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Legal Hermeneutics and the Tradition Underlying the Septuagint

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Abstract: Exegetical renderings in the Septuagint have often been presented as evidence indicating the influence of “Palestinian exegesis” on the translators. This has at times led to a skewed interpretation of the Greek version. By the help of a test case, the present study illustrates the importance of looking first for the coherence of the Septuagint in its own right. Some of its most elaborate exegetical elements may owe little to influence from the home country but instead reflect traditions of diaspora Judaism.

The Letter of Aristeas relates that the translators of the Pentateuch were brought especially from Jerusalem to give the Jews in Egypt, and King Ptolemy, a Greek version that would be as faithful as possible to the best native traditions. Ever since, there has been a strong tendency to relate the Septuagint to Jerusalem. In modern scholarship, it is not rare to find the claim that the translators themselves, or at least their exegetical knowledge, came from Judea.¹ The underlying idea seems to be that if the Septuagint is Jewish, it must be related to Jerusalem.²

The tendency to stress links with the homeland underplays the notion that a genuine Judaism of a specific type may have existed in the western diaspora.

1. See recently Emanuel Tov, “Reflections on the Septuagint with Special Attention Paid to the Post-Pentateuchal Translations,” in *Die Septuaginta: Texte, Theologien, Einflüsse*, ed. Wolfgang Kraus, Martin Karrer, and Martin Meiser, WUNT 252 (Tübingen: Mohr Siebeck, 2010), 3–22; Johann Cook and Arie van der Kooij, *Law, Prophets, and Wisdom: On the Provenance of Translators and Their Books in the Septuagint Version*, CBET 68 (Leuven: Peeters, 2012).

2. Tov (“Reflections,” 5 n. 9) writes: “Jewish exegesis is visible wherever a special interpretation of the LXX is known also from rabbinic literature. Such exegesis reveals the Palestinian background or influence of at least some of the translators.”

When the Pentateuch was translated into Greek—at some time during the third century—Jews had been in Egypt for a long time. Although there will have been exchanges with the homeland at every point, some of which are actually attested in the Elephantine papyri, it is not unreasonable to think the diaspora communities developed distinct habits and a distinct interpretation of their religious experience over time. One should allow, of course, for diversity among Egyptian Jews. But one should also admit that Judaism of the western diaspora may have been distinct globally. The piety, theology and religious practice of Judaism in Egypt will have differed somewhat from that of other Jews. The Septuagint could be expected to echo the distinct traditions of the western diaspora.

The two notions are not mutually exclusive. Some religious traditions underlying the Septuagint may have been imported from Jerusalem, while other traditions may be of local origin. It is important, however, to keep the two approaches apart in theory and to recognize the legitimacy of both. A case study taken from the area of legal exegesis will illustrate what is at stake.

1. THE LAW OF THE HEBREW SLAVE IN EXODUS 21:2–11

According to Exod 21:2–6, a Hebrew who has sold himself into slavery will serve his master for six years, after which period he must be given the option of becoming free again. Although עברי (“Hebrew”) may originally have meant something different, in its present context the law almost certainly refers to Israelite debt slaves.³ Exodus 21:2–6 is a “law of mercy,” unenforceable in a human court but commanded to the Israelite people on the basis of God’s great liberating act narrated in the preceding chapters of Exodus. Israelites should not be slaves.⁴ This does not mean the law is wholly theoretical. In fact, the largest part of the passage is devoted to the practical application of the law. The principle of liberation had to be balanced against the economic rights of the slave owner. Thus, if the Hebrew slave has married a slave girl belonging to the master’s household, the law stipulates he will have a choice to make: to be freed after six years or to stay with his wife and children in servitude.

The second part of the law in verses 7 to 11 also seeks to strike a balance between two fundamental exigencies. An Israelite girl sold into slavery by her father may normally be expected to become a concubine to her master or one of his household.⁵ Freeing her after six years would lead to dissolving the marital bond formed in servitude. For this reason, it seems, the girl is excluded from the rule that applies to men: she will not be liberated in the sixth year. Instead, her

3. See the major commentaries.

4. Note that in Exod 1–10, the term Hebrews is used frequently to refer to the Israelites enslaved to Pharaoh.

5. Note the term *עַד*, “to appoint, to designate as a wife,” in vv. 8 and 9 and the term *עֲנָה*, “duty of marriage,” in v. 10.

rights are defined differently: she must be treated as a wife, and if her owner gets tired of her, she must be sold back to her own family. Freeing her for no money is only a last resort.

The Septuagint version of Exod 21:2–11 generally corresponds to the received Hebrew text, but there are two important divergences.⁶ The most striking one occurs in verse 7 where “she shall not go out as the (male) slaves do” is translated as: “she shall not go out as the female slaves do.”

Exod 21:7

לֹא תֵצֵא אִתָּךְ כַּאֲשֶׁר יֵצְאוּ הָעֲבָדִים
 οὐκ ἀπελεύσεται ὡσπερ ἀποτρέχουσιν αἱ δοῦλαι

A second, less visible divergence, finds expression in the vocabulary. The Hebrew nouns עֶבֶד and אִמָּה are very often paired as masculine and feminine meaning “male and female slave.” In the Septuagint, the pair is usually rendered παῖς and παιδίσκη and more rarely δοῦλος and δούλη.⁷ In the present passage, the Greek renderings vary: עֶבֶד is rendered παῖς in verse 2 and δοῦλαι in verse 7. The variation of equivalents is surprising, but on the lexical level, both renderings conform to regular expectation. What is unexpected, however, is the rendering of אִמָּה in verse 7 as οἰκέτις, a rare word to which we will get back later.

These divergences suggest that the law on the Hebrew slave was not just translated word for word, but that the Greek version reflects an interpretation. What that interpretation was is not self-evident.

2. THE INTERPRETATION OF THE SEPTUAGINT IN LIGHT OF RABBINIC HALAKAH

In his acclaimed work on the influence of “Palestinian exegesis” on the Seventy, Zecharia Frankel argued forcefully that the Greek translator interpreted Exod 21:7 in a way consonant with rabbinic halakah.⁸ According to the halakah, verses 7 to 11 do not concern the female counterpart of the Hebrew slave of verses 2 to 6, but the special case of the daughter who was a minor—less than twelve years of age—when her father sold her. Such a girl is liberated in the seventh year, according to the halakah (although she is liberated for many other reasons as well, notably when she reaches puberty, so that the six-year limit of servitude may be considered rather theoretical). The “going-out of slaves” is therefore interpreted as applying to non-Israelite slaves. The statement: “she shall not go out as the male slaves do” means: in respect to going out, she is not like Canaanite male

6. A few exegetical renderings are faithful to the intended meaning of the passage and as such irrelevant to the present study. See notably in v. 3.

7. For παῖς and παιδίσκη, see, e.g., Exod 21:20, 32; for δοῦλος and δούλη, see Lev 25:44.

8. Zecharia Frankel, *Ueber den Einfluss der Palästinensischen Exegese auf die alexandrinische Hermeneutik* (Leipzig: Barth, 1851), 91.

slaves—she will be liberated for many reasons that do not affect them.

In Frankel's view, a similar interpretation underlies the Septuagint version of Exod 21:2–11. His main evidence is the use of the term *δοῦλος* in verse 7—the feminine gender is not important in Frankel's reasoning.⁹ In the Greek Pentateuch, *δοῦλος* is used for the deepest form of servitude only, that of Israel in Egypt and that of non-Israelites in Israel.¹⁰ The word could not therefore, according to Frankel, designate the Hebrew slave in Exod 21:7 but only the Canaanite slave.

A few years after Frankel, Abraham Geiger argued similarly that the Greek translation of Exod 21 agreed with Jewish halakah.¹¹ Unlike Frankel, his main argument is not drawn from the vocabulary but from the feminine gender of *αἱ δοῦλαι*. The statement “she shall not go out as the female slaves do” shows, in Geiger's view, that the opposition is not between a female Israelite and male Israelites, as in the Hebrew text. In the Greek, the female Israelite slave is contrasted to other female slaves, which can therefore only be non-Israelites. Otherwise, Geiger's argument is similar to Frankel's: Exod 21:7 means that the Israelite girl sold into slavery by her father will not be freed as Canaanite slaves are, “for a tooth or an eye.”¹² She does go free, however, in the seventh year.

More recently, Geza Vermes, in a wide-ranging discussion on the interpretation of Exod 21:7–11 in antiquity, essentially came to the same conclusion.¹³ Citing both Frankel and Geiger, he accepted the claim that the Septuagint opposed the Israelite slave girl to gentile slaves, like rabbinic halakah, thus diverging from the original intent of the text of Exodus.

3. EVALUATION

Today, specialists of halakah have become more cautious in regard to the possibility of dating rabbinic traditions to the early Hellenistic period. The

9. In Frankel's view, the feminine is a mistake due to “unwissende Diaskeuasten”; he proposes to correct the Greek text so as to read the masculine *δοῦλοι*.

10. See Lev 26:13 and 25:44.

11. Abraham Geiger, *Urschrift und Uebersetzungen der Bibel in ihrer Abhängigkeit von der inneren Entwicklung des Judentums*, 2nd ed. (Frankfurt am Main: Mada, 1928), 187–88.

12. The halakic rule concerning the tooth and the eye is derived from Exod 21:26–27, where it is established that an owner who destroys a slave's eye or knocks out his tooth must let the slave go free. This is interpreted as referring to Canaanite slaves only. Neither the Hebrew text nor the Septuagint explicitly states that a non-Israelite slave is meant, however. If Frankel's theory were correct, one might expect the slave of Exod 21:26–27 to be referred to as *δοῦλος*, but this is not the case (see below, n. 18).

13. Geza Vermes, “Bible and Midrash: Early Old Testament Exegesis,” in *Cambridge History of the Bible*, ed. by P. Ackroyd and C. F. Evans, vol. 1 (Cambridge: CUP, 1970), 199–231.

discoveries in Qumran have confirmed that some legal interpretations of the Mishnah were already known in the first century BCE.¹⁴ But it has also become clear that many rabbinic rules and distinctions must have emerged later. In light of these developments in scholarship, the approach championed by Frankel and Geiger would today seem more problematic than it did a hundred or even fifty years ago.¹⁵

In the case at hand, the explanation of the Septuagint on the basis of rabbinic writings is not to be rejected from principle, but because it does not do justice to the data. The connection between the Greek version of Exod 21:2–11 and the halakah is tenuous. The use of the term *δοῦλος* (or rather: *δοῦλαι*) in verse 7 cannot bear the weight of the argument Frankel builds on it. Both *δοῦλος* and *παῖς* are regular equivalents of Hebrew *אָבִיב*, sometimes being used even in the same verse.¹⁶ There is probably a semantic nuance to each noun, *παῖς* being a more general term and *δοῦλος* stressing more the juridical aspect. But the “referent” of the nouns is the same. To distinguish the Hebrew *אָבִיב* of verse 2 from the allegedly gentile *δοῦλαι* of verse 7 on the basis of the vocabulary alone, is simply far-fetched. As to the use of the feminine underscored by Geiger, this is indeed striking. But it can hardly be interpreted as pointing to the non-Israelite identity of the *δοῦλαι*.

4. THE COHERENCE OF THE SEPTUAGINT VERSION

When the Greek version of the law on Hebrew slaves is read with an open mind, a different interpretation would seem to emerge. A good place to start is the phrase “the female slaves” in verse 7. Who are these female slaves? A first possibility would be to define their identity on the basis of the preceding verses. In Exod 21:3, it is stated that if a Hebrew slave has been bought with his wife, they will both become free after six years of servitude. Perhaps the daughter sold into slavery is compared to these wives: “she [the *οἰκέτις*] shall not go out as the female slaves do.” Wives sold as slaves together with their husbands go out in the seventh year, but daughters sold individually do not. This is a possible reading of the Greek version of the law. It is not entirely satisfactory, however. The wives are mentioned in passing only. Although they are liberated in the seventh year, this is presented as a right of their husbands. Their sex seems to be a feeble reason for singling them out for contrast. It would have been easier to

14. See, e.g., Aharon Shemesh, *Halakhah in the Making: The Development of Jewish Law from Qumran to the Rabbis* (Berkeley: University of California, 2009).

15. This does not mean their work should be dismissed completely. Preliminary stages of what would later become rabbinic halakah may have been established early enough to influence the translation of the Pentateuch. Some instances of Septuagint renderings following the halakah signaled by Frankel retain a certain probability.

16. See Lev 25:44. Note also that what the Hebrew slave does for his master is expressed with the verb *δουλεύω* (v. 2).

say, like in the Hebrew text, that the daughter does not regain her freedom as the male Hebrew slaves do. In other words, if αἱ δοῦλαι refers to the wives of Hebrew slaves, the divergence in the translation hardly entails an interpretation at all. This begs the question of the *raison d'être* of the divergence.

It is preferable, then, to look further afield for the identity of the “female slaves” referred to in the Greek version of Exod 21:7. As is well known, Deut 15:12–18 rewrites the law of the Hebrew slave in a way that establishes equality between the sexes. The introductory verse states: “If your brother, a Hebrew man *or a Hebrew woman*, is sold to you, he will work for you six years, but in the seventh year you shall set him free” (v. 12).¹⁷ Further on in the Deuteronomic law, the principle is repeated: “you shall do the same with regard to your female slave” (v. 17). The provision on the daughter sold into slavery is absent in Deuteronomy: Deut 15:12–18 is parallel, roughly, to Exod 2:2–6, but there is no Deuteronomic parallel to Exod 2:7–11.

The slave law in Deuteronomy may originally have been intended to replace that of Exodus. But when both versions ended up in the composite Pentateuch, they had to be harmonized in one way or another. The Septuagint version of Exod 21:2–11 appears to reflect one stage in that process. Verses 2–6 on the Hebrew slave were interpreted, in light of Deut 15, as applying to Hebrew slaves of both sexes. Since laws applying to both sexes are often, in the Bible, formulated in regard to men only, this explanation was not particularly far-fetched. But it did leave the second part of the law, on the Hebrew daughter, dangling as an anomaly. If the Hebrew slave, both male and female, is to be liberated after six years, what is to be made of the law that seems to exclude the daughter from this rule? The exegetical solution to this problem was to treat this case as a special kind of slavery that did not allow for liberation in the seventh year. When a father sold his daughter to become the *concubine* of another Israelite, the liberation in the seventh did not apply.

This reconstruction accounts for almost all the peculiarities of the Greek version. The “female slaves” (αἱ δοῦλαι) in verse 7 is a reference to the slaves of verses 2–6. Hebrew men *and women* (according to the harmonizing exegesis underlying the translation) sold into slavery must normally be liberated after six years. The daughter sold by her father falls into a different category: she will not go out as other female slaves do.

As to the word οἰκέτις, in Greek lexicography it is usually viewed simply as the feminine of οἰκέτης (“household slave”). The Septuagint data indicate a different usage, however. In the Greek version, the feminine equivalent of

17. The tortured syntax of this verse shows that the phrase “or a Hebrew woman” was inserted into a base text that did not include the female slave explicitly. The same conclusion can be drawn from v. 17, where the clause “you shall do the same with regard to your female slave” is probably also an addition.

οικέτης is *θεράπινα*.¹⁸ Moreover, while *οικέτης* is frequent in the Greek Pentateuch, the word *οικέτις* is found only twice, in our verse and in Lev 19:20. In the latter passage, it refers to a female slave (הַפְּשָׁה in Hebrew) who has been designated to a man but has not yet had sexual relations with him. In the other books of the Greek Bible, the word occurs again in Prov 30:23, commenting on the scandal that arises if an *οικέτις* drives out her mistress. The verse implies that the female slave takes the place of her mistress in relation to the husband. Philo, in all his preserved works, uses the word only once, *Congr.* 152, in reference to Hagar, the slave-wife of Abraham (though in a heavily allegorical context). We may conclude that in the language of the Septuagint, this specific word defines the girl as a concubine. In our passage, the rare word reveals the reason why the girl is not to be liberated in the seventh year.

Admittedly, one problem remains. Why the female slaves are referred to with the word *δοῦλαι* while the male slave is called *παῖς* has not been explained. As was already stated, the words often co-occur and may refer to the same reality. Perhaps the use of *δοῦλαι* was triggered, because the verse contrasts two forms of slavery: one of servitude and one of concubinate. Or perhaps the variation is merely stylistic.

5. THE ORIGIN OF THE SEPTUAGINTAL INTERPRETATION

Let us recapitulate. The meaning of the Greek version of Exod 21:2–11 diverges globally from what was originally intended in the Hebrew text. The Hebrew text opposes male Israelite slaves, who will serve for six years, to unattached female Israelite slaves, who will become concubines and cannot therefore become free again. The Greek opposes male and female Hebrew slaves, who will serve and be freed, to nubile Hebrew slaves designated as concubines. The divergence is expressed discretely, in a way that permits the translator to observe his usual word-for-word translation technique. The underlying reinterpretation flows from the necessity to read the laws of Exodus in way that does not contradict the laws of Deuteronomy.

The harmonization was almost certainly elaborated in Greek. It is expressed by slight retouches that can hardly be attributed to the Hebrew *Vorlage*. Both the change of “slaves” to “female slaves” and the choice of the rare word *οικέτις* must have happened in the process of translation. Nevertheless, it would be a mistake to ascribe the harmonization to ad hoc exegesis on the part of the translator. The interpretation surfacing in the Septuagint translation resulted from much study and reflection. It almost certainly represents an interpretive tradition handed down to the translator. The way of expressing it in Greek may be the translator’s work. But the distinction between the two legal cases in the light of Deut 15 must have been established previously.

18. See Exod 21:26–27.

The Septuagint rendering of the slave law is traditional, but it is not rabbinic. The legal interpretation underlying the Septuagint differs from what later became Jewish halakah. The rabbinic writings also harmonize the two versions of the law on Hebrew slaves, but they do so on different principles and with different results. Crucially, the case of the daughter mentioned in Exod 21:7–11 is not opposed to that of the Hebrew slave in verses 2–6: the daughter is to be liberated in the seventh year like other Hebrew slaves. In order to achieve this interpretation, a whole new category is imported into the law, namely, that of gentile slaves, whose liberation is ruled by very different principles. The category of non-Israelite slaves pays no part in the Septuagintal interpretation of the present passage. One can only speculate about the origin of the Septuagint interpretation, which appears not to be attested in any other ancient writing. Reason suggests it must have emerged among Jews of the Egyptian diaspora. The interpretation may have originated in a school setting, where learned Jews tried to make sense of the composite Pentateuch. Alternatively, it may reflect some type of jurisprudence, if indeed Jews in Egypt practiced the biblical slave laws in day-to-day life.¹⁹

6. CONCLUSIONS

Our case study has shown that an approach of the Septuagint from the vantage point of Rabbinic Judaism runs the risk of skewing the data. Frankel's and Geiger's hypotheses opened up new avenues of research in the nineteenth century. In the present case, however, their approach was wrongheaded.

An important methodological principle has also emerged. Before one attempts to interpret it in the light of other early readings, the Septuagint is to be read as a coherent text with its own authority. In the present state of research on ancient Jewish texts, the most obvious *comparandum* for the Septuagint is Qumran literature. The Qumran writings are coeval with the Septuagint in a way rabbinic writings are not. Much interesting research has been done on Qumran and the Septuagint, and one wishes much more of it will be done in the future. However, the comparative approach can only be helpful if each text is first given a proper hearing. Only when the inner logic of the Greek text has been explored does it become possible to compare its reading with other traditions.

The Septuagint is a Jewish work. But this general fact says very little about the precise contents one may expect to find in the version. Judaism of the

19. The recently recovered documents from the archive of a Jewish *politeuma* in Heracleopolis suggest some form of application of biblical law in the limited area of family law, see, e.g., Joseph Méléze-Modrzejewski, “La fiancée adultère: A propos de la pratique matrimoniale du judaïsme hellénisé à la lumière du dossier du politeuma juif d’Hérakléopolis (144/3–133/2 avant n.è.),” in *Actes de la journée d’études du 7 février 2004*, ed. J.-C. Couvenhes, B. Legras (Paris: Publications de la Sorbonne, 2006), 103–18.

Hellenistic period was notoriously diverse. Although they shared many central values, Jews in antiquity also transmitted a great variety of traditions, including traditions in the realm of religious law. This is perhaps true for any period in history, but it is particularly true for Hellenistic times. Beyond the evaluation of individual readings, the Septuagint needs to be given its rightful place in a history-of-religions perspective. The group that produced the Septuagint added a unique shade of diversity to the variegated forms of Judaism of its epoch. Of course, this group was not impermeable to influences from the homeland. There were exchanges and relationships. But the group also developed traditions particularly its own. Its unique contribution needs to be taken into account.