THE COVENANT OF CIRCUMCISION

New Perspectives on an Ancient Jewish Rite

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Circumcision and Castration under Roman Law in the Early Empire

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Introduction

Although Jews represented a distinct ethnic and religious group within the social world of the Roman empire, the boundaries between Jew and non-Jew were permeable and often invisible. There were virtually no dependable markers of Jewish identity in the ancient world, either self-imposed or mandated from without. The world of the early empire was far removed from the rigid legal and cultural codes of the European high middle ages. The Jews' dietary code, their observance of the Sabbath and the seven-day week, and their singular and aniconic God were enshrined in the ethnographic discourse of the Greek and Latin speaking elites upon whom we are primarily dependent for our knowledge of the ancient Mediterranean world. Yet, in the social and economic domains, it seems that neither their names, nor their accents, nor their professions, nor their clothing, nor many other aspects of their daily lives served as reliable signs of ethnic or religious difference in Greco-Roman antiquity.[1] In most respects, Jews were just one group in a vast and diverse imperial system.

There is, of course, an important exception. While not unique to the Jews,[2] circumcision of the male genitals not only constituted one of their most distinctive practices, but also served as a particularly visible mark of difference.[3] This physical demarcation was especially acute in a society in which public nudity both during work and at play was prevalent and in which the perfection of the unaltered male physique was prized. From the controversy surrounding the *gymnasium* constructed in Jerusalem by the Hellenizing faction during the reign of Antiochus IV[4] to the scrutiny of the genitals of Jewish men by Roman authorities for the purpose of

collecting the punitive Jewish tax *(fiscus Judaicus)* following the Jewish War (64–73 C.E.),[5] circumcision remained a locus of contention among Jews as well as between Jews and their non-Jewish neighbors. The rite of circumcision was central to the creation of visible Jewish difference in antiquity, a form of "otherness" physically inscribed in the flesh.

The act and sign of circumcision did not, however, function in a social and cultural vacuum. Circumcision was not simply an anomalous Jewish peculiarity, but, to the Greek and Roman elites of the early empire, Jewish circumcision belonged to a larger category we might best term "genital mutilation." The understanding of circumcision by the surrounding culture was, at least in part, informed by the emergent social reality of castration and the increasing prominence of eunuchs in political and social life. Moreover, Hellenized Jewish elites themselves explored the meaning of the close affinity between Jewish ritual circumcision and other forms of genital mutilation. Moreover, alongside the literary, social, and economic spheres, the tension between the categories of circumcision and castration was continuously negotiated in the juridical domain as well. The analogy between these practices was, in fact, codified in a Roman law of the second century, which made explicit the widely held belief that the only factor that separated circumcision from castration was the identity of the body upon which it was performed or, in other words, the performative context of the action. This law explicitly addressed the affinities between circumcision and castration and, for the first time, codified the difference between the two. Only at this late date did Jewish circumcision emerge as a juridically defined and legally protected practice. Yet, in legally recognizing the autonomous existence of Jewish circumcision, the Romans simultaneously protected and delimited it. In fact, it is under these legal innovations of the second century C.E. that Roman notions of Jewish identity, built around membership in a specific *religio*, were brought to bear on the practice of circumcision. As we will see, the very law that mandated the difference between Jewish circumcision and castration paradoxically asserted the fundamental sameness of these forms of genital modification.

Early Legislation Regarding Castration

By the end of the first century C.E., the increasing rate of castration performed within the boundaries of the empire and the concomitant growth in trade in eunuchs had come under imperial scrutiny. This relatively early legislative activity preceded the rise of eunuchs to prominence at the imperial court by several hundred years. It was not until the late third century, following the capture of the Persian king's harem by Galerius in 298,

that eunuchs became central to the functioning of the emperor's household and government. As advisors, councilors, and household servants, these foreign-born slaves were uniquely suited as protective go-betweens, easing the relationship between the increasingly autocratic emperors and the ruling elites with whom they negotiated policy decisions. By the middle of the fourth century, eunuchs were to play a decisive role in the unfolding power struggles of the imperial family. The Emperor Julian (361–363 C.E.), in an attempt to purge the court of the extravagant luxury of his cousin, Constantius II (337–361 C.E.), executed large numbers of court eunuchs, including the chamberlain Eusebius and his followers in the eunuch corps.[6]

Despite this historical trajectory, eunuchs were virtually absent from the public record and from official imperial histories throughout the first and second centuries. This absence from public life should not be taken as an indication of total neglect on the part of Roman elites. The emergence of eunuchs was a slow and lengthy process.[7] A wide variety of sources attest to attempts as early as the end of the first century to regulate the trade in slaves castrated within the empire.[8] Castration enhanced the value of slaves traded in the empire, since it was believed to make them loyal and dependable, severed from social and family ties that might threaten their allegiance to their masters. Newly promulgated legislation against castration appeared under Domitian (81–96 C.E.) and his successor Nerva (96–98 C.E.). Suetonius, the second-century Roman historian, reports in his life of Domitian that "he (Domitian) prohibited the castration of males, and he lowered the price of the eunuchs who remained in the hands of slave-dealers."[9] Dio Cassius (c. 155–235 C.E.) in his history of the early empire corroborates this report: "Accordingly, though he (Domitian) himself entertained a passion for a eunuch named Earinus, nevertheless, since Titus also had shown great fondness for eunuchs, in order to insult his memory, he forbade that any person in the Roman empire should thereafter be castrated."[10] Concerning Nerva, Dio Cassius reports that "among (Nerva's) various laws were those prohibiting the castration of any man."[11] This anticastration legislation is preserved in Justinian's *Digest* in a section from Venuleius Saturninus's *Duties of the Proconsul*, book 1: "It is provided by a *senatus consultum* given in the consulship of Neratius Priscus and Annius Verus that whoever has his slave castrated is fined half his property."[12] These legal developments still deserved mention in the late fourth century at a time when the eunuch corps had become a fixture of imperial court life. Ammianus Marcellinus (c. 330–395 C.E.) still found it worthy of note that it was Domitian three hundred years earlier who had first tried to keep the production of castrates beyond the boundaries of the empire.[13]

The anxiety caused by this surge of commercial activity surrounding

the creation of eunuchs likewise merited sharp comment in the politically astute poetry of the day. Statius (c. 45–96 C.E.) praises Domitian for his legal innovations regarding castration, as one "who forbids vigorous sex to be destroyed, and as Censor protects grown men from fear of torment of their beauteous form."[14] The witticisms of Statius's contemporary Martial (38–103 C.E.) likewise praise Domitian for his active protection of public morality: "no one shall now be eunuch or adulterer while you govern, whereas before (for shame!) even a eunuch was an adulterer."[15] The economic realities of trade in castrates in no way mitigated the disgust that the practice elicited in Roman elites.

Although they did set a legal precedent for subsequent imperial policy concerning the trade in eunuchs, these early efforts at legislating this fledgling industry were merely provisional measures and not definitive solutions. A clear demand for reiteration of the Emperor's legal position on castration remained for each successive ruler to address. Hadrian (117–138 C.E.) expanded the specific policies of his predecessors concerning castration. Hadrian's legislation is preserved in the form of a *rescript*, or negotiated appeal and response, recorded in Justinian's *Digest* in a passage from book 7 of Ulpian's *Duties of Proconsul* (*fl.* 213–217 C.E.):

> The same deified Hadrian wrote in a *rescript:* "It has been decided, in order to end the practice of making eunuchs, that those who are found guilty of this crime are to be liable to the penalty of the *lex Cornelia*, and their goods must deservedly be forfeit to my imperial treasury. Slaves, however, who castrate others are to be punished with the extreme penalty [i.e. death]. If those who are liable on this charge fail to appear in court, sentence is to be pronounced in their absence as if they were liable under the *lex Cornelia*. It is certain that if those who have suffered this outrage announce the fact, the provincial governor must give those who have lost their manhood a hearing; for no one should castrate another, freeman or slave, willing or unwilling, nor should anyone voluntarily offer himself for castration. Should anyone act in defiance of my edict, the doctor performing the operation shall suffer a capital penalty, as shall anyone who voluntarily castrates himself *[item ipsi qui se sponte]*.[16]

Another passage of unspecified date and provenance, this time from Marcian's *Institutes*, reiterated this ruling yet again: "Again, anyone who castrates a man for lust or for gain is by *senatus consultum* subject to the penalty of *Lex Cornelia*."[17] These legally binding statements tightened up the laws against castration by charging that anyone who had carried out such an operation should be punished under the *Lex Cornelia de sicariis et veneficiis* (i.e., the law concerning murder and poisoning). Castration, even if voluntary or self-inflicted, was a capital crime.

Circumcision as Genital Mutilation among Jewish Elites

This intensification of legislative attention paid to castration had important implications for contemporary intra-Jewish debates surrounding circumcision in the first century. The near contemporaries, Philo of Alexandria and Paul of Tarsus engaged passionately in debates surrounding the practice of circumcision. These two men were deeply Hellenized and highly educated Roman citizens who sought to articulate in novel ways a place for Judaism within the predominantly Greek-speaking world of the eastern Mediterranean of their day. Recent research has addressed the relationship between the thought of these two seminal figures, in particular their parallel use of an allegorical hermeneutic to articulate and support their dualist attitudes toward body and soul.[18] My purpose here is not to enter into a full evaluation of their discussions of circumcision, but rather to emphasize those passages in their writings that juxtapose the categories of circumcision and castration.

Paul, in his capacity as apostle to the gentiles, is sorely vexed by the question of gentile adult circumcision within the early Jesus movement.[19] He writes passionately to the communities that he helped found, in rejection of the teaching being promulgated by other traveling Jewish-Christian missionaries that circumcision is necessary for full inclusion in the salvation offered by Jesus. In such contexts, Paul's fiercely ironic ire flashes out. Punning on the normal form of the Greek word for circumcision *peritome*, Paul creates a deliberate variant, calling circumcision *katatome*, or "mutilation." "Beware of the dogs, beware of the evil workers, beware of those who mutilate the flesh! For it is we who are the circumcision," he writes to the community at Philippi.[20] Although clearly polemical, this sharp barb expresses the close relationship Paul sees between circumcision and castration. In the *Letter to the Galatians*, Paul again lets his anger against his competitors show. He intones a curse against those who would recommend circumcision to the Gentile adherents of Jesus: "I wish that those who unsettle you [on this matter] would castrate themselves."[21] Paul does not recommend that his followers take up the provocative suggestion attributed to Jesus that those who are able ought "make themselves eunuchs for the kingdom of heaven."[22] Instead, Paul uses the resemblance between circumcision and genital mutilation as grounds for rejecting the practice as an essential rite of passage for his gentile followers.

While it might be said that Paul is here merely making polemical use of the obvious verbal and conceptual associations between circumcision and castration, Philo's reflections on eunuchism and castration reflect a far more significant and thoughtful treatment of the comparison. Alien to his

surrounding culture but so important to his own, circumcision served for Philo as a site of hesitation about his own Jewish tradition and his own conceptions of gendered sexuality. Philo is aware that Jews are ridiculed for their practice of circumcision. In a well-known passage at the beginning of his multipart treatise on the biblical commandments Philo reports:

> I will begin with that which is an object of ridicule among many people. Now the practice which is thus ridiculed, namely the circumcision of the genital organs *[he ton gennetikon peritome]*, is very zealously observed by many other nations, particularly by the Egyptians, a race regarded as pre-eminent for its populousness, its antiquity and its attachment to philosophy. And therefore it would be well for the detractors to desist from childish mockery and to inquire in a wiser and more serious spirit into the causes to which the persistence of this custom is due, instead of dismissing the matter prematurely and impugning the good sense of great nations.[23]

Philo then proceeds to offer a lengthy defense of the practice from a variety of perspectives, historical and medical as well as philosophical. It is perhaps surprising that in a number of passages Philo offers a comparable defense for the practice of castration. As we shall see, for Philo, the figure of the eunuch served as a fertile cultural signifier. The ambiguous figure of the eunuch represents the instability inherent in his conception of human existence in which rigid gender hierarchies are nonetheless permeable, thus providing Philo with a dynamic language of human growth and transformation.

In a number of little-known passages, Philo portrays the biblical character Joseph, conventionally a model of the idealized statesman, as a eunuch. Certainly Joseph's beauty and self-presentation make him suspect. This characterization, coupled with the nature of Joseph's career—first as a household slave and then as a powerful figure within the Egyptian bureaucracy—lends credence to Philo's suggestion that Joseph's career is the classic career of a eunuch. This portrayal is especially provocative, because in these cases the interpretation does not derive from negative hermeneutic play on the complexities of Joseph's effete character, but is instead aimed at depicting Joseph as a paragon of self-control and abstinence. Philo interrupts in midstream the flow of his invective against Potiphar's wife as the figure of corrupting Pleasure, wed to a eunuch who serves "none other than Pharaoh, destroyer of noble things."[24] He offers in place of this harsh, albeit expected, condemnation of the eunuch Potiphar, a radically different understanding of eunuchism:

> According to another account *[kat' allon logon]* it would be noblest to become a eunuch, if [in this way] our soul should be able to escape wickedness and

> unlearn passion. So Joseph too, the self controlling character when pleasure says to him "Sleep with me and, being human, indulge in human passions and enjoy the delights that come in life's course," refuses to comply with her.[25]

It is no longer Potiphar who is the eunuch, but Joseph. And the eunuch, far from representing emasculate and emasculating passion, signifies the transcendence of the physical and sexual self. Similarly, in a passage dealing precisely with the struggle to overcome human desire, Philo relates:

> To my thinking, those who are not utterly ignorant would choose to be blind rather than see unfitting things, and to be deprived of hearing rather than listen to harmful words, and to have their tongues cut out to save them from uttering anything that should not be said. . . . Certain wise men, they tell us, while being tortured on the wheel to induce them to reveal secrets have bitten off their tongue, and so contrived a worse torture for their torturers, who found themselves unable to obtain the information they wanted. It is better to be made into a eunuch than to rage after sexual intercourse.[26]

How are we to understand such texts in which castration serves as a trope for the spiritual perfection of the wise?

In his writings, Philo consistently uses the same language of "excision" to describe both castration and circumcision as symbols of the separation of soul from body and of the rejection of physicality. The semantic field that undergirds Philo's description of both castration and spiritual progress is identical to his discussion of the allegorical meaning of circumcision. In his defense of circumcision in *The Special Laws* Philo had written:

> Circumcision assimilates the circumcised penis to the heart. For as both are framed to serve for procreation, thought being generated by the spirit force in the heart, living creatures by the reproductive organ. . . . Thus the legislators thought to punish the organ of sexual intercourse, making circumcision *[peritome]* the figure of the excision *[ektome]* of excessive and superfluous pleasure.[27]

Like Paul, Philo plays with the word *peritome* (circumcision). In this case, however, he points out its affinity to the similar word *ektome* (excision), emphasizing the ethical symbolism of the act of circumcision and not its destructive dimension. For Philo, circumcision is not an empty commandment, but represents the profound spiritual truth that the male individual must, through struggle, learn to overcome the body by cutting out the passions from the heart. And, unlike many radical allegorizers in his own community, Philo recognized the need to enact such commandments physically

as well as in spiritual terms.[28] In biblical sources, both circumcision and castration define the boundaries of community, one a prerequisite for inclusion, the other a mark of exclusion.[29] Within Philo's Platonizing framework, however, castration, similar to circumcision, provides an apt metaphor for spiritual progress. For Philo, all circumcised Jewish men have in some respects undergone an alteration to their reproductive organs as a ritual of sanctification to ensure their inclusion in a sacred community.

The relationship between ritual circumcision and castration is given similar attention by another Hellenized semite named Philo. Philo of Byblos, a non-Jewish, Phoenician writer of the second century C.E. transmitted the myths and local histories of the ancient Phoenicians. Claiming to translate these tales from an ancient Phoenician writer named Sanchuniathon, Philo's Greek version of these sacred narratives represents a striking parallel to the project of the Hellenized Alexandrian Jews, Philo of Alexandria foremost among them, who had undertaken to interpret their own myths in light of the Greek philosophy of their day. The work of Philo of Byblos is preserved for modern readers only through the citations provided by Eusebius of Caesarea (c. 260–341 C.E.), the first historian of the Christian Church, in his *Preparation for the Gospel (Praeparatio evangelica)*. Philo assimilates circumcision to castration in his narrative concerning Kronos, the god of the Phoenicians, who circumcised himself to atone for his castration of his father Ouranos. "But when there was a pestilence and death, Kronos gives his beloved son to Ouranos, his father, as a wholly burned offering. He also circumcizes his [own] genitals and forced the allies with him to do the same."[30] Circumcision is an attenuated form of castration, less severe but sufficiently similar to function as ritual substitution for it. Writing in the second century, Philo may reflect the concerns of his own age as much as he does those of his ancient Phoenician ancestor.[31] Interestingly, his etiology of circumcision among the Phoenicians of the Syrian coast links it unabashedly to the mythic struggle between Kronos and his father Ouranos that is also at the heart of Hesiod's *Theogony*. In an inversion of the natural order, according to the myth it is the son who castrates the father. In order to expiate this act of violence, however, the son in turn establishes a tradition of circumcision to be enacted in all future generations by fathers on their sons.

Circumcision and Castration in Latin Authors of the Early Empire

This tendency to associate circumcision with castration also served far less serious purposes than Paul's polemical wit, Philo of Alexandria's metaphysical ethics, or Philo of Byblos's etiological myth. Roman *literati* often turned to this association in their attempts to mock what they considered a distinctive and grotesque Jewish trait. Pierre Cordier has recently pointed

out that Roman elites primarily identified the circumcised Jew with the unmanaged sexual behavior of the figure of Priapus and that they only later came to view circumcision as a form of genital mutilation.[32] Yet, the roots of this later development are already present in the remarks of first-century Latin writers on its brutal and disfiguring nature. Circumcision could be funny in its own right, but was all the more so when its affinity to the crude and violent practice of castration could be pointed out.

The Latin poet Horace recounts a story in which the speaker, suffering under the tedious company of his interlocutor, catches a glimpse of a friend passing by whom he hopes to draw into conversation, thereby disentangling himself. His friend, perhaps feigning ignorance of the speaker's plight, says he cannot stop to talk business on the Jewish Sabbath. "Do you wish to offend the clipped Jews *[curtis Iudaeis]*?" he asks in mock seriousness.[33] This reference to "clipped Jews" elicits despair on the part of the speaker. He bemoans his own fate: "To think so black a sun has shone for me! The rascal runs away and leaves me under the knife *[sub cultro]*." The humor of the passage depends on the identification of the speaker's social peril with a threat to his genitals, an association elicited by the mention of Jewish circumcision. Horace assimilates circumcision to genital mutilation or, at least, to partial castration.

A similar sensibility informs a number of passages in Petronius' *Satyricon*, a work written in the middle of the first century. Petronius considers circumcision the most salient feature of the Jews and often makes the practice the butt of his jokes.[34] In one particular passage, the hero of the work, Encolpius, lists circumcision among other grotesque deformations of the human body. When he suggests to his companions that they attempt to disguise themselves from their enemies by painting themselves black like Ethiopians, another character complains sarcastically: "Oh yes, and please circumcise us too, so that we look like Jews, and bore our ears to imitate Arabians, and chalk our faces till Gaul takes us for her own sons."[35] This brief list of grotesqueries is then followed by a longer catalogue of disfigurements of the body, including scarification of the face. Circumcision not only serves as a distinctive sign of Jewish identity but, more important, marks the Jews as a nation committed to barbarian practices.

This view of circumcision as a form of genital mutilation deepened with time. The late-fourth-century *Scriptores Historiae Augustae (SHA)* reports that the Bar-Kokhba revolt was sparked by a legal ban on circumcision: "At that time the Jews, too, began war because they were forbidden to mutilate their sexual organs *(genitalia mutilare)*."[36] Whatever the historical validity of this notoriously problematic work, its language is extraordinarily instructive. Despite the existence of the common Latin term for circumcision, the *SHA* makes use of a far more colorful and ideologically provocative phrase, *genitalia mutilare*. The technical terminologies of both

castration and circumcision are absent. In their place, we find the elision of castration and circumcision, which gives expression to broader cultural norms concerning all forms of genital mutilation as well as Jewish difference and its disastrous consequences.

The Emergence of Circumcision as a Legal Category

Until now we have looked at a number of cases in which circumcision was assimilated to castration by both Jews and non-Jews alike. Ironically, with the intensification of this cluster of associations, Roman imperial authorities were forced to reassert the distinction between these categories. It is under such circumstances that Jewish circumcision emerged within Roman legal and literary discourse as a distinct and autonomous category. The impact of Roman judicial thought and administrative structures on the practices and norms of colonized populations is perhaps nowhere so poignantly visible as in the force applied by the Romans to legislate and control the Jewish practice of circumcision. As we have seen, the period from the "Jewish War" (66–74 C.E.), through the obscure War of Quietus (115–117 C.E.), and extending into the aftermath of the Bar-Kokhba Revolt (132–135 C.E.) had seen tremendous legal activity on the part of the Roman imperial administration aimed at defining and controlling what it considered to be various forms of genital mutilation. This same period saw complex negotiations between Roman and Jewish authorities concerning the equally contested terrain of circumcision. It is in the wake of these legal innovations that Jewish circumcision, a practice Roman law had not previously legislated, emerged as a juridically defined category. In legally recognizing the existence of Jewish circumcision, Roman law came simultaneously to protect and delimit it.

Previous studies have often neglected to provide a convincing reconstruction of the techniques by which Roman law was brought to bear on the practice of circumcision. They have assumed that a universal, empire-wide prohibition of circumcision was passed under Hadrian, a position that has assumed the status of a rare orthodoxy among Jewish historians.[37] This innovation on the part of Hadrian, they claim, was in large measure responsible for sparking the uprising led by the messianic military leader Simon ben-Kosiba (Bar-Kokhba) in Judaea in 132 C.E. . In order to find support for this reconstruction, some have scoured the specific legal language adopted by Hadrian in the anticastration legislation cited earlier to locate covert references to circumcision in this law.[38] There is, however, no concrete evidence to support the assumption that the legal status of the practice of circumcision was addressed in Roman legislation before the time of Antoninus Pius.[39] Careful analysis of these legal documents makes

it possible to map out the impact of Roman legal and cultural norms on this primary sign of Jewish identity.

The accommodation of Jewish circumcision under Antoninus Pius is preserved in the *Digest* from book 6 of Modestin's *Rules* (*fl.* c. 225[40]). "The Jews were allowed by rescript of the divine Pius to circumcise only their own sons; whoever practices this on anyone who does not belong to their religion *(religio)* will be punished as a castrator *[castrantis poena]*."[41] The law presents the *novum* first in the form of a positive grant: Jews may circumcise, but only their own sons. Having recognized this right, it then proceeds to restrict it by referring to a previously existing limitation. Jewish circumcision, that is, circumcision at the hand of a Jew, performed on someone not belonging to the Jewish *religio*, is constituted as juridically identical with castration. The distinction between the two is not the operation itself, but the religious identity of the body on which that operation is performed.

We should, therefore, view the law against the background of anti-castration legislation explicitly alluded to in the *rescript's* second clause, and not with reference to hypothetical legislation concerning circumcision allegedly promulgated by Hadrian. When the law decrees that a circumcision performed on a non-Jew will be punished in accordance with the law of castration *(castrantis poena)*, it makes use of the Hadrianic legislation against the castration of slaves as its reference point. It is not surprising then that Modestin records this law in the portion of his compilation relating to the mistreatment of slaves.[42] The general prohibition from which Jewish circumcision emerges as a legally protected category is not a prior prohibition against circumcision, but rather the familiar ban on castration. We thus witness in this legal enactment circumcision emerging from castration as a novel category within Roman law. And, in the act of restricting the practice of circumcision among Jews, the *rescript* for the first time formally affirms its legality.

It is important to stress that we should not view the *rescript* through the lens of later legislation, especially prominent under the Christian emperors of the fourth to sixth centuries, that prohibited the possession and circumcision of non-Jewish slaves by Jews. In the second century the legal status of Jews had not yet been cast in terms of a religious conflict between Judaism and Christianity. Within the context of this earlier period, Antoninus Pius's law is aimed primarily at protecting slaves from what it viewed as yet another form of genital mutilation, Jewish circumcision.

A half-century later, Septimius Severus (193–211) passed legislation outlawing the conversion of non-Jews to Judaism: "It is forbidden to become a Jew under severe penalty."[43] By the time of Constantine, converts to Judaism would be subject to heavy censure and the Jewish community would be severely limited in its ability to coerce its members to stay within its bounds.[44] In this same period, Constantine and his successors reiterated

the old laws prohibiting the circumcision of non-Jewish slaves by Jews[45] and eventually prohibited Jews from buying non-Jewish slaves altogether.[46] The concerns of the Christian community, actively advocated by Constantine and his successors, would make use of Roman legal categories and procedures that had taken root under the pagan emperors. Throughout this whole period during which circumcision was subjected to increasing restriction, one thing, however, remained stable: Jews were never prohibited from circumcising their own sons by a Roman emperor.

Conclusion

The treatment of slaves generally and the production of castrates in particular served as the primary context of legal innovation concerning alterations to the male genitals throughout the first two centuries of the empire. Whatever legislation regarding circumcision did emerge in this period was not motivated by "civilizing" policies aimed at transforming the Jews and their ancestral customs. In the process of refining restrictions on castration, Roman legal experts were forced to differentiate Jewish ritual circumcision from the more inclusive category of genital mutilation. That they did so should not seem peculiar. As we have seen, Jews themselves had often reflected on the implicit relationship between circumcision and other forms of genital alteration. Non-Jewish authors viewed this practice as a humorously grotesque version of genital mutilation. Jews did constitute an identifiable ethnic group in the varied social mosaic of the Roman empire, and circumcision did serve as the chief mark of their distinctive way of life. Yet, we should not make the mistake of viewing circumcision as a discrete category. Jewish circumcision was easily assimilated by Jews and non-Jews alike into the more familiar category of genital mutilation. This juxtaposition of circumcision and castration challenged both Jewish autonomy and Roman tolerance. Once assimilated into the empire, Jews could not simply be permitted to function solely within the terms of their own tradition. It is in this social and cultural framework that Jews and their Roman masters negotiated the terms of their coexistence. The emergence of circumcision within Roman law is a small but important chapter in that centuries-long story of assimilation and difference.

Cultural Markings

1. David L. Gollaher, *Circumcision: A History of the World's Most Controversial Surgery* (New York: Basic Books, 2000), 108.

2. Gollaher, 93, citing Peter C. Remondino, *History of Circumcision from Earliest Times to the Present: Moral and Physical Reasons for Its Performance* (1891), 186.

3. Gollaher, 94.

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1. For an excellent analysis of why these social mechanisms did not make Jews distinctive, see Shaye J. D. Cohen, *The Beginnings of Jewishness* (Berkeley: University of California Press, 1999), 25–68.

2. As is well known, Herodotus 2.104.2–3 considers circumcision a distinctive feature of the entire Syro-Palestinian region. On the wide geographic scope of the practice, see Jacob M. Sasson, "Circumcision in the Ancient Near East," *Journal of Biblical Literature* 85 (1966): 473–76.

3. I provide here only a very partial list of only the most important discussions of circumcision as a mark of difference: John M. G. Barclay, "Paul and Philo on Circumcision: Romans 2.25–9 in Social and Cultural Context," *New Testament Studies* 44 (1998): 536–56; Daniel Boyarin, "'This We Know to Be the Carnal Israel': Circumcision and the Erotic Life of God and Israel," *Critical Inquiry* 18 (1992): 474–505; Cohen, *Beginnings of Jewishness*, 39–49; John J. Collins, "A Symbol of Otherness: Circumcision and Salvation in the First Century," in *"To See Ourselves as Others See Us": Christians, Jews and "Others" in Late Antiquity*, ed. J. Neusner and E. Frerichs (Chico, Calif.: Scholars Press, 1985), 163–86. Tacitus, *Histories* 5.5.1–2 already states this rationale explicitly: "They [the Jews] instituted circumcision of the genitalia so that they could be recognized by their difference." On circumcision as a "typically Jewish" practice, see Zdzislaw Zmygrider-Konpka, "Les Romains et la Circoncision des Juifs," *Eos* 33 (1931): 334–50; Peter Schäfer, *Judeophobia: Attitudes towards the Jews in the Ancient World* (Cambridge: Harvard University Press, 1997), 95–102.

4. See the account of the suppression of circumcision at 1 Maccabees 1:50–54 and the parallel account at Josephus, *Antiquitates judaicae* 12.241. On circumcision in the context of the gymnasium, see Allen Kerkeslager, "Maintaining Jewish Identity in the Greek Gymnasium: A Jewish 'Load' in CPJ 3.519 (=P. Schub. 37=P. Berol. 13406)," *Journal for the Study of Judaism* 28 (1997): 12–33.

5. Suetonius, *Domitian* 12.2. Citations from Classical authors are from the Loeb Classical Library unless otherwise indicated.

6. Shaun Tougher, "Byzantine Eunuchs: An Overview, With Special Reference to their Creation and Origin," in *Women, Men and Eunuchs: Gender in Byzantium*, ed. L. James (New York: Routledge, 1997), 168–84, esp. 169–70.

7. Walter Stevenson, "The Rise of Eunuchs in Greco-Roman Antiquity," *Journal of the History of Sexuality* 5 (1995): 495–511.

8. For systematic treatment of Roman slave law, see Alan Watson, *Roman Slave Law* (Baltimore: Johns Hopkins University Press, 1987).

9. Suetonius, *Domitian* 7.1.

10. Dio Cassius 67.2.3.

11. Dio Cassius 68.2.4.

12. *Digesta* 48.8.6. Neratius Priscus and Annius Verus were consuls during the reign of Nerva. Unless otherwise noted, all translations of the *Digest* are taken from *The Digest of Justinian*, trans. ed. Alan Watson (Philadelphia: University of Pennsylvania Press, 1998), 2 vols.

13. Ammianus Marcellinus 18.4.5.

14. Statius, *Silvae* 4.3.13. Translation mine.

15. Martial, 6.2; cf. Martial, 9.6 Translation mine.

16. *Digesta* 48.8.4.2.

17. *Digesta* 48.8.3.4.

18. See especially Daniel Boyarin, *A Radical Jew: Paul and the Politics of Identity* (Berkeley: University of California Press, 1994). But, for a very different account of Paul's relationship to Jewish law and community, see John G. Gager, *Reinventing Paul* (New York: Oxford University Press, 2000), and Stanley K. Stowers, *A Rereading of Romans* (New Haven: Yale University Press, 1994).

19. For contrasting views of Paul's attitude toward circumcision, see Paula Fredriksen, "Judaism, the Circumcision of Gentiles, and Apocalyptic Hope: Another Look at Galatians 1 and 2," *Journal of Theological Studies* n.s. 42.2 (1991): 532–64; and Peder Borgen, "Paul Preaches Circumcision and Pleases Men," in *Paul and Paulinism: Essays in Honour of C. K. Barret*, ed. M. D. Hooker and S. G. Wilson (London: SPCK, 1982), 37–46.

20. Philippians 3:2.

21. Galatians 5:12.

22. Matthew 19:12.

23. *Spec. Laws* 1.3. On this passage, see also Richard D. Hecht, "The Exegetical Contexts of Philo's Interpretation of Circumcision," in *Nourished with Peace: Studies in Hellenistic Judaism in Memory of Samuel Sandmel*, ed. F. E. Greenspahn, E. Hilgert, and B. L. Mack (Chico, Calif.: Scholars Press, 1984), 51–79.

24. *Alleg. Interp.* 3.236.

25. *Alleg. Interp.* 3.236–37.

26. *Worse* 176.

27. *Spec. Laws* 1.9. Likewise, at *Migration* 92, Philo writes: "It is true that receiving circumcision does indeed portray the excision of pleasure and all passions, and the putting away of the impious conceit, under which the mind supposed that it was capable of begetting by its own power: but let us not on this account repeal the law laid down for circumcision. Why, we shall be ignoring the sanctity of the Temple and a thousand other things, if we are going to pay heed to nothing except what is shown us by the inner meaning of things. Nay, we should look on all these outward observances as resembling the body and their inner meaning as resembling the soul."

28. *Spec. Laws* 1.1–10.

29. Deuteronomy 23:1–2.

30. Eusebius, *Praeparatio evangelica* 1.10.33 (=Jacoby, FGrH 790 F 2); Albert I. Baumgarten, *The Phoenician History of Philo of Byblos* (Leiden: Brill, 1981), 215.

31. Baumgarten, *Phoenician History*, 5–6.

32. Pierre Cordier, "Les Romains et la Circoncision," *Revue des Etudes Juives* 160 (2001): 337–55.

33. Horace, *Sermones* 1.9.70. Translation mine.

34. E.g., Petronius, *Satyricon*, 68.4–8.

35. Petronius, *Satyricon*, 102.14.

36. *SHA*, Vita Hadriani 14.2.

37. For the clearest articulation of this *opinio communis*, see Cohen, *Beginnings of Jewishness*, 46.

38. See especially Alfredo M. Rabello's strained—almost midrashic—interpretation of Hadrian's law in "The Ban on Circumcision as a Cause of Bar Kokhba's Rebellion," *Israel Law Review* 29 (1995): 189–95, and also his "The Edicts on Circumcision as a Factor in the Bar-Kokhva Revolt," in *The Bar-Kokhva Revolt: A New Approach*, ed. A. Oppenheimer and U. Rappaport (Jerusalem: Yad Yitzhak Ben-Zvi, 1984), 37–41 (Hebrew).

39. Joseph Geiger was the first to argue this view in "The Ban of Circumcision and the Bar-Kokhva Revolt," *Zion* 41 (1976): 139–47 (Hebrew). I further develop this view in "Negotiating Difference: Genital Mutilation in Roman Slave Law and the History of the Bar Kokhba Revolt," in *The Bar Kokhba War Reconsidered*, ed. Peter Schäfer (Tübingen: Mohr Siebeck, forthcoming).

40. Andrew Borkowski, *Textbook on Roman Law*, 2d ed. (London: Blackstone Press, 1994), 50. Modestin was the pupil of Ulpian (*Digesta* 47.2.52.20).

41. *Digesta* 48.8.11.1. The translation is adapted from Peter Schäfer, "The Bar Kokhba Revolt and Circumcision: Historical Evidence and Modern Apologetics," in *Jüdische Geschichte in hellenistisch-römischer Zeit* (ed. A. Oppenheimer; München: Oldenbourg, 1999), 119; see also Schäfer, *Judeophobia*, 104. In so translating, Schäfer follows David Rokeah, "Comments on the Revolt of Bar Kokhba." *Tarbiz* 35 (1966): 122–31, where Rokeah unequivocally rejects the mistranslation "the Jews alone" that is proposed in E. Mary Smallwood, "The Legislation of Hadrian and Antoninus Pius against Circumcision," *Latomus* 18 (1959): 344; see also Smallwood's *The Jews under Roman Rule: From Pompey to Diocletian* (Leiden: Brill, 1976), 496–501. Smallwood's misreading continues to be at the crux of the misrepresentations of the law that are still current in much recent scholarship. Notable examples are Rabello, "The Ban on Circumcision," 211; Amnon Linder, *The Jews in Roman Imperial Legislation* (Detroit: Wayne State University Press, 1987), 100; and Moshe David Herr, "Persecutions and Martyrdom in Hadrian's Days," *Scripta Hierosolymitana* 23 (1972): 93.

42. This legislation concerning circumcision is included in *Digesta* 48.8.11 alongside legislation regarding the conditions under which a slave is protected from being thrown to the beasts. Both these fragments of legislation are drawn from book 6 of Modestin's *Rules*. The theme of this section seems to have been the protection of slaves from physical harm inflicted on them by their masters.

43. *Scriptores Historiae Augustae*, *Severus* 17.1.

44. This law of 329 promulgated under Constantine the Great is preserved in *Codex Theodosianus* 16.8.1 (=Linder, *The Jews in Roman Imperial Legislation*, # 8).

45. This law of 335 also under Constantine the Great is preserved in *Consitutio Sirmondiana* 4 (=Linder # 10).

46. This law of 339 promulgated by Constantine II is preserved in *Codex Theodosianus* 16.9.4 (=Linder # 11)

Rubin: "*Brit Milah:* Change in Custom"

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1. According to PT Yevamot 5:1:6 (c); BT Yevamot 45b. See also N. Rubin, *The Beginning of Life: Rites of Birth, Circumcision and Redemption of the First-born in the Talmud and Midrash* (Tel-Aviv: Hakibbutz Hameuchad, 1995), 85 (Hebrew).

2. BT Yevamot 22a.

3. For the process of conversion, see: S. Bialoblocki, "The Attitude of Judaism towards Proselytes and Proselytism," *Bar-Ilan* 2 (Jerusalem: Kiryath Sepher, 1964), 44–60 (Hebrew); M. Samet, "Conversion in the First Centuries C.E.," in I. Gafni, A. Oppenheimer, and M. Stern, eds., *Jews and Judaism in the Second Temple, Mishna and Talmud Period* (Jerusalem: Yad Izhak Ben-Zvi, 1993), 316–43 (Hebrew). For the significance of conversion, see A. Sagi and Z. Zohar, *Conversion to Judaism and the Meaning of Jewish Identity* (Jerusalem: Bialik Institute and Shalom Hartman Institute, 1995) (Hebrew); A. Sagi and Z. Zohar, "The Halakhic Ritual of Giyyur and Its Symbolic Meaning," *Journal of Ritual Studies* 9.1 (1995): 1–13.

4. E.g., he may not circumcise another Jew (PT Yevamot 8:1:8[d]), he is not permitted to offer the Paschal sacrifice (M Pesahim 5:3), and other restrictions. See Rubin, *Beginning of Life*, 85 n.1, and 173, n.38.

5. PT Yevamot 8:1:8(d); BT Shabbat 135a; Yevamot 71a. For one born circumcised and his status, see N. Rubin, "Historical Time and Liminal Time: A Chapter in Rabbinic Historiosophy," *Jewish History* 2.2 (1988): 8–22 (Hebrew).

6. T Shabbat 15(16):8; PT Yevamot 6:6:7(d); BT Yevamot 64b. See also Rubin, *Beginning of Life*, 93.

7. See, e.g., T Shabbat 15(16):9; PT Shabbat 19:2:17(a); BT Yevamot 72a.

8. On the process see H. Romberg, *Bris Milah* (Jerusalem and New York: Feldheim, 1982), 110–11; G. C. Denniston "'Modern' Circumcision: The Escalation of a Ritual," *Circumcision* 1.1 (1996): 3–11 <http//faculty.Washington.edu/gcd/CIRCUMCISION>. The first written testimony concerning the circumcision laws appears in *Kelalei ha-Milah* (The Rules of Circumcision) by R. Jacob ha-Gozer and his son R. Gershom ha-Gozer (thirteenth century). *Kelalei ha-Milah* was published in the book *Sichron B'rith Larischonim* by A. J. Glasssberg (Berlin: Itzkowski, 1982 [photocopy edition: Jerusalem, 1978]). These rules are generally followed to the present, and certainly represent a long tradition.

9. For recent mechanical and surgical methods look at the websites under "foreskin restoration."

10. We do not know of any challenge raised against the practice of circumcision