those who have the privilege should rather enter into matrimony as free than in a state of servitude.<sup>227</sup>

No law forbids the servants to hold property in their own name, provided they had brought it with them, or received it as a gift, or had the opportunity to acquire it in any other way. But Michaelis is wrong in drawing this general inference from Lev. xxv. 49, where the person under consideration is the impoverished Israelite, who is no proper servant, and who has the perpetual right of redemption. There might be outstanding debts due him, or he might receive by inheritance enough to redeem himself for the remaining time of service. With more show of reason does Michaelis adduce the fact that Zibah, the servant of Saul, and then of Mephibosheth, was himself the master of twenty servants, 2 Sam. ix. 2, 9, 10.<sup>228</sup> We may, perhaps, adduce from more ancient time the fact that the relation of servitude in which Jacob stood did not prevent his possessing herds of his own and a numerous train of servants, Gen. xxxii. 17.

One is surprised to see in Michaelis, appended immediately to the laws relating to servants, a section entitled "Peculiar right of oxen," that, namely, of being left unmuzzled while threshing out the corn (chap. 17. § 5). Michaelis thinks that this law contains, likewise, an intimation that the servant should not be forbidden to partake of the eatable or drinkable substance upon which he is bestowing toil. The law does indeed authorize an *inference* of the kind, if one looks to the spirit of the legislator. But what he wished to say concerning laborers, he would have uttered directly, had he found it necessary to do so. But this, as it would seem, he did not. Every passer-by was further-

<sup>227</sup> The Rabbins notice (*Kerithuth*, II. 4, compared with 5) how the penalty applied in this case to the maid-servant differs from the directions elsewhere in force; and they state, as a prominent point, that the chastisement was to be suffered only by *her*, the trespass-offering to be brought only by the man. But it does not appear how this can be inferred from the text. See chap. 81. § 3.

<sup>228</sup> According to the law of the *Mishna*, *Canaanitish* servants and handmaids have no right to anything found by them, but Hebrew servants have. *These*, therefore, have an actual right to possess property. *Baba metsiah*, I. 5. Compare Maimonides, *Tract. Mattanah*, chap. III. § 12, seq.

more permitted to partake of the fruits of the field and of the grape-clusters (chap. 16. § 3). The obligation rested upon the master, and certainly he had the intention, of giving his servants and handmaids a regular maintenance. It could hardly then be supposed that at the wine-press and fruit harvest he would prohibit his laborers from partaking of the fruits,<sup>929</sup> especially when we consider the abundant produce of the soil at that day.<sup>930</sup> But in the case of beasts, especially of oxen employed in threshing out grain, of which in the course of days they might consume no inconsiderable part, it was possible that one of a severer temper should conceive the idea of hindering them from eating.

§ 14. In Lev. xix. 20, it is said of the maid-servant betrothed to a husband: "if she has not been redeemed, *or her right of freedom* has not been given her." The word *chuphshah*,<sup>931</sup> here employed in the original text, Gesenius translates simply by the word "freedom." But it can just as well signify a document, or a formal declaration, to be made, for example, before the judges, by which the manumission of this maid-servant is announced. In fact, the text seems to require the assumption of such a formal procedure, which could indeed have been hardly dispensed with where, as in the case of this maid, grave legal decisions were concerned. See § 13. We might in like manner assume something of the same sort in the case of men-servants, especially when their master of his own accord manumitted them. For this there is the more ground, when we consider that for the case of the servant who pre-

<sup>929</sup> Although in Job, chap. xxiv. 10, 11, such conduct as this is certainly charged upon evil-doers.

<sup>930</sup> That according to Mosaic law, laborers have in general the right to partake of those fruits upon which they are bestowing labor, is stated *Baba metsiak*, VII. 2-7. No limitation is to be set to this right; yet the laborer's own interest requires that he avoid using it to excess, lest he should close against himself the doors (to employment). From chap. VII. it follows that the laborers were in fact accustomed to stipulate for themselves an indemnification for the renunciation of that right. The *keepers* of fruits (already gathered) have a right to partake of them when such is the custom of the place, VII. 8.

<sup>931</sup> חֻפְשָׁה.

fers to remain beyond his time in the house of his master, a definite form is prescribed.<sup>922</sup>

§ 15. The *hirelings*, or hired servants, to which class, as it would seem from Ex. xii. 45, the lawgiver reckons foreigners, would naturally undertake service where it would be most for their advantage. They had also the privilege of determining the kind and degree of work in view of the wages to be demanded. They are accordingly mentioned, Lev. xxv. 45, as an example of those who receive special good treatment. In Lev. xix. 13; Deut. xxiv. 14, 15, it is directed that their wages be paid them before the going

<sup>922</sup> The ordinances, according to the law of the Mishna, see above, notes 927 and 923. The Rabbins require, in the case of the manumission of those who have been already received by (circumcision and) baptism (see note 888), a subsequent bath, whereby they become altogether like other Israelites, *Jebammoth*, 47. 6, Maimonides, *Issure Biah*, chap. XIII. § 11. The servant purchased from gentiles, if he come before his master and declare, upon the occasion of his (first) baptism, that he receives it in order to become a proselyte, thereby obtains his freedom. *Jebammoth* 45. b.; 46. a.; Maimonides, as quoted above, § 11. If one makes over in writing his whole property to his slave, the latter thereby obtains his freedom forthwith. *Peah*, III. 8. The daughters of manumitted servants are altogether in the same condition as those of other proselytes, so that, provided their mother was an Israelitish woman, even priests are permitted to marry them, and the children are competent to the priestly dignity. *Bik-kurim*. I. 5.

When bills of manumission are to be given, the same thing is in general to be observed in respect to their form as in the case of bills of divorce. *Gittin*, I. 4. Compare the remarks on this subject in chap. 106. The substance of a bill of manumission lies in the words, "Henceforth be a free woman (or a free man);" or, "Henceforth be thine own." *Gittin*, IX. 3. When one has executed a bill of manumission, and given a commission to put it into the hands of his servant, he can no longer recall it, even though the servant have not yet received the document, as can certainly be done in the case of a divorce. The ground of this difference is, that it is lawful in one's absence to ordain something to his advantage, but not to his detriment. *Gittin*, I. 6.

The Rabbins suppose the case to be possible that one may be half-servant and half-free; for example, when he has belonged at the same time to several masters, and has been manumitted by one of them. He is then in an evil plight, as being unable to contract any marriage; not with a maid-servant, in his character as freeman, nor with a free woman, in his character as servant. Rabbinic law decides that in this case the remaining owner or owners can be compelled to manumit him, on condition of receiving a bond for his half (or respective proportion) of the servant's value. *Gittin*, IV. 5; *Edayoth*, I. 13. Comp. Maim. Tract. *Abadim*, chap. VII. § 4. In the case of maid-servants, also, a like relation of half-freedom may exist. *Kerithuth*, II. 5.

down of the sun; which may be naturally limited to mean, so far as they need them and demand them. From this precept it seems also to follow that they were hired by the day, or for the performance of a definite work. On the other hand, it appears from Lev. xxv. 53 (see above) that they were sometimes hired by the year. In this case they probably made their home altogether in the master's house.<sup>933</sup>

§ 16. Michaelis speaks also of the servants of the sanctuary, and quotes in connection with these Lev. xxvii. 1–8. But in that passage it is more than probable that not the person himself is devoted by a vow to the sanctuary, but his value according to the estimation given,<sup>934</sup> see chap 43, § 4. But in the case of the ban-vow [*Banngelübde*, answering to the Hebrew *נדר*, by which a thing was irrevocably devoted according to the tenor of the vow, — Tr.] the meaning certainly is that one may irrevocably devote anything belonging to him, servants included, as a gift to the sanctuary, see chap. 44, p. 372, [where the author discusses at large the question whether *private persons* could devote human beings to death, and rightly decides the question in the neg-

<sup>933</sup> According to the law of the Mishnah, the proper time for demanding wages is, for the day-laborer (according to Lev. xix. 13) the whole of the night; for the night-laborer, (according to Deut. xxiv. 15) the whole of the day following the termination of his labor, even when he has been hired for longer periods of time. During that period he is to be permitted to make oath in case of any dispute in regard to the demand; and so also after its expiration, provided only that witnesses testify to his having addressed the demand at the right time to the master of the house. In all other cases the presumption of the court is rather in favor of the alleged employer, so that he is admitted to an oath by which he repels the demand. *Baba metsiah*, IX. 11, 12; compare *Shebuoth*, VII. 1; see note 795 [a long note appended to § 89, which treats of the oath. — Tr].

The general Mosaic regulations are applied to the hire of beasts and vessels. *Baba metsiah*, IX. 12.

In respect to the hours of labor and the board of the day-laborer, the custom of the place is to be law. Here the employer may do nothing arbitrary, nor can the employee demand anything beyond such usage. *Baba metsiah*, VII. 1.

<sup>934</sup> The idea of a *valuation of persons* without any thought of the relations of servitude appears further in the Mosaic law in the redemption of the first-born (chap. 8 § 5). It appears also in modern times, as for example, in the custom (unfortunately, still occasionally prevalent) of purchasing exemption from service, and substituting another man, in respect to military obligation.

ative,—T<sub>R</sub>]. Why the Midiantish women given to the priests and Levites, Numb. xxxi. 47, should not have belonged to them, but to the sanctuary, as Michaelis thinks, II. § 125, does not appear. But in later time there were certainly men-servants and also maid-servants, 1 Sam. ii. 22, belonging to the sanctuary. It is well known that under Joshua the Gibeonites were devoted to the service of the sanctuary Josh. ix. 3, seq.; 26, 27.<sup>985</sup> Altogether different, however, was the relation of those who were consecrated to the sanctuary after the manner of Samuel (who, however, was also a Levite); and who seems to have participated immediately in the functions of divine service. That Eli, on account of his fondness for Samuel, made him his own personal servant, as Michaelis expresses himself, is nowhere said. On the contrary it is declared, 1 Sam. iii. 1, that “the child Samuel ministered to Jehovah (that is, performed the service of the sanctuary) before Eli.” But in the Mosaic law, which does not favor votive dedications, we find no very exact specifications respecting any of these relations.

<sup>985</sup> These are distinguished from other servants partly by their exclusive destination [to be “hewers of wood and drawers of water for the congregation and for the altar of the Lord,” Josh. ix. 23, 27. — T<sub>R</sub>.]; partly also by the circumstance that here the whole of a little community was devoted to hereditary servitude. This may, in a certain manner, remind us of the Spartan Helots, although the condition of the Gibeonites seems to have been in no respect an oppressive one, compare 2 Sam. xxi. 3, seq. We can hardly doubt that the *Nethinim*, that is, given (to the sanctuary), who appear 1 Chron. ix. 2; Ezra ii. 43, 58, 70; vii. 7; viii. 20; Neh. iii. 26; vii. 46, 60, 73; x. 29; xi. 3, 21, were descendants of those Gibeonites, according to the well-known assumption of the Rabbins (see note 889); and that this designation, which is first applied to the Levites, as *hereditarily given* to the sanctuary, Numb. iii. 9, afterwards remained as the exclusive title of the Gibeonites, who in like manner belonged by inheritance to the sanctuary. For this reason the proper *Nethinim* are expressly distinguished from other persons assigned to the hereditary service of the sanctuary; as, for example, “the servants of Solomon,” Ezra ii. 58; Neh. vii. 60; xi. 3 (see Winer, *Handwörterbuch*, II. § 175). The former, as appears from Ezra ii. 43, seq.; Neh. vii. 46, seq., were divided into several families; but, after the return from the captivity, were not very numerous, inasmuch as their number, along with that of “the servants of Solomon,” amounted only to 392. The *Nethinim* dwelt in quarters of their own, Neh. iii. 31; xi. 21, and had their own overseers, Neh. xi. 21, who (if one may venture to draw a conclusion from the *Nethinim* name *Zika*, Ezra ii. 43; Neh. vii. 46) were chosen out of their own number.

## GENERAL REMARKS ON THE ABOVE.

In the foot-notes Saalschütz has everywhere indicated the view of the Rabbins on the topics discussed by him. The most important points in which he differs from them relate to the circumcision of servants, and the manner of reconciling what is said of the purchase of Hebrew men-servants and maid-servants, Ex. xxi. 2-11; Deut. xv. 12-18, with the directions respecting the poor Israelite who has been sold to his brother or to a resident foreigner, Lev. xxv. 39-43, 47-55.

1. In regard to *circumcision* Saalschütz maintains, note 904, that the direction given to Abraham for the circumcision of all the male servants in his household "is to be regarded only as a special obligation imposed upon Abraham;" and he infers from the words of Moses, Ex. xii. 44, "Every man's servant that is bought for money, when thou hast circumcised him, then shall he eat thereof;" namely, of the paschal lamb,—that the circumcision of servants was left optional. To this view Mielziner very pertinently objects that the words "every man-child in your generations," Gen. xvii. 12, and "my covenant shall be in your flesh for an everlasting covenant," v. 13, clearly imply that the command imposed upon Abraham was intended to be of perpetual obligation. In regard to the words of Moses, Ex. xii. 44, nothing further can be inferred from them than that some delay might occur in the circumcision of the servant "bought for money," during which the passover might possibly be celebrated. The natural inference from them certainly is that the lawgiver considered the circumcision of all such servants as a thing that must follow of course.<sup>1</sup> In regard to the original intent of the precept

<sup>1</sup> The Hebrew of Ex. xii. 44 runs thus: וְכָל-עֶבֶד אִישׁ מִקְנֵי כֶסֶף וְהַלְתָּהּ בּוֹ אִישׁ יָאָמַל בּוֹ; which may be rendered literally: And as to every servant, — a man bought with money, thou shalt circumcise him; then shall he eat thereof. So Rosenmüller well: Ceterum, verba illa וְכָל-עֶבֶד אִישׁ absolute sunt posita, et *πρότασις* faciunt, Latine sic exprimenda: *quod attinet servum emptitium, ἴσθι, circumcides eum, ἢ ἀποδόσω* indicat, ut alias saepissime." In this he agrees with the ancient versions. *The Septuagint* is: Καὶ πάντα οἰκέτας



given to Abraham, Mielziner, in maintaining the common view, has clearly the right on his side. But in respect to the *later Rabbinic usage* he and Saalschütz are perfectly agreed. "That the Rabbins," says the former, "did not countenance anything like coercion of conscience, is evident from their declaration that a purchased slave could not be forced even to the circumcision enjoined by the law. In case of his refusal, the master was to forbear with him for a year, and try to bring him to a better mood by mild persuasion. If his efforts were unsuccessful, he must sell him again to a heathen. If the slave, however, entered into service on the condition that circumcision was to be omitted, the master might retain him forever uncircumcised. A slave once delivered from heathendom by circumcision could not be sold again to a heathen, nor into foreign lands, because he might in that case be easily enticed back into heathenism. If the master thus sold him, he could under certain circumstances be forced to buy him back again; but then he could no longer hold him in his service, but must let him go free."<sup>1</sup> This view of the Rabbins grew very naturally out of the development of the idea of the freedom and spirituality of religion. In the case of infants born in the house, circumcision was wholly the act of the parent or

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ἡ ἀργυρώρητον (as if he had read a conjunction *or* between the words  $\text{וְכָרַם}$  and  $\text{וְאָכַל}$ ) *περιτεμεῖς αὐτὸν καὶ τότε φάγεται ἀπ' αὐτοῦ*. The *Vulgate* reads: *Omnis autem servus emptitius circumcidetur, et sic comedet*. The *Targum of Onkelos* follows the Hebrew literally. The *Targum of Pseudo-Jonathan*, besides other departures from the Hebrew text, enjoins *baptism* also: And as to every foreigner who has been sold as a servant to an Israelite being the purchase of money — thou shalt circumcise him and baptize him, then he shall eat thereof.

With the view of the ancient translators agrees that of the moderns generally. *Luther*: Aber wer ein erkaufter knecht ist, den beschneide man, und dann esse er davon; but whoever is a servant bought with money, let him be circumcised, and then let him eat thereof. *De Wette*: Und jeglichen knecht, der mit geld erkauf ist, sollst du beschneiden, dann mag er davon essen; And every servant bought with money shalt thou circumcise; then may he eat thereof. So the *French Version*: Mais tout esclave qu'on aura acheté par argent sera circoncis, et alors il en mangera; But every slave who has been bought with money shall be circumcised, and then he shall eat thereof.

<sup>1</sup> In *Am. Theol. Review*, pp. 430, 431. Compare above, Saalschütz, note 904.

master. But when heathen servants arrived at years of discretion were introduced into the household, it was felt that the imposition upon them by force of the rite of circumcision could have to them no spiritual significance, and must have the effect of confirming them in their rejection of the true religion.

2. Far more important is Saalschütz's dissent from the common view in respect to the *two classes of passages*; first, Ex. xxi. 2-6; Deut. xv. 12-18, which he designates as I. *a* and *b*; secondly, Lev. xxv. 39-43, and verses 47-55 of the same chapter, which he numbers II. *a* and *b*. The common view is, that both these classes of passages refer to *the same persons*. To remove the difficulties growing out of the total disagreement in respect to the time of service, — till the seventh year in one case, till the year of jubilee in the other, — different hypotheses have been proposed, which are stated by Saalschütz. That adopted by Mielziner (and long ago given by Michaelis) is the following: "Ordinarily the man-servant became free after six years of service, that is, at the beginning of the seventh year; but if he had been sold into servitude a few years before the year of jubilee, he was not to wait for the seventh year, but he regained his freedom in the year of jubilee." He adds in a note that "the Rabbins confirm this view, but only in relation to the person who sold himself on account of poverty; one who was sold as a judgment for theft, they say, could only be sold for six years, not for a shorter time;" and, further, that the prevailing view of the Rabbinical commentators is that the regulations spoken of Ex. xxi. 2-6, and Deut. xv. 12 seq., applied only to persons sold as a judgment for theft, while the provisions defined in Lev. xxv. 40 were applicable only to those who sold themselves on account of poverty; while Rabbi Eliezer, in opposition to this common view, maintains that the man who sold himself was in every respect subject to the same conditions as the one sold under a judicial sentence; a point in respect to which Mielziner himself agrees with Eliezer.<sup>1</sup>

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<sup>1</sup> Am. Theol. Review for April, 1861, pp. 243, 244.

In respect to the harmonizing of the two classes of passages now under consideration, Saalschütz, while he fairly states the common view, maintains at length that the first class of passages, Ex. xxi. 2-6, and Deut. xv. 12-18, refers to a peculiar class of servants, not belonging to the heathen, and yet not to be regarded as proper Israelites, but constituting a middle class between slaves purchased of heathen and the impoverished Israelites that appear in the *second* class of passages, Lev. xxv. 39-43, and vs. 47-55. See his enumeration in § 7 above. As this is an important point, we give in full Mielziner's criticism on Saalschütz's view.

"Prof. Saalschütz, in his *Mos. Recht*, 702, attempts an explanation of this same difficulty. He agrees with Rabbi Eliezer (in opposition to the Rabbins), that wholly different persons are intended in Leviticus and Exodus. The passage in Lev. xxv. 40, he says, refers only to the case of an Israelite reduced to poverty, who had sold his possessions until the year of jubilee, and who was therefore allowed to sell his services for more than six years, that is, till the year of jubilee. The other passages (in Ex. and Deut.) refer, not, as the Rabbins allege, to one sold for theft, but to a special class of servants, who, without being heathen, were not considered as proper Israelites, but formed a *middle class, born in slavery*, between the impoverished Israelites and the slaves purchased of heathen. Under this category come, first of all, those born in the house of an Israelite from the marriage of slaves; also, slaves purchased who had become incorporated with the family by circumcision, and thus attained a kind of naturalization. This class was known under the name of 'Hebrew slaves,' and to them applies the ordinance that, when sold by their first master the second owner has no longer the same rights over them with the first, but must release them in the seventh year. Saalschütz finds himself compelled to take this view, from the difficulty which he sees in the words of Ex. xxi. 2: 'If thou buy an Hebrew servant.' As this could not be said of one who, up to that time, had *not* been a Hebrew servant, but a holder of property. But the difficulty in the passage is less than that in the interpretation. Why does the phrase 'to buy a servant,' presuppose that he was already a servant, any more than the phrases 'to make a king' (Judg. ix. 8), or 'to take a wife' (creare regem, ducere uxorem), presuppose that the former was already a king, and the latter already a wife? And opposed to the interpretation of Saalschütz is the fact that, in the repetition of the law (Deut. xv. 12) about emancipation after six years service, the *ebed* [servant] is not named. And, in fine, we do not see why the whole special legislation in Exodus should be introduced with provisions about this peculiar class of servants, even before the enactments as to the freedom of the Hebrews

themselves, to which, according to the usual interpretation, this passage refers."<sup>1</sup>

To us Mielziner does not seem, in the note just quoted, to have fully met the argument of Saalschütz, §§ 6-8. The assumption of the Rabbins, to which he gives his adherence, that the release at the year of jubilee had respect only to the Hebrew servant who had been sold into servitude a few years,—less than six before the year of jubilee,—who “was not to wait for the seventh year, but regained his freedom in the year of jubilee,” seems to us very forced and unnatural, and we cannot but say with Saalschütz: “This is getting over the difficulty in a very superficial way. It is impossible that a law should have been given containing such a perilous ambiguity.” His position, also, in respect to the formula, “If thou buy a Hebrew servant,” does not appear to be conclusive. Undoubtedly the phrases, “to make a king,” “to take a wife,” presuppose, from their very nature, that neither the king nor the wife existed before. Otherwise the former could not have been made, nor the latter taken. So, also, with the phrase, “to buy a wife,” which means to take a wife by purchase. But, on the other hand, to depose a king, and to divorce a wife, presuppose the previous existence of both. We must, then, judge of each expression from its own character. Now the phrase, “to buy a Hebrew servant,” is most obviously and naturally understood as meaning, to buy a Hebrew who is already a servant. It might, perhaps, apply to the Hebrew who was sold into servitude for theft, but not, as Mielziner contends, to the case of the poor Israelite who sold himself for poverty. When we consider how carefully worded is the ordinance respecting the latter, Lev. xxv. 39-43, 47-55, and how widely the language differs, in every respect, from that in Ex. xxi. 2-6, Deut. xv. 12-18, it is hard to believe that both classes of regulations relate to the same persons.

It is not, however, our purpose to advocate the position of Saalschütz against the common Rabbinic view. Our

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<sup>1</sup> Am. Theo'. Review for April, pp. 244, 245.

readers have both before them, and we leave to them the decision between the two. Only this we would remark, that the view of Saalschütz is peculiarly favorable to all servants of foreign descent who had been incorporated by circumcision into the Hebrew commonwealth. For it gave to each of them, upon every change of masters, the privilege of freedom after six years of service; while, according to the common view, as well stated by Mielziner, "Besides the case of serious injuries inflicted upon the slave by the master (Ex. xxi. 26, 27), the Mosaic law has no ordinance about the manumission of slaves from foreign nations."<sup>1</sup>

It has been maintained by some writers that the words of Moses in reference to the year of jubilee: "And ye shall hallow the fiftieth year, and proclaim liberty throughout all the land unto all the inhabitants thereof," apply, by fair interpretation, to the servants of foreign origin also, as being a part of "the inhabitants of the land." This view is ably advocated by Rev. Albert Barnes, who says: "To one who should read this law, if there were no other to conflict with it, or that made it necessary to seek a different interpretation, the plain meaning of the statute would appear to be, that *all* who resided in the land from whatever motive, or whatever were their relations or employments, were from that moment to be regarded as freemen."<sup>2</sup> Undoubtedly such would be the view of the statute taken absolutely by itself. But in interpreting it, we are to consider the limitations imposed on it by the context, as well as by other laws. Now, if we examine the context, we find that the ordinance of the year of jubilee provides not simply for liberty, but for liberty in connection with the return of the people to their hereditary possessions, which had been temporarily alienated through the pressure of poverty. The entire verse, Lev. xxv. 10, reads thus; "And ye shall hallow the fiftieth year, and proclaim liberty throughout all the land unto all the inhabitants thereof; it shall be a jubilee unto you; and ye shall return every man unto his possession, and ye shall return every man

<sup>1</sup> In Am. Theol. Review for July, p. 436.

<sup>2</sup> Barnes on Slavery, chap. V. § 2, p. 146.

unto his family." The same words are repeated, v. 13: "In the year of this jubilee ye shall return every man unto his possession." Then follow extended regulations having for their basis the fundamental law that all landed estate is to return at the year of jubilee to its hereditary owners, so that there shall be no perpetual alienation of it. After these follow, in the remainder of the chapter, provisions for the release at the year of jubilee of the impoverished Israelite who has sold himself (or been sold) to one of his countrymen or to a gentile. Now all this certainly looks as if these provisions referred throughout to one and the same class of persons,—impoverished Israelites. One who reads the chapter through with no preconceived theory, naturally infers that the provisions, vs. 39–43, and 47–55, are intended to specify how the ordinance of v. 10, "Ye shall return every man unto his possession, and ye shall return every man unto his family," is to be carried out. Such has ever been the view of Jewish commentators. They have held that all Hebrew servants, though their ear had been bored with the awl, were released at the year of jubilee; but they have not extended this rule to gentile servants.

This view is further confirmed by the fact, that between the two passages relating to the release at the year of jubilee of an Israelite held in servitude, *first*, by one of his own countrymen, vs. 39–43; *secondly*, by a foreigner, vs. 47–55, there occur the following remarkable words:

"Both thy bond-men and thy bond-maids, which thou shalt have, shall be of the heathen that are round about you; of them shall ye buy bond-men and bond-maids. Moreover of the children of the strangers that do sojourn among you, of them shall ye buy, and of their families that are with you, which they begat in your land; and they shall be your possession, and ye shall take them as an inheritance for your children after you, to inherit them for a possession, they shall be your bond-men forever: but over your brethren, the children of Israel, ye shall not rule one over another with rigor." vs. 44–46.

Mr. Barnes explains the clause: "They shall be your bond-men forever," as meaning that "the *permanent* provision for servants was *not* that they were to enslave or employ their brethren, the Hebrews, but that they were to employ

foreigners; or, as he immediately afterwards expresses it: "it would be a *permanent arrangement* that they might be purchased and introduced among the Hebrews."<sup>1</sup> In other words, he refers the words "for ever," not to *the persons bought and their children*, but to the ordinance. But, *first*, this is not the natural interpretation of the passage grammatically considered. Had Moses intended such a sense, he would probably have said, as often elsewhere, "It shall be to you an ordinance forever;" *secondly*, the context is against such an interpretation. He has just been prohibiting the permanent servitude of an Israelite (and of course his posterity) to one of his brethren; and he immediately proceeds to make the same prohibition in respect to a heathen master. We seem, therefore, necessitated to understand him as here allowing such servitude in the case of heathen servants, and them only.

If, now, the view of Saalschütz as to the class of persons called "Hebrew servants" is tenable, then, since incorporation into the Hebrew commonwealth by circumcision was at least free to all of gentile origin who desired it, a way was opened for the gradual fusion of gentile servants in the Hebrew commonwealth, and the termination of their state of servitude. Otherwise we must say that, in respect to them, the custom already existing was tolerated, just as in the case of polygamy and divorce, and the evils incident to it mitigated by humane restrictions and regulations.

But we entirely agree with Mr. Barnes that the passage in question furnishes no warrant for the system of slavery as it exists in our southern states. Here we might draw a contrast between the mild laws of the Hebrews, even in respect to "the heathen round about them," and the barbarous code of American slavery. The Hebrew laws recognized the rights of the slave as a man. If his master smote out his eye or his tooth, he was to let him go free for his eye's or his tooth's sake. But the southern slave codes begin by converting slaves into chattels personal. And, lest any one

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<sup>1</sup> Barnes on Slavery, ubi supra, p. 155.

should suppose the expression to be only a figure of speech, they take care to tell us that it is to be understood literally in the strictest sense. "Slaves shall be deemed, taken, reputed, and adjudged to be chattels personal in the hands of their masters and possessors, to all intents and purposes whatsoever."<sup>1</sup> "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, his labor; he can do nothing, possess nothing, nor acquire anything but which must belong to his master."<sup>2</sup> Thus they strip him at the outset of all rights whatever. According to these laws the slave has no more right to use his intellectual than his bodily powers in the pursuit of his own welfare. If the acquisition of knowledge diminishes his value as a "chattel personal," his owner must place beyond his reach all the means of knowledge. Accordingly, in most of the slave states, it is made a high crime and misdemeanor to teach the slave to read or write, or give him any book or pamphlet, though it be the word of God. That these "chattels personal" may not learn their rights as men, and thus become dangerous or unsafe property, they are by law shut up in ignorance. The master may give them by verbal teaching just so much knowledge of God's holy word as he judges convenient and proper; but they may not learn to read for themselves the words of Christ and his apostles. Why? Because the intelligence which this implies would diminish their value as chattels personal! Such is the supremely mean and selfish spirit of the system. If any man treats his slaves in a Christian manner (as doubtless many do), it is in spite of the slave-code, not by its direction. Contrast now with all this the Hebrew laws, which left the way open to all servants of gentile origin to be incorporated by circumcision into the Hebrew commonwealth, and expressly admitted them to all the religious privileges which their masters enjoyed.

But on this we will not at present insist. We prefer to

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<sup>1</sup> South Carolina code.

<sup>2</sup> Louisiana code.



meet those who defend American slavery on the ground of the Mosaic code in another way. We wish them to show, in the light of the New Testament, if they can, who are now their "*brethren*," over whom they may not rule with rigor, and who are the "*heathen round about*" them, whom they may take as "an inheritance for their children after them"? They will hardly make the distinction to be that between their own citizens and foreign nations, for that would allow them, if they had the power, to enslave the people of Britain, France, Spain, and Mexico; and we may add (if they can succeed in establishing their so-called "Southern Confederacy") the "greasy mechanics" of the northern states. Nor will they venture to make the distinction one of religious faith, for then the Persians, Turks, and Arabs would be candidates, along with the Africans, for the horrors of the slave-ship. It can be no other than that of *race*, — a distinction unknown to the Mosaic institutions. The high preëminence conferred by these upon the Israelites over all foreigners rested, not on any distinction of race, but upon covenant privileges. By his own sovereign act Jehovah took them into a special relation to himself. "Now, therefore, if ye will obey my voice, indeed, and keep my covenant, then ye shall be a peculiar treasure unto me above all people; for all the earth is mine. And ye shall be unto me a kingdom of priests, and an holy nation."<sup>1</sup> In accordance with this sovereign choice he gave them the land of Canaan, and drove out the heathen before them. In all the civil regulations of the Mosaic code their preëminence over the surrounding heathen nations was carefully maintained. They were the depositaries of God's truth, the only people to whom he had directly revealed himself. From them the light of religion was to go forth to the rest of the world. It was of the highest importance that in all their institutions their special dignity as the peculiar people of Jehovah should manifest itself. Hence we find appended to the laws enjoining the gentle treatment of Israelitish ser-

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<sup>1</sup> Ex. xix. 5, 6.

vants, and their release at the year of jubilee the significant clause: "For they are my servants which I brought forth out of the land of Egypt; they shall not be sold as bondmen."<sup>1</sup>

But in the New Testament we are expressly taught that Christ has abolished the distinction between Jews and Gentiles. "He is our peace who hath made both one," — it is of gentiles that he is speaking in contrast with God's ancient covenant people, — "and hath broken down the middle wall of partition between us;"<sup>2</sup> so that now "we both" — Jews and Gentiles — "have access by one spirit unto the Father." "Now therefore," adds the apostle, "ye are no more strangers and foreigners, but fellow-citizens with the saints, and of the household of God."<sup>3</sup> The slave-holder, then, who argues from the Mosaic code, must, if he understands the first principles of the gospel, acknowledge that *now under the New Testament* his slaves stand to him in the relation of brethren belonging to the same household of faith with himself, and that the law for their treatment is that for the impoverished Israelite, not for "the heathen round about." Let him do this, and we will be content.

But instead of this he sets up the odious and unscriptural distinction of *race*. Starting from the acknowledged fact that some races are more vigorous than others, and that "in the course of human events" the weaker races will naturally come into a subordinate relation to the stronger, he draws from this the monstrous inference that the natural condition of the former is to be "chattels personal" to the latter; as if there were no distinction between being in a state of political inferiority, such, for example, as that of India to England, or our own aboriginal tribes to the United States, and being converted into "chattels personal," stripped of all the rights of manhood, and bought and sold, like cattle, in the market."<sup>4</sup>

<sup>1</sup> Lev. xxv. 42, 55.

<sup>2</sup> Ephes. i. 14.

<sup>3</sup> Ephes. i. 18, 19.

<sup>4</sup> In "Ross on Slavery" we may see an abundance of this sort of reasoning. He either does not apprehend or will not acknowledge the radical difference

Such is the logic of the argument from races; and its injustice is answerable to it. When by subjection to the power of slavery the manhood of the negro slave has been as far as possible crushed out of him, and the free negro placed under the overshadowing influence of *the caste of color*, and thus doomed to a condition of civil and social inferiority, from which, so long as he remains in this country, no amount of virtue or talent can possibly raise him, — when thus the colored race has been placed in the most unpropitious circumstances for the development of true manhood, its degradation is pleaded as an argument to show that servitude is its normal and healthful condition! A glance at the present condition of Liberia is sufficient to refute this plea. There it has been proved that, if the negro race can but have a tolerably fair chance, it is abundantly capable of self-government, and progress in all the arts of civilization.

In bringing this Article to a close we wish to say a word respecting another argument which has sometimes been insisted on. It is, to use the words of Dr. Ross, that "Ham was cursed to render service forever, to Shem and Japheth."<sup>1</sup> Were this a true statement of the words of scripture, it would prove nothing to the purpose. The Assyrian was ordained of God to chastise his offending covenant people: "O Assyrian, the rod of mine anger, and the staff in their hand is mine indignation. I will send him against an hypocritical nation, and against the people of my wrath will I give him a charge,"<sup>2</sup> &c. But this did not clear him from the guilt and punishment of oppressing the Jews, as the verses immediately following show. Moses and the prophets predicted the dispersion and oppression of the Jews as a punishment for their sins: "Thou shalt be only oppressed and crushed always;"<sup>3</sup> "My God will cast them away, because they did not hearken unto him: and they shall be wanderers

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between the natural subordination of one class to another, as the woman to the man, the child to the parent, and the conversion of men and women into articles of merchandize, which is the very essence of American slavery.

<sup>1</sup> Ross on Slavery, p. 50.

<sup>2</sup> Isa. x. 5, 6.

<sup>3</sup> Deut. xxviii. 33.

among the nations.”<sup>1</sup> But who will venture to plead these awful threatenings as an excuse for maltreating and spoiling them?

But the word of God says no such thing as Dr. Ross represents. The blessings of Noah were bestowed on Shem and Japheth; but the curse was restricted to Canaan.<sup>2</sup> If any one ask why, we are not bound to furnish an answer. Perhaps it was for the same reason that, in the third commandment and elsewhere, God promises that he will show mercy unto thousands of generations to them that love him and keep his commandments; but will visit the iniquity of the fathers upon the children only to the third and fourth generation of them that hate him,—because, namely, he is “the Lord God, merciful and gracious, long-suffering, and abundant in goodness and truth.”<sup>3</sup> When God mercifully restricts the curse to one of Ham’s sons, what right has Dr. Ross to extend it to Ham himself; “He cursed him” [Ham], says Dr. Ross, “because he left him unblest.”<sup>4</sup> To be left unblest was doubtless a great calamity, but *it was not the same thing as receiving the special curse of servitude.* That fell on Canaan alone. “Cursed be Canaan,” says Noah; “a servant of servants shall he be to his brethen. “The *special* curse on Canaan,” says Dr. Ross, “made the general curse on Ham conspicuous, historic, and explanatory, simply because his descendants were to be brought under the control of God’s peculiar people.”<sup>5</sup> If these words mean anything to his purpose, it is that the curse of servitude *especially pronounced* on Canaan made the same curse of servitude, *falling generally* on Ham “conspicuous, historic, and explanatory.” But this is a baseless assumption, which we meet by a simple denial. The curse of servitude was pronounced on Canaan alone, and the history of his posterity,—the Sidonians, Hittites, Jebusites, Amorites, Girgasites, Hivites, Arkites, Sinites, Arvadites, Zemarites, and Hamathites,<sup>6</sup>—in their relation to God’s covenant people made the curse *for them alone* “conspicuous, historic,

<sup>1</sup> Hosea ix. 17.<sup>2</sup> Gen. ix. 25–27.<sup>3</sup> Ex. xx. 5, 6; xxxiv. 6, 7.<sup>4</sup> Ross on Slavery, ubi supra.<sup>5</sup> Ib.<sup>6</sup> Gen. x.; xv. 18.

and explanatory." Now it is well known that none of Canaan's posterity settled in Africa. "The border of the Canaanites was from Sidon, as thou comest to Gerar, unto Gaza; as thou goest unto Sodom and Gomorrah, Admah and Zeboim, even unto Lasha."<sup>1</sup> None, then, of the Africans come under the curse pronounced by Noah on Canaan.

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### ARTICLE III.

#### THE TÜBINGEN HISTORICAL SCHOOL.<sup>2</sup>

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PROVIDENCE, R. I.

"The Tübingen School" is, strictly speaking, a historical rather than a theological school. Its representatives, Baur, Strauss, Keller, Schwegler, Köstlin, and Hilgenfeld, are indeed theologians, and have pursued such investigations as are usually left to theologians. Their peculiarity, however, consists in their dealing with their materials, not from a theological, but from a purely historical point of view. While not refusing the title of theologians, and claiming for themselves a place within the broad realm of Protestant theology, they boast that they alone exhibit the genuine Protestant spirit by their independent search for historical truth. They propose to carry on their inquiries, unbiassed by any peculiar doctrinal views; they found their dogmatic system on their scientific convictions, and refuse to interpret history according to any settled system of doctrine. They claim to have sought historical truth like any other kind of

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<sup>1</sup> Gen. x. 19.

<sup>2</sup> This Article is a reproduction, in an English form and dress, rather than a close translation, of an anonymous Article under the same title in Von Sybel's *Historische Zeitschrift*, Vol. 4, 1860. It leans very decidedly towards the views of the school whose principles it proposes to exhibit; it will not, however, on that account be less interesting to American readers desirous of learning the views of this class of critics. The Article has been considerably shortened by omissions and condensations. — Tr.