Orthodox Approaches to Biblical Slavery

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Recent popular and aggressively anti-religious books have highlighted the Bible's sanctioning of slavery as evidence of the Bible's immorality.[1] One striking example can be found in a best-selling and deliberately provocative book by journalist, author, and political commentator Christopher Hitchens, who argues that the ethics of the Bible lead the sensitive modern thinker not so much to atheism as to "anti-theism:"

> By this I mean the view that we ought to be glad that none of the religious myths has any truth to it, or in it. The Bible may, indeed does, contain a warrant for trafficking in humans, for ethnic cleansing, for slavery, for bride-price, and for indiscriminate massacre, but we are not bound by any of it because it was put together by crude, uncultured human mammals.[2]

Given the enormous outrage and repulsion that the modern Western world feels toward slavery, arguments like Hitchens' find fertile ground.

Not all readers of the Bible have been moved to throw down an atheist gauntlet in the manner of Hitchens. Recent progressive theologians point to biblical slavery, along with animal sacrifice and the prohibition against homosexuality, as a moral anachronism that the Western world has outgrown. Unlike atheist critics, these progressive theologians are unwilling to reject their biblical traditions outright; in fact, they claim to take much inspiration and guidance from these traditions. Nevertheless, they find so many gaps between their modern moral sensitivities and the particular commandments and institutions of the Bible that their divergence from those institutions appears systemic. For example, in

an article supporting the concept of single-sex marriage, Reform rabbi Devon Lerner points to biblical slavery as a basis for concluding that "Our world is very different from the world of the biblical times, and so all of our religious practices and interpretations of the Bible have necessarily changed and evolved through the centuries."[3]

Orthodox Judaism has its share of morally sensitive thinkers, and they also have had to deal with the Western outrage over biblical slavery; naturally, in order to remain Orthodox, they have not been moved, as Hitchens was, to reject the Bible as primitively mammalian. They are, therefore, left with the task of resolving the conflict between the modern moral outcry against slavery and the Bible's obvious sanction of the institution. Among Orthodox Jewish thinkers of the modern period, several creative—and sometimes mutually exclusive—approaches to this contradiction have emerged. Some have reinterpreted the biblical system in order to render it less offensive; others have questioned the moral superiority of the anti-slavery position; still others see biblical slavery as one of a few ephemeral accommodations to particular historical circumstances that the Western world has thankfully outgrown. This paper will examine these Orthodox approaches.

The case of slavery serves as a paradigm, as it helps us generate diverse approaches to a wide range of apparent ethical conflicts between Judaism and Western morality. It also traces the boundaries of acceptable theological resolutions within contemporary Orthodox Jewish thought. The three basic models for dealing with potentially noxious biblical systems and laws—limiting via reinterpretation, moral and social justification, and historical qualification—are found both in their pure forms and as alloys in this context, and they shed as much light, and perhaps more, on the general approach of the contemporary Orthodox commentator as they do on the institution of slavery itself.[4] As we shall see, in cases such as this, in which tradition so vividly seems to clash with modern thinking, even conservative rabbinic figures will feel compelled to subject tradition to large scale re-evaluation and re-interpretation.

The Biblical Systems of Slavery

The Bible allows for several different systems of slavery, some more moderate than others—one applies to the Hebrew manservant (Ex. 21:2-6, Lev. 25:39–43), another to the Hebrew maidservant before the age of majority (Ex. 21:8–11),[5] and the third to Gentiles of either sex (Lev. 25: 44–46).[6] In order to highlight the three basic models for resolving the conflict we are presently studying, I will focus only on the biblical system of slavery most grating to the modern sensibility. A model that successfully disarms the offense in the most "unjust" system will easily disarm the relatively modest "injustices" of the more moderate systems. Although a study of the various systems of slavery as they are presented in the Bible itself would be interesting, we will take the talmudic categorization of these systems as a given, since all the Orthodox thinkers whom we will discuss accepted the talmudic understanding as the authoritative meaning of the Bible.[7]

From the modern, egalitarian perspective, the Gentile slave is at a remarkable disadvantage. To be sure, even he benefits from significant rights that temper his obviously unfortunate state. These rights include, most notably, the right not to be killed, and given the history of slavery, this is a right that must not be taken for granted. According to Jewish law, the murder of any slave is a capital crime,[8] and a slave is freed should his master inflict a severe and permanent bodily injury.[9] Even the spiritual rights of the Gentile slave are protected to a degree; for example, a slave residing in the Land of Israel may not be taken to the Diaspora against his will, and if he is sold to a master in the Diaspora, he must be released.[10] Maimonides concludes his Laws of Slaves with an appeal to masters to treat

their Gentile slaves mercifully, in accordance with “the attributes of saintliness and the ways of wisdom.”[11]

Nevertheless, despite his many rights, of all types of slaves, only the Gentile slave is a slave for life. Children born to him are slaves as well, unless he succeeds in purchasing his freedom or is set free upon having suffered a severe and permanent bodily injury. The Hebrew slave, on the other hand, goes free after six years if he was sold by a court; his term of service could be longer if he sold himself into bondage or agrees to extend his term at the end of the six years imposed by the court, but in all cases, he goes free at the Jubilee year.[12] The Hebrew maidservant goes free automatically upon reaching the age of majority.[13]

The Hebrew slaves’ temporary status, together with the fact that they must be treated with great dignity by law, somewhat attenuates the moral difficulty of the institution.[14] Rather than harsh slavery, they could be likened to indentured servitude—a desperate and passing solution to the hunger of poverty or a reforming expiation following an act of theft. Maimonides notes that a Jew is sold into slavery against his will only after a theft that he is unable to repay; he may sell himself only if he is reduced to such poverty that “he has nothing left, not even a garment.”[15] Similarly, a Jewish girl is sold by a father unable to care for her needs.

In summary, although modern moralists may have many reservations about any of the Bible’s systems of slavery, they will clearly find the system of Gentile slaves-for-life the most offensive. For Orthodox thinkers, this system presents the greatest challenge. We turn now to examine the ways in which they responded to this challenge.

Approach I: Limiting via Reinterpretation

R. Hirsch

R. Samson Raphael Hirsch (1808–1888), the founder of German Jewry’s *Torah im derekh eretz* movement, moderates the conflict by reinterpreting the institution of biblical slavery. He limits its scope and emphasizes how—in this limited scope—it was of practical benefit to any individual slave.

In R. Hirsch’s Germany, Jews were debating emancipation of a different kind—the emancipation of the Jews—and R. Hirsch was a cautious supporter. As a young rabbi in Oldenburg in the 1830s, R. Hirsch dedicated a chapter to the subject of Jewish emancipation in his first published book, *The Nineteen Letters of Ben Uziel*, a bold defense of Jewish tradition. The reasons R. Hirsch gives there for supporting Jewish emancipation could easily apply to the emancipation of slaves as well:

> I rejoice when I perceive that in this concession of emancipation, regard for the inborn rights of men to live as equals among equals, and the principle that whosoever bears the seal of a child of God, unto whom belongs the earth, shall be willingly acknowledged by all as brother....[16]

Later in this chapter, R. Hirsch expresses some reservations about the emancipation of the Jews, since it might lead to greater assimilation, but this was a consideration unique to the Jewish condition in exile. Implicit in these particularistic reservations is the appreciation that the emancipation of other groups is an unqualified blessing.

R. Hirsch more explicitly addressed the institution of biblical slavery several decades later in his commentary to the Pentateuch, which was published over the course of a decade (1867–1878). In several passages, he makes clear his discomfort with the biblical institution of slavery by emphasizing its limits, noting in his comments to Exodus 12:44 that nowhere does the Bible permit a Jew to enslave a free person; one may only purchase a person who has already been enslaved by others. In circumstances in which not only the concept of slavery exists, but actual slaves exist, the best thing a Jew can do is to buy them and care for them according to the relatively merciful laws of the Torah.

It is telling that R. Hirsch chooses to discuss biblical slavery in the context of the slave sharing in communal worship, in this case the Passover offering, which is itself a symbol of Jewish liberation. R. Hirsch emphasizes this irony and uses it to distinguish biblical slavery from its contemporary forms.

> The consideration of certain circumstances is necessary, correctly to understand the fact that the Torah presupposes and allows the possession and purchase of slaves from abroad to a nation itself just released from slavery. No Jew could make any other human being into a slave. He could only acquire by purchase people who, by then universally accepted international law, were already slaves. But this transference into the property of a Jew was the one and only salvation for anybody who, according to the prevailing laws of the nations, was stamped as a slave. The terribly sad experiences of even the last century (Union, Jamaica 1865) teach us how completely unprotected and liable to the most inhuman treatment was the slave who in accordance with the national law was not emancipated, and even when emancipated, wherever he was, looked upon as still belonging to the slave class, or as a freed slave.[17]

From this passage, it is clear that R. Hirsch sees biblical slavery as a practical improvement and not as an ideal. He argues that the purchase of a slave by a Jew would improve the lot of the slave, since slaves, wherever and whenever they existed and until his day, had no rights except in the house of a Jew. Even when emancipated, the freed slaves were often treated with the same exploitation and cruelty that they received in their master's house. By becoming the property of the Jew, the slave became, to a great degree, a member of the Jewish people, with rights, religious obligations approximating those of his master, and a sense of community to the point that he was allowed to eat of the communal Passover sacrifice. The slaves of Jews were protected by law, and as R. Hirsch points out elsewhere in the same spirit, even the mental suffering of slaves is seen by God, who protects them and comforts them.[18]

R. Uziel

The first Sephardic Chief Rabbi of the State of Israel, R. Ben Zion Meir Hai Uziel (1880–1953), later adopted this same approach to slavery. R. Uziel explicitly writes his defense of biblical slavery in response to "those who mock the Torah of Israel, which permits the ownership of the Canaanite slave's body."

> [B]ut were those mockers to think carefully, they would understand that this acquisition was not permitted other than regarding those who were already sold to their brothers under the same conditions. And even so, it was not permitted to exploit their bodies. Rather, even if one should damage a major human limb, this slave goes free, even for a tooth or an eye.… From here you see that the acquisition of a Canaanite slave that the Torah permits is for the good of the slave himself, to save him from his Canaanite brothers so that he should not be enslaved cruelly and physically exploited to the point of death.[19]

Both R. Hirsch and R. Uziel contrast the relatively merciful slavery of the Bible with the cruel slavery of the ancient world, a theme that is expressed repeatedly in popular Orthodox literature.

R. Hertz

Another example of this approach contrasting biblical slavery with other forms of slavery appears in R. Joseph H. Hertz's commentary on the Pentateuch. R. Hertz (1872–1946) was the Chief Rabbi of the British Empire from 1913 until his passing, and his commentary was ubiquitous in English speaking congregations for some 50 years following its publication in 1936. In his comments to Leviticus 25:46, R. Hertz details how the "system of slavery which is tolerated by the Torah was fundamentally different from the cruel systems of the ancient world." The Bible never permitted the chaining, maiming, branding, and crucifixion of slaves that were permitted in Greece and Rome; "A Fugitive Slave Law, such as existed in America, with the tracking of runaway slaves by blood hounds, would have been unthinkable to the Israelite of old." Here, R. Hertz gives powerful expression to the historical premise that forms the foundation of R. Hirsch and R. Uziel's argument: The system of slavery tolerated by the Bible was relatively merciful and represented a vast improvement not only over ancient forms of slavery, but even when compared to the nineteenth-century American iteration.

But for R. Hirsch and R. Uziel, an argument like that of R. Hertz did not go far enough. They were not satisfied with asserting that the Bible was only *relatively* merciful, tolerating a less offensive form of a basically unjust institution. As they led Judaism in the milieu of, respectively, modern Western Europe and the new Jewish State, they consistently attempted to show the Bible's *absolute* morality—and therefore pertinence—in all times. In this case, they did so by imposing a qualification: Jews, they argued, were permitted to improve only the lot of the already enslaved by modifying the conditions of their enslavement. When qualified in this way, the purchase—but not the creation—of a slave could be viewed as something of a redemption and salvation. As we will see, other Orthodox thinkers are satisfied with the more modest argument that the Bible was merciful only in a relative manner.

Even if we accept the historical premises that underlie this approach, it remains difficult for several reasons, on both the universal and particular levels. One ethical problem that can be raised is that the Jewish purchase of slaves, even if good for any particular slave, would seem to encourage the enslavement of people in general. Both R. Hirsch and R. Uziel would agree that Jewish law forbids the purchase of stolen goods because such a purchase creates a market for stolen goods and thereby encourages theft.[20] One could plausibly argue that the purchase of slaves would similarly seem to encourage enslavement by creating a market for them. In response, R. Hirsch and R. Uziel might counter that we should care more about the actual and acute suffering of the already enslaved—who

suffer in a way that stolen goods do not[21]—than the hypothetical effects on the slave market.

A greater problem, however, is that the legal premise of their argument—that Jews may not themselves create Gentile slaves—seems to be inaccurate according to Jewish law. For example, a Gentile, monotheistic resident of Israel, a "*ger toshav,*" may sell himself to a Jew and become a permanent slave.[22] In fact, according to the code of Maimonides, a Jew who "seizes" a Gentile child or finds a Gentile baby can choose at his discretion to immerse him as a Gentile resident, as a slave, or as a free Jew.[23] In addition, a Jewish slave owner is allowed to breed Gentile slaves by ordering his Jewish slave to impregnate a female Gentile slave mate.[24]

The strength of these questions seems to cast some doubt on the validity of this approach to biblical slavery. At the same time, the Sephardic Chief Rabbi of Israel and the undisputed leader of Orthodox German Jewry were certainly aware of these laws. The degree to which they struggled to explain biblical slavery in a way that would conform to modern ethical sensibilities only highlights the importance of those sensibilities in their eyes. Although unquestionably Orthodox in outlook, they seemed to have little compunction about explaining a biblical law in a way that modestly can be termed "creative."[25] One can only wonder if they would also rule based on their premises, were these laws to become practically relevant.

Approach II: Moral and Social Justification

Netziv

A very different approach is found in the Bible commentary of R. Hirsch's Eastern European contemporary, R. Naftali Tzvi Yehudah Berlin (1816–1893), head of the famous Volozhin Yeshiva. In his work of biblical exegesis *Ha'amek Davar*, R. Berlin (commonly referred to by his acronym as "Netziv") accepts slavery as being in the moral and religious interest of the pagan. While R. Hirsch and R. Uziel reinterpret the laws of slavery and then show how purchase by a Jew is to the existing slave's benefit, Netziv justifies the entire institution of slavery by appealing to the religious benefit *any* Gentile would derive from joining the nation of Israel, even in the limited and restrictive role as a slave.

The Bible (Lev. 25:44–45) states that slaves may be taken from both the pagan nations and the resident alien population:

> And as for the male and female slaves whom you may have—it is from the nations that are around you that you shall buy male and female slaves.
>
> Moreover, you may buy them from the children of the strangers who sojourn among you and from their families that are with you, whom they have begotten in your land; and they will be your possession.

In his commentary on these verses, Netziv notes that there is a positive biblical commandment to take slaves from the neighboring pagan nations ("from among them there was established a

commandment") in order to, as he puts it, "remove them from their idolatry.[26] In contrast, the *ger toshav* achieved his status by committing to abandon idolatry. Although he need not keep other ritual laws and is not considered a full convert to Judaism, there is no general obligation ("there is no commandment at all") to convert Gentiles to Judaism, and therefore there can be no positive commandment to enslave the sojourner.

Still, the verses do give explicit permission to enslave even the monotheist sojourner, and Netziv does not seem to be have been troubled by this. Perhaps he would argue that although the religious development entailed by transforming a sojourner into slave is too small to make such enslavement a positive commandment, there is nevertheless still significant improvement. The Canaanite slave is, after all, obligated in Jewish law and ritual to a high degree, in a way similar to the obligations of any free Jewish woman, and that improvement would make the enslavement an overall positive development even for a *ger toshav*.

Sometimes, Netziv claims, slavery is the only way to help a vulgar person find positive religious expression in his life. For example, when discussing the curse of Ham, the son of Noah, Netziv writes that slavery fits the nature of Ham and his descendants. His comments are a response to the fact that although Noah cursed only Ham with slavery, many descendants of Shem and Japheth have also been enslaved, while at the same time many of descendants of Ham remain free.

> Rather the curse was that one who arrives at the state of slavery would be fit for this, insofar as he is from the seed of slaves from birth, and from the womb, and from conception. This is not the case of Shem and Japheth. His seed is not fit for this, and even when he is a slave, his inner spirit longs to be free. Consequently, it is inconvenient to use him, and through some effort he will be made free.…[27]

The modern moralist accepts personal autonomy and liberty as sacrosanct. In the conception of Netziv, however, the imposition of moral standards and monotheism is far more important, since only through moral practice and monotheist belief can any person fulfill his purpose on earth and return his soul to its divine source. Morality and monotheism accepted autonomously may be the ideal, but for a corrupt Ham and his descendants—both figurative and literal—a regulated and merciful system of slavery is a clear second best. One who views slavery only as a social institution may certainly find it terrible, and a Bible that supports it immoral; but Netziv, who sees slavery as a vehicle through which the pagan may participate to some degree in the covenant and commandments of Israel, justifies the sacrifice of personal liberty as worthwhile.[28]

Interestingly, in discussing the curse of Ham, R. Hirsch takes a position that on its surface closely approaches that of Netziv. He points out that Noah does not say that Canaan, the son of Ham, "will be a slave of Shem" as a prophetic description; rather, Noah prays, "*may* Canaan be a slave of Shem." According to R. Hirsch, only through domination by the spiritual Shem can the sensual Canaan find a path to worshiping God, "to fulfilling his divine purpose."[29] From this comment, one might easily understand that R. Hirsch believes in a form of racist elitism, but this would be inaccurate. True, the children of Shem have inherited their patriarch's spiritual and moral disposition, while the children of Ham have inherited antinomian sensuality; nevertheless, R. Hirsch clearly describes Ham's servitude as a historical vehicle for Ham's spiritual reform and ultimate freedom: "From Shem will man learn to make his home a dwelling for the divine presence, and the divine presence will return to dwell among men."[30]

In R. Hirsch's conception, the ultimate subjugation of Canaan to Shem is not economic, material, or political; it is an inner acceptance of Shem's values, of the yoke of self-restraint for the sake of heaven. Compared to R. Hirsch, Netziv's emphasis is more practical and prosaic, dealing less with sweeping historical development and more with the moral and theological merits of actual slavery for actual individual slaves. According to Netziv, Noah's curse remains eternally valid, and slavery thus remains the best hope for the morally challenged Canaan.

R. Kook

R. Abraham Yitzhak Ha-Kohen Kook (1865–1935) was a close student of Netziv, and like his teacher, he unapologetically accepts slavery as just when controlled by the divine laws of the Bible and when practiced within the context of a merciful and moral society.[31] R. Kook's acceptance of slavery is based on the premise that human beings are naturally and inevitably unequal—not in moral terms, as in the conception of Netziv, but rather in physical and economic terms. R. Kook argues that in order to prevent the strong from exploiting the weak, employers should be given an economic interest in the welfare of their workers, and this is best achieved when the latter are treated as property.

R. Kook cites the contemporary predicament of coal miners who, as free laborers, worked (and often still work) under horrible and sometimes tragic conditions. Were the mine owners to have an economic property interest in each individual worker, R. Kook argues, the owners would surely care for them better. When slavery is regulated by the laws of the Torah (which R. Kook understands to include not just the Bible but the oral tradition as well), the institution of slavery may, in fact, be the most merciful mode of life for such workers. Only when slave owners are cruel does the institution become monstrous; under such circumstances, it is better that there should be no slaves at all.

R. Kook is of the opinion that the laws of slavery are a noble, if not ideal, solution to a less than perfect economy. The ideal solution presumably would be merciful labor laws fulfilled by merciful people. Jewish law, however, recognizes that in reality, people will act in a way that is exploitative, and the Bible deals with this sad reality by prescribing slavery as one solution. As previously noted, however, in a world where people take cruel advantage, it is better to do away with that institution entirely.

R. Kook's approach to slavery echoes his approach toward other Jewish laws—they are directed at people who are basically righteous, but who still have the human failings of a pre-messianic age. For R. Kook, the institution of slavery is an accommodation to historical reality, not just to the reality of slavery in the ancient world, but to the reality of any age before the advent of the messiah. On the one hand, in a messianic world, the laws of slavery would be unnecessary—similar to what R. Kook writes about the strictly modest separation between the sexes prescribed by the Jewish tradition.[32] In a perfected world, not only will slavery of humans be proscribed, but even the human domination of beasts—described by R. Kook as "ugly slavery"—will pass from the earth as humans return to the vegetarian state of Adam.[33] On the other hand, in an overly corrupt world, the laws of slavery that should protect the worker from exploitation are themselves abused and used to exploit the worker to a monstrous degree and must, therefore, be abandoned.[34]

R. Kook writes that the Jewish People's exilic state is a sign and a result of this moral corruption. In practice, therefore, he would have little sympathy for contemporary slavery. His practical renunciation of slavery on these grounds, despite the theoretical utility of the institution, recalls his discussion of Israel's abandonment of political activity while in exile.[35] According to R. Kook, political activity is necessary in order to effect change on a communal level; nevertheless, in its exile, Israel abandoned the political arena, as political activity in the hands of the corrupt can only be destructive both to the self and to the polis.

Today, more than half a century after the New Deal, in an era in which labor laws and social safety nets are ubiquitous if not always generous, one might question to what degree R. Kook's defense of biblical slavery is ingenuous. R. Kook, however, wrote his opinion about slavery in 1904, at a time when the exploitation of the proletariat was acute and driving much of the world toward economic and political revolution. We may honestly wonder how he might have amended his opinion after witnessing the reforms that developed in this social ferment and which are today accepted as standard practice in modern countries, but it is difficult to suggest that R. Kook did not sincerely present what he felt was a genuine and ancient solution to a perennial social and economic problem.

R. Dessler

R. Eliyahu Eliezer Dessler (1892–1953) served as the spiritual and educational supervisor ("*Mashgiah Ruhani*") of the Ponevezh Yeshiva in Israel. Many of R. Dessler's teachings—which draw from the *Mussar* movement, the Hassidic movement, and the Lithuanian yeshiva tradition—have been collected in the five-volume *Mikhtav me-Eliyahu*, which is widely read in contemporary Orthodox circles. He referred to the matter of slavery in a short address to the yeshiva in the fall of 1950; his approach to slavery seems to borrow elements from both Netziv and R. Kook.

Like Netziv, R. Dessler notes that the source of slavery is rooted in the biblical Ham's moral corruption. Noah's reaction to Ham's act of violence, according to R. Dessler, indicates that the institution of slavery was intended to enable a "small" person to perfect himself by becoming a "vessel for a great" person.[36] Nevertheless, like R. Kook, R. Dessler disavows the practical utility of slavery in his contemporary world. He explains that over the course of history, the originally constructive relationship between slave and master changed for the worse, so that the relationship became defined less by moral superiority and more by inequalities of power in which the weak became the slaves of the strong. The powerful tried to justify their exploitation by taking on the external trappings of moral superiority—gentility and superficial manners—but these gestures were empty and often hypocritical.[37] Ultimately, the slaves threw off their yokes to become the dominant cultural force themselves, sadly lacking not only moral excellence but even shallow manners.

R. Dessler's explanation traces a history of ethical degeneration, from true moral leadership to exploitation supported by superficial and hypocritical moralizing and from empty exploitation to bald immorality. Without question, the world should be freed from the grip of hypocritical masters, moralizers, and imperialists, but in practice, we have found ourselves in an even worse state.

While R. Hirsch views emancipation as a step along the road of social progress, R. Dessler sees it as just the opposite. This description of slavery parallels his general perspective on historical degeneration, *yeridat ha-dorot*,[38] a perspective grounded in classical rabbinic literature[39] that defines, to some degree, more right-wing Orthodoxy.[40] Modern humans rage against slavery because they know it only in its corrupted and cruel form. Were we to witness this institution as the Bible intended for it to be practiced, for the physical (R. Kook) or moral/spiritual (R. Dessler or Netziv) benefit of the slave, even modern people would agree that this is a useful institution.

Approach III: Historical Accommodation

R. Nahum Rabinovitch

The several approaches we have summarized above were articulated by rabbinic thinkers who have become accepted in the Orthodox world as leading luminaries of past generations. Nevertheless, not all have found their approaches satisfying. Several contemporary rabbis have continued to grapple with the ethics of biblical slavery, both in writing and in the classroom, and it remains to be seen if their contributions will be widely accepted.

One major current theme is that slavery, even in its biblical form, is indeed unjust. Above, we saw that R. Hertz refers to the Bible's *toleration* of slavery when regulated by merciful laws. This is essentially an admission that slavery is not in the best interest of the slave—even having saved him from a worse slavery at the hands of a cruel master (R. Hirsch and R. Uziel), having saved him from idolatry (Netziv and R. Dessler), and having saved him from being fodder for the coal mines (R. Kook). Despite the admitted injustice, however, the Bible tolerated regulated slavery.

R. Hertz did not explain the reason for this tolerance, but contemporary Orthodox thinkers have developed this theme, arguing that the laws of slavery are not an ideal; rather, they fall into the category of laws that were given, in the words of the Talmud, "to appease the evil inclination."[41] Accepting the concept of historical progress, R. Nahum Eliezer Rabinovitch (1928–2020), who served for many years as the Rosh Yeshiva of Yeshivat Birkat Moshe in Israel, argues that the laws of biblical slavery were a practical accommodation and a minimum standard for the developing cultural circumstances described by the Bible, in which slavery remained a norm. As with the laws of polygamy, divorce, and war, here too the Bible speaks to circumstances that are real, not necessarily ideal.[42] R. Rabinovich bases his historical contextualization of certain commandments on the following passage from Maimonides' *Guide of the Perplexed*:

> Many things in our Law are due to something similar to this very governance on the part of Him who governs, may He be glorified and exalted. For a sudden transition from one opposite to another is impossible. And therefore man, according to his nature, is not capable of abandoning suddenly all to which he was accustomed.… Just as God perplexed them in anticipation of what their bodies were naturally incapable of bearing—turning them away from the high road toward which they had been going, toward another road so that the first intention should be achieved—so did He in anticipation of what the soul is naturally incapable of receiving, prescribe the laws that we have mentioned so that the first intention should be achieved, namely, the apprehension of Him, may He be exalted, and the rejection of idolatry.[43]

R. Rabinovich points out that there is no positive obligation to buy a slave, because the ownership of another person is a violation of the essential equality of all humanity. Nevertheless, in giving the Torah to Israel, God recognized that this young nation was living in a world in which slavery was a normative institution. For reasons both social and economic, the Jews would have been unable, at that point in history, to give up the institution of slavery completely. The Bible therefore chose to regulate and improve the existing institution until the time came when humanity would grow out of it.[44] Like animal sacrifice, slavery was permitted as an accommodation; but unlike animal sacrifice—and in applying Maimonides' principle to slavery, this seems to be R. Rabinovich's subtle innovation—slavery could ultimately vanish completely, since there is no positive obligation to own slaves, as there is to offer sacrifices.[45]

Whereas R. Dessler and other Orthodox Jewish thinkers see history as a process of ethical decline, R. Rabinovich, like R. Hirsch, takes ethical progress for granted. R. Rabinovitch's approach is echoed and amplified by R. Norman Lamm (1927–2020), who served as the President of Yeshiva University for many years. R. Lamm catalogues several biblical laws, including slavery, that were passively suspended when they were regarded as "counter-productive" in a moral climate of "heightened sensitivity."[46] This claim was recently re-articulated by the former Chief Rabbi of Great Britain, R. Jonathan Sacks (1948–2020):

> In miracles, God changes nature but never human nature. Were He to do so, the entire project of the Torah—the free worship of free human beings—would have been rendered null and void… God wanted mankind to abolish slavery but by their own choice, and that takes time. Ancient economies were dependent on slavery… Slavery as such was not abolished in Britain and America until the nineteenth century, and in America not without a civil war. The challenge to which Torah legislation was an answer is: how can one create a social structure in which, of their own accord, people will eventually come to see slavery as wrong and freely choose to abandon it?[47]

R. Rabinovitch addresses two related difficulties with this approach. First, if the institution of slavery is only an unfortunate and temporary accommodation, we would imagine that emancipation would be encouraged for Gentile slaves at all times, just as it is required for Hebrew slaves every Jubilee. In fact, the opposite is true, as Leviticus (25: 39, 43–46) seems to encourage the purchase of Gentile slaves:

> If any of your brothers become impoverished and sell themselves to you, do not work him as you would a slave… Do not rule over him ruthlessly; but fear your God. And your male and female slaves—from among the foreigners who live among you may you purchase male or female slaves. Also from the children of the resident foreigners who live among you may you take, and from their family that is with you, to whom they gave birth in your land; they shall be for you as an inheritance. And you shall pass them on to your children after you as a permanent inheritance, and with them should you work; but with your brothers the children of Israel—a man and his brother—do not rule over his ruthlessly.

R. Rabinovich responds that by actively encouraging the enslavement of Gentiles, the Bible was weaning Israel away from the enslavement of Jews; in the future, however, even the enslavement of Gentiles would be discouraged. In a world where slavery was considered economically necessary, the Jews were directed to take neighboring pagans instead of their monotheist brothers.[48] This at once limited slavery, gave the slaves rights, educated the pagans, and slowly led to a transformation of thought. From a perception that slavery was necessary, it became viewed as a necessary evil; later it became viewed as simply evil.

A second difficulty for this approach is that it seems to contradict the talmudic law that forbids freeing a Gentile slave.[49] Again, if all people would be emancipated in an ideal world, we would expect Jewish law to encourage the emancipation of any particular slave at any time, but in fact, the

opposite is the case.

In response, R. Rabinovich recognizes the paradoxical nature of these laws, and explains that once the Gentile entered—to a limited degree—the people of Israel, he could not simply be given his freedom:

> Once a slave had tasted of God's commandments, it would be unreasonable for him to return to idolatry. And so it was forbidden for his master to sell him to a Gentile, and even more so to restore him to full Gentile status.

If, on the other hand, he were to be set free as a full Jew, he would have converted to Judaism without any volition on his part. R. Rabinovich argues that the prohibition against freeing slaves derives mostly from concern that Israel should not be making masses of, in effect, forced converts.[50]

Finally, R. Rabinovich argues that the prohibition against freeing slaves should not be overemphasized. The Talmud and later codes note many instances in which slaves could and should be freed. For example, a slave could be freed in order to facilitate the enhanced performance of any commandment, even one of only rabbinic authority; the Talmud reports that R. Eleazer once freed a slave in order to be able to pray with a *minyan* (*Berakhot* 47b and *Gittin* 38b). This precedent was accepted as law by Maimonides[51] and R. Yosef Karo[52] in their codes. In effect, that which seems categorically prohibited in the Bible was accepted as relatively banal in the time of the Talmud.

Apparently, it was so common for the Jews of the tannaitic period to free their slaves that Jews were even persecuted for this very reason by the Romans. The Talmud reports that R. Eleazar ben Parta was brought before the Roman authorities and accused of freeing his slaves. When he denied this, one of his former slaves rose to testify against him (*Avodah Zarah* 17b). The Talmud does not elaborate on the basis for the Romans' displeasure with R. Eleazar, leading Rashi to suggest an explanation. He comments that the Romans decreed against the freeing of slaves because it was understood to be a Jewish custom ("*dat Yehudit*"), and this, apparently, was one of the many decrees enacted to break the uniquely Jewish spirit.

R. Shlomo Goren (1917–1994), as Chief Rabbi of the Israel Defense Forces (he would later become the Ashkenazic Chief Rabbi of Israel), celebrated this story and the history it symbolizes in an article written for the army magazine *Mahanaim*.[53] The Romans identified the Jews with emancipation, and ever since, R. Goren claims, Jews have continually been at the forefront of the emancipation movement. The degree to which this claim is historically accurate is beyond the scope of this article.[54] For our purposes, R. Goren's spirited embrace of the values of emancipation, and the ease with which he marginalizes the normative institution of biblical slavery, including the apparent prohibition on freeing slaves, testifies to this Orthodox rabbi's unambiguous acceptance of certain modern egalitarian values, as well as his comfort in reinterpreting biblical values and laws in light of modern ethical conceptions.

Conclusion

The moral outrage that modern thinkers share against slavery has elicited widely different responses to the moral status of biblical slavery. Not only are there differences between the religious and the anti-religious, but there are differences even within the ranks of Orthodox Jewry. This subject highlights various Orthodox perspectives on history: Some Orthodox thinkers lament the loss of a potentially valuable social instrument due to the moral decline of society throughout history, while others point to emancipation as a sign of moral progress. Even more centrally, our examination of the topic shows the varying degrees with which Orthodox thinkers acknowledge the moral values of their contemporary society and the different models with which they confront those values. Some are more apologetic, limiting biblical slavery so that it conforms to modern conceptions. Others assert that the Bible contains moral accommodations that society has transcended.

Interestingly, even conservative thinkers—who justify slavery by pointing to the social, economic, moral, and spiritual benefits it gives to the weak and the vulgar—may have been moved by modern conceptions to justify slavery in accordance with those conceptions. Accepting that only a direct benefit to the slave himself could be an acceptable justification for enslavement, almost all would agree that the practical application of this once normative institution would be unthinkable today. Of course, the most conservative rabbis might argue that their approaches are informed only by unchanging biblical values, that their views have always been the Jewish view,[55] and that they have not been influenced by modern notions of egalitarianism. These claims would have to be tested by a comparative study of the talmudic and medieval rabbinic literature on this subject—a study that would be of great value, but which is beyond the scope of this paper.

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[1] For a particularly caustic criticism, see Morton Smith, “On Slavery: Biblical Teaching v. Modern Morality,” in *Biblical and Secular Ethics: The Conflict* ed. R. Joseph Hoffman and Gerald A. Larue (Buffalo, 1988), 69–78. See also Richard Dawkins, *The God Delusion* (New York, 2008), 300.

[2] Christopher Hitchens, *God Is Not Great: How Religion Poisons Everything* (New York, 2007), 102.

[3] Devon Lerner, “Why We Support Same-Sex Marriage: A Response From Over 450 Clergy,” *New England Law Review* 38:3 (2003–2004): 528. See also Jack Rogers, *Jesus, the Bible, and Homosexuality: Explode the Myths, Heal the Church* (Louisville, KT, 2006), 18–34.

[4] Such reevaluation of Jewish law on ethical grounds, including the laws of slavery, certainly took place in earlier periods of Jewish history as well. A possible example of this can be found in Maimonides’ closing remarks to *Hilkhot Avadim*, cited in note 11 below.

[5] See Maimonides, *Mishneh Torah, Hilkhot Avadim*, chap. 4.

[6] This paper will refer to Gentile slaves in the masculine for purposes of convenience only.

[7] Throughout this paper, we similarly largely ignore the precise legal differences between the various Sages of the Talmud, Maimonides, and later codifiers such as R. Yosef Karo in his *Shulhan Arukh,* as these differences have little bearing (with some noteworthy exceptions) on later thinkers’ specific approaches to the general morality of slavery as a normative institution.

[8] Maimonides, *Hilkhot Rotze’ah u-Shemirat Nefesh* 2:10.

[9] *Hilkhot Avadim*, chap. 5.

[10] See *ibid*., chap. 8 for detailed laws protecting the slave’s spiritual rights.

[11] *Ibid*., 9:8.

[12] *Ibid*., 2:2–3.

[13] *Ibid*., 4:4–5.

[14] As noted above, Maimonides encourages the merciful treatment of Gentile slaves as well, but this is considered behavior that is *middat hassidut* (way of the pious) and is not legally binding, as is the dignified treatment of a Hebrew slave.

[15] *Hilkhot Avadim* 1:1.

[16] R. Samson Raphael Hirsch, *The Nineteen Letters of Ben Uziel*, trans. B. Drachman (New York, 1899), 165–166.

[17] R. S.R. Hirsch, *Commentary on the Torah*, trans. I. Levy, (London, 1966), Ex. 12:44.

[18] See *ibid*., Gen. 11:12.

[19] R. Ben-Zion Meir Hai Uziel, *Mahmanei Uziel* (Tel Aviv, 1939), 263.

[20] *Shulhan Arukh, Hoshen Mishpat* 358:1

[21] This imperfection in the analogy between the slave and the stolen object was pointed out by Prof. David Berger in a personal communication.

[22] Maimonides, *Hilkhot Avadim* 9:1. See also *Shulhan Arukh, Yoreh De‘ah* 267:9.

[23] Maimonides, *Hilkhot Avadim* 8:20. R. Hirsch may have chosen to ignore this decision of Maimonides because it does not seem to have a source in the Babylonian Talmud. See *Or Sameah* ad loc., who finds the source for this law in the Jerusalem Talmud, *Yevamot*, chapter 8.

[24] *Hilkhot Avadim* 3:3.

[25]In the case of reinterpretation of morally ambiguous narratives, such as the massacre of Shekhem in Gen. 34 or Jephtah’s sacrifice of his daughter in Judges 11, the modern reader walks on well-trodden ground. After all, these are not normative laws, but stories. They have always provoked sensitive readers, and much of classic biblical exegesis is devoted to understanding their ambiguous moral, political, and spiritual dynamics. In the end, the protagonists are either exonerated or found at fault, but they are usually judged based on the religious values of the commentator, which are themselves products of his tradition and are left largely unquestioned. In the case of allegedly immoral laws, however, the stakes are higher.

[26] R. Naftali Tzvi Yehudah Berlin, *Ha‘amek Davar*, commentary to Lev. 25:45.

[27] *Ibid.*, commentary to Gen. 9:25.

[28] For a related discussion of the value of religious coercion in the thought of the Netziv, see Gil Perl, "'No Two Minds are Alike:' Tolerance and Pluralism in the Work of Netziv," *The Torah u-Madda Journal* 12 (2004): 74–98. Netziv's justification of slavery seems to indicate an even greater acceptance of religious coercion than even Perl has demonstrated.

[29] R. Hirsch, commentary to Gen. 9:27.

[30] *Ibid.*

[31] R. Avraham Yitzhak Ha-Kohen Kook, *Iggerot ha-Rayah* (Jerusalem, 1985), vol. 1, 92–101 (letter #89).

[32] R. Avraham Yitzhak Ha-Kohen Kook, *Mussar Avikha u-Middot ha-Rayah* (Jerusalem, 1985), 90.

[33] R. Avraham Yitzhak Ha-Kohen Kook, "*Afikim ba-Negev*" in *Ha-Peles* 3 (1903), 657.

[34] See Michael Nehorai, "Halakhah, Metahalakhah, and the Redemption of Israel: Reflections on the Rabbinic Rulings of Rav Kook," in *Rabbi Abraham Isaac Kook and Jewish Spirituality*, ed. Lawrence Kaplan and David Shatz (New York, 1995), 137. Nehorai notes that for R. Kook, Jewish law finds its ultimate expression in the ideal state, and leads the Jewish People toward that ideal. This ideal state is also messianic, but it remains populated by people who are less than perfect. Clearly, there are different epochs that are termed "messianic:" (1) the return of the people to its land; (2) the ultimate redemption.

[35] R. Avraham Yitzhak Ha-Kohen Kook, *Orot* (Jerusalem, 1949), 14.

[36] R. Eliyahu Eliezer Dessler, *Mikhtav me-Eliyahu* (Jerusalem, 1987), 4:247.

[37] It is worth noting that R. Dessler was educated in Eastern Europe and spent the 1930s and most of the 1940s serving in the English rabbinate.

[38] See *Mikhtav me-Eliyahu* (Jerusalem, 1997), 5:273–274.

[39] See, for example, *Sotah* 9:12–15; *Berakhot* 20a, 35b; *Eruvin* 53a; *Shabbat* 112b; *Bava Batra* 58a; Menachem Kellner, *Maimonides on the "Decline of the Generations" and the Nature of Rabbinic Authority* (Albany, NY, 1996).

[40] See Eliezer Schweid, *Bein Hurban li-Yeshu'ah: Teguvot al Hagut Haredit la-Sho'ah bi-Zemannah* (Tel Aviv, 1994), 9. Among the Modern Orthodox, the concept of the "decline of the generations" is more nuanced and less categorical; R. Norman Lamm recently wrote that "the idea is a mood, not a doctrine." Although generally accepting the moral and spiritual superiority of previous generations, R. Lamm is much more willing to recognize historical progress: "Not only is there a place for *hiddush* (innovative thought), but intellectual, scientific, halakhic, and philosophic creativity are positive goods, part of the unending search for truth, a search that—as we have seen—is characteristic of the striving for holiness." See Norman Lamm, *Torah Umadda* (New York, 1990), 86–103. Although here, R. Kook seems to have sided with the more conservative conception of the "decline of the generations," as usual, his general outlook was hardly unequivocal. See David Shatz, "Rav Kook and Modern Orthodoxy: The Ambiguities of 'Openness'" in *Engaging Modernity: Rabbinic Leaders and the Challenge of the Twentieth Century*, ed. Moshe Sokol (New York, 1997) 107–110; Yehudah Mirsky, "An Intellectual and Spiritual Biography of Rabbi Avraham Yitzhaq Ha-Cohen Kook from 1865 to 1904" (Doctoral dissertation, Harvard University, 2007), 325–346.

[41] See *Kiddushin* 21b. David Berger reports that R. Ahron Soloveichik (1917–2001) "described slavery as a concession to human frailty, analogous to the *eshet yefat to'ar*;" see Berger, "Jews, Gentiles, and the Modern Egalitarian Ethos: Some Tentative Thoughts," in *Formulating Responses in an Egalitarian Age*, ed. Marc Stern (Lanham, MA, 2005), 89. R. Benjamin Blech used this term in the context of slavery in a lecture at Yeshiva University in February, 2006. He included in this category the laws of polygamy, divorce, monarchy, and—the most classic of this category—the laws of "the beautiful captive" (Deut. 21:10–14). The lecture is available at http://www.yutorah.org/showShiur.cfm/713955/Rabbi_Benjamin_Blech/Oh_my_G-d:_

The_Torah_sanctions_slavery!?

[42] R. Nahum Eliezer Rabinovich, *Darkah shel Torah—Perakim be-Mahashevet ha- Halakhah u-ba-Aktualiyyah* (Jerusalem, 1999), 11–19. This essay has been printed in English as "The Way of Torah" in *The Edah Journal* 3:1 (Tevet, 5763).

[43] Maimonides, *The Guide of the Perplexed* 3:32, trans. Shlomo Pines (Chicago, 1963), vol. II, 527. Rabbi Eliezer Berkovits similarly cited this passage to explain that the laws of slavery are among the laws that are "Torah-Tolerated, not Torah-Taught." Eliezer Berkovits, *Jewish Women in Time and Torah* (Hoboken, NJ, 1990) 29–33.

[44] According to R. Blech, n.41 above, "God waited for Lincoln to free the slaves."

[45] This innovation is not at all self-evident. Nothing in *Guide of the Perplexed* 3:32 indicates that Maimonides allowed for laws to be changed, even if they were originally given as accommodations. Nevertheless, Maimonides does present a model of ethical progress, and since there is no positive obligation to own slaves, abolition of slavery could justifiably and legally give expression to that conception of progress. I thank David Shatz for pointing out the innovation here.

[46] Norman Lamm, "Amalek and the Seven Nations: A Case of Law vs. Morality," in *War and Peace in the Jewish Tradition*, ed. Lawrence Schiffman and Joel B. Wolowelsky (New York, 2007),

207–208, 227.

[47] See http://www.chiefrabbi.org/thoughts/behar5767.html, based on Jonathan Sacks, *Dignity of Difference: How to Avoid the Clash of Civilizations* (New York, 2003), 69–70.

[48] The idea that Gentile slavery is a limited accommodation to economic necessity finds support in *Sifra, Behar* 6:3 to Lev. 25:44: "Perhaps you shall say, since the Torah has forbidden us all these [permanent Jewish slaves], with what shall we work? The verse says, 'And your male and female slaves [from among the foreigners who live among you].'"

[49] This is the opinion of R. Akiva in *Sotah* 3a; R. Yishmael permits freeing a Gentile slave. Maimonides accepts the opinion of R. Akiva in *Hilkhot Avadim* 9:6.

[50] One might add that the difficulty of getting rid of a slave (given the law that the slave owner may only sell the slave to another Jew, which was not always easy in times of economic difficulty) actually discourages the purchase in the first place. See Maimonides, *Hilkhot Avadim*, ch. 8.

[51] *Hilkhot Avadim* 9:6.

[52] *Shulhan Arukh, Yoreh De'ah* 267:79.

[53] *Mahanaim* 32 (1957): 12.

[54] The responsa literature is, in fact, replete with questions regarding the freeing of slaves, to the point that it seems to have been quite commonplace. Slaves in Jewish homes were treated with considerable compassion and often affection, and they were often set free to become active members of the Jewish community. See Simcha Assaf, "*Avadim u-Sekhar Avadim Ezel ha-Yehudim bi-Yemei ha-Beinayim*," in *Be-Ohalei Ya'akov* (Jerusalem, 1943), 223–256.

[55] Indeed, among the great medieval Jewish thinkers, slavery for life was justified based on the religious needs of the Jewish master, a position that I have not found among the modern commentators. See, for example, *Sefer haHinnukh*, commandment 347, "To Work a Canaanite Slave Forever."