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Debt Slavery and Forced Labour

Debt slavery or debt bondage is a term used to depict the situation of those hopelessly indebted. In the Nordic languages,[1] debt slavery is also a term used to describe contemporary social situations. The idea of debt slavery is today mainly linked to the phenomena as it is know from antiquity and preceding civilizations. Already in the Code of Hammurabi there are rules on indebted failing to meet claims for debt, and hence giving up himself, his wife, son, daughter, slave or maid to forced labour.[2] From Leviticus we see that debt slavery also seem to have been known among the Israelis.[3] Still, it is the ending of debt slavery in Greek and Roman law that has drawn attention to the legal institute. In Greek law, debt slavery was abolished by Solon in his famous reforms in 590s B.C.[4] The Greek historian Plutarch uses the incident to depict Solon as a man who resisted the temptation to become tyrant, and hence makes it a story of democracy.[5] The Greek philosopher Aristotle, on the other hand, makes the very abolition of debt slavery to a contribution to the Greek democracy: "There are three points in the constitution of Solon which

[1] Norwegian: *gjeldsslave*, Danish: *gældsslave*, Icelandic: *skuldir Þræll*, Swedish: *skudslav*, and Finnish: *velkaorja*.

[2] See chaper 117–119 in the online available translation of the Code of Hammurabi at http://mcadams.posc.mu.edu/txt/ah/Assyria/Hammurabi.html#Hammurabi.Law.117 (08. January 2016).

[3] See Leviticus 25: 39 in the online available translation of the *Bible* at http://www.o-bible.com/cgibin/ob.cgi?version=bbe&book=lev&chapter=25 (08. January 2016).

[4] Pavel Oliva, "Gesetze Solons und die athenische Polis", in *Folia philologica*, (1983), pp. 65–69 (66).

[5] See 13:2–3 and 14: 1–2 in the online available translation of Plutarch's *The Parallel Lives* at http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Plutarch/Lives/Solon*.html (08. January 2016).

appear to be its most democratic features: first and most important, the prohibition of loans on the security of the debtor's person".[6] Also the abolition of debt slavery in Roman law, called *nexum*, was mythologized. The Roman historian Levy linked it to increased liberty to the plebeians: "This year (326 B.C.) was marked by the dawn, as it were, of a new era of liberty for the plebs; creditors were no longer allowed to attach the persons of their debtors."[7] The Lex Poetelia Papiria, deciding that "the goods and not the person of the debtor shall be the security for the debt", was, according to Levy, enacted by all the people of Rome. The story might have been quite another one, but it illustrates the origins of the powerful moral and political connotations of the term debt slavery in contemporary debate.

It is the mythology of the events in Athens in the 590s and in Rome in the 320s B.C. that constituted the idea of debt slavery the have prevailed to this day. Because in western European law in general, there are not striking many traces of provisions concerning debt slavery after the abolition in Athenian and Roman law in antiquity. This despite that Tacitus claimed that among the Germanic peoples even personal freedom was a good that could be disposed over, and could for instance be lost when gambling:[8] "Strangely enough they [Germanic peoples] make games of hazard a serious occupation even when sober, and so venturesome are they about gaining or losing, that, when every other resource has failed, on the last and final throw they stake the freedom of their own persons. The loser goes into voluntary slavery; though the younger and stronger,

[6] The citation is taken from section 1 part 9 in the online available translation of Aristotle's *The Athenian Constitution* at http://classics.mit.edu/Aristotle/athenian_const.1.1.html (08. January 2016). The whole reasoning reads: "There are three points in the constitution of Solon which appear to be its most democratic features: first and most important, the prohibition of loans on the security of the debtor's person; secondly, the right of every person who so willed to claim redress on behalf of any one to whom wrong was being done; thirdly, the institution of the appeal to the jury courts; and it is to this last, they say, that the masses have owed their strength most of all, since, when the democracy is master of the voting-power, it is master of the constitution." See also section 1 part 3, 6, 10, 11 and 12.

[7] The citation is taken from book VIII: 28 in the online available translation of Levy's *The History of Rome* at http://mcadams.posc.mu.edu/txt/ah/Livy/Livy08.html (08. January 2016).

[8] Drew, 1973 p. 254 n. 16.

he suffers himself to be bound and sold."[9] One exception from the absence of provisions concerning debt slavery, is Lombard law. Liutprand, Lombard king between 712 and 1744, issued a provision saying that "if a man who is prodigal or ruined (…) commits theft or adultery or an breach of peace (scandalum) or injuries another man and the composition for this is twenty soldi or more, than a public representative ought to hand him over as a slave to the man who suffered such illegal acts." In this case the slavery was for life. If the compensation for the crime was less than twenty solidi, the slavery was limited in time.[10] King Aistulf, king between 749 and 756, made a provision based on the same principle of debt slavery to pay compensation for crimes.[11] In Irish, as in Lombard law debt slavery seem to mainly originated from the disability to pay compensation for crimes committed.[12] But when we find debt slavery mentioned for in *Senchus Már*, an Irish compilation of legal texts from the eighth century,[13] it could also stem from poverty.[14]

It seems that Karl von Amira sees debt slavery, *Schuldknechtschaft*, as a feature of Nordic law, since he links the reduction in this importance of the legal institute in the Norwegian Code of 1274 with "unnordische Einflüssen".[15] But debt slavery is not a dominant figure in Nordic medieval law in general. It is not at all mentioned in the Danish compilations of law.[16] We still find an in this context interesting regulation in the compilation for Scania, stating that a thief could be sentenced to do temporarily forced labour for the King.[17] In the Swedish compilations of law, we find similar arrangements in Östgötalagen and Södermannalagen that von Amira classifies as debt slavery.[18] In the Östgötalagen two provisions concerning forced labour in the sense that they deal with the right of a husband to pay the fines of his wife to free her from forced labour in the

[9] The citation is taken from chapter 24 in the online available translation of Tacitus' *Germania* at http://legacy.fordham.edu/halsall/source/tacitus1.html (08. January 2016).

[10] Drew, 1973 pp. 213–214.

[11] Drew, 1973 p. 237.

[12] Kelly, 2001 pp. 215–216.

[13] Hancock and O'Mahony, 1865 pp. 105–113. I am much obliged to Brage Thunestvedt Hatløy for the references to Irish law.

[14] See also Ginnell, 1894 p. 153.

[15] von Amira, 2. volume, 1973 p. 171.

[16] Mayer, 1960 p. 669–670.

[17] The compilation for Scania chapter 151 and 130. I am much obliged to Helle Vogt for this reference to Danish law.

[18] von Amira, 1. volume, 1973 pp. 125–133.

service of the King.[19] The single provision in the Södermannalagen concerns the same issue – payment of fines by forced labour.[20]

Regulations in Danish and Swedish law in the High Middle Ages on what might be regarded as debt slavery, is hence scarce. The few regulations there are on debt slavery, concerns the same issue as Lombard law; debt slavery as a mean to execute the payment of fines. It is hard to know if these provisions are the reminiscence of a previous much more extensive legal institute on debt slavery, or if they are the exceptions in a system where debt slavery was an otherwise unknown legal institute. Reminiscence or exception, the reason for the existence of the provisions might be that they made execution of fines effective in a system were imprisonment was not an alternative, and vengeance easily could be triggered off if royal execution of punishment for crimes failed. The arrangement with debt slavery is hence more a part of what we today define as public law than private law. The exception is Irish law, where debt slavery also had what we today define as a private law dimension.

Before the Norwegian code of 1274 and the Code of the towns from 1276, there were four compilations of law for each of the four legal provinces,[21] and compilations for the different Norwegian towns. But only the compilations for the legal provinces of Gulating and Frostating, and the compilation for the town Nidaros, have been preserved. And debt slavery is only a theme in a single provision in the Gulating compilation for the western part of Norway.[22] But, contrary to most of the regulations on debt slavery we have seen so far, this is a general rule on debtors, *skulldar mann,* and how to deal with those who cannot repay their debt. The provision in book IV chapter 15 contains a general justification of debt slavery: "Halda scal slict allt sem men verða a satter, oc

19 The Östgötalagen, Vådamål 35 and 37.

20 The Södermannalagen, Mannhelg 14. This seems also to be the case in Gutalagen chapter 2. See Peel, 2015 pp. 94-95 (2/37).

21 The four Norwegian legal provinces were Gulating in Western Norway, Frostating in Middle and Northern Norway, Eidsivating in the interior Eastern Norway, and Borgarting in the costal Eastern Norway.

22 This is previously treated by Brandt, 1870: 199–201, Robberstad, 1960 p. 672, and Iversen, 1994 p. 185–186. Brandt, and seemingly Robberstad, seem to regard The Forstatings compilation X-26, and the compilation for the town of Nidaros chap. 50 as rules regarding debt slavery, but they are solely rule on execution of debt not on debt slavery. This is also the reason why von Amira deals with far more provisions from more legal sources when dealing with debt slavery in Sweden, Norway and Iceland, that what is done in this article.

vatar vitu" – It shall be kept what is promised, and witnesses can confirm. The idea was that if you took up a loan, you were bound to keep your promise and repay it, with your own labour in the last resort. This is a reflection of the general principle in chapter 1 in book II on sales, which also deals with debt: no one shall take the property of others. To not repay debt proven by two witnesses is such a crime according to chapter 2: if two witnesses confirm the debt, but it is not repaid, the debtor will also be charged with robbery next to repayment. In many ways, the general principle justifying debt slavery in book IV chapter 15 is summing up and combining the essence of chapter 1 and 2 book II.

The provision is placed last in book IV on slaves and the freeing of slaves. It could otherwise have been put in book II on sales, since this book in general deals with debt. And this might have been the case for parts of the provision on debt slavery. Because chapter 15 in book IV in the Gulating compilation, being one of the longest in the compilation, has itself the appearance of a compilation – it bears evidence of being edited, and it might have been that all provisions on debt slavery at one point were somewhat randomly put together in this one single chapter. This would explain why the conditions for being put in debt slavery, and the punishment for selling a debt slave as an ordinary slave, appear twice, but in different wording and in different places in the provision. It should also be noted that when the professor in legal history, Knut Robberstad, in 1937 translated the Gulating compilation into modern Norwegian, he structured chapter 15 as if it consisted of 18 different parts.[23] And it might then be that it is actually a compilation of 18 individual rules on debt slavery. If that is the case, this is almost twice as many provisions concerning debt slavery that there is in the Icelandic compilation of law called *Grágás*, Grey Goose, which we soon will study closer.

According to book IV chapter 15 in the Gulating compilation, a debtor that could not repay his debt, should be offered to his kinsmen in a public assembly. Only if they did not choose to repay the debt, the debtor would become a debt slave. The formal procedure was somewhat stricter when the debtor was female than male. As a debt slave, the debtor could be beaten like ordinary slaves if he would not work, since the debt slave formally was without legal rights, *rett laus*, in relation to his master and his family. If anyone else hit the debt slave, his master had the same right to compensation as he had for his main slave. Instead of being put to

[23] Robberstad, 1952 pp. 95–97.

work, the debt slave could be sold for as much as he owed his master. But the debtor could only be sold as a debt slave and not as an ordinary slave, meaning that he was sold on the condition that he was a free man when the debt was repaid, and within the realm. But if the debt slave tried to escape his servitude, his master could choose to make him an ordinary slave. And if the debt slave refused to work, and the beating had no effect, the master could take him to the public assembly and again offer him to his kinsmen. If they this time as well did not pay for his freedom by repaying the debt, his master could bring him home and do with him as he liked; "hoggva af hanom hvart sem hann vill ovan æda nedan" – cut off what he likes above or below the belt.

If the debt was on three marks or less, a debtor could instead of entering servitude make one of his children a debt slave. If a debtor got a child while in servitude, and he could not manage to get anyone to take care of it, the child became the responsibility of his master. But the length of the servitude would increase with the cost of taking care of the child. If the debtor got several children, his kinsmen had to take them into care. If the debt was not repaid before the debtor lost his ability to work, his master would have to provide for him. This obligation the master could avoid by simply freeing the debt slave while he was still capable of working.

In the Gulating compilation for the western part of Norway, we do not encounter debt slavery as a mere measure to execute the payment of fines, but as a legal institute, and a social and economic phenomena in society. This was also the case for Iceland. This might not come as a surprise of two reasons. Firstly, Iceland was inhabited from the western part of Norway, which also remained its primary point of contact on the European mainland. Secondly, the story goes that Ulvjot from Iceland came to Norway to get aid from Torleiv Spake (the wise), who also advised King Håkon the Good on the Gulating compilation, to make what became the Icelandic laws in the tenth century.[24] However, there are few provisions in the Gulating compilation and in *Grágás* that are similar. This also counts for regulations on debt slavery – there are quite a few of them in both compilations of law, but the content is very different.

Grágás was, as the contemporary Norwegian collections of law, a compilation. That means that it was a private collection of legal rules, produ-

[24] See the online available translation of Vilhjálmur Finsen's *Are hinn Froðe Þorgilsson Íslendingabók* at http://www.heimskringla.no/wiki/%C3%8Dslendingab%C3%B3k_-_Overs%C3%A6ttelse (8. January 2016).

ced mainly through legislation, court practice and costume, that enjoyed a high status in the capacity of being a written document, but was still not a text with absolute authority. This is why *Grágás* exists in two manuscripts, *Konungsbók* and *Staðarhólsbók*, with similar but far from identical content. It is first with *Jarnsíða* in 1271/73 and *Jonsbók* in 1281, both issued by king Magnus the Law Mender, that Iceland got one authorized code of law. In these codes the importance of debt slavery was minimal. But if we focus on the Danish translation done by Vilhjámur Finsen in 1870 of *Konungsbók,* but with regards to *Staðarhólsbók*, we find ten provisions concerning debt slavery at least formally in use till 1271/73.

A formal criteria for taking a free man as a debt slave, was an announcement on the public assembly. On Iceland it seems this had to be done at Allthingi, the assembly common to all Iceland,[25] while in Gulating it is not specified what kind of assembly that could serve the purpose. Children of freed slaves could in Gulating even be taken as debt slaves if the announcement was made at a public assembly, a tavern or a legal meeting ordained by the Church. Debt slaves on Iceland lost their legal right to economic gain. If a debt slave gave an ice-bear the fatal blow or killed an outlaw, the master got the prize.[26] If a debt slave was the heir to someone killed, the right to compensation belong to his master unless his kinsmen bought him out of the servitude by repaying the debt.[27] He also lost his right to inherit land,[28] probably to keep the land in the family since it otherwise would be given to his master to cover the debt. Most interesting is that a person was obliged to enter servitude as a debt slave if the mother or father, with the mother being given preference to

[25] *Konungsbók* chapter 44 in the online available translation of Vilhjálmur Finsen's *Islændernes Lovbog i Fristatens Tid* at http://www.heimskringla.no/wiki/Thingsordningsafsnittet, and chapter 110 at http://www.heimskringla.no/wiki/Her_begynder_Afsnittet_om_Manddrab (08. January 2016).

[26] *Konungsbók* chapter 14 in the online available translation of Vilhjálmur Finsen's *Islændernes Lovbog i Fristatens Tid* at http://www.heimskringla.no/wiki/Kristenretsafsnittet (08. January 2016), and chapter 109b at http://www.heimskringla.no/wiki/Her_begynder_Afsnittet_om_Manddrab (08. January 2016).

[27] *Konungsbók* chapter 96 in the online available translation of Vilhjálmur Finsen's *Islændernes Lovbog i Fristatens Tid* at http://www.heimskringla.no/wiki/Her_begynder_Afsnittet_om_Manddrab (8. January 2016).

[28] *Konungsbók* chapter 118 in the online available translation of Vilhjálmur Finsen's *Islændernes Lovbog i Fristatens Tid* at http://www.heimskringla.no/wiki/Arveafsnittet (08. January 2016).

the father, needed care.[29] Debt slaves are on several occasions treated the same way as ordinary slaves.[30] That this had to be stressed, shows that they otherwise were differently treated.

Debt slavery in Icelandic law, was, like in the legal province of Gulating in Western Norway, a legal institute way beyond the execution of fines, and was a social and economic phenomenon next to being a legal one. There historical links between Icelandic law and the law of Gulating might be one the reason that debt slavery is a legal institute in both, while the difference in society and in legal development, caused a difference in content. It is harder to explain why there are so many detailed rules on debt slavery in *Grágás* and in the Gulating compilation, while this legal institute are not mentioned in the other contemporary Norwegian legal sources, hardly plays a role in other Nordic medieval legal sources from the High Middle Ages, and in western European legal sources from the Early Middle Ages.

One explanation could be that *Grágás* and the Gulating compilation are more literary than legal works, reflecting more the author's visions rather than social realities. To resort to such an explanation is especially tempting when facing the brutality in book IV chapter 15 in the Gulating compilation on how the master could treat debt slaves refusing to work: "hoggva af hanom hvart sem hann vill ovan æda nedan" – cut off what he likes above or below the belt. What first has to be noted is the extensiveness of the legal treatment of debt slaves, dealing with different detailed situations that we might imagine could occur and spur off legal uncertainty. Second, this kind of unpleasant brutality is not accidentally added to the compilation, or the consequence of a brut sense of humour with no relation to legal and social realities. Instead it is found throughout the Gulating compilation. A most telling example, are the rules on grave men, *grafgangs men*. The rule was that a former master of slaves had no duty to take care of them after they were freed. But if a freed slave and his wife, and their children, still asked their former master for support when in need, the former master should dig a grave at the churchyard,

29 *Konungsbók* chapter 128 in the online available translation of Vilhjálmur Finsen's *Islændernes Lovbog i Fristatens Tid* at http://www.heimskringla.no/wiki/Arveafsnittet (08. January 2016). See also chapter 127.

30 *Konungsbók* chapter 9 in the online available translation of Vilhjálmur Finsen's *Islændernes Lovbog i Fristatens Tid* at http://www.heimskringla.no/wiki/Kristenretsafsnittetittet, and chapter 110 at http://www.heimskringla.no/wiki/Her_begynder_Afsnittet_om_Manddrab (08. January 2016).

put the whole family in, and take care of the longest surviving.[31] An alternative was, according to another provision in the compilation, to take them in as debt slaves.[32] It should be noted that this last provision is in book XIII on naval defence of the realm, a chapter that was made by king Håkon the Good in the tenth century, and which remained royal domain.[33] Third, and most important, debt slavery was not abolished with the Norwegian Code of 1274, issued by king Magnus the Law Mender.[34] A man who had lost his property in an accident like a fire, ship wrecking or another kind of unfortunate event, got his duty to repay his debt postponed till God again had made him able to pay his dues. But if his poverty was not due to an accident, he had to enter forced labour to repay his debt. The master's right to beat him is not mentioned in this provision, but probably still remained, since beggars in general had no rights when begging if they could but would not work.[35] If escaping the forced labour, the debtor should be punished unless he deserved mercy. But it was unthinkable that the punishment should be lifelong slavery, just as it was unthinkable to give the master the right to cut off limbs if the debt slave refused to work. Forced labour was far less brutal in the Code of 1274 than in the Gulating compilation, just as it was far less brutal in *Jarnsíða* of 1271/73 and *Jonsbók* of 1281 than in Grágás, but it was not totally abolished, and became a part of royal legislation that in general was heavily influenced by new theological, philosophical and legal ideas.

Hence, that debt slavery is an abnormality in medieval legal sources, does not mean that the legal institute was not a part of law and society in Iceland and Western Norway. According to Orlando Patterson in *Slavery and Social Death* from 1982, "among the less commercially developed peoples, debt tended to create slaves by indirect cause."[36] An example of indirect caused debt slavery, is the pawning of a relative. This kind of debt slavery is not found in *Grágás* and the Gulating compilation. But according to Patterson "debt as a direct cause of slavery was more common among the commercially more advanced peoples."[37] This is the kind of debt slavery we find on Iceland and in the western part of Norway.

[31] The Gulating compilation IV-7/chapter 63.
[32] The Gulating compilation XIII-4/chapter 298.
[33] See The Gulating compilation XIII-21/chapter 314.
[34] The Norwegian Code of 1274 VIII-5.
[35] The Norwegian Code of 1274 VIII-5.
[36] Patterson, 1982 p. 124.
[37] Patterson, 1982 p. 125.

This were two societies that have unfriendly nature and poor agriculture in common, but which also had in abundance different kinds of natural resources, like fish and products of different kinds of game in the sea and the high mountains. In both societies, trade was therefore a prerequisite for wealth, and partly even played a role for survival. At the same time these were societies with a weak state formation, where the right,[38] and at time the duty,[39] to take vengeance played a central role in the legal system. Debt slavery made taking up loans and doing trade easier, but also prevented killings resulting from the non-payment of debts. It might be asked if debt slavery hence is a link between the commercial societies of Athens and Rome in antiquity, and Iceland and Western Norway in the High Middle Ages?

Trade played a significant role in society and the economy of other parts of Norway than the legal province of Gulating, in other parts of the Nordic countries, and in Western Europe in general. Other factors must hence also be taken into account. One factor of relevance might be that the kinship groups played for a long time a significant role in both the western part of Norway and on Iceland, like they did in Ireland. As we have seen, debt slavery was not possible unless the kinsmen refused to take on the duties of the debtor. Debt slavery was therefore not only a question of economic ruin, but of rejection of the kinsmen. Debt slavery was therefore in many ways less a question of the power relation between creditor and debtor, than of the relation between the debtor and his kinship group. As long as a kinship groups was a factor to be accounted for in society, debt slavery was less brutal than it first appears to be. In the Norwegian Code of 1274, the are no traces of kinship groups having a legal role in society any more. As we have seen, the most brutal aspects of debt slavery also vanished with this code.

Under any circumstance, we will leave the question open on why debt slavery appear in Icelandic and Western Norwegian law to an extent that is not known in other parts of the Nordic countries. What we can conclude is that it is not debt slavery on Iceland and in the western part of Norway that is the reason why debt slavery is a term still in use in contemporary debates, not even in the Nordic countries. That is a result

[38] See the Gulating compilation X-11/chapter 160, X-11/chapter 160, X-46/chapter 195, X-47/chapter 196, VI-20/chapter 121, X-35/chapter 184, XIII-20/chapter 314, XIII-20/chapter 314 and X-35/chapter 184.

[39] The Gulating compilation X-37/chapter 186, X-3/chapter 152 and X-22/chapter 171.

of the link made between debt slavery on one hand, and democracy and liberty on the other, in Greek and Roman history in antiquity. The decay of debt slavery as a legal institute on Iceland and in Western Norway went by unnoticed and unmythologized at the same time as the reduction of the importance of kinship groups in these societies in the thirteenth century.

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