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*THE SLAVE QUESTION*¹

II

THE CHRISTIAN FAITH AND SLAVERY

This hope which the Christian religion awakened was based on the concept of human dignity—doubly affirmed, both by the idea of the creation of man in the image of God and by that of the redemption of mankind by the blood of Jesus Christ. All men, being possessors of an immortal soul, are equal in God, and this essential equality obliges each of us to respect others. Man must treat man as his fellow, as his neighbour, or in other words, as a person and not as a beast or a thing. “There is neither bond nor free” wrote St. Paul in the epistle to the Galatians, “for ye are all one in Christ Jesus.”

What a revolutionary impact that sentence must have had on a world which had been based from time immemorial on servitude! The Christian doctrine was thus essentially opposed to the practice of slavery, and we shall see how the Church, as its power grew greater, made every effort to combat that practice, the struggle being taken up later by the Christian moralists and philosophers. In this second chapter we shall trace these efforts, by way of the decisions of Governments and doctrinal trends, to the moment when the development of philosophical ideas and advances in international law led to an international campaign against slavery.

¹ See, *Supplement*, September 1954, p. 184.

During this century-long struggle those on the side of morality and natural law were by no means always successful. Although slavery may be regarded as having practically disappeared in Western Europe towards the end of the XVth century, it subsisted until much later in other European countries; outside Europe it continued to flourish, and even increased to a considerable extent as a result of the traffic in negroes shipped from Africa to the New World.

In spite of the boldness with which St. Paul had proclaimed his principles, he did not go as far as to believe in the possibility of an immediate and unconditional liberation of all slaves; nor did he recommend such a course. Showing some indulgence to slavery where it was tempered by a patriarchal spirit, the Church endeavoured first of all to attack the most inhumane forms of the practice. If a man in bondage can follow the rites of his religion, receive the sacraments, marry and found a family, then his life is not intolerable. But it becomes intolerable if these actions are forbidden him. The support which the Church gave to the slave in the matter of marriage was therefore of cardinal importance. It held that slaves were free to marry, even against the will of their masters, and that marriages between slaves could not be annulled. The support thus given to the founding of families was a decisive factor in the evolution of moral customs.

When the Barbarians overthrew the Roman empire they began by behaving in the same way as all other warlike peoples, treating those they had conquered as slaves. But later, having been converted to Christianity, they relied on the Church's support to establish their authority and, yielding to its influence, showed little objection to freeing their captives.

Pope Gregory I (St. Gregory) records the heroic example provided by St. Paulinus, bishop of Nola, in Campania, towards the end of the IVth century. A widow whose son had been carried off by the Vandals asked St. Paulinus for the wherewithal to buy him back. As the bishop had no money to give her, he decided to offer his own person in exchange. He was enslaved and taken to Africa, and was cultivating the gardens of the king of the Barbarians when the king discovered his holy cha-

racter and wished to send him home loaded with presents ; he refused to go alone, however, and asked for his companions to be freed. His request was granted and a ship loaded with wheat was provided to take them home. To this day the town of Nola continues to commemorate the return of St. Paulinus every year on Christmas Eve.

The bishops made constant attempts to ransom slaves. In 378 A.D., after the capture of Adrianople, St. Ambrose, Bishop of Milan, sold the sacred vases to buy back men, women and children who had been carried off into slavery by the Goths. When he was criticised for so doing he replied : " Souls are of greater value to Christ than precious metals ". A similar spirit of generosity was shown by St. Eligius whose goldsmith's shop provided him with a large income. Most of his resources were used to ransom captives. The chronicles tell us that he often redeemed up to a hundred slaves, men and women, at a time and then gave them the choice of returning to their homes or embracing a monastic life ; according to their choice, he would give them money for their journey home or make arrangements for their admission into a convent or monastery. The Ecclesiastical Councils always ratified such decisions, for, in the words of St. Gregory, " the holy canons intend the goods of the Church to be used for the ransom of captives ".

Where a slave could not be redeemed, the Church could at least protect him from inhumane treatment. In 549 A.D. the Orleans Ecclesiastical Council recognized the right of slaves who had been treated too harshly to take sanctuary in churches. They were only returned to their masters if the latter swore not to inflict corporal punishment on them, nor overburden them with work, nor brand them.

By restoring to manual labour the prestige it had lost, the Rule of St. Benedict helped in the VIth century to raise the social level of slaves, many of whom obtained their freedom by entering the monastery.

Serfdom gradually replaced slavery ; feudal law only recognized serfs, and although serfdom tied men permanently to the land they cultivated—a serious infringement of their liberty, it is true—it nevertheless allowed them to have a

family life and to possess personal property, and gave them a recognized status as real persons.

With the decline of the feudal system, serfdom, in its turn, tended to disappear. In France it was the Crown which first set the example of freeing serfs. In 1315 all the serfs on the royal estates were freed *en bloc* by a decree of Louis X. This example was followed generally and by 1350 serfdom was no more than a memory. The "churls" remained on their land and were dependent in certain respects on their lords, but they were not subject to the penalties which had been previously inflicted for flight. The freedom of the peasant population was thus progressively established in France, and by the end of the XVth century French jurists were able to declare that slavery was no longer practised in their country. They went still further and concluded that any slave who arrived on French soil was automatically freed by the mere fact of having breathed the air of a free country. In this connection Bodin¹ cites an order of the Parlement of Toulouse in 1558 by which a slave brought from Spain by a Genevese subject, who was passing through the town, was freed.

The same juridical progress was apparent in England and the Netherlands.

In the reign of Queen Elizabeth, an English jurist wrote that "the air of England is too pure for a slave to breathe therein".

The customary law of Antwerp laid down expressly that: "all slaves who come within the town and its franchises are free and beyond the power of their masters and mistresses; if the latter wish to keep them as slaves and make them serve against their will, they may appeal *ad libertatem patriae* and summon their masters and mistresses to appear before a magistrate, and be declared free by process of law"².

The position was the same in Amsterdam.

In other European countries, however, the practice of enslavement on account of debts had the effect of keeping

¹ BODIN: *Les six livres de la République*, Book I, Chapter 5.

² Translated from a text cited by Cino VITTA in *Liberté et moralité individuelles*, « Recueil des Cours de l'Académie de droit international », 45, page 564.

slavery in existence. Voltaire records that after the capture of Copenhagen by Charles XII, the King of Denmark proclaimed in his rolls that anyone who took up arms against the Swedes would be granted liberty. This declaration, adds the historian, had considerable weight "in a country which used to be free, but where all the peasants and many even of the upper classes are slaves today".

But it was above all in Russia that slavery flourished. It should incidentally be noted that the word "slave" did not come into use until the Xth century, when the German emperor, Otto the Great, repulsed the Slav invasion and reduced a vast number of prisoners of war to slavery. Even the name of these "Slavs" replaced the term used until then to describe the servile condition which had been transformed into serfdom in the countries of Western Europe, but had been maintained in all its rigour in Eastern Europe.

In spite of the conversion of the Principality of Kiev to Christianity, *Russkaya Pravda*, a collection of laws published by Yaroslav the Wise in the XIth Century, takes official account of slaves as a class. The *Kholopy* were former prisoners of war, either foreigners, or Russians from other principalities, or else insolvent debtors or men who had voluntarily sold themselves to a master. They were very numerous and could be sold. There was a busy trade in such slaves with the Byzantines who resold them in Venice, where the Riva dei Schiavoni perpetuates their memory.

In Russia, as in other Eastern countries, the Church no doubt endeavoured to transform slavery into serfdom. But the process of development of serfdom in Western Europe was reversed in the case of Russia. Instead of gradually progressing towards a system of free peasantry, Russian serfdom was transformed, from the XVIIth century onwards, into a new form of slavery almost as harsh as the old one.

The Russian Church also encouraged landed proprietors to free their peasants in their wills, but the peasants, having no means of establishing themselves, often sold themselves back either to the heirs or to new masters¹.

¹ See WELTER: *Histoire de Russie*, page 53.

Although certain princes tried to set limits to this voluntary bondage¹, such impulses were not maintained in view of the Crown's dependence on the support of the nobility, the class from which the officers of the army were recruited. The Code of 1649 abolished all limitation on the hunting down of fugitive slaves and may be said to have legalized slavery by authorizing the nobility to sell their serfs—even individually, separating members of the same family. Peter the Great felt the shame attaching to an institution which reduced men to the level of beasts, a state of affairs which was not, he said, “to be found in any country”. By a decree of 1721 he ordered the Senate to “put an end to this selling of men, and”, he added, “if it is not possible to suppress it entirely, let them only be sold by whole families”. But this law remained a dead letter. It would appear, incidentally, that the Emperor was himself resigned to this, as he speaks of “the untamed character of the Russians and the impossibility of making them work without compulsion”. In his absolute dependence on his owner, the Russian serf had become a mere thing.

The tendency of the Russian form of Christianity to consider man from the point of view of sin, and to humiliate rather than exalt his personal dignity, appears to have contributed to this result, whereas the less sombre Christianity of the West led to a blossoming forth of the individual.

In 922, for instance, the Coblenz Council had declared that anyone who carried off a Christian to sell him was guilty of homicide. In 1179 the Lateran Council had prohibited the selling into slavery of any Christian prisoner of war. Jurists had, in their turn, proclaimed the principle that anyone who was baptized immediately became free.

It should be noted that these theories implied some limitation of the universal bearing of the Christian idea at its origin. For if a man was preserved from slavery through being a Christian, did it not follow that he could be reduced to slavery if he was

¹ In 1605 Dimitry the pretender decreed that only the heads of families could sell themselves, and prohibited the hunting down of fugitive slaves.

not a Christian, especially in the case of war and capture, since custom demanded that prisoners of war should become slaves ?

That was certainly the interpretation accepted and practised through the centuries, during the struggles between Moslems and Christians—first of all after the Islam Conquests, then after the Crusades, and finally after the reconquest of Spain from the Moors.

Hence the presence of Moslem slaves in Spain, and the slave markets of Florence, Sicily and Catalonia ¹.

In return the Moslems reduced Christians to slavery. The pirates of the Barbary Coast even made this a flourishing industry.

The object of St. Louis' two crusades in 1250 and 1270 A.D., was to deliver the Christians captive in Barbary ; but as we know, they did not succeed. It was then that the religious Orders, the Trinitarians and the Fathers of Our Lady of Mercy, were organized and devoted themselves to the work of redeeming slaves, who, imprisoned in hulks in Algiers, Tunis and Saleh or on the Barbary galleys, were often ill-treated, beaten with knotted cords and deprived of all aid. Cervantes, who knew captivity in Tunis, describes in one of his plays the deplorable fate of a family of Christians who were seized by pirates while at sea, brutally separated from one another and sold by auction. It is true that in certain cases slavery was less harsh than this ; it even happened sometimes that slaves, after being converted to the Moslem faith, rose to high positions, like the French renegade who became the engineer and architect of the port of Mogador. On the whole, however, the condition of the Christian slaves was a miserable one, and the Barbary piracy an affliction for Christianity. It is estimated that when Louis XIV ordered Duquesne to bombard Algiers in 1648, there may have been from 5,000 to 6,000 French slaves there.

The Trinitarian Order was authorized to collect contributions towards the ransoming of captives in all the dioceses of the Kingdom of France. The Order had 150 lodges and was helped by the White Penitents who specialized in the exchange of currency ². The Marseilles Office of the Trinitarians arranged

¹ Slaves were also sold at the Champagne and Provence fairs during the XIIth and XIIIth centuries.

² The Berbers would only accept Mexican or Sevillian piastres.

passages for the agents who arranged the ransoms, and chartered ships to bring back the liberated captives ¹.

But they could not all be ransomed, and, concerned about their lot, St. Vincent de Paul, who had like Cervantes been a slave in Tunis, created the African Mission of Lazarists the object of which was to bring instruction and moral comfort to the Christian slaves in Barbary. This mission organized a correspondence service between prisoners and their families. Besides this the Lazarists ransomed prisoners with the alms at their disposal and, during the last fifteen years of his life, St. Vincent de Paul spent no less than a million pounds in buying back some 1,200 slaves.

In spite of the efforts which the Powers made to suppress it, the scourge of piracy continued to flourish for a long time. When France captured Algiers in 1830, there were still 122 slaves there—most of them French.

The discovery of America set Christian consciences a major problem. Were the natives of the continent really men? Many of the newcomers acted to begin with as though they doubted it. Don Juan de Zumarraga, the first bishop of Mexico, suspected, for example, that the Aztecs were not descended from Adam, and in order to destroy all traces of what he considered to be their diabolic origin, had several thousands of documents and manuscripts, which recorded their history and the results of their scientific investigations for centuries, burned.

The Church immediately reacted against such tendencies. In 1537 Pope Paul III published the famous papal bull *Veritas Ipsa* which "solemnly recognized these Indians as real men" adding that "they must not be reduced to slavery".

This pontifical act came as confirmation of the views which the monk Victoria had taught with incomparable brilliance at Salamanca for several years past. The illustrious Dominican rejected the idea of conquest. He based Spain's rights in America on the international rule which obliges the inhabitants of a country to give a friendly reception to those who visit them and

¹ See Gaston BONET MAURY : *La France et la rédemption des esclaves en Algérie à la fin du XVII^e siècle*. « Revue des Deux-Mondes », 1906, p. 989.

try to develop their territory without doing them any harm. This right was not that of military conquest (which might give rise to slavery through the application of the laws of war), but only a right of peaceful occupation. War was only justified for the purpose of repressing an *unprovoked* aggression by the natives against the Spanish. Victoria also denied the discoverers of the new world the right to make war on the native population and reduce them to slavery on the pretext that they were heathens ; “ because ”, he said, “ we cannot give the name of infidels to those who, not having been initiated into the Christian faith, are ignorant of the moral principles which condemn their customs and their way of life ”.

The influence of the Salamanca School on Charles V was strong enough to make him promulgate the wise and humane *Laws of the Indies*, under which the Indians were to be considered as free men, vassals of Spain. They were to be safeguarded and protected in the same ways as minors and could dispose of their property as they wished, or even—an exceptional measure—terminate their contracts in cases where they had been seriously wronged. The penalties inflicted on them for offences were less severe than the ordinary penalties in such cases, and in many respects they were subject to the common law of the Kingdom of Spain ¹.

This generous legislation obviously prevented all the natives being considered generally as slaves. It must, however, be admitted that the law was very often circumvented, the *encomienda* and *repartimiento* systems contributing in particular to this. The *encomienda* authorized the requisition of savages for a number of services, on condition they were well treated and given religious instruction. It was accorded as a favour to persons who had distinguished themselves in the Indies, and was valid during lives of the person to whom it was granted and his heir. The *repartimiento* was a privilege of a similar nature, but in respect of a lesser number of Indians and easier to obtain. It is certain that in all too many cases the rights thus granted led to the reestablishment of slavery.

¹ See R. OCTAVIO : *Les Sauvages américains devant le Droit*, « Recueil des Cours de l'Académie de droit international », 31, p. 222.

In Brazil, under the rule of the Portuguese, an attempt was at first made to establish slavery generally among the Indians. In 1511 a ship carried 30 Indian slaves to Portugal. But the mother country opposed such practices, and a code of regulations issued in 1548 recommended that the natives should be well treated and banned unprovoked attacks and the making of war on them under pain of death and confiscation of property. An exception was, however, made in the case of legitimate defence, authority being given to "fight those who act as enemies, to destroy their villages and hamlets, to kill and to take prisoners". It followed from this and later laws that Indians captured during a lawful war could be treated as slaves. In the same way, Indians who were handed over by their fathers for instruction, or who sold themselves after attaining their majority (i.e. when over 20 years old), became slaves, and so did natives who were taken prisoner by other tribes and preferred to be slaves of the Christians. This last clause encouraged a practice which developed, under the name of redemption (*resgate*), into a real hunt for Indians.

The situation became so scandalous that in order to end it Pope Benedict VII issued a papal bull in 1741 excommunicating anyone who deprived the Indians of their liberty; but the situation was only really changed by the vigorous action of Pompal, the all-powerful minister of Joseph I, who enfranchised the Indians entirely and placed them under Portuguese common law.

In North America the legal attitude of the British Government was originally similar to that advocated by Victoria and the Salamanca School. In the concessions for the establishment of colonies in America, the English Crown—which maintained the feudal system and reserved for itself the bare ownership of all land—accorded no privileges at the expense of the Indians. The letters of concessions related only to land which the Indians had abandoned of their own free will or to land conquered in a just war in which violence was repelled by violence ¹.

¹ See CARLIER : *La République américaine*, Vol. I, p. 4.

But here again the good intentions of the Government were circumvented by the abusive use made by the colonists of the right of legitimate self-defence. After fighting the Indians in order to protect themselves, they carried on the war in order to take prisoners and so have slave labour at their disposal.

The treatment of the Indians in the French colonies in Canada, which were established later, reflected a much more liberal outlook.

Richelieu's regulations were aimed at converting the Indians to Christianity with a view to making them subjects of the King of France. In general they were won over by gentle methods and persuasion except in the case of the Iroquois, whom it was necessary to fight before they could be pacified ; but the military operations were never accompanied by the reduction to slavery of the conquered.

It will be seen, then, that the enslavement of Indians was not carried out systematically in America ; it was to disappear, moreover, either through crossbreeding, the extermination of the Indians, or their confinement in reserves. On the other hand, traffic in negroes imported from Africa to work the newly aquired lands, had the effect of spreading slavery very considerably, especially in Brazil and in the United States.

Slavery was a normal practice in Africa as a result of inter-tribal warfare, and there was a considerable trade in black slaves with the Moslem countries.

Before the discovery of America, Henry the Navigator, the founder of Portuguese maritime power, had forbidden the slave trade. But private interests prevailed over public ethics and, by the end of the XVth century, Portuguese traders has established the trade in the Canary Islands and Guinea.

Consequently, when the laws of the Indies came to hamper the recruiting of slave labour among Indians, the colonists were greatly tempted to turn to the reservoir of manpower which existed in Africa. Nor did the State lag behind the colonists ; as early as 1501 the Catholic Kings advised the Governor of Hispaniola to procure negroes rather than Jewish or Moslem slaves for work in mines and on military constructions.

But that was not all : the slave trade provided the Spanish

Government with a large source of income, since, in addition to the proceeds of customs duty (which was calculated on the basis of the selling value of these human cargoes), the Government received two ducats per slave for import licences. As the need for manpower continued to grow, the Kings of Spain began to make real contracts with the slave traders. This was the origin of the *Assiento* (contract), the income from which was so assured that it was finally used as security for stock issued by the Treasury to enable it to pay its foreign debts.

The trade being very profitable, the Spanish State reserved it exclusively for its nationals. But smugglers were active, the English buccaneers vying with the Spaniards the most keenly for the profits of the slave trafic. Seamen who were later to win distinction in operating the British fleets served their military apprenticeship as slavers, and the day came when the settlement of a long war enabled England to obtain an official *assiento* from Spain, its terms being embodied word for word in the Treaty of Utrecht. A special clause in this Treaty authorized an English company to furnish America with 4,800 "Indies pieces" a year for a period of 30 years. The term "Indies pieces" meant a tall and perfectly formed negro. It often needed more than one individual to constitute a single Indies piece. Children at their mothers' breast did not count, and three young negroes under 15 years old counted as two Indies pieces. As M. George Scelle observes¹: "From the commercial point of view slaves are mere cattle. Animals are normally sold singly; slaves are sold by quantity like some form of provisions".

In 1786, one of the last years for which statistics of slaves entering America were kept, England introduced 38,000 negroes into the American colonies, France 20,000, Portugal 10,000, the United Provinces 4,000 and Denmark 2,000.

It is estimated that at this rate some twelve million negroes were carried off from Africa and transported to America. The traffic took place under such harsh conditions that at least the same number of individuals must have succumbed either to the

¹ G. SCELLE : *La Traite négrière aux Indes de Castille*, Paris 1906.

brutalities inflicted when they were captured or to ill-treatment during the voyage.

The development of the black slave traffic in America had certain repercussions in Europe, weakening the legal rules which had been hallowed by usage since the XVth century. By custom, negroes brought to Europe by their masters should have become free the very moment they landed. But that is not what happened. In France an edict of 1716, interpreted by a royal declaration of 15 December 1738, laid down specifically that the slaves of French colonists would be refused their freedom¹. It thus came about that in 1738 there were several thousand slaves in Paris. The Duke of Penthièvre, Admiral of France, certainly protested in 1762 against such provisions, which he regarded as illegal—and which would not appear to have been endorsed by Parliament. It is nevertheless true that serious concessions had had to be made, in practice, to interests which conflicted with legal principles.

In England the situation was exactly the same. In 1729, Attorney-General York and Solicitor-General Talbot formulated the opinion that the transportation of a slave did not affect his status. As a result the slave traffic was engaged in openly in London during the middle of the XVIIth century².

Thus, in spite of the part played by the Christian Powers in the discovery of the World, slavery remained in force in many lands, in defiance of the principles of Christianity.

When the Philosophers, ignoring all question of religious doctrine, took over the moral stock of Christianity and established a new code of ethics, they were indignant at the existence of such a situation. Montesquieu speaks of it with cutting irony in his *Esprit des Loix* (Book XV, chapter V), using the following words: "One cannot conceive that God, who is a very wise being, should have put a soul, especially a good soul, into a completely black body. It is impossible for us to suppose that

¹ If the latter ceased to be colonists and remained in France, they had to send their slaves back to the colony within a year.

² See *Report of the Royal Commission on fugitive slaves*, Blue Book, 1876, Memorandum of Lord Chief Justice Cockburne, p. 64.

such people are men, because if we were to suppose that they were men, one would begin to believe that we ourselves were not Christians. Small minds exaggerate the injustice done to Africans ; for if what they tell us is true, would the princes of Europe, who establish so many useless conventions among themselves, not have thought of drawing up a general convention in favour of mercy and pity ? ”

These last words of Montesquieu were the words of a prophet. International action was soon to hasten the adoption, in the different States, of decisive measures against slavery, which would henceforward be regarded as a shameful survival in a civilized world.

(to be continued)