

# **From Chattel Slavery to Modern Slavery**

*A Legal and Ethnographic History*

By

**Stuart Casey-Maslen and Loren Persi Vicentic**

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**This book first published 2025**

**Ethics International Press Ltd, UK**

**British Library Cataloguing in Publication Data**

**A catalogue record for this book is available from the British Library**

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**Print Book ISBN: 978-1-83711-229-6**

**eBook ISBN: 978-1-83711-230-2**

**Paperback ISBN: 978-1-83711-231-9**

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# Introduction

Slavery has existed in a range of forms from the earliest days of human civilisation.<sup>1</sup> Even the earliest human settlements in ancient Mesopotamia had slaves, and the more slaves a Mesopotamian citizen had, the greater his wealth.<sup>2</sup> Since those beginnings of humankind, slavery and enslavement have been practised by most peoples at most times.<sup>3</sup>

But it is a mistake to perceive slavery as a ‘monolithic, one-size-fits-all phenomenon, characterized by features such as natal alienation, persons as property, coercion, or “social death”’.<sup>4</sup> Even from the earliest days of slavery, many historians reject the polarity of ‘slave versus free’ as an overly simplistic framing of the status of the near eastern populations.<sup>5</sup> King Hammurabi would later decree that people were divided into three categories: free, ‘semi-free’, and slaves, with many of the rules set forth in his famed Code in the second century before the current era (BCE) explicitly regulating the treatment of slaves.

Slavery in the Near East was neither a substantial factor in economic production nor the primary means of organised labour.<sup>6</sup> This remains true for the Neo- and Late Babylonian societies in the first millennium BCE, when slavery was of a greater significance than in earlier periods of ancient Near Eastern history.<sup>7</sup> It was the Greek city-states, and especially Athens, that first made slavery ‘absolute in form and dominant in extent’.<sup>8</sup> Two thousand years later, Engels would claim in his polemic work, *Anti-Dühring*, that: ‘Without slavery, no Greek state, no Greek art and science’.<sup>9</sup>

The Greeks believed not only that slavery was a *necessary* component of their lives, but even that society could not go on without it. But their philosophers also debated slavery. Aristotle, for instance, who famously described slaves as ‘property with a soul’,<sup>10</sup> would declare that humankind is divided into two—masters and slaves—arguing at one point that slavery was advantageous for the slave as well as the master.<sup>11</sup> Antisthenes, a disciple of Socrates, wrote a treatise, *On Freedom and Slavery*. We believe he was the son of a slave-woman, but sadly none of his original text has survived.<sup>12</sup>

Athens is considered one of the five ‘slave societies’ the world has known – by which is meant an ‘institutionalized system of large-scale employment in both the countryside and the cities’.<sup>13</sup> The four others would be ancient Rome, the colonial Caribbean, Brazil (in the sixteenth to late nineteenth centuries of the current era (CE)), and the *antebellum* American South.<sup>14</sup> Already in the sixth century BCE, Solon, the Athenian statesman and reformer, was responsible for introducing an important body of laws on slavery. New laws were needed to settle the serious social problems that slavery brings ‘in its wake’.<sup>15</sup> These laws separated, for the first time in Athens, the slave from other social categories. As with other items of property, a slave could be bought, sold, hired, bequeathed, or given away. But if he or she was sold, the law required that any physical defect be disclosed to the would-be purchaser.<sup>16</sup>

The word slave in English comes from the medieval Latin *sclavus*, which referred to the Slavonic peoples who had been reduced to a servile state by conquest in the ninth century CE. The Italian word ‘ciao’, meaning both hello and goodbye, is a Venetian dialect alteration of *schiaivo* (‘s-ciao vostro’) meaning ‘I am your slave’, also derived from *sclavus*.<sup>17</sup>

But the ancient Greek, Hebrew, and classical Latin terms for slave did not possess such ethnic connotations.<sup>18</sup> Indeed, debt slavery by a citizen was a common occurrence in many societies. In Greece, as in earlier Mesopotamia, peasants could sell themselves or their family members into slavery as a survival strategy. Indeed, the practice became so common that in 594 BCE, Solon abolished the right of men in Attica to sell themselves for debt and freed all those who had been enslaved for indebtedness.<sup>19</sup> Under Solon's laws, anyone who tried to enslave a free person was liable to arrest as an 'enslaver'.<sup>20</sup>

Debt slaves would tend to look down on 'common' chattel slaves, indicating a meaningful difference in status even among the enslaved. Thus, in ancient Rome, several passages in Livy and Dionysius compare and contrast debt slavery (*'nexum'*) and chattel slavery.<sup>21</sup> The *nexi* complained of being treated as slaves when they are actually citizens who had not been sold as slaves on the other side of the Tiber.<sup>22</sup>

A mass of 'free' commoners was the predominant labour force in the 441 years of the Qin and Han dynasties in China that ended in the third century CE, along with the use of convicted criminals as forced labourers.<sup>23</sup> During the Han dynasty, however, slavery expanded rapidly under the rule of its many emperors, assuming an important place in the Chinese economy for the first time.<sup>24</sup> Thousands of prisoners of war were enslaved to the State in classical China.<sup>25</sup> But enslavement during warfare never reached the heights it did in the last two centuries of the Roman Republic.<sup>26</sup> In the later classical period of Chinese society, enslavement as a result of debt was a common way in which poor families fell into bondage in times of great economic hardship.<sup>27</sup>

The status in Norse society of a slave ('thrall') is to be contrasted with that of the freeman and the nobleman. To call someone a slave was a punishable insult in most localised Danish and Swedish laws, even as recently as the fourteenth and fifteenth centuries CE.<sup>28</sup> Thralls were certainly chattels, to be bought and sold under colour of law. At no point, however, was Scandinavia to be considered a slave society, but always one more society 'with slaves'.<sup>29</sup> The introduction of Christianity saw a decline in Norse slavery (although the Church did not advocate for its abolition), but it was not until the late-medieval period that the practice was completely abolished.<sup>30</sup> Slavery was only brought to an end in all of Sweden's colonies in 1846, with the last legally owned slaves in Saint-Barthélemy bought and freed by the Swedish government on 9 October 1847.<sup>31</sup>

To the east, slaves in medieval Arabia were certainly chattels: the *Quran*—the word of God revealed to the Prophet—referred to them as being 'owned'<sup>32</sup> and laws on slavery were even used to direct how to treat livestock as well.<sup>33</sup> Slaves were classified not only among animals but in particular among the beasts of burden used for the lowest of work.<sup>34</sup> In slavehood, there were even degrees of base nature: *Al-laqîte* was the foundling whose mother and father were unknown. *Al-mâqîte* was the slave of the *laqîte*; and *al-sâqîte*, the slave of his slave. Here, Ennaji tells us, 'we are in the bowels of society, in its most distant depths'.<sup>35</sup> A connotation among Arabs of Black people being somehow 'deficient' is said to have favoured their enslavement in the Medieval period and even since. Sharia—the 'idea and ideal' of God's law—did, however, prohibit the enslavement of Muslims as well as the mistreatment of slaves.<sup>36</sup>

In contradistinction to the Greek and Roman slave societies, slaves (who remained as such) were widely used as soldiers from the early days of Islam. By the middle of the ninth century CE, the Caliph in

Córdoba already had an army of 60,000 ‘silent ones’ – so named because being English, German, or Slav, these slave soldiers spoke no Arabic.<sup>37</sup> The Mamluk Dynasty that ruled Egypt, Syria, and the Hejaz from 1260 until the Ottoman conquest in 1517 famously took slave armies to a new level, importing great numbers of young slaves from the Turkic steppes or from the Circassian tribes in the Caucasus.<sup>38</sup> The Moroccan Sultan Mulai Ismail had established an army of 180,000 Black African slaves by 1700 – 20,000 were still under arms by the time of his death in 1727.<sup>39</sup>

The Roma (also called Romani) are in some respects the forgotten slaves of history, ignored even by historians who specialise in slavery. Even in Romania itself, Roma slavery has not been yet included in many history school books, and still today very few Romanians are aware of this painful history.<sup>40</sup> In the second half of the fourteenth century, Roma who had arrived in the so-called Danubian Principalities of Wallachia and Moldavia (part of modern-day Romania) were forced into slavery. There was undoubtedly a racial element to the enslavement.

Roma were owned by the Prince as ‘slaves of the State’, as well as by monasteries and by private individuals. Roma would be enslaved for five centuries. Their emancipation was the result of several laws, with the final act of abolition in 1856 setting free those who had remained slaves. As had occurred in Great Britain three decades earlier, the slave owners were financially compensated for their ‘loss’, but the slaves were not.

## **The Transatlantic Slave Trade**

In 1441, two Portuguese captains set sail in separate ships to what is today an area in the north of Mauritania. One found a market of

Moorish traders on land where he seized a dozen black Africans to take back to Portugal.<sup>41</sup> From these small beginnings would arise one of the greatest crimes in human history – the transatlantic slave trade. It was even underpinned by the Catholic Church – a papal bull of 1445 authorised Portugal to reduce to servitude all heathen peoples.<sup>42</sup>

The Portuguese were thus the first Europeans to begin taking slaves out of Africa and across the Atlantic ocean to the New World and the last Europeans to ban slavery. Ultimately, Portugal- and Brazil-based merchants were responsible for transporting almost six million enslaved Africans to the Americas.<sup>43</sup> That equates to approximately half of the slave trade over the Atlantic Ocean in the early modern period.<sup>44</sup> More than 45 per cent of all slaves transported to the Western Hemisphere would be taken to Brazil.<sup>45</sup> Brazil not only received the largest contingent of African slaves in the Americas, it was also the longest-lasting slave society in the colonial regimes of the Western Hemisphere.

Africans had practised slavery since pre-historic times.<sup>46</sup> But the transatlantic slave trade took inhumanity to a new level. ‘The African’s experience with one would not prepare him for the other’, Meltzer tells us.<sup>47</sup> At the heart of the trade was sugar. In the words of Hugh Trevor-Roper, ‘No commodity in the world—not herrings, not spices, not potatoes—has launched quite such convulsions in human history as sugar, which has created cities, sustained empires, peopled and dispeopled continents.’<sup>48</sup>

Early on, the sugar plantations relied almost solely on an imported slave workforce. The work in the fields was gruelling, with long hours spent in the hot sun, supervised by overseers who were quick to use the whip. Tasks ranged from clearing land, planting cane, and harvesting canes by hand, to manuring and weeding.<sup>49</sup> Inside the plantation works, the conditions were often worse, especially in the



heat of the boiling house. The death rate on the plantations was unremittingly high – the result of overwork, poor nutrition, brutality, and disease. Many plantation owners, though, preferred to import new slaves rather than to ensure the survival of their existing complement.

The slave system in Saint-Domingue was regarded as one of the harshest in the Americas.<sup>50</sup> Both the slave ship that brought slaves to the island and the plantation were spaces of incredible violence, hardship, and disease, resulting in a high mortality rate and a constant demand by slave owners for more African slaves.<sup>51</sup> But under French rule, Saint-Domingue grew to be the wealthiest colony in the French empire. By the second half of the eighteenth century, it was the outpacing its closest rival, British Jamaica.<sup>52</sup> Known as the ‘Pearl of the Antilles’, it probably became, for a time, the richest colony in the world. Shortly before the rebellion that led to the creation of Haiti, Saint-Domingue produced roughly 40 per cent of the sugar and 60 per cent of the coffee imported to Europe.<sup>53</sup> Haiti is the only State in history that emerged as the result of a successful slave rebellion.

Dysentery (the ‘flux’) caused or led to death of perhaps one third of all slave fatalities while being transported across the oceans, with smallpox not far behind. Captains of slavers ‘were unanimous in describing the flux as the scourge of their human cargoes’.<sup>54</sup> Other slaves died of scurvy, which is caused by a sustained deficiency of vitamin C. This was so common in Angola that it was termed the ‘*mal de Loanda*’.<sup>55</sup> Olaudah Equiano (*ca.*1745–97), a former slave who survived the Middle Passage to Barbados, wrote in his autobiography, which was published in 1789,

I was soon put down under the decks, and here I received such a salutation in my nostrils as I had never experienced in my life:

so that, with the loathsomeness of the stench, and crying together, I became so sick and low that I was not able to eat, nor had I the least desire to taste anything.<sup>56</sup>

Indeed, slave ships were so notorious for their stench of bodily fluids, excrement, and human waste that sailors would often perceive vessels not by their eyes but with their nostrils, for the Atlantic winds carried the foul odours for miles.<sup>57</sup>

Slavery was, in the words of Philip Morgan, ‘the central institution in the British Caribbean’.<sup>58</sup> British involvement in the transatlantic slave trade began in 1562 CE, and by the 1730s Britain was the world’s biggest slave-trading nation.<sup>59</sup> Over the course of its involvement in the slave trade, British ports outfitted nearly one third of all transatlantic slave voyages. In April 1792, William Pitt the Younger told the House of Commons that ‘no nation in Europe’ had ‘plunged so deeply into this guilt as Great Britain’.<sup>60</sup> It is estimated that between 1662 and 1807, the captains of British and British colonial ships were responsible for the capture or purchase of 3,415,500 Africans.<sup>61</sup> Of this total, 2,964,800 are thought to have survived the voyage to the Americas to be sold as slaves on plantations in the Americas and, especially, the Caribbean.<sup>62</sup>

And as the nineteenth-century CE sociologist, William Edward Burghardt Du Bois, recalls, ‘we cannot forget that America was built on Africa.’<sup>63</sup> In 1492, the Italian explorer Cristoforo Colombo (better known in the English-speaking world as Christopher Columbus) became the first European to explore the Americas since the Vikings set up colonies in Greenland and Newfoundland in the tenth century CE.<sup>64</sup> He thought, wrongly and persistently, that he had arrived on islands off the coast of Asia,<sup>65</sup> so he called the Indigenous peoples he encountered *los Indios* – Indians.<sup>66</sup> While Columbus did not invent slavery, which already existed in the Americas, he and his crews

enslaved many native inhabitants of the West Indies, treating them in an extremely brutal manner.<sup>67</sup>

The first African slaves to be transported to the continental United States were brought by the Spanish in 1526. By then, Spanish law had been governing slavery for more than 250 years. The Castilian king, Alphonso X, had promulgated a set of laws known as the *Siete Partidas* in 1265. The laws, which were heavily influenced by the Code of Justinian from the sixth century CE Roman Empire, governed slave law in Castile itself as well as in the overseas Spanish territories.<sup>68</sup> In 1641, Massachusetts became the first North American colony formally to recognise slavery as a legal institution.<sup>69</sup> While New England and the Middle colonies (Delaware, New Jersey, New York, and Pennsylvania) would be and would remain societies with slaves, the southern United States would go on to become one of the world's five slave societies.

From the smallest of beginnings in 1619, the slave population in America would grow rapidly. Chattel slavery of, primarily Africans, was prevalent in the United States from its founding in 1776 until 1865, predominantly in the South. Eight of the first twelve US presidents were themselves slave owners. In 1790, the first census of the United States counted 697,624 slaves. By 1860, the eighth census was counting 3,953,760.<sup>70</sup> But all told, it is calculated that in the transatlantic slave trade, 'only' some 388,000 slaves were sold into the United States.<sup>71</sup> Slavery in America was thus distinctive in the ability of the enslaved population to increase its numbers by natural reproduction. Slave 'breeding' began with girls of thirteen or fourteen years of age.<sup>72</sup> Unlike any other enslaved society, the United States had a high and sustained natural increase in the enslaved population for more than 150 years.<sup>73</sup>

After Portugal and Great Britain, France was the third most active power involved in the transatlantic Slave Trade. Between 1551 and 1875, more than 1.38 million Africans were transported by force to the New World on ships flying the French flag. The first French slave-trading voyages date to the second half of the sixteenth century CE, when French merchants sought to turn a personal profit from the Spanish colonisation of the Americas. In the 1630s, Louis XIII began issuing 'letters patent' to companies from Brittany, Normandy, and Paris to conduct business in West Africa, although he did not formally authorise the slave trade until 1642.<sup>74</sup>

The island of Saint-Domingue in the Caribbean became the primary destination for slave expeditions from 1715. Known since its successful rebellion in 1804 as Haiti, this State occupies the western part of the island of what was earlier known as Hispaniola. Columbus first landed at Hispaniola (Española) on 6 December 1492, at a small bay he named San Nicolas (now Môle-Saint-Nicolas on the north coast of Haiti). Even after it gained nationhood at the beginning of 1804, Haiti's troubles were not at an end. In the words of journalists at *The New York Times* writing in 2022, Haiti became the world's 'first and only country where the descendants of enslaved people paid reparations to the descendants of their masters — for generations'. At the point of a gun—or more accurately the muzzle of hundreds of cannon aboard French warships—Haitians were forced to pay 120 million French Francs to their former enslavers. This equates to about \$560 million in today's US dollars.

To add insult to injury, the Haitians were forced to borrow the money from French banks. If that money had stayed in the Haitian economy and grown at the nation's actual pace over the last two centuries, it would have added US\$21 billion to the country over time. Instead, the first free Black nation in the Americas would see its children 'forced

to work, sometimes for little or even no pay, for the benefit of others — first the French, then the Americans, then their own dictators'.<sup>75</sup>

## Chattel Slavery in the Modern Era

The Holocaust is the greatest crime in human history. But the treatment by the Nazis of non-Jewish slaves is also difficult to comprehend, so shocking are both the nature and scale of the phenomenon. Operating side by side with the programme of extermination of the Jews, forced labour became an integral part of Hitler's plans for total war.<sup>76</sup> Although precise figures are not available,<sup>77</sup> between nine and half and twelve million people (Jews, Poles, and Russians for the most part) were forced to work for the Nazis under the most brutal conditions. From the establishment of the first concentration camps in the winter of 1933, forced labour formed a core part of the camp regimen.<sup>78</sup>

In Krupp's weapons factories, 'fists, clubs, blackjacks, and whips' assured the 'performance' of the company's forced labourers.<sup>79</sup> A company doctor who inspected the working and living conditions of the *Fremdarbeiter* (the foreign forced labourers) described them, euphemistically, as 'extremely bad':

The diet was entirely inadequate. ... Only bad meat, such as horsemeat or meat which had been rejected by veterinarians as infected with tuberculosis germs, was passed out in these camps. Clothing, too, was altogether inadequate. Foreigners from the east worked and slept in the same clothes with which they arrived. Nearly all of them had to use their blankets as coats in cold and wet weather. Many had to walk to work barefoot, even in winter. Tuberculosis was particularly prevalent. The TB rate was four times the normal rate. This was

the result of inferior housing, poor food and an insufficient amount of it, and overwork.<sup>80</sup>

On one occasion, Dr Wilhelm Jaeger, the 'senior doctor' for Krupp, visited 600 Jewish women who had been brought in from Buchenwald concentration camp to work at a Krupp factory. He described in his affidavit for the Nuremberg trials that he found the women 'suffering from open festering wounds and other diseases'. There were 'no medical supplies', he said. One could not enter the barracks 'without being attacked by fleas', he wrote, noting that he had himself received large boils on his arms and legs as a result of his visit.<sup>81</sup> Skilled Jewish workers in Auschwitz concentration camp made fuzes for automatic weapons in the plant Krupp built there in June 1943. The slave labourers were worked to exhaustion and most were then gassed to death.<sup>82</sup>

The treatment of Yazidis by Islamic State in 2014–17 in Iraq and Syria is the most recent example in history of chattel slavery. Nearly 7,000 Yazidi women were enslaved and many were repeatedly the victim of sexual assaults. They were also forced to convert to Islam, with many forcibly married off to Islamic State fighters. Women who tried to escape were often punished with gang rape. Women and children as young as nine were sold, sometimes on multiple occasions, in slave markets in cities where Islamic State had a strong presence.

Once sold, the Yazidi females were the sole property of their owner, who could re-sell, gift, or will them to other fighters. Islamic State fighters blocked escape attempts by refusing to provide Yazidi women and girls with clothing that would allow them to move unnoticed in the streets. Escape attempts were punished with the killing of the women's children, gang rape, rape, and beatings. Locked into houses and apartments by their owners, the women and girls were often handcuffed and tied to the beds and raped.<sup>83</sup> As El-Masri

has observed, 'The act of sexual slavery against Yazidi women and girls was extreme because it was organised, deeply institutionalised, legalised, and legitimised in Islamic State-controlled territory'.<sup>84</sup>

Two 'diwans' (departments) had responsibilities for slaves and the slave trade, namely the 'Department of Slaves' and the Research and Fatwa Department. These diwans issued manuals that outlined what the owner could and could not do with his '*sabaya*'. One such document called on Islamic State fighters to treat their slaves well, citing words from the *Quran* calling for them to be good to 'those whom your right hand possess' and citing Islamic texts with instructions not to hit the slave's face, and to emancipate the slave who becomes a believer, for which the master will be rewarded by God. But, as with other strictures, there was a chasm between Islamic State proclamations and the invariably abusive and often violent reality.<sup>85</sup> In practice, Islamic State commanders allowed their fighters a completely free rein to treat their Yazidis slaves as they wished.

Under international criminal law, crimes against humanity comprise illegal acts of great gravity committed as part of a widespread or systematic attack on any civilian population.<sup>86</sup> Sexual slavery, as one form of these crimes, is defined in the Rome Statute that established and governs the International Criminal Court as the exercise of any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending, or bartering them as well as by causing the victims to engage in one or more acts of a sexual nature.<sup>87</sup> This international crime was perpetrated by many Islamic State fighters against women and girls as young as nine years of age. But neither Iraq nor Syria is yet a party to the Rome Statute which would allow the International Criminal Court to put on trial and punish the perpetrators.

## Legal Personality

The notion of slavery as ‘social death’ comes from the writings of Orlando Patterson. Patterson rejects the legal definition of slavery when it is limited to those reduced to the status of a chattel – an item of property. He does so on the basis that ‘proprietary claims and powers are made with respect to many persons who are not slaves’.<sup>88</sup> But of course, the notion of slavery is not always clear-cut and there will inevitably be those who are the margins of the definition. Some slaves (but certainly not all and not in every society) had rights themselves, their legal status notwithstanding. After all, some civilisations allowed slaves not only to earn money and other property but also to keep them in their own right. In the Old Babylonian period, which spanned from *ca.* 2000 to 1595 BCE, slaves could – and did – marry; have children; live with their families in their own homes; own moveable property (though not land or houses); and work fields to produce their own crops. In contrast, in ancient Greece, slaves could not own property in their own right. While they might be given pocket money or allowed to keep some of the money they earned as part of their labours, legally the money remained under the master’s ownership.

Since a slave was a legal non-entity in ancient Greece, without legal right or obligation, no ordinary slave could either prosecute or be prosecuted.<sup>89</sup> He could not testify except after torture – and for that, the consent of his master was required.<sup>90</sup> One explanation for the need for torture was that as a slave who knew anything of relevance, he would typically belong to one of the litigants and would naturally be fearful of saying anything contrary to his owner’s interests unless the pressure put on him to reveal the truth was even greater than the punishment he could expect to receive from the owner for revealing it.<sup>91</sup>



According to Justinian's *Digest*, in Roman law, 'Slaves are either born or made'.<sup>92</sup> They could be born into slavery, decide to become slaves (as a result of debts) or—more commonly—captured in warfare or by pirates. And from the early days of Rome, slavery was regulated by law – a legal regime as complex as any other area of Roman law.<sup>93</sup> The jurist Gaius would thus declare in his second-century CE textbook that under the *ius gentium* 'the most fundamental distinction in the law of persons is this: all men are either free men or slaves'.<sup>94</sup> Legally, a slave in the Roman empire could not own property. That said, the *peculium* was effectively the slave's to hold even though by law it remained the property of the master.

The early Christian church brought little solace to the slaves. For instance, St Augustine, who lived from 354 to 430 CE, argued that all slaves *deserved* to be slaves – a result of their sin.<sup>95</sup> Christian slave-owners would seek to extract economic advantage from their slaves just as would any other slave-owners.<sup>96</sup> Christian teachings did, though, lead to some enhancement of limited protections. Emperor Constantine (who converted to Christianity in 312 CE) decreed that when slaves from a single family were sold, husband and wife, parents and children, had to be sold together.<sup>97</sup>

## Slave Punishments

As James Walvin observed, slavery, which was 'conceived and nurtured in violence, naturally begat violence'.<sup>98</sup> Punishments were regulated by both law and policy throughout history (the one not necessarily mirroring the other). In the Third Dynasty of Ur, in the twenty-second and twenty-first centuries BCE, even if a private owner did wish to put his fugitive slave to death following recapture, it appears that he would still have needed the king's approval to do so. The Code of Hammurabi makes it clear that a master's ownership of

his slave was not unfettered. While the law endorsed the concept of slavery, it also recognised that slaves required protection from their owners. Thus, for example, a master could not ordinarily kill his slave (at the least unless the slave ran away). Harsh punishments short of killing were, however, lawful. Unruly slaves could, for instance, have their ears bored or cut off.<sup>99</sup>

Public slaves in ancient Greece were termed *demosioi*.<sup>100</sup> They appear to have had a superior status to other slaves, even one that in many respects was akin to freedom. Remarkably, a corps of 300 Scythian archers—slaves all—served as a form of judicial police force for Athens, ‘arresting, torturing, and executing offenders’, and ‘pursuing escaped prisoners’.<sup>101</sup> Herodotus tells us that the Scythians later decided—as a matter of policy—to stop killing their slaves and whip them instead as punishment for their misdeeds.<sup>102</sup> But ordinary slaves were derided by society. Thus, Greek texts assert that ‘there is nothing worse than a slave, even if he is a good slave’ and ‘even the best of slaves is bad’.<sup>103</sup> Potentially, slaves could be killed on their Athenian master’s whim. That said, Antiphon claims that executive sanction was, in legal theory at least, required for an execution.<sup>104</sup> Moreover, a master could certainly not kill another man’s slave as that would render him liable to prosecution.<sup>105</sup>

Throughout the empire, Romans feared their slaves. ‘Every slave we own is an enemy we harbour’, ran a Latin proverb. This fear would manifest itself in violent repression. The Roman Republic offered no legal protection to slaves. A slave owner was thus free to whip his slaves, jail them (in *ergastula* constructed for the purpose), starve them to death, and even kill them. They could be sent to their deaths against beasts (until a law in the first century CE required prior approval of a magistrate) or in combat with other men in the gladiatorial arena. With the advent of the principate, though, came growing (albeit still

limited) protection against ill-treatment. Thus, for instance, in the late first century CE, Domitian outlawed the mutilation of slaves.

Torture was required for slaves to testify in legal proceedings in the Roman Empire as it had been in ancient Greece. For a fixed fee, a company of undertakers in Rome provided these services on demand, along with flogging and crucifixion.<sup>106</sup> Although, as the *Digest* recounts, it was unlawful to torture a slave to death, death was a frequent result.<sup>107</sup> Augustus, the first emperor of the principate, made it illegal to torture women and children who were called to give testimony in legal proceedings.

Qin law stated that a slave in classical China would be punished in the same way as a commoner for killing his own child, the only difference being that after he had served his term of hard labour, he would be returned to his owner. It is indeed 'remarkable' that 'even in this case the State claimed the authority to punish the guilty slave and it is not the slave owner who possesses sole rights over his property and has the sole right to punish the murderer. In this way, the child of a slave has the same protection under the law as a free individual.'<sup>108</sup>

A Norse owner could punish his slaves as much as he wanted. Adam of Bremen famously said that the Danes knew no other form of punishment than 'the axe or slavery'.<sup>109</sup> If they so wished, slave-owners could kill their own thralls without suffering any legal consequences. It was similarly accepted in the Islamic world that slaves who were disobedient or who made mistakes and tried to escape could be physically disciplined. And they 'certainly were', Brown affirms. In one location in the late-nineteenth century CE, a special facility for punishing slaves would usually involve their beating 'until they defecated' one victim recalled.<sup>110</sup> As a rule, however, the Muslim master did not have power of life and death over

his slave property.<sup>111</sup> Only in a case where the slave had committed a capital or corporal offence did certain schools of Islamic law allow a master to kill him.<sup>112</sup>

The ‘particularly gruelling conditions that most eighteenth- and nineteenth-century New World slaves endured came primarily from the dominance of gang slavery within the plantation system’.<sup>113</sup> The ‘almost unimaginable oppression’ of the enslaved workforce in the British Caribbean, which involved ‘one of the most ruthless, savage forms of slavery in world history’, was nonetheless notable for its productive efficiency.<sup>114</sup> Slavery was maintained by the ‘highly personal mechanisms of coercion: the whip, rather than resort to law, was the institution’s indispensable and ubiquitous instrument.’<sup>115</sup> Despite the frequent and violent abuses, masters also hoped that rewards—half or full days off to allow the enslaved to tend their provision plots or attend funerals, for instance—would offset punishments.<sup>116</sup>

As Morgan recalls, the ‘dominant experience of the law from the slaves’ perspective was terror’. The courts frequently mandated corporal punishment that involved removal of ears or feet or the splitting of nostrils. ‘The public execution of rebellious people by burning them alive, hanging them from gibbets, and decapitation and the display of severed heads on poles were common methods of instilling fear’.<sup>117</sup> Thus, the plantation system of the eighteenth-century British Caribbean was particularly brutal ‘even for an age very used to brutality’.<sup>118</sup>

The 1798 Amelioration Act stipulated that slaves could only be forced to work for a maximum of fourteen hours a day. It also introduced financial compensation for slaves—and therefore penalties for owners—for instances of cruel and unusual punishments or serious neglect. But these provisions were not widely enforced. That said, in

the trial of Arthur William Hodge, a planter and politician, indicted for the murder of one of his slaves, the Act was cited obliquely. Hodge's defence counsel, at the bail hearing, had argued that: 'A Negro being property, it was no greater offence for his master to kill him than it would be to kill his dog'.<sup>119</sup> The prosecution cited the 1798 Act in order to refute it. Hodge was found guilty and was executed by hanging in 1811, the first British subject to be executed for the crime of murdering a slave.<sup>120</sup>

Elsewhere in the Caribbean, in Saint-Domingue, sadistic punishments were so frequent they were given names like the 'four post' or the 'ladder'. The whipping

was interrupted in order to pass a piece of hot wood on the buttocks of the victim; salt, pepper, citron, condors, aloes, and hot ashes were poured on the bleeding wounds. Mutilations were common, limbs, ears, and sometimes the private parts, to deprive them of the pleasures which they could indulge in without expense.<sup>121</sup>

## **A Complete Absence of Sexual Autonomy**

Sexual autonomy did not exist for the female slave in almost any society. In ancient Athens, for instance, the master would decide which of his female slaves he (and his slaves) would sleep with and when.<sup>122</sup> Loss of physical integrity as a slave in the Roman Empire also inevitably meant extreme sexual vulnerability for both male and female slaves.<sup>123</sup> The profits to be made induced masters regularly to exploit the bodies of their enslaved females—and males—as sources of income.<sup>124</sup>

If a Roman woman took a male slave as her lover, the fruit of their loins would still be a slave.<sup>125</sup> The poet Martial provides a 'shopping

list' of features a man would look for in a boy purchased for his sexual gratification.<sup>126</sup> Other male slaves might be castrated.<sup>127</sup> But the survival rate of *castrati* was never good. In the sixth century CE, Justinian is said to have been outraged that only three of ninety boys who underwent the operation survived.<sup>128</sup>

In classical China, a specific term (*yü*) existed for a sexual relationship between a 'pei' and her master, perhaps a reflection of the frequency of occurrence. A son who slept with a female slave who had already lain with his father was guilty of incest.<sup>129</sup> In Norse society, an important function of slave women appears to have been their role as concubines, bearers of their masters' children, or simply sexual partners when it suited the master.<sup>130</sup> The added cost of female slaves in Western Europe may have been a reflection of the value placed on sexual services and their use as status symbols.<sup>131</sup>

Even at the point of sale, a slave woman might sometimes be raped one last time in the presence of her purchaser.<sup>132</sup> A twelfth century text describes the life of Bishop Wulfstan, who is said to have observed that the English

would buy men from all over England and sell them off in Ireland in the hope of profit, even putting on sale girls whom previously they had sexually abused and who were now pregnant. You could see and sigh over rows of wretches bound together with ropes, young people of both sexes whose beautiful appearance and youthful innocence might move barbarians to pity, daily exposed to prostitution, daily offered for sale. A detestable crime, wretched infamy for vindictive men worse than beasts. To consign their lovers, even their own blood into slavery.<sup>133</sup>