1 Ties of Unfreedom in Late Antiquity and Early Islam: Debt, Dependency and the Origins of Islamic Law

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Introduction

In this chapter I will be looking at a rather amorphous tie of dependence, one that is not formally recognized either in social or legal circles. It is an interpersonal personal tie, one that occurs between free persons, but where one party has, due to force of circumstance, become so dependent upon, or obligated to, another that they might be considered to have effectively surrendered their liberty, either temporarily or permanently. That is, I will be talking about those who were designated free yet nevertheless came to forfeit their freedom for a time, submitting themselves to another person, such as an employer, creditor, slave-dealer or potential patron, possibly even a well-wisher. Modern scholars often call this voluntary slavery or contractual slavery, contrasting it with chattel slavery,[1] or, more recently, "unfreedom," using this term to characterize the diverse forms of dependency and control experienced by those who are not legally classed as slaves.[2] This situation involved a different sort of tie to that between master and slave, which was closely regulated and defined by the law and recognized by Scripture. It was a more uncertain and ambiguous tie, for it was disapproved of by lawyers, which meant that it was only cursorily treated by them, lacking the clear definitions and protections afforded to slaves and their owners.

[1] Referring to those who were born slaves or captured during warfare, though other means of enslavement, such as kidnap, even though illegal, were common. For some examples see Jelle Bruning, "Slave Trade Economics in Abbasid Egypt: The Papyrological Evidence," *Journal of the Economic and Social History of the Orient* 63 (2020): 684–90.

[2] The classic study is Jacques Ramin and Paul Veyne, "Droit romain et société: les hommes libres qui passent pour esclaves et l'esclavage volontaire," *Historia: Zeitschrift für Alte Geschichte* 30 (1981): 472–97; see also Morris Silver, "Contractual Slavery in the Roman Economy," *Ancient History Bulletin* 25 (2011): 73–132. I should note here that I will chiefly be using legal sources, which are an imperfect indicator of social realities and are usually shorn of the personal details of the cases that they present. The "poor" are a theme in Christian literature, so that gives us an additional perspective, but this is much less the case in Islamic literature. Unfortunately, Zoroastrian legal sources are few, offering us only occasional hints about the nature of "unfreedom" in the Sasanian Persian Empire, and so I will be drawing principally on Roman sources for the late antique situation.

The forfeiter was in a more vulnerable position, given that he/she was likely to be low on the social scale, or at least to have fallen low, but the would-be buyer of a free person, even if the latter was willing, could also be in a precarious position, since such transactions, unless conducted for charitable reasons, could attract sanction from the authorities. Moreover, given that free status was usually deemed to be inalienable, it could potentially be reclaimed, leaving the buyer out of pocket or even facing reprimand. We are therefore talking about ties of dependency – "ties that unequally bind" as Cecilia Palombo nicely puts it in her chapter below, playing on the main theme of this volume – but also about ties that were not properly regulated and that might be disapproved of or even disavowed.

Such surrender of liberty by a free person was often the result of some form of destitution or exploitation, though it could also be chosen out of a pragmatic recognition that short-term subservience or indentured service might be a route to achieve long-term advancement. For those with no fixed or liquid assets, the most obvious thing that they had to offer was their own labor or that of those under their charge. This could be utilized in a variety of ways, such as security for a loan, as a substitute for interest on a loan, as compensation for a debt that one could not pay off, or simply to obtain enough food to eat. If one desperately needed money and could not find a person willing to lend money in return for labor, one's only option might be to sell oneself, or a family member, directly to a slave dealer or at a slave market. Such action was evidently perceived as a last resort, since we most often read about it in accounts of famines and disasters when it is listed as one of the signs of the dire straits that people found themselves in. A famine in fifth-century Vandal Africa was so bad, says Victor of Vita, that "some wished to exchange their freedom and that of their children for permanent servitude, and they could find no way to do this," evidently because food was too scarce to make such an exchange possible. And the setting for a story of three tribesmen who sold themselves to the caliph Marwān I (64–65/684–85) was imagined as "a time of hunger."[3]

However, a free person's liberty might be curtailed in more subtle ways. For example, in some areas of economic life employers had such power over their workers that it constrained the latter's freedom of movement. In a ruling of the Roman emperor Justinian (r. 527–65 CE), for instance, the supposedly free *coloni* (farmworkers resident on an agricultural estate)

[3] Alice Rio, "Self-Sale and Voluntary Entry into Unfreedom 300–1100," *Journal of Social History* 45 (2012): 666 (Victor); Abū Faraj al-Iṣfahānī, *Kitāb al-Aghānī* (Cairo: Dar al-Kutub, 1927–74), 10:73 (Marwān; I am grateful to Simon Pierre for this reference).

are referred to as "belonging to them (the estate owners) by law." This may simply reflect the perception of labor as property, but it does at the very least imply a dilution of the workers' free status and suggests that freedom and unfreedom were sometimes not so rigidly separated and that unfreedom could take many forms besides outright enslavement. It could also happen that the powerful would drag those in straitened circumstances or of ambiguous status into slavery, as was the case for a certain Martha and her extended family in sixth-century Egypt, whose plight is recounted in a lengthy document from Aphrodito, written by someone who fervently declares Martha to be of free status despite those seeking to enslave her.[4] In short, this tie of dependency was found in many different contexts – social, legal and economic – and took many different forms, which makes it well worth studying, and we will attempt to explore here some of the ways in which it played a role in the late antique and early Islamic Middle East.

Unfreedom from Late Antiquity to Early Islam

Since the problem of free persons driven to give up their liberty is an enduring one, it helps, when examining it, to take a broad view, and to this end I will here adduce examples and perspectives from the late antique period as well as the early Islamic period. Pursuit of this approach has often been hampered by the widespread notion that the emancipatory efforts of the Prophet Muḥammad and his companions led to a radical break with the past.[5] It is not just Middle Eastern scholars who have pushed this view, but also Western scholars. For example, Bernard Lewis declares that Islam brought "major changes" to unfreedom in the ancient world, for "it became a fundamental principle of Islamic jurisprudence that the natural condition, and therefore the presumed status, of mankind was freedom."[6] This is echoed by Harald Motzki, who quotes one Muslim jurist's statement that "a freeborn person is not a slave," in support of his contention that: "This principle of classical Islamic jurisprudence differs in its clarity and radicalism from the pre-Islamic legal systems of the Near East and the Mediterranean,"

[4] Discussed by Judith Evans Grubbs, "Slave and Free at the End of Antiquity," in *Living the End of Antiquity: Individual Histories from Byzantine to Islamic Egypt*, ed. Sabine R. Huebner *et al.* (Berlin: de Gruyter, 2020), 187–89.

[5] An influential early example is Ali A. Elwahed, *Contribution à une théorie sociologique de l'esclavage* (Paris: Albert Mechelinck, 1931), 111–35, who is followed by, among numerous others, David Graeber, *Debt: The First 5000 Years* (New York: Melville House, 2011), 274–75.

[6] *Race and Slavery in the Middle East* (Oxford: Oxford University Press, 1992), 5–6.

thus constituting a "discontinuity between the Islamic and pre-Islamic legal systems."[7]

However, even a brief perusal of the relevant primary sources makes clear that there is much common ground in the attitudes towards freedom and unfreedom in the Roman and Islamic cultures of the Middle East. The Latin legal maxim that "a free person cannot be assigned a price" (*homo enim liber nullo pretio aestimatur*) matches well the Arabic maxim: "a free person is not to be bought or sold" (*al-ḥurr lā yubāʿu wa-lā yushtarā*) or more simply "the free are not for sale" (*lā yubāʿu l-aḥrār*).[8] Furthermore, both Roman and Islamic societies lived with the paradox of valuing freedom but being unable to do without the labor of the unfree.[9] The latter category was in theory confined to slaves, and it is

[7] *Analysing Muslim Traditions. Studies in Legal, Exegetical and Maghāzī ḥadīth* (Leiden: Brill, 2010), 125. Although both Lewis and Motzki make very grandiose claims, the Islamic legal tradition refers very rarely to "freedom." The statement that "freedom is a basic principle" of mankind (*al-aṣl huwa al-ḥurriyya*) is limited to a very few specific cases, in particular that the penalty of flogging might be reduced a little for free persons (e.g. Burhān al-Dīn al-Marghīnānī, *al-Hidāya fī sharḥ al-bidāya*, ed. Ṭalāl Yūsuf, Beirut: Dār Iḥyāʾ al-Turāth, n.d., 2.360) and that a foundling should be presumed free unless there is evidence to the contrary (e.g. ʿAlāʾ al-Dīn al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ fī tartīb al-sharāʾiʿ*, Cairo: Dār al-Kutub al-ʿIlmiyya, 1986, 6.197). Note the observation of Franz Rosenthal on this point: "The problem of freedom found little positive attention in legal works … We cannot discern any tendency among jurists to go beyond technicalities and to see freedom and slavery as something more than legal facts" (Franz Rosenthal, *The Muslim Concept of Freedom Prior to the Nineteenth Century*, Leiden: Brill, 1960, 33–34). Cf. also Irene Schneider, "Freedom and Slavery in Early Islamic Time," *al-Qanṭara* 28 (2007): 355–57.

[8] Olivia F. Robinson, *The Criminal Law of Ancient Rome* (Baltimore: Duckworth, 1995), 32–33. The Arabic maxim occurs in our earliest *ḥadīth* collections; e.g. Saʿīd b. Manṣūr, *Kitāb al-Sunan*, ed. Ḥabīb al-Raḥmān al-Aʿẓamī (Bombay: al-Dār al-Salafiyya, 1982), 2:336 (no. 2803, *kitāb al-jihād*); Ibn Abī Shayba, *Kitāb al-Muṣannaf*, ed. Kamal Y. al-Ḥūt (Beirut: Dār al-Tāj, 1989), 6:524 (*kitāb al-siyar*); ʿAbd al-Razzāq al-Ṣanʿānī, *Kitāb al-Muṣannaf*, ed. Ḥabīb al-Raḥmān al-Aʿẓamī (Beirut: al-Maktab al-Islāmī, 1983), 10:194 (nos. 18798–99, *kitāb al-luqṭa*).

[9] Compare the view expressed in the famous *Book of Ethics* of Nāṣir al-Dīn al-Ṭūsī, trans. George Michael Wickens (Abingdon: Routledge, 2011), 181 (discourse 2, section 5): "Where this class of people (slaves) does not exist, the doors of ease are fast shut … Accordingly, due thanks should be offered for the existence of this company: they should be regarded as the pledges of Almighty God." Jonathan Brockopp, "Slavery in Islamic Law: An Examination of Mālikī Jurisprudence" (PhD Dissertation, Yale University 1995), 181, notes that Islamic law "seems exclusively concerned with common household slavery," giving the impression that Roman and Islamic societies were very different in the deployment of unfree labour, but he argues that in fact there was "increased use of slaves as soldiers, entertainers and bureaucrats" (ibid. 181). They were found in industrial and agricultural settings too; see e.g. Mohamed Talbi, "Law and Economy in Ifriqiya (Tunisia) in the Third Islamic Century: Agriculture and the Role of Slaves in the Country's Economy," in *The Islamic Middle East, 700–1900*, ed. Abraham L. Udovitch (Princeton: Darwin Press, 1981), 209–49, and Alexandre Popovic, *The Revolt of African Slaves in Iraq in the 3rd/9th Century* (Princeton: Markus Wiener, 1999).

accordingly on this latter category that almost all legal and moral attention was directed: tightly defining the ways in which slavery could occur (primarily by birth to slave parents and in the course of war via capture of and tribute from enemies), regulating carefully the sale and purchase of slaves, and mitigating their exploitation (emphasizing the importance of treating slaves well,[10] establishing procedures for manumission and forbidding the enslavement of free citizens/monotheists,[11] and so on). Yet, although Roman and Islamic jurists devised strict definitions in order to suppress any blurring of the distinction between free and unfree and to regulate any movement between the two states, both were obliged to confront the phenomenon of free persons becoming unfree for a time, as we shall see below.

In sum, there is good reason to posit some degree of continuity between the practices and attitudes of late antique and early Islamic society in regard to unfreedom, and it is through the lens of such continuity that I shall approach this topic. I do not have in mind here the apologetic/polemical question of the degree to which Islam effaced or continued Greco-Roman civilization, whether its culture or economy or both, but rather the continuity that in social theory would be called path dependency.[12] This is the idea that processes become institutionalized and reinforced over time, ways of doing things become routinized the longer that they are practised. Facts on the ground, new realities, such as a change in leadership at the top, will of course lead to changes in these practices and processes, but it will often be slow, more akin to the turning of a supertanker than the tacking of a sailing boat.

[10] E.g. Bryson (1st c. AD), *Oikonomikos Logos*, §§62–63 (in Simon Swain, *Economy, Family and Society from Rome to Islam*, Cambridge: Cambridge University Press, 2013, 12): "The man must protect his slaves as he protects his limbs … When he thinks of what they have suffered, he realizes that if he suffered something like it, he would prefer to be assigned a master who would be gentle to him and treat him with kindness"; E. Sachau, *Syrische Rechtsbücher* (Berlin: G. Reimer, 1907), 3:86–87 (Ishoʿbokht 3.10.3: owners should be fair and just to their slaves); Q 4:36: "Be good to parents, relatives …. and slaves (lit. what your right hands possess)."

[11] This last condition is very widespread in human history, i.e. that you do not enslave your own people (however that is perceived); the Old Testament already specifies that "you may buy male and female slaves from among the nations that are around you" but "over your brothers, the people of Israel, you shall not rule" (Leviticus 25.44–46).

[12] James Mahoney, "Path Dependence in Historical Sociology," *Theory and Society* 29 (2000): 507, defines path dependency as "historical sequences in which contingent events set into motion institutional patterns or event chains that have deterministic properties." Peter Brown once told me that he liked to think of "the stickiness of social institutions," which I think captures the concept nicely.

Self-Sale in Late Antiquity and Early Islam

In theory, freedom was inalienable in Roman law. As the emperor Diocletian declared in one of his rescripts: "The law is firm that free persons cannot be made slaves, with their condition changed by any private pact or business transaction."[13] Nevertheless, many Roman jurists acknowledged the reality of self-sale by the free. Often quoted in illustration of this is the observation of Aemilius Papianus (d. 212 CE) that, due to the large volume of slaves being traded, "we frequently out of ignorance buy free persons."[14] In general, this would not be regarded as a legally valid transaction, and where it was established that the person being sold was freeborn, the law could be used to restore such persons to their liberty. However, "if someone over twenty years of age allows himself to be sold with a view to sharing in the price (*ad pretium participandum*)"[15] or "for the purpose of becoming a steward (i.e. of an estate: *ad actum/negotium gerendum*)," then he/she would forfeit their free status. This is because the self-seller is effectively committing fraud, that is, "when he made himself out to be a slave and so procured his sale with the purpose of deceiving the purchaser."[16] And he/she may well, therefore, have to return to the purchaser the price that the latter had paid.[17] Yet the general disapprobation of the sale of free persons made this a suspect transaction and meant that participants in the trade had to be cautious. Everyone agreed that it was wrong for someone to buy a free person when aware of the latter's free status,[18] but there is some hesitation over whether it mattered if the slave dealer knew or not. Ulpian of Tyre (d. ca.

[13] Justinian, *Code*, trans. Fred. H. Blume, published posthumously online by Timothy Kearley at www.uwyo.edu/lawlib/blume-justinian/, accessed 30/4/2020, 7.16.10; cf. ibid., 7.16.6 (Emperor Valerian, 253–60): "Not even if you had voluntarily stated in writing that you were a slave, and not free, would you thereby have prejudiced your right (to freedom)."

[14] Justinian, *Digest*, trans. Alan Watson (Philadelphia: Penn University Press, 1985), 41.3.44; note the reference in ibid. 21.1.17.12, to "a place frequented by those who declare themselves for sale."

[15] Ibid. 1.5.5 (Marcian); cf. ibid. 40.12.7 and 28.3.6.5 (Ulpian): a will is voided if the testator falls into slavery "by being captured by the enemy or if, being more than twenty years old, he has allowed himself to be sold with a view to becoming a steward or sharing in the price." The ruling is also found in Sachau, *Syrische Rechtsbücher*, 1.1.26, 1.2.37, 1.3.73, noting that those under twenty years of age could even in this case still be restored to freedom.

[16] Justinian, *Digest*, 40.12.16 (Ulpian, who continues: "However, if the man sold was under the compulsion of force or fear, we shall say that he was innocent of fraud").

[17] Ibid. 40.12.18 (Ulpian): "A free man who has been sold as a slave with his knowledge is therefore liable to the purchaser as regards the sum he gave."

[18] E.g. ibid. 18.1.6: "You cannot wittingly buy a freeman or anything the alienation of which you know to be forbidden" (Pomponius quoting "the younger Celsus"); cf. ibid. 40.12.22.3: "If the purchaser knew that the man was free only at a later stage, this will not prejudice him, since he was ignorant at the time of purchase. But if he knew at the time, the fact that he later conceived doubts will be of no assistance to him."

228 CE) was of the opinion that: "If a buyer knowingly buys a free person, this gives rise to a capital charge against him under the *lex Fabia* on kidnapping (*plagium*), to which the seller *also* is liable if he sells a person knowing him/her to be free."[19] However, some jurists were more indulgent. For example, Licinius Rufinus (d. after 238 CE) states: "The majority of jurists have held that there can be a valid purchase of a free man if both vendor and purchaser are unaware of his status, *as also* where the vendor knows but the purchaser does not. But if the purchaser knowingly buys a free person, there is no valid purchase."[20] This left room for connivance between the would-be self-seller and the slave dealer, and possibly also with the purchaser if he declares that he "believed" the seller's declaration or pleaded ignorance.

Muslim jurists felt the same antipathy towards the sale of free persons as their Roman counterparts and were generally of the same view that freedom was inalienable. Thus, when the Meccan scholar Ibn Jurayj (d. 150/767) asked his teacher ʿAṭāʾ b. Abī Rabāḥ (d. 115/733) about a free person who affirmed that he was a slave (so that he might be sold), he received a blunt reply: "A free person does not become a slave" (*lā yakūnu al-ḥurr ʿabdan*), and a similarly firm judgment – "free persons are not to be sold" (*lā yubāʿu al-aḥrār*) – is given by the Kufan ʿĀmir b. Sharāḥīl al-Shaʿbī (d. ca. 110/728) and the Medinan Ibn Shihāb al-Zuhrī (d. 125/742).[21] However, Muslim jurists also had to deal with the realities of the widespread and frequent occurrence of this phenomenon, and so, while many were very much opposed to it, others ruled that making a formal declaration of one's slave status did make one a slave and so able to be sold.[22] The expression used by the self-seller in this case – "he affirms his slave status" (*aqarra bi-l-ʿubūdiyya*) or "he affirms that he is a slave" (*aqarra bi-annahu ʿabd*) – is evidently a recognized and formalized one,[23] suggesting that such types of sale were a fairly common occurrence despite the disagreement about its legality.

[19] Ibid. 48.15.1 (italics mine).

[20] Ibid. 18.1.70 (italics mine).

[21] ʿAbd al-Razzāq, *Muṣannaf*, 10:194 (nos. 18800: ʿAṭāʾ, 18798: al-Shaʿbī, 18799: al-Zuhrī).

[22] E.g. Ibn Abī Shayba, *Muṣannaf*, 4:529 (*bāb al-ḥurr yuqirr ʿalā nafsihi bi-l-ʿubūdiyya* in *kitāb al-buyūʿ*): ʿAlī says: "If someone affirms his own slave status, then he is a slave," but al-Shaʿbī says: "A free person does not make himself a slave by his affirmation of slave status," which is akin to the ruling of Diocletian and that of Valerian cited above.

[23] An *iqrār* (affirmation or acknowledgement or confession of something, e.g. of debt or paternity) has legal force; Mathieu Tillier suggested to me that the use of this legal term may mean the affirmation was performed in court, or it may be that it was part of the procedure for slave-sales at market. Note that the verb used in Syriac for this action, *awdī*, has the same semantic range as Arabic *aqarra* (for an example of its use see Sachau, *Syrischer Rechtsbücher*, 1.3.73, from laws of Constantine, Theodosius and Leo: *mawdē d-ʿabdā-w*).

Muslim jurists also had to deal with the situation of a free person who conspires with a vendor to sell himself on the basis that "the price is (shared) between me and you" (*al-thaman baynī wa-baynaka*),[24] the equivalent of the Roman *ad pretium participandum*.[25] The Basran Qatāda b. Diʿāma (d. 117/735) reports both an accepting position, imputed to the caliph ʿUmar b. al-Khaṭṭāb (d. 23/644): "He becomes a slave, since he has affirmed his slave status of himself" and the sale can go ahead, and a hardline position, attributed to the caliph ʿAlī b. Abī Ṭālib (d. 40/661): "He does not become a slave and the seller is punished with amputation (*qaṭʿ*)."[26] The Kufan Sufyān al-Thawrī (d. 161/777) also determines that a man selling a free person should be punished, though opting for discretionary punishment (*taʿzīr*) rather than amputation,[27] and notes that "the sale is void" (*lā bayʿa lahu*).[28] Al-Zuhrī goes a step further and rules in the case of "a man who sold a free person and said 'the price is (shared) between me and you'" that "they are both punished and the price is returned to the buyer."[29] But what if the vendor had absconded and was no longer to be found? The Basran al-Rabīʿ b. Ḥabīb (d. c. 175/791) offered a pragmatic solution when he was questioned about just such an event:

> A man bought a person on the market, having been told that he was a slave. Later on, the purchaser found out that the man was a free person. Now he could not find the vendor again who had sold the man to him. Al-Rabīʿ ruled: "The purchaser does not own the man, but he can let him work (*yastasʿīhi*), if he does not get his money, as though the man had

[24] E.g. ʿAbd al-Razzāq, *Muṣannaf*, 10:193 (no. 18794).

[25] Cf. Sachau, *Syrischer Rechtsbücher*, 1.2.37: "If a free man says of himself that he is a slave, when asked, and conspires with a vendor, then, if he is 20 years old, he loses his freedom …, especially if he has received half of the price" (*yatīrāʾīt dēn en pelgeh d-ṭīmā nsab*).

[26] ʿAbd al-Razzāq, *Muṣannaf*, 10:194 (no. 18796); ibid., 10.195 (no. 18806), has the same text, but cited from Ibn Jurayj, and with the addition that Ibn ʿAbbās said: "He (the seller) should not receive amputation, but rather something similar to it, namely imprisonment (*al-ḥabs*)." Ibn Abī Shayba, *Muṣannaf*, 5:532, cites Ibn ʿAbbās' ruling "concerning two free men one of whom sold the other" that "the sale is revoked, both are punished, but neither by amputation." Note that ʿAlī is quoted in support of both sides of the debate (see n. 22 above).

[27] I.e. he does not class it as a *ḥadd*, a punishment fixed in the Qurʾan for crimes against God (including theft, which ʿAlī presumably found analogous to the sale of a free person), but rather as a matter for which a judge might select a punishment as he saw fit.

[28] ʿAbd al-Razzāq, *Muṣannaf*, 10:193 (no. 18795).

[29] Ibid. 10:193 (no. 18794); Ibn Abī Shayba, *Muṣannaf*, 5:532 (*kitāb al-ḥudūd*), specifies "a painful punishment." Thus also Abū ʿAlī al-Hāshimī, *al-Irshād ilā sabīl al-rashād*, ed. ʿAbd Allāh al-Turkī (Beirut: Muʾassisat al-Risāla, 1998): "Whoever affirms that he is a slave (*aqarra bi-annahu ʿabd*) and is sold, and subsequently it is established that he is a free person, the sale of him is void and he is punished, and the price must be returned to the purchaser from the one who took it from him (i.e. the vendor); and if the one avowing his slave status took some of the price, he must return it."

affirmed his slave status, despite being a free man *(kaʾannahu aqarra bi-l-ʿubūdiyya wa-huwa rajul hurr)*."[30]

The case of free women selling themselves seldom features in Roman law, it being presumably assumed that, where such a situation arose, it was covered by the same regulations as those governing male self-sellers.[31] In Islamic law it is also rare, but we do occasionally encounter it as a distinct category.[32] An interesting example is provided by the Iraqi Muḥammad al-Shaybānī (d. 189/805), who gives an example of a man who buys a woman thinking she is a slave, has sex with her and then becomes aware that she is a free person. He reports that the jurists of Medina argued that if the buyer knew she was a free woman when he had sex with her then he owed her a dowry, but if he did not know then he did not owe her anything. However, al-Shaybānī cites his teacher Abū Ḥanīfa in support of the view that she should be given a dowry whether the buyer knew or not of her free status, presumably wishing to retrospectively legalize the relationship as though it were a marriage.[33] In this instance no information is given at all about the circumstances behind the woman's self-sale. Occasionally, however, we get a glimpse of the harsh realities that might underlie such events. In a report from the Basran jurist Yaḥyā b. Saʿīd al-Qaṭṭān (d. 198/813), for instance, al-Ḥasan al-Baṣrī (d. 110/728) is asked "about a man who saw a girl for sale in the market who tells him that she was kidnapped (*masrūqa*)" and he replied: "she may be bought and she is given no dowry" (i.e. he treats her as a slave); al-Qaṭṭān said that he questioned Qatāda b. Diʿāma about that decision and he answered that he disliked it.[34]

Sale of Family in Late Antiquity and Early Islam

In Mediterranean and Middle Eastern societies a father had extensive powers over the members of his household, but, in the late antique period at least, this did not generally extend to the right to sell them, though

[30] Ersilia Francesca, "Un contributo al problema della formazione e dello sviluppo del diritto islamico" (PhD Dissertation, University of Naples, 1994), Appendix 8.

[31] Sachau, *Syrische Rechtsbücher*, 1.1.26, 1.2.38, 1.2.79, 1.3.74.

[32] Ibn Abī Shayba, *Muṣannaf*, 5:532, gives us the case of a woman selling her willing sister, whose buyer then has sex with her; the judgment is that both women are punished, and that the seller gets a refund but should make a small donation to the woman he bought.

[33] *Al-ḥujja ʿalā ahl al-madīna*, ed. Mahdī Ḥasan al-Kīlānī al-Qādirī (Beirut: ʿĀlam al-Kutub, 1983), 3:196 (*bāb al-rajul yashtarī jāriyatan fa-yaṭaʾuhā thumma yaʿlamu annahā ḥurra*). The report is discussed by Schneider, "Freedom and Slavery," 374–75.

[34] Ibn Abī Shayba, *Muṣannaf*, 4:463 (*bāb fī rajul raʾā jāriya tubāʿu fa-qālat innī masrūqa* in *kitāb al-buyūʿ*).

Zoroastrian law allowed it for cases of destitution where the family's very survival was at stake (*adwadād*).[35] Certainly, in the case of wives, there are very few mentions of their sale and where it is reported it is usually accompanied by strong disapproval. Thus, Augustine, Bishop of Hippo, recounts in outraged tones how one of the Church's tenant farmers sold his wife "not because of any fault on her part, but stirred solely by this feverish pestilence (of greed)."[36] In Islamic law this issue also crops up only rarely; where it does so, the standard ruling is that both receive an exemplary punishment.[37] An obvious follow-up question to this is: "What should be done in the case of a man who sells his wife and the buyer has sex with her and she bears his child?" When this was put to Sufyān al-Thawrī, he replied that "she is returned to her husband, there is no dissolution of their union and both the woman and her husband receive a discretionary punishment."[38] Ibn Shubruma (d. 144/761) disagreed with this opinion, however, when asked by the Umayyad governor Yūsuf b. ʿUmar (Governor of Iraq 120/738–126/744) for his verdict on just such a case. He approved the discretionary punishment of the husband but he rejected any form of punishment of the wife. Unusually for these relatively dispassionate legal texts, one gets a sense of Ibn Shubruma's distaste for such behavior, adducing the words of the Prophet at the farewell pilgrimage: "You have taken them (your wives) in the trust of God (*bi-amānat Allāh*)," so concluding: "She is in our view a trust that he (the husband) has betrayed."[39]

The inalienability of free status in Roman law applied in theory to children as well. Emperors Diocletian (284–305 CE) and Maximian (286–305 CE) state the matter very clearly: "It is plain law that children cannot be transferred by parents to another, either by sale, gift, pledge, or in any other manner."[40] And this was forcibly reiterated by Constantine the Great

[35] Farrokhmart i Wahraman, *The Book of a Thousand Judgements*, trans. Anahit Perikhanian (Costa Mesa: Mazda, 1997), 33.6–9, 13–17; Maria Macuch, *Rechtskasuistik und Gerichtspraxis zu Beginn des siebenten Jahrhunderts in Iran: Die Rechtsammlung des Farroḫmard i Wahrāmān* (Wiesbaden: Harrassowitz, 1993), 244–45, 247–51.

[36] Augustine (St.), *Letters. Volume VI (1*–29*)*, trans. Robert B. Eno (Washington DC: Catholic University of America Press, 1989), 79 (no. 10*, ca. 422 CE).

[37] Ibn Abī Shayba, *Muṣannaf*, 5:531, citing al-Ḥasan al-Baṣrī and Ibn ʿAbbās (*yuʿāqabān wa-yunakkalān*), though in the following case in ibid., al-Ḥasan wrote regarding the same situation to ʿUmar b. ʿAbd al-ʿAzīz, who ruled that both should receive a discretionary punishment and a spell in prison (note that the couple wore *zanānīr*, implying they were non-Muslims).

[38] ʿAbd al-Razzāq, *Muṣannaf*, 10:195 (no. 18804): *tuʿazzaru ʾl-marʾa wa-zawjuhā*. Ibn Abī Shayba, *Muṣannaf*, 5:531, specifies an exemplary punishment: *yuʿāqabān wa-yunakkalān* (reported from Qatāda from al-Ḥasan al-Baṣrī and Ibn ʿAbbās).

[39] ʿAbd al-Razzāq, *Muṣannaf*, 10:195 (no. 18805), where it is noted that Yūsuf then "gave the man a beating harsher than amputation."

[40] Justinian, *Code*, 4.43.1; cf. ibid. 7.16.1: "By stating that you sold your freeborn sons, you acknowledge having committed an illegal and dishonorable act" (Emperor Antoninus).

(306–37 CE) in one of his rescripts: "It is not at all permissible for freeborn children to be reduced to slavery at a price and it is not sanctioned by our untroubled age."[41] Yet there is occasional recognition that extreme hardship might require some stretching of the law, as long as the basic principle that freedom could not be alienated was respected. A fifth-century ruling illustrates well this attitude: "Whoever, under threat of extreme necessity or for the sake of sustenance, sells their own children, shall not prejudice their freeborn status. For a free man has no price. Thus children cannot be given as pledge or insurance … though parents may rent the labor of their children."[42] And the Christian focus on the poor as a social category deserving of attention means that we have many sources that lament the plight of those so impoverished that they were driven to sell their offspring just to survive.[43]

Constantine the Great seems to have made an exception for a newborn child (*sanguinolentus*, i.e. still bloody from the birth), but again only by reason of economic hardship: "If anyone on account of poverty, want and support shall sell a newborn son or daughter, the sale shall be valid only in such cases and the purchaser shall be permitted to obtain its service." Yet even then, "the person who sold or alienated the child, or anyone else, may reclaim it to its freeborn condition, if he offers the price which it is worth, or a slave of equal value in its place."[44] A couple of years later, Constantine decided to clarify a closely related matter, that of infants exposed/abandoned (*expositi*) by their parent(s) for reasons of poverty, shame or the like, who might then be found (i.e. foundlings) and reared by those wanting a child, servant and so on. According to classical law, the child's birth status, whether free or slave, should be maintained by whoever discovered and reared them, but of course their status would often not be known, and it was all too easy for them to be added to the slave supply irrespective of their origins. In order to avoid arguments and lawsuits over this, Constantine therefore ruled: "Whoever takes a male or female that has been cast out of

[41] Cited by Kyle Harper, *Slavery in the Late Roman World AD 275–475* (Cambridge: Cambridge University Press, 2011), 399.

[42] *Sentences of Paul*, 5.1.1, cited by Harper, *Slavery*, 412, who gives very useful discussion of the topic of the sale of children in his Chapter 10. See also Cam Grey, "Slavery in the Late Roman World," in *The Cambridge World History of Slavery, Volume 1: The Ancient Mediterranean World*, ed. K. Bradley (Cambridge: Cambridge University Press, 2011), 491–92.

[43] Ibid. 410–11, on the sermons of Basil of Caesarea and Ambrose of Milan. More examples are given by Christian Laes, "Child Slaves at Work in Roman Antiquity," *Ancient Society* 38 (2008): 267–71, and especially Ville Vuolanto, "Selling a Freeborn Child: Rhetoric and Social Realities in the Late Roman World," *Ancient Society* 33 (2003): 169–207, who points out that the extent of the practice is difficult to determine because descriptions of people selling their children were a way of signalling extreme economic duress.

[44] Justinian, *Code*, 4.43.2.

a household with the knowledge and consent of the father or master, and raises it to strength with his own provisions, he shall hold it under that same status which he wished it to have when he collected it, whether he wishes it to be a child or a slave"; that is, the one who adopted the baby could choose whether to be its parent or its owner.[45]

As regards sale of children in early Islamic times, it is clear that the practice was deemed generally illicit, but the consequences differed depending on whether they were minors or not. In the early legal compilation of ʿAbd al-Razzāq (d. 211/826) there are two main examples. The first goes back to the Medinan Saʿīd b. al-Musayyab (d. 94/712), who is questioned about a man who sold one of his children, to which Saʿīd responded:

> If he sold a child who had reached maturity and who had consented to that, then, if it is a female — and if the purchaser had sex with her — she will be given the *ḥadd* punishment and the father will receive a painful punishment and have to give back the price for her (that he had been paid). A child (resulting from this relation) has the status of a legitimate child. If it is a male (being sold), who has reached maturity, he and his father will receive a painful punishment and the father must pay back the price for him.[46]

And the second example goes back to al-Zuhrī:

> A man sold his daughter and the buyer had sex with her. Her father said: "Need impelled me to sell her" (*ḥamalatnī al-ḥāja ʿalā bayʿihā*). Both the father and the daughter are to be flogged 100 lashes each if the girl had reached maturity. The price is returned to the buyer, but he has to give to her a dowry for having had intercourse with her. However, the father has to pay it back to him as a fine, unless the buyer knew that she was a free person; then he still owes the dowry, the father does not have to pay it back to him as a fine, and the buyer also receives 100 lashes. If the girl was not of age, then the father is given an exemplary punishment (*nakāl*).[47]

In cases involving a daughter, the distinction between marrying off and selling off is fuzzy, or at least we are not given enough information to discern the underlying realities.[48] It is interesting that the quotation above includes the mitigating plea from the father that he was driven to this by

[45] For the quotations on *expositi* in this paragraph and further discussion see Harper, *Slavery*, 404–409.

[46] ʿAbd al-Razzaq, *Muṣannaf*, 10:195–96 (no. 18807).

[47] Ibid. 10:194 (no. 18797); Ibn Abī Shayba, *Muṣannaf,* 5:532. Both this and the previous report are discussed by Schneider, "Freedom and Slavery," 370–73.

[48] This is discussed with examples from a different period in Harald Motzki, "Child Marriage in Seventeenth-Century Palestine," in *Islamic Legal Interpretation. Muftis and their Fatwas*, ed. M. Khaled Masud *et al.* (Cambridge, MA: Harvard University Press, 1996), 129–40.

necessity; although it is extremely rare to be given personal motives in these legal texts, one can imagine that sad stories of "need" form the background to many of the decisions of self-sale and sale of family members.

On the subject of infants, Islamic law did not consider their sale separately from that of children in general. It did, however, have a lot to say about the abandoned infant (*manbūdh*) or foundling (*laqīṭ*). There were some jurists who followed the Constantinian idea that it could be raised either as a free person or a slave according to the wish of the finder.[49] A few claimed that they should be deemed slaves,[50] but the view that won out was that they should be regarded as free, which was ascribed to a number of authorities, including the caliphs ʿUmar b. al-Khaṭṭāb, ʿAlī b. Abī Ṭālib and ʿUmar b. ʿAbd al-ʿAzīz (d. 101/720) (in a letter to the people of Mecca).[51] It was particularly scholars of the Ḥanafī law school who argued for this, and it is among them that we find the justification for this position in the assertion of the fundamental freedom of mankind.[52]

Debt Bondage in Late Antiquity and Early Islam

Debt, as David Graeber has powerfully argued, is as old as civilization. However, although it may well have begun as a means of exchange in the earliest communities (you give me something I need, putting me in your debt, and so I will reciprocate later with something you need), it had a tendency, especially in more hierarchical societies, to entrench the quasi-enslavement of the poor to the rich.[53] An explicit example of this is given in the complaint of farmworkers to Nehemiah (5:4–5 NLT): "We have had to borrow money on our fields and vineyards to pay our taxes. We belong to the same family as those (who are wealthy), and our children are just like theirs. Yet we must sell our children into slavery just to get enough money to live. We have already

[49] Ibn Abī Shayba, *Muṣannaf*, 4:438 (*k. al-buyūʿ*) from Ibrāhīm al-Nakhaʿī (d. 96/715).

[50] Ibid. 4:439 (*hum mamlūkūn*), also from Ibrāhīm al-Nakhaʿī.

[51] Ibid. 4:438–39, including again Ibrāhīm al-Nakhaʿī.

[52] See n. 7 above and Mohamad S. Sujimon, "The Treatment of the Foundling (*al-laqīṭ*) According to the Ḥanafīs," *Islamic Law and Society* 9 (2002): 358–85.

[53] Graeber, *Debt*. In chapter 2 he demonstrates the falsity of the pervasive notion that barter was the main mode of exchange before the invention of money; rather, informal systems of credit and debt were the norm within communities and barter mainly took place only among strangers or communities that rarely interacted. The quasi-slavery nature of creditor–debtor relationships is a feature of dependency theory, which is used to explain why it has been difficult for many less-developed countries to catch up with rich Western countries. See also Arietta Papaconstantinou, "Credit, Debt and Dependence in Early Islamic Egypt," *Travaux et mémoires* 20 (2016): 613–42 (note ibid. 617: "My aim is to investigate … the role of credit and debt in the creation and maintenance of hierarchy and dependence).

sold some of our daughters, and we are helpless to do anything about it, for our fields and vineyards are already mortgaged to others." Thus, indebtedness could lead to loss of liberty. If one had pledged oneself or a family member as security for a loan, then failure to repay that loan when it fell due could put one at the mercy of one's creditor, and at the very least result in continued servitude until the requisite sum could be raised.

We encounter a wide variety of such scenarios in the documentary record. An interesting example is provided by the case of a certain Barlaas, from a village in the vicinity of Dura Europos, who, in 121 CE, borrowed 400 drachmas from the local governor, Phraates, signing a contract specifying that: "In lieu of interest on the above money, Barlaas, staying with Phraates until the time of repayment, will perform for him the services of a slave (*parexetai autōi doulikas chreias*), doing everything which is ordered him." The loss of liberty for the period of the loan is clear in the clause specifying that Barlaas may not "absent himself, neither day nor night, without the permission of Phraates." The contract concludes with the stipulation that if he does not repay the money on the appointed day "Barlaas will remain with Phraates, performing the same services according to the above provisions until the repayment of the money."[54] This was a popular sort of arrangement, which involved the borrower, or a member of their family, "staying with" (Gr. *Paramonē*) the creditor for a time to carry out tasks for the latter. Although it could be beneficial to those who had no assets to pledge, it is easy to see how the borrower, even though retaining the legal status of a free person, could easily fall into a condition of long-term, or even permanent, unfreedom, unable to ever earn enough money to repay the capital on the loan.[55]

This fate befell a girl and her mother in fifth-century Dunhuang: they had to herd domestic animals for a Chinese creditor, because their male escort had run off leaving debts unpaid, and so they had to stay as surety until their father/husband sent the funds to pay the debt and release them.[56] And in late sixth-century Egypt, Menas, a bath-attendant, died leaving a debt unpaid with the result that his young daughter Prokla, whom he had used as a guarantee, had to supply "all slavish and useful services" to the

[54] Quotations are from the translation given in Michael Rosotvtzeff and C. Bradford Welles, "A Parchment Contract of Loan from Dura-Europos," *Yale Classical Studies* 2 (1931): 7–8.

[55] Grubbs, "Slave and Free," 188–90, gives other examples from the fifth and sixth centuries CE and observes that "*paramonē* could become permanent quasi-slavery."

[56] Nicholas Sims-Williams, "The Sogdian Ancient Letters," https://depts.washington.edu/silkroad/texts/sogdlet.html, no. 3, accessed 23/4/2020.

creditor.[57] Sometimes, however, the arrangement seems to have been voluntary, as when a woman who was a professional weaver in third-century Egypt agreed to do weaving and general housework for another woman to pay off the interest on a debt of three talents incurred by her father.[58] In most of the cases involving children it is difficult to ascertain the level of duress and hardship that was involved. We are usually just told that the child's labor was "in lieu of all interest payments" (*anti tōn toutōn tokōn*) on a loan or debt, or some such reason, and that he/she generally stayed at the house of the creditor "remaining with him and performing every kind of work enjoined upon him."[59] It might well be that the situation was in some cases akin to an apprenticeship, meaning that, as well as the loan that the parents received, the child would receive training, and usually their food and clothing, but in many cases it is likely that the child was treated as something of a drudge.[60]

Possibly falling into this latter category is the arrangement that is recorded in a late seventh-century papyrus from Nessana, near Gaza, which concerned, so Westermann argues, a financial arrangement between a certain al-Aswad b. ʿAdī and a priest named Kyrin, who seems to have received a loan of fifty solidi from al-Aswad or incurred a debt of fifty solidi to him and had offered his son to remain with al-Aswad as surety or in lieu of interest on the sum borrowed. The son would very likely have performed various tasks for al-Aswad until such time as his father could pay back the money to release him. The papyrus records the repayment of the fifty solidi to al-Aswad, who remits twenty solidi to Kyrin as charity, and the removal of the restriction on the son's freedom of movement and the claims of al-Aswad or his heirs on either of them.[61]

Using free persons as security for a loan seems to have been permitted in Zoroastrian law.[62] It was discouraged in the later Roman Empire, but we

[57] For her story see Grubbs, "Slave and Free," 190, who also gives an example of a contract from the same time and place where the whole debt was cancelled after four years of service as "a steadfast *familaris* slave (*katadoulos*)."

[58] William L. Westermann, "The Paramone as a General Service Contract," *Journal of Juristic Papyrology* 2 (1948): 28.

[59] Ibid. 36.

[60] The donation of children to monasteries in early Islamic Egypt may well be an example of this, though it is presented in terms of voluntary gift-giving; see Arietta Papaconstantinou, "*Theia oikonomia*. Les actes thébains de donation d'enfants ou la gestion monastique de la pénurie," *Travaux et mémoires* 14 (2002): 511–26.

[61] Ibid. 47–50. See further my "P. Nessana 56: a Greek-Arabic Contract from Early Islamic Palestine and its Context," *Jerusalem Studies in Arabic and Islam* 51 (2022): 133–48.

[62] Farrokhmart i Wahraman, *Book*, 57.12–58.3; Macuch, *Rechtskasuistik*, 393-95, 400–406. Macuch takes the MP phrase: "I take PN *pad tan*/as a body" to mean *als Schuldknecht*/as

know from warnings against it that it did happen, and was perhaps even widespread, as is implied by the following edict of the emperor Justinian (527–65):

> We learn of the following impious conduct in various provinces, namely that creditors dare to detain children of debtors as pledges or use them for servile labour or lease them out. We entirely forbid this and direct that if a man does anything of that kind, his debts shall not only become void, but he shall pay an equal amount to the person whom he detains or to his parents, and he shall further be subjected to corporal punishment by the magistrates of the places, for so daring to detain a free person for a debt, or to lease him out or to hold him as a pledge.[63]

The same situation likely obtained in the Islamic Empire, where the question of what to do in the case of the pawning of a free person was discussed by a number of legal specialists with evident disapproval of the practice.[64]

If the debtor had not given any security, then, in the case of default, recourse was first made to a debtor's property to settle their debts.[65] If that proved insufficient, or if the debtor refused that option, recourse might be made to their person, whether by imprisonment, forced labor or sale. The three options would usually only result in temporary loss of liberty. Sale sounds more permanent, but it tended to mean sale of a person's services for a fixed duration, as is found already in the Law Code of Hammurabi (§117): "If anyone fails to meet a claim for debt and sells himself, his wife, his son and daughter for money or gives them away to forced labour, they shall work for three years in the house of the man who bought them, or the

a debt-slave, in the sense that this would be time-limited servitude with a view to working off the debt (ibid. 406, no. 17: "Dem Gläubiger Farroḫ wird der Schuldner Ādurfarrbay für begrenzte Zeit, in der er seine Obligationen abarbeiten kann, als Schuldknecht ausgeliefert").

63 Justinian, *Novels*, no. 134.7, trans. Fred H. Blume, published at http://www.uwyo.edu/lawlib/justinian-novels/, accessed 23/4//2020. Note that selling a child is not mentioned and it may well be that the laws of Diocletian and Constantine cited above had reduced the outright sale of children in favor of the sale of their labor.

64 E.g. Ibrāhīm al-Nakhaʿī is asked about "a free man who affirms slave status so that he may be pawned" and rules: "If the free man is pawned and affirms that (he is a slave), he remains a pawn until he extricates himself, as he deceived them" (ʿAbd al-Razzāq, *Muṣannaf*, 10:194, no. 18801; cf. Ibn Abī Shayba, *Muṣannaf*, 4:482, *kitāb al-buyūʿ*).

65 This is often supported by reference to the example of how Muḥammad dealt with the spendthrift Muʿādh b. Jabala (ʿAbd al-Razzāq, *Muṣannaf*, 8:268–69, no. 15177), who racked up huge debts, and "the Prophet sold all of his (Muʿādh's) property for the sake of his debt until he had nothing left" (*ḥattā qāma bi-ghayr shayʾ*), though many lawyers allowed a debtor to keep enough for their basic sustenance.

proprietor, and in the fourth year they shall be set free."[66] Something akin to this had existed in the early Roman Empire, the nexus contract, whereby a free man, on account of money which he owed, "'bound' his labour like a slave until he should pay off (*dum solveret*) the debt."[67] By the late antique period Roman law books only tend to talk about the sale of property to settle debts, and imprisonment as a last resort, but not about claims against the person of the debtor or of his family. However, references in literature suggest that in reality many of the older practices continued.

ʿUmar II's Rulings on Defaulting Debtors and the Origins of Islamic Law

Documents and literary sources make it clear that imprisonment was commonly used in the Islamic world to pressure defaulting debtors and their families to pay up, and indeed that it seems to have become the preferred method when the proceeds from sale of assets were insufficient.[68] However, other strategies were also employed, especially in the first century or so after the Prophet Muḥammad, as is indicated by a letter of ʿUmar II (99–101/717–20) regarding debt default.[69] It is transmitted by the Egyptian jurist al-Layth b. Saʿd (d. 175/791) and it was written in reply to a request from ʿIyāḍ b. ʿUbayd, an Egyptian judge (93–100/712–19), for his opinion on three cases involving persons with debts that they could not pay. The second and third cases are the most pertinent:

[66] This is the translation of Leonard William King (1915), available at https://www.sacred-texts.com/ane/ham/, accessed 29/4/2020; for discussion see Gregory C. Chirichigno, *Debt-Slavery in Israel and the Ancient Near East* (Journal for the Study of the Old Testament Supplement Series 141) (Sheffield: Journal for the Study of the Old Testament Press, 1993), ch. 3.

[67] Varro, *The Latin Language*, 7.105, cited and discussed by Morris Silver, "The *Nexum* Contract as a 'Strange Artifice'," *Revue internationale des droits de l'antiquité* 59 (2012): 228.

[68] Irene Schneider, "Imprisonment in Pre-Classical and Classical Islamic Law," *Islamic Law and Society* 2 (1995): 158–60; Petra M. Sijpesteijn, "Policing, Punishing and Prisons in the Early Islamic Egyptian Countryside," in *Authority and Control in the Countryside: From Antiquity to Islam in the Mediterranean and Near East*, ed. Alain Delattre, Marie Legendre and Petra M. Sijpesteijn (Leiden: Brill, 2018), 558–59; Mathieu Tillier and Naïm Vanthieghem, "Un registre carcéral de la Fusṭāṭ abbaside," *Islamic Law and Society* 25 (2018): 22–23. See also Rosenthal, *Muslim Concept*, 48–49 ("It was the general practice for the creditor to apply to the courts to have the debtor sent to debtor's prison," but he/she might be freed if their "indigence was established beyond a doubt").

[69] For a discussion of ʿUmar II's letters and their authenticity see Sean Anthony, "A 'Rediscovered' Letter of the Caliph ʿUmar b. ʿAbd al-ʿAziz: The Epistle on the Conquest-Revenue," in *Rulers as Authors in the Islamic World*, ed. Maribel Fierro *et al.* (Leiden: Brill, 2024). 47–88 and also Matthieu Tillier's article cited in n. 72 below.

> with him heading for the well.[70] His slave died while he (the master) was left with a lot of debt and no money. You placed him in the hands of the creditors until you received my instruction on the matter. So order that man to work off his debt and order the creditors to look after him well until/so that he settles what he owes and he may not be sold.
>
> كتبتَ تذكر أن رجُلًا ابتاع رقيقًا، فانطلق بِهِ عامدًا إلى البأْر، فأُصيب رقيقه عَلَيْهِ دَين كثير ولم يبقَ لَهُ مال. فجعلته فِي أيدي الغُرَماء حتى يأتيك أمري فِيهِ. فمُر ذَلكَ الرجُل فليسعَ فِي دَينه وأْمُرْ غُرَماءه فليرفقوا بِهِ حتى يقضي الَّذِي عَلَيْهِ ولا يُباع.
>
> (You mention) that among them (your cases) was a man who bought female slaves on credit and with interest. Then he sold for cash what he had bought for only a third of the price or a part of it. You say: His situation continued thus until his debt grew to 300 dinars and you say: His partners came to me asking that he be sold for their benefit.[71] You mention that you handed him over to them until you received my instruction. So (here it is): Order that man to work off his debt; he is responsible until he has settled it. The creditors may not sell him; rather, order them to look after him until/so that he pays what he owes.
>
> (وتذكر) أن منهم رجلًا يبتاع الولائد بالنَّظِرة بالمال المرتفع ويبيع بالنقد الَّذِي يشتري بثُلُث الثمن أو ببعضه، وتقول: فلم يزَلْ ذَلكَ شأْنه حتَّى ترابى عَلَيْهِ من الدين ثلاثمائة دينار. وتقول: جاءَني أصحابه يسألوني أن يُباع لهم. وتذكر أنك جعلته فِي أيديهم حتى يأتيك أمري. فمُر ذَلكَ الرجُل فليسْعَ فِي الَّذِي عَلَيْهِ ويسأل حتَّى يقضي ولا يُمكَّن غُرَماؤه من بيعه ومُرْهم فليرفقوا بِهِ حتى يُؤَدّي ما عليه.[72]

ʿUmar's judgements include the same three points in each case: the debtor cannot be sold (*lā yubāʿu*, i.e. to raise money to settle the debts), the debtor should work to pay off the debt (*fa-l-yasʿa*) and the creditors should treat the debtor well while he is working for them (*fa-l-yarfuqū bihi*).

[70] The text has *al-baʾr*, but this is likely a miscopying of a place name. Note that I have translated the next word as "his slave" (*raqīquhu*), though the text has "his companion" (*rafīquhu*), which I take to be a typographical error.

[71] Literally "that he be sold for them," presumably meaning either that he should be sold in a slave-market to raise money to pay his debts, or, as Motzki, *Analysing*, 195–96, suggests, that he should be handed over to his creditors so that they could sell him. It is unclear whether ʿUmar's prohibition of selling is given to underline a general principle (free people should never be sold), or in reaction to a prevalent practice, or, as Motzki says, as a response to the situation in the pre-Islamic and early Islamic Ḥijāz.

[72] Muḥammad b. Yūsuf al-Kindī, *The Governors and Judges of Egypt*, ed. Rhuvon Guest (London/Leiden: E. J. W. Gibb, 1912), 336–37. Note that in this last sentence I omit the words "God Almighty and Exalted" (*Allāhu ʿazza wa-jalla*) which come after *yuʾaddī* "he pays", as I think they are misplaced. I unfortunately had no access to Mathieu Tillier's translation of al-Kindī's text due to the Covid-19 lockdown, but I would urge readers to consult it. See also his "Califes, émirs et cadis: le droit califal et l'articulation de l'autorité judiciaire à l'époque umayyade," *Bulletin d'études orientales* 63 (2015): 165–84, for a survey of ʿUmar II's legal correspondence, which he largely regards as authentic.

The letter is given in full by the Egyptian scholar Muḥammad b. Yūsuf al-Kindī (d. 350/961) with a formal introduction, conclusion and a date (Dhū l-Ḥijja 99/July 718), and other scholars quote the same three points, even if briefly and piecemeal, in reports going back to ʿUmar. Thus the ruling that "a free person is not sold in the case of bankruptcy" (*lā yubāʿu ḥurr fī iflās*) is attributed to a written ruling of ʿUmar II by Makḥūl (d. 118/736).[73] And the observation that if he declared someone bankrupt "he would hire him out" (*ājarahu*) is reported of ʿUmar by ʿAmr b. Maymūn (d. ca. 147/764), who is sometimes quoted with the additional comment that ʿUmar placed the debtor in very menial work as a rebuke (*kāna yuʾājiru al-mufallis fī amhan ʿamal li-yuwabbikhahu bi-dhālika*).[74] Moreover, al-Layth b. Saʿd, the transmitter of ʿUmar II's letter in al-Kindī's book, records a similar ruling on the authority of the Egyptian mufti ʿUbayd Allāh b. Abī Jaʿfar, who was appointed by ʿUmar: "He (the judge) should not imprison (*lā yaḥbisu*) the bankrupt, but rather should let him work off his debt (*yasʿā fī daynihi*).[75] It seems likely, then, that these judgments on debt bondage go back to ʿUmar II directly, or at least, if one wants to be more sceptical, to one of his appointees in the judiciary.[76]

The fact that ʿUmar's letter can be tied with a reasonable degree of certainty to a fairly specific time makes it a good test case for trying to understand the decisions of early Muslim lawmakers presented above. Were they consciously looking to prevailing practice in the region or were they seeking in their minds to establish a new Islamic formulation, or perhaps both? The letter has been considered in this vein by Irene Schneider and Harald Motzki, though with rather different answers.[77] The former points to

[73] Ibn Abī Shayba, *Muṣannaf*, 4:545 (*kitāb al-buyūʿ*).

[74] Ibid. 4:536 (*kitāb al-buyūʿ*); ʿAbd al-Razzāq, *Muṣannaf*, 8:267 (no. 15173, *kitāb al-buyūʿ*); Ibn Ḥazm, *al-Muḥallā bi-l-āthār* (Beirut: Dār al-Fikr, n.d.), 6.480 (also from ʿAmr b. Maymūn: *kāna yuʾākhiru l-mufallis fī sharr ṣanʿa*).

[75] Ibid. 6:480. Motzki, *Analysing*, 200, says that *yaḥbisu* here means not imprisonment but rather the arrest of the debtor so that the creditors "could do what they liked with him as if he was a slave." However, Sijpesteijn, "Policing, Punishing and Prisons," 558, points out that incarceration was a common response to non-payment of debts, less to punish than "to force the prisoner to pay the money he owed, either from his own assets or through the help of a third party." See also the references in n. 68 above.

[76] ʿUmar II is also said to have recommended sharing a debtor's money and property among his creditors (e.g. Ibn Ḥazm, *Muḥallā*, 6:480), but it is not explained whether that was prior to or instead of the debtor being hired out.

[77] Irene Schneider, *Kinderverkauf und Schuldknechtschaft* (Stuttgart: F. Steiner, 1999); Harald Motzki, "Der Prophet und die Schuldner. Eine ḥadīṯ-Untersuchung auf dem Prüfstand," *Der Islam* 77 (2000): 125–208, and followed up by "Ar-radd ʿalā r-radd – Zur Methodik der ḥadīṯ-Analyse," *Der Islam* 78 (2001): 147–63. Both articles were revised and translated into English in his *Analysing*, 125–208 and 209–29, which I shall cite here.

ʿUmar II's childhood with his father in Egypt as a time when he could have "become familiar with debt bondage" and favors the idea that "it had its roots in late antique legal practice."[78] The latter stresses ʿUmar's education and period of governorship in Medina and asserts that "if the judgement (of ʿUmar) refers to an older legal practice at all, then it would be to that of the Arabs of the Ḥijāz."[79] At first glance, Schneider's argument that ʿUmar II's ruling is a continuation of pre-Islamic Near Eastern practice seems convincing, and she supports it with examples of debt bondage from the pre-Islamic Near East.[80] But Motzki objects that parallels are not proof and that it is unlikely that the creditors (whom Motzki says must have been Muslim Arabs) "would have followed the legal customs of non-Muslim Egyptians."[81] He then concludes: "The caliph's (i.e. ʿUmar II's) judgement should thus be seen in the context of the transition from the pre-Islamic legal practice of the Ḥijāz to an Islamic legal practice that only gradually evolved throughout the first/seventh century."[82]

Motzki seems here to be driven by his conviction that Islamic law must originate in the Ḥijāz, but I will run with it for the moment in order to present his argument. Motzki stresses that in his opinion "'ʿUmar II is not legitimizing a pre-Islamic legal practice (debt bondage), but rather abolishing a more severe practice (debt slavery) that existed in the Ḥijāz in pre- and early Islamic times."[83] The evidence for this latter claim is twofold. First, there are accounts of debt bondage in the Ḥijāz (e.g. al-ʿĀṣ b. Hishām of the clan of Makhzūm works off a debt for Muḥammad's uncle Abū Lahab) and of sale of debtors (Muḥammad allows a debtor called Surrāq, who fraudulently acquired livestock, to be sold to recompense his creditor).[84] Second,

[78] Schneider, *Kinderverkauf*, 154 and 304.

[79] Motzki, *Analysing*, 200–201.

[80] Schneider, *Kinderverkauf*, 290–303; the examples are drawn from all the major cultures of the pre-Islamic Middle East, from ancient to late antique times, and are only similar in very broad terms.

[81] *Analysing*, 198; note that this is simply assumed by Motzki, not demonstrated.

[82] Ibid. 201.

[83] Ibid. 201. Motzki, like many other scholars, distinguishes between debt slavery and debt bondage, the former entailing sale of the person/permanent loss of liberty and the latter involving only the person's labor/temporary loss of liberty. It should be stressed, however, that these distinctions are blurry. On the one hand, the fact that freeborn status was deemed inalienable in the Roman and Islamic worlds meant that even if a debtor was sold, it did not affect his/her legal status, and there was usually the chance of redemption. On the other hand, a period of temporary forced labor could become long-term depending on the conditions of the loan contract (e.g. whether the labor counted towards the sum borrowed, or only towards the interest, leaving the principal still to be paid).

[84] Though this is a complex *ḥadīth* that has an interesting connection with Exodus 21.37 and 22.2. Note that Muḥammad is also quoted as saying that the one who sells a free person will

there is the Qurʾan itself, which appears, says Motzki, to be "grappling with the issue of debts."[85] It urges creditors not to impose compound interest on loans (Q 2:275–79; cf. 3:130).[86] Then it continues (2:280):

> If someone has difficulty (paying their debt), grant a delay until (he is) in ease; that you act charitably is better for you (*Wa-in kāna dhū ʿusratin fa-naẓiratun ilā maysaratin wa-an taṣaddaqū khayrun lakum*).

This is followed by two long verses about the importance of having debt agreements written down and witnessed. In short, concludes Motzki, there is no reason to dismiss Muḥammad's Ḥijāz as a venue for debates over debt bondage, as Schneider does, and it makes perfect sense to assume that it is precisely these developments in the Ḥijāz that informed ʿUmar II's decision to forbid the sale of persons in debt in favor of the milder sanction of working off one's debts.[87]

Muḥammad is portrayed as both endorsing and rejecting the sale of persons and debt bondage, presumably being deployed as the sanction by both sides of later discussions.[88] Qurʾan 2:275–83 does suggest, though, that the problem of indebtedness was debated in Muḥammad's Ḥijāz and that there was a tendency towards greater clemency towards debtors. But it is ʿUmar II, or one of his judicial appointments, who is the earliest authority to give a formal ruling on the topic. Motzki is right to say that ʿUmar is not just endorsing pre-Islamic practice but is making a deliberate decision. Sale, imprisonment and hiring out had all been applied to the problem of defaulting debtors in the pre-Islamic Near East, even if sometimes against the prevailing law of the time, but ʿUmar decides to exclude the former two and to approve the third option. "What would have motivated the caliph to choose this milder procedure?" asks Motzki. "The most plausible answer,"

face his ire on the day of resurrection.

85 *Analysing*, 179.

86 Motzki argues, with reference to Q 3:130 (*lā taʾkulū l-ribā aḍʿāfan muḍāʿafatan*) that *ribā* "does not mean any interest on loans that one was unable to repay in time … but interest that multiplied upon expiry of the loan period, in other words: usurious interest" (p. 182). This was also prohibited by Justinian, but already at the First Council of Nicaea in 325 AD (canon 17) there had been condemnations of taking any interest at all (e.g. a cleric found to be taking interest – *tokous lambanein/usuras sumere* – will be deposed).

87 *Analysing*, 180–87. One could argue that it is the Qurʾanic injunction to be charitable (*taṣaddaqū*) that explains why al-Aswad remitted as charity (*ṣadaqa*) a part of the payment Father Kyrin made to him, as recorded in *P.Nessana* III 56, or it could of course be that by his day, after centuries of emphasis by Christianity on charitable giving, it had become expected of the better off to remit a part of a final payment for release of a slave or debtor.

88 Or, as traditionalist scholars would say, he endorsed it but then "the revelation of Qurʾan 2:280 abrogated his previous *sunna*" (Motzki, *Analysing*, 189).

he says, is "Muḥammad's revelation in general and the revelation of Qurʾan 2:280 in particular."[89] However, ʿUmar does not call on the creditors to give the debtors more time or a charitable remission, as urged by Qurʾan 2:280. So what was ʿUmar thinking? He is not really following prophetic precedent, as Motzki claims, or simply endorsing pre-Islamic practice, as Schneider maintains. It looks like he is making an ad hoc pragmatic decision, recognizing that debts need to be paid and creditors satisfied, but adopts a merciful attitude inasmuch as he rules out the harsher solutions of selling or imprisoning the debtor and urges that a debtor working off his debt should be treated well. It appears as though he means this to serve as a precedent, that is, free debtors should never be sold, but should always work to pay off their debts and be dealt with humanely while doing so. In sum, he seems to act as though he, as caliph, has the right to make law, acting like a Roman emperor responding to a legal inquiry, his letter serving as a decree.[90]

One might argue, with Motzki, that ʿUmar was swayed by the general tenor of the Qurʾan's (and Muḥammad's) more clement attitude towards indebtedness, or we might look at the bigger picture and say that this was itself in line with the move away from the sale and forced labor of debtors (whether by their creditors or by their own selves) in the late antique Middle East and towards debt forgiveness and imprisonment. Presumably, it is this overall moral shift that explains why ʿUmar's endorsement of debt bondage did not find favor in classical Islamic law manuals. By the time of Abū Jaʿfar al-Ṭaḥāwī (d. 321/933) it seems to be all but forgotten: "We do not know any scholar who supported the hiring out of the insolvent debtor so that he can settle his debt from his wages except for Ibn Shihāb al-Zuhrī."[91] Rather, the correct procedure in this situation would be, he says, that of the Prophet (in Qurʾan 2:280): deferment and charitable remission.

[89] *Analysing*, 201–202.

[90] I.e. a *decretum*, "a verdict given in a legal procedure," the emperor acting in a judicial role, usually consulting first his *consilium*, which included jurists (A. J. Boudewijn Sirks, "Making a Request to the Emperor: Rescripts in the Roman Empire," in *Administration, Prosopography and Appointment Policies in the Roman Empire*, ed. Lukas de Blois, Leiden: Brill, 2001, 122). Of relevance here are the arguments of Joseph Schacht (*The Origins of Muhammadan Jurisprudence*, Oxford: Clarendon Press, 1950, 190) that "Muhammadan legal science started in the later part of the Umaiyad period, taking the legal practice of the time as its raw material and endorsing, modifying or rejecting it" and of Patricia Crone and Martin Hinds (*God's Caliph*, Cambridge: Cambridge University Press, 1986, 49), that "originally all caliphs formulated law in their capacity as caliphs." Their arguments are taken up and refined by Mathieu Tillier in his "Califes, émirs et cadis," and *L'invention du cadi: la justice des musulmans, des juifs et des chrétiens aux premiers siècles de l'Islam* (Paris: Editions de la Sorbonne, 2017).

[91] *Sharḥ mushkil al-āthār*, ed. Shuʿayb al-Arnaʾūṭ (Beirut: Muʾassisat al-Risāla, 1994), 5:141. Muḥammad b. al-Ḥasan al-Ṭūsī (d. 460/1067) says that Abū Ḥanīfa, Shāfiʿi, Mālik and "most jurists" were against it, but he is able to cite a few more early authorities who favored it: Aḥmad b. Ḥanbal, Isḥāq b. Rāhawayh, ʿUmar b. ʿAbd al-ʿAzīz, ʿUbayd Allāh b. al-Ḥasan

Yet in reality, of course, this is unlikely to have been the dominant procedure – not all creditors could have afforded to forgive their problematic debtors even if many wished to do so – and papyri and literary sources suggest that prison became the favored option, which was also not of immediate benefit to the creditor.[92] So why did working to pay off one's debts drop out of favor? Motzki makes the interesting observation that: "Among the early Muslims, the proponents of debt-slavery or of the compulsory working-off of debts in the service of the creditor are almost exclusively persons who held positions as judges … The opponents of such forms of personal execution were mainly from among the 'theorists', the legal scholars who developed their opinions largely independently of legal practice, often in purely scholarly environments."[93] Classical Islamic law became, therefore, suffused with "the ethical ideal of Qurʾanic revelation," edging out compromises with harsh realities.

Conclusions Regarding the Origins of Islamic Law

In some respects, both Motzki and Schneider make valid points: there is no reason to say that moral discussions about debt bondage could not take place in the Ḥijāz, and, since the Ḥijāz had been in contact with Roman Arabia for half a millennium by the time of Muḥammad, it is plausible to infer that the debt-related policies of early Muslim authorities were informed by pre-Islamic practices. But their accounts are also flawed in many respects. In particular, both present their arguments in a strongly dichotomous framework, as is all too common in the writings on the origins of Islamic law: either Islamic law was born in Muḥammad's Ḥijāz or it grew out of the pre-Islamic Middle East, and the two are seen as somehow mutually exclusive.[94] And both tend to present the objects of their study – the late antique world and the early Islamic world, late Roman law and Islamic law – as distinct and coherent entities that could borrow from and influence one another.

al-Anbārī and Sawwār b. ʿAbd Allāh al-Qāḍī; he himself is against it (*law aflasa man ʿalayhi al-dayn lā yuʾājar li-yaktasiba*) as there is no evidence for it and God ordered deferment not earning (*al-Khilāf fī l-aḥkām*, ed. ʿAlī al-Khurasānī *et al.*, Qom: Muʾassisat al-nashr al-islāmī, 1990, 3:272, *kitāb al-taflīs*).

92 Thus Sijpesteijn, "Policing, Punishing and Prisons."

93 *Analysing*, 202.

94 Compare the review/rebuttal by Wael Hallaq, "The Use and Abuse of Evidence: The Question of Provincial and Roman Influences on Early Islamic Law," *Journal of the American Oriental Society* 110 (1990): 79–91, of Patricia Crone, *Roman, Provincial and Islamic Law* (Cambridge: Cambridge University Press, 1987).

In recent years there has been a reaction against "explanatory models that turn culture into static binary encounters, characterized by 'conflict', 'resistance', 'influence', 'assimilation', 'acculturation' or 'appropriation'."[95] The preference has been, rather, for more organic models that take better account of the shifting, complex and blurred natures of societies and institutions. This seems to me a better approach for dealing with imperial legal systems, which are by no means monolithic but rather teem with regional variations and local archaisms,[96] with disparities between provincial and empire-wide rulings and gaps between theory and practice, with disagreements between jurists and judges and differences between conservatives and progressives, and so on. And it is an approach that makes particularly good sense when dealing with broad social issues like unfreedom, which all three Abrahamic religions, if not all societies, had to contend with.[97] Motzki's attempt to isolate the early Islamic engagement with unfreedom seems, therefore, somewhat fruitless. On the other hand, Schneider ignores the fact that this phenomenon results from very widespread problems (debt default and poverty) with a limited range of possible solutions. Impoverished and/or indebted people have in many times and places, including in our modern world, felt/been compelled to give up their free status and sell their labor, at least temporarily, in order to ensure the survival of themselves and their dependents. In such a situation, the recurrence of similar practices does not necessarily imply direct borrowing or influence, but rather the constraining factors of environment and resources, as well as the fact that inhabiting a shared geographical space without rigid borders will inevitably lead to some convergence in social behavior and cultural norms.

Thus, this investigation into the nature of freedom and unfreedom confirms the conclusions of a growing body of studies that there is no major shift or "discontinuity" in the socio-legal landscape of the late antique

[95] Michael L. Satlow, "Beyond Influence: Towards a New Historiographic Paradigm," in *Jewish Literatures and Cultures*, ed. Anita Norich and Yaron Z. Eliav (Providence RI: Brown Judaic Studies, 2008), 38.

[96] There are examples of legal practices enduring for millennia; see Patricia Crone and Adam Silverstein, "The Ancient Near East and Islam: The Case of Lot-Casting," *Journal of Semitic Studies* 55 (2010): 423–50; Hannah Cotton, "Continuity of Nabataean Law in the Petra Papyri," in *From Hellenism to Islam: Cultural and Linguistic Change in the Roman Near East*, ed. eadem *et al*. (Cambridge: Cambridge University Press, 2009), 154–74.

[97] In Judaism, for example, the problems of debt-slavery were mitigated by periodic clean slates; cf. Deuteronomy 15:1–2: "At the end of every seven years you must declare a cancellation of debts. This is the nature of the cancellation: Every creditor must remit what he has loaned to another person" and ibid. 12–14: "If your fellow Hebrew – whether male or female – is sold to you and serves you for six years, then in the seventh year you must let that servant go free. If you set them free, you must not send them away empty-handed. You must supply them generously from your flock, your threshing floor, and your winepress."

and early Islamic Middle East.[98] I hope also to have demonstrated that the continuities we observe should not be understood solely, if at all, in terms of Muslim jurists borrowing from or being influenced by late antique lawyers but also, or more so, in terms of shared cultural assumptions, norms and perspectives and the same technological and environmental constraints. However, Muslim authorities, in the course of adapting and reacting to this common legacy, introduced innovations and slowly developed a new way of doing things, and what we would call Islamic law was the result of this gradual transformation.[99] This point is made by a number of contributors to this volume, in particular by Cecilia Palombo in her chapter below with regard to the regulation of credit and debt. It has also been well illustrated by Mathieu Tillier in his excellent book on Islamic judges and justice, in which he succinctly concludes: "The first generations of Muslims used the materials available in the conquered lands. They did not borrow them, or, if they did draw upon them, that was accompanied almost immediately by a transformation, in the same way as the ancient columns redeployed in mosques do not make the latter a borrowing from late antique culture."[100]

Conclusions Regarding Unfreedom in Late Antiquity and Early Islam

But what does the occurrence of this particular tie of dependence tell us about the nature of social dependency in the early Islamic Empire? In a very general way, it reveals the structures of inequality in that society. However, wealth on its own only confers indirect power over others; to convert that indirect

[98] E.g. Andrew Marsham, "Public Execution in the Umayyad Period: Early Islamic Punitive Practice and its Late Antique Context," *Journal of Arabic and Islamic Studies* 11 (2011): 101–36, and Petra M. Sijpesteijn, "Shaving Hair and Beards in Early Islamic Egypt: An Arab Innovation?", *Al-Masāq* 30 (2018): 9–25. Note that both scholars appeal for the phenomena they study in their articles to be placed in the context of an "Islamic Late Antiquity" (pages 123 and 24 respectively), citing Tom Sizgorich, "Narrative and Community in Islamic Late Antiquity," *Past and Present* 185 (2004): 9–42.

[99] The fact that the legal system of the Arabian conquerors took a while to evolve into what we would recognize as Islamic law does not mean that there was a "legislative vacuum of the first century or so after the conquest" (Papaconstantinou, "Credit, Debt," 615). In some ways the opposite was true, for the indigenous legal systems initially remained in place and then additionally there were the rulings of Muslim generals, governors and caliphs, who either directly made legal decisions themselves or appointed others to do so.

[100] *L'invention du cadi*, 581. This topic is also fruitfully discussed with regard to administration in Petra M. Sijpesteijn, *Shaping a Muslim State: The World of a Mid-Eighth Century Egyptian Official* (Oxford: Oxford University Press, 2013), 64–80.

power into direct control certain mechanisms are needed, mechanisms like self-sale and debt bondage, which concede to the rich direct power over those in straitened circumstances. Such mechanisms are, of course, found in numerous societies across the world, and we do not have the sort of quantitative data that would allow us to say if the situation was better or worse in the early Islamic polity. What we can discern, however, is differences in response to this situation by the state. The power to command and control people is generally felt by the state to be its prerogative, and so a state will try to limit or regulate mechanisms of direct control that operate between its own subjects outside of its authority.[101] Slaves were excluded from citizenship and were regulated and legislated for, so they did not pose a challenge, but unregulated control of free-born subjects by other free-born subjects effectively amounted to private power outside of the state's purview and so did constitute a threat to the state's claims to be the principal determinant of the lives of its subjects. One might argue that states are big creators of unfreedom in the sense that they limit our freedom of action in many different ways, but they do so, rightly or wrongly, in pursuit of a larger aim – enforcing justice, ensuring distribution of wealth, safeguarding public safety and so on – and as governing entities distinct from the governed, so they did not contract interpersonal ties of the sort I have been talking about.[102]

Indeed, states sought to reduce or disrupt these informal ties of dependency in a variety of ways: by limiting the duration of the tie, as in ancient Babylon, by cancelling all debts every seven years, as in ancient Israel,[103] by abolishing the practice of "lending on the (security of the) body" as in ancient Athens,[104] by reducing the indebtedness of small farmers to large landowners in medieval Byzantium,[105] or by allowing the reimbursement of the debt (and not just the interest on the debt) through labor, as we saw with the rulings of Justinian the Great and ʿUmar II. In the case of self-selling, the state sought either to enforce bans on the practice or to encourage a philanthropic response from religious

[101] That it was in the interest of states to limit debt slavery is argued by Alain Testart, "The Extent and Significance of Debt Slavery," *Revue française de sociologie* 43 (2002): 173–204.

[102] Pre-modern states had the means to acquire slaves by capture or purchase for large-scale military and economic projects (see n. 9 above for agricultural slaves in Islam), which was a less contentious option than cajoling its free citizenry. Many made occasional resort to forced labor of their subjects, but, in the early Islamic case at least, this was time-limited and remunerated (Sijpesteijn, *Shaping*, 180), and so did not compromise the free status of those so coopted.

[103] See the quote from the code of Hammurabi above and n. 97 above.

[104] Edward Harris, "Did Solon Abolish Debt-Bondage?" *The Classical Quarterly* 52 (2002): 415–30.

[105] Daphne Papadatou, "*Antichresis* in Byzantine Law," *Revue des études byzantines* 66 (2008): 209–20, who points to a number of legal measures, such as limiting rates of interest, blocking transfers of land from debtors to creditors, abolishing *paramonē* arrangements in cases of default. The aim seems to have been to prevent large landowners swallowing up the land of small farmers.

institutions or wealthy individuals. King Charles the Bald (d. 877 CE), for example, urged those who could afford it to buy impoverished self-sellers as an act of charity, and later, after they had performed some tasks, to release them: "and if someone says that he does not want to pay for a free man in a time of famine or for another necessity unless he gets to keep him as a slave forever, let him heed what the Lord tells him through his apostle: 'He who has the wealth of the world, and sees his brother is in need, and shuts up his bowels of compassion from him, the love of God dwells not in him' (I John 3.17)."[106]

In general terms, it is clear that in the medieval European and Middle Eastern worlds debt bondage and the sale of self and family became gradually more and more restricted. Allowing extra time for the payment of debts features in the Qurʾan and in most of the "Germanic" law codes. Creditors' recourse to the body of the defaulting debtor through sale or labor became increasingly curtailed in favor of distraint on the property of the debtor and use of imprisonment to pressure the family and friends of the debtor to contribute. There are three possible explanations for this shift across the whole of the post-Roman East and West: the emphasis of Christianity and Islam on charity and debt-forgiveness, the influence of Germanic and Arabian tribal law,[107] or the increased power of the early Carolingian and Abbasid Empires, which were able to exert greater judicial oversight of such matters as the maintenance of personal freedom and the regulation of debt collection. I suspect that the latter is the most important factor, but more research would need to be done before reaching any firm conclusions.[108]

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[106] Rio, "Self-sale," 670.

[107] On "the significant level of protection for private debtors" in Germanic law codes see Judith Spicksley, "The Decline of Slavery for Debt in Western Europe in the Medieval Period," *Atti delle Settimane di Studi e altri Convegni* 45 (2014): 468–72. This could be a way to explore Motzki's contention of an Arabian basis for Islamic debt law, but it would need to focus on material outside of the *Life* of Muḥammad, as the latter is too much shaped by later concerns.

[108] And the apologetic/patronizing notion that such things did not happen in Islamic society needs to be set aside, as it has meant that Islam is frequently left out of discussions of unfreedom. Thus Alain Testart states in his otherwise comprehensive assessment of "The Extent and Significance of Debt Slavery" that "Islam will not be considered here given that debt slavery goes against Islamic law" (ibid. 182). This is like saying that one will omit the US from a study of racism because racism is against US law.

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