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The Evolution of the Slave Status in American Democracy

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# THE JOURNAL OF NEGRO HISTORY

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## I

### THE EVOLUTION OF THE SLAVE STATUS IN AMERICAN DEMOCRACY

Slavery and freedom were constituent elements in American institutions from the very beginning. In the inherent antagonism of the two, DeTocqueville recognized the most serious menace to the permanence of the nation.<sup>1</sup> Slavery, which came in time to be known as the “peculiar institution” of the South, gradually shaped the social, moral, economic and political ideas of that section to fit its genius. The more democratic tendencies of the free industrial order of the North served by contrast to crystallize still more the group consciousness of the South. In this wise the erstwhile loyal South was slowly transformed into a section that was prepared to place local and sectional interests above national, and the result was secession. Just as it was not loyalty to inalienable human rights in the abstract that brought about the abolition of slavery in the North, but rather the gradual expansion of the idea of liberty through the free give and take of a vigorous democracy in which economic and social conditions militated against slavery, so it was not loyalty to States’ rights in the abstract that brought about the Civil War but rather the alien group

<sup>1</sup> “Democracy in America,” Vol. I, pp. 30, 361 ff, 369, 370, Colonial Press edition.

consciousness of the slave States which was the outgrowth of totally different economic and social conditions. It is the object of this paper to trace the influence of these various factors upon the status of the slave.

Slavery of both Indians and Negroes and white servitude were well recognized forms of social status in all the colonies, and slavery was general down to the time of the American Revolution. As early as 1639 we hear of a Negro slave in Pennsylvania. In 1644 Negroes were in demand to work the lowlands of the Delaware. In 1685 William Penn directed his steward at Pennsbury to secure blacks for work "since they might be held for life," which was not true of indentured servants.<sup>2</sup> Negro slaves were sold in Maryland in 1642.<sup>3</sup> Negroes are referred to in the Connecticut records as early as 1660.<sup>4</sup> An "act against trading with negro slaves" was passed in Elizabeth-Town, New Jersey, in 1682.<sup>5</sup> An entry in Winthrop's Journal, February 26, 1638, states that a "Mr. Peirce, in the Salem ship, the *Desire*, returned from the West Indies after seven months. He had been to Providence, and brought some cotton, and tobacco, and *Negroes*, etc."<sup>6</sup> The twenty Negroes sold to the colonists at Jamestown, 1619, were the first landed on the soil of Virginia and possibly the first brought to the American colonies.<sup>7</sup>

There is evidence to show that the status of the Negro was at first very closely affiliated with that of the white servant with whom the colonists were thoroughly familiar and who stood half way between freedom and complete subjection. It is probable, therefore, that both Indian and Negro servitude preceded Indian and Negro slavery in all the colonies,<sup>8</sup> though the transition to slavery as the normal status of the Negro was very speedily made. The first and

<sup>2</sup> Turner, "The Negro in Pennsylvania," pp. 1 and 19.

<sup>3</sup> Bracket, "The Negro in Maryland," p. 26.

<sup>4</sup> Steiner, "History of Slavery in Connecticut," p. 12.

<sup>5</sup> Cooley, "A Study of Slavery in New Jersey," p. 12.

<sup>6</sup> Moore, "Notes on the History of Slavery in Mass.," p. 5.

<sup>7</sup> Ballagh, "A History of Slavery in Virginia," p. 8.

<sup>8</sup> *Ibid.*, p. 30.

essential feature in this transition was the lengthening of the period of servitude from a limited time to the natural life. The slave differed from the servant then not so much in the loss of liberty, civil and political, as in the perpetual nature of that loss.<sup>9</sup>

There were several factors operating in the case of the Negro to fix the status of the slave as his normal condition, the earliest and one of the strongest of which was economic in character. Certainly the influences which brought Negro slavery to the West Indies and later to the British colonies to the north were primarily economic. As a result of her great commercial expansion in the first half of the fifteenth century Spain had established a thriving slave trade with the west coast of Africa. When it was discovered that the natives of the West Indies, who had been enslaved to meet the labor demands of the new world, were unable to do the work Spain began to import Negro slave labor at the suggestion of Bishop Las Casas, thus turning the stream of slave trade westward about the beginning of the sixteenth century. By way of the English island colonies, the Bermudas and Barbados, the slave trade extended northward to the American colonies, the first slaves being brought from the West Indies to Virginia in 1619, so that by the end of the seventeenth century the traffic had reached proportions that frightened the colonists into taking measures for its restriction.<sup>10</sup>

The fact that Negro slavery reached American soil by way of the West Indies is not without significance as throwing light upon the status of the slave especially in the southern colonies such as the Carolinas and Georgia. The first Negro slaves imported into South Carolina came from Barbados in 1671 and there is reason for thinking that the Barbadian slave code and customs were imported with the slaves, for the act passed in Barbados in 1668 declaring Negro slaves to be real estate was copied very closely in the

<sup>9</sup> Ballagh, *op. cit.*, p. 28.

<sup>10</sup> *Ibid.*, p. 11.

South Carolina act of 1690.<sup>11</sup> The stringency of the Barbadian slave code and the resulting barbarous treatment of the slaves have made the little island famous in history. "For a hundred years," says Johnston, "slaves in Barbados were mutilated, tortured, gibbeted alive and left to starve to death, burnt alive, flung into coppers of boiling sugar, whipped to death, overworked, underfed, obliged from sheer lack of any clothing to expose their nudity to the jeers of the 'poor' whites."<sup>12</sup> And yet the owners of these slaves were English, of the same stock under which developed the mild patriarchal type of slavery of Virginia. The difference in the status of the slave in Virginia and in the northern colonies as opposed to the colonies farther south, where in some places the Barbadian conditions were at least approximated, is to be explained in terms of the different social and economic conditions rather than the character of the slave-owners. The West Indian type of slavery was not conducive to the more intimate and sympathetic relations which arose between slave and master in the colonies to the north where a fairly complete integration of the Negro in the social consciousness of the white took place.

It is easy to distinguish factors in the economic conditions in the northern and southern colonies which brought about these differences in the status of the slave in the two sections. In the trading colonies of New England and in the farming colonies of the Middle States the occupations in which slave labor could be profitably made use of were limited in number. The climate was too cool, especially for freshly imported slaves. Slave labor was ill adapted to the kind of crops the soil demanded. The status of the slave from the very nature of the case approximated that of the servant. The slaves became for the most part servants, the time of whose service was perpetual. The slaves of Pennsylvania, for this reason, were treated much more kindly than the Negroes in the West Indies. Their lot was doubt-

<sup>11</sup> McCrady, "Slavery in the Province of South Carolina, 1670-1770," pp. 631 ff of the Report of the American Historical Association for 1895.

<sup>12</sup> Sir H. H. Johnston, "The Negro in the New World," pp. 217, 218.

less far happier than that of the slaves in the lower South.<sup>13</sup>

The conditions in the planting colonies from Virginia southward were different. Here was an unlimited supply of fertile lands which lent themselves readily to the unskillful and exhausting methods of slave labor. Here too was a warm climate congenial to the Negro, though enervating and often unhealthful for the white. The staples, such as the sugar cane, rice and later the cotton plant, were such as the unscientific slave labor might easily cultivate. All the conditions of profitable slave labor were present, namely, possibilities for concentration of labor, its absolute control and direction and exploitation.

The status of the Negro in the planting colonies was the outcome of these economic conditions. He was deprived of the stimulating effect of personal intercourse with the white, enjoyed by the slave at the north. His status was fixed by a certain position in an industrial system, the tendency of which was to attach him more and more to the soil and, especially on the larger plantation, to make of him a "living tool." He became, as time went on, the economic unit. Even free labor, in so far as it survived slave labor, was forced to take its measure of values from the slave. There were of course gradations in status even among the slaves in the lower South so that the same system could include the conditions described in Fanny Kemble's *Journal of a Residence on a Georgian Plantation* as well as those portrayed in Smedes' *Memorials of a Southern Planter*. If we take the whole sweep of country from New England to the far South, the differences in the status of the slave varied still more, including the exceedingly mild form of slavery in Pennsylvania where the slave was not essentially different from the indentured servant, the patriarchal slavery of Virginia, as well as the capitalistic exploitation of slave labor in the great rice plantations of South Carolina and Georgia and the cotton and cane plantations of Mississippi and Louisiana. Here, in some cases at least, the West Indian conditions were approximated. In the lower South particularly

<sup>13</sup> Turner, *op. cit.*, p. 40; see also DuBois, "The Suppression of the African Slave Trade," Chs. III and IV.

were found those conditions which as we shall see later tended to fix the slave status as an integral part of southern life so that in time it came to be spoken of as the South's "peculiar institution."

Strange as it may seem, religion also played a large part in the determination of the status of the slave in early colonial days. Just as it was the zeal of the early Church which had much to do with the eradication of the slavery of antiquity, so it was also the zeal and bigotry of churchmen that had much to do with the reinstatement of slavery of a type worse in some respects than that of antiquity. Speaking of the custom of the Spaniards of enslaving the Moors that fell into their hands through conquest, Prescott says: "It was the received opinion among good Catholics of that period, that heathen and barbarous nations were placed by the circumstances of their infidelity without the pale both of spiritual and civil rights."<sup>14</sup> The expansion that took place as a result of the discovery of the new world brought Europeans into contact with heathen who according to the prevailing opinions were without the pale of Christianity and, therefore, possessed of no rights that Christians need observe. It is not surprising then that Columbus brought back Indian slaves with him, though Isabella ordered returned those "who had not been taken in just war."

The Puritan settlers of New England were not one whit behind the Spanish in making use of the same religious grounds for the enslaving of the Indians conquered in war. Roger Williams in a letter to John Winthrop in 1637 writes as follows of a successful expedition against the Pequots: "It having again pleased the Most High to put into our hands another miserable drove of Adam's degenerate seed, and our brethren by nature, I am bold (if I may not offend in it) to request the keeping and bringing up of one of the children." The following extract from a letter to Winthrop in 1645 is a curious mixture of religious bigotry and Yankee shrewdness: "A war with the Narragansetts is very considerable to this plantation, for I doubt whether it be not sin

<sup>14</sup> "Ferdinand and Isabella," Part II, Ch. 8.

in us, having power in our hands, to suffer them to maintain the worship of the devil, which their pow wows often do; secondly, if upon a just war the Lord should deliver them into our hands, we might easily have men, women and children enough to exchange for Moors (Negroes?) which will be more gainful pillage for us than we conceive, for I do not see how we can thrive until we get into a flock of slaves sufficient to do all our business, for our children's children will hardly see this great continent filled with people, so that our servants will still desire freedom to plant for themselves and not stay but for very great wages. And I suppose you know very well how we shall maintain twenty Moors cheaper than one English servant.”<sup>15</sup> Few passages better illustrate how religious ideas and economic needs conspired to bring about the enslavement of both Indian and Negro at this early period.

Race also played its part in determining the slave status. There was present more or less from the very beginning of slavery in States like Virginia the tendency to limit such servitude to the Negro race. At first, when both Indian and Negro slaves were found together, there was no *a priori* ground for discriminating against the Negro in favor of the Indian and designating the status of the slave as the normal status of the Negro. The probable reason is that racial characteristics of the Indian made him a bad subject for slavery. The Massachusetts colonists found the Pequot Indians surly, revengeful and in the words of Cotton Mather unable to “endure the Yoke.”<sup>16</sup> The Negro, on the contrary, proved himself much more tractable and therefore more profitable as a slave. These plastic race traits, in fact, have enabled the Negro to survive while the less adaptive Indian has disappeared. Thus the bonds of a servile status hardened from decade to decade about the Negro, being determined partly by economic needs, partly by religious prejudices and partly by the Negro’s own peculiar racial traits.

Legislation, which always follows in the wake of status

<sup>15</sup> Moore, “History of Slavery in Massachusetts,” pp. 2, 10.

<sup>16</sup> Brackett, *op. cit.*, p. 20; Ballagh, *op. cit.*, p. 36.

and normally gives expression to it, corroborates what has just been stated. Virginia in the act of 1670 first fixed the legal status of the slave and so worded the act as virtually to protect the Indian from enslavement. By an act of 1705 she made Indian enslavement illegal, thus practically limiting slavery to the Negro. Hence at the time when Virginia drew up her famous Declaration of Rights, in which she affirmed the natural equality and inalienable rights of all men, the prevailing sentiment of the community undoubtedly was that the normal status of the Negro was that of the slave, which status placed him entirely without the scope of these lofty declarations. The protests of such men as George Wythe and Thomas Jefferson were contrary to the drift of the social mind.<sup>17</sup> The last stage in this process of determining status on the basis of race is to be found in the various slave codes that grew up in the Southern States. They were supposed to be done away with forever by the war amendments and Sumner's famous Bill of Rights but the problem is one far too subtle and intricate for regulation by statute, as the Supreme Court has discovered. Status based upon color still exists both North and South though without legal sanction.<sup>18</sup>

The noble conceptions of freedom and equality which were embodied in the bills of rights and the Declaration of Independence were destined in time to triumph over slavery, though not without bloodshed. It is interesting to trace their influence on the status of the slave. The doctrine of human rights found in the Declaration of Independence and in the bills of rights of the State constitutions, despite its metaphysical cast, is not derived from the political philosophy of the French; the key of the demolished Bastile sent by Lafayette to Washington by the hand of Thomas Paine symbolized rather the debt owed to America by France.<sup>19</sup>

<sup>17</sup> Ballagh, *op. cit.*, pp. 47 ff.

<sup>18</sup> Stephenson, "Race Distinction in American Law"; R. S. Baker, "Following the Color Line."

<sup>19</sup> Ritchie, "Natural Rights," p. 3; see also in this connection Jellinek, "The Declaration of the Rights of Man and of Citizens," and Scherger, "The Evolution of Modern Liberty."

The Declaration itself perhaps shows closer affiliations with John Locke's *Treatise on Civil Government*, which may be taken as a statement of the principles contended for in the Puritan Revolution of 1688. But even Locke's ideas of civil and religious liberty were not original with him. They were in reality the result of applying to the sphere of politics the logical implications of doctrines preached by the Protestant reformers of a century or two earlier in their revolt against the authority of tradition. To be sure the masses of men were ignorant of the theological distinctions drawn by Luther and Knox between the democracy of sin under the first Adam and the democracy of grace under the second Adam or Christ. The levelling effect of these ideas, however, was unmistakably felt as in the doggerel of John Ball, the mad Wycliffite priest of Kent,

“When Adam dalf and Eve span,  
Who was then the gentleman?”

In the next century under the pressure of their struggle against injustice masquerading behind charters and parliaments, the Puritans under the leadership of John Locke made their appeal to natural rights just as the reformers before them had made their appeal to the higher rights and duties that hold in a spiritual kingdom of grace. The appeal, originally religious in origin, now appears stripped of its theological setting and hence with a certain “metaphysical nakedness” which only the enthusiasm and sense of need arising from the necessities of their situation prevented its champions from perceiving. Locke and Blackstone, while insisting upon the absolute and inalienable rights of the individual, never broke with the feeling for precedent inherent in the Englishman. The natural rights they preached were only conceived as having validity within the sphere of the British subject and not for humanity in general.<sup>20</sup>

In very much the same way the colonists, in the struggles against royal oppression, felt the need for a higher and

<sup>20</sup> Jellinek, “The Declaration of the Rights of Man and of Citizen,” p. 56.

more comprehensive sanction for their conduct and following the precedent set them by the Puritans of the seventeenth century, they fell back upon the notion of inalienable rights possessed by each individual independent of society. Here, too, the inspiration and original setting of these ideas were strongly religious. Religious toleration had gained constitutional recognition in almost all the colonies so that the political movement out of which American freedom was born had the powerful support of religious sanction. To this fact must be attributed in part at least the tone of finality and absoluteness in the American declarations of rights. Out of this universal recognition of liberty of conscience arose the notion of a right of a higher sort not inherited but inherent and inalienable because rooted in man's religious nature—"a God-given franchise."

This sense of the inherent and inalienable nature of the rights of conscience was, under the stress of the immediate political exigencies of the struggle with England, very easily and naturally extended from the sphere of religion to that of civil and political rights. It provided the sanction for the break with the mother-country that was contemplated. Virginia's declaration of rights was intended to be law, for the preamble states that these rights "do pertain to them (the people of Virginia) and their posterity as the basis and foundation of government." And what are these rights? They are first of all, "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they can not by any compact deprive or divest their posterity, etc."<sup>21</sup> Thus, from the logic of events and not as a result of a philosophical speculation, the Revolutionary fathers were forced to take advanced ground in their definition of human rights. Leaving the fixed social order of the old country for the wilderness, where the only society was that of the savage, they naturally looked upon government as arising out of a compact behind which lay the sovereign autonomy of the individual by virtue of inalien-

<sup>21</sup> Jellinek, *op. cit.*, p. 84.

able rights given him by God. What more natural in their revolt from the old country than to make this doctrine the political and moral sanction of their course?

The rich emotional life aroused by the war for national independence as well as the struggle of over half a century later for the emancipation of the slave have given to these ideas of inalienable human rights a hold upon the conscience of the nation altogether incommensurate with their actual validity. It would be a thankless task and yet an altogether feasible one to show that the Revolutionary fathers did not break with English traditions in their declarations of rights. They simply stripped these principles of their original religious and political setting and persuaded themselves that through a fresh and rigorous restatement of them they had established their finality and originality. A stream is not changed by altering the name it bears at its fountain head. The very enthusiasm and loyalty of the men of '76 for what has been called "metaphysical jargon" leads one to suspect that the ultimate basis of these ideas lay in the social consciousness of the people. The democratic ideals they expressed in institutional forms—social, political or religious—belonged, of course, to the social heritage they brought with them from the old country. They did not, therefore, discover these "lost title deeds of the human race." It would be much nearer the truth to say they merely stated them clearly because by virtue of previous training and a new environment they had succeeded best in realizing those conditions, social and political, which alone make their clear statement possible. The measure of success and validity of any social doctrine, no matter how abstract, is to be found in its harmony with the background from which it springs and in the extent to which it actually succeeds in effecting needed social adjustments. It was perfectly natural that our forefathers should wish to proclaim as a new and unalterable truth, the everlasting possession of themselves and of all free people, what they already enjoyed. This did not alter the fact that the only guarantee for the perpetuity of these rights was the vigorous

democracy of which they were the expression. "The Americans," writes Jellinek, "could calmly precede their plan of government with a bill of rights, because that government and the controlling laws had already long existed."<sup>22</sup>

As these great notions of human rights first took hold of the Anglo Saxon through religion, so it was through religion also that the ideals of freedom and equality first affected the status of the slave. We have already seen what was the prevailing doctrine of Christendom at the time of the discovery of the new world. It was that infidels and heathen were without the Christian fold and so did not come under those sanctions of conduct that prevailed in the dealings of Christians with each other. The colonists, therefore, assumed "a right to treat the Indians on the footing of Canaanites or Amalekites" with no rights a Christian need regard.<sup>23</sup> The same was held true of the Negroes. In time, however, petitions began to be received from slaves desiring to be admitted to baptism and this raised the question concerning the status of the slave after conversion to Christianity.<sup>24</sup> The dilemma faced by the slave-owner with religious scruples was as follows: To confer baptism would be in accordance with the contention of pious churchmen that slavery was but a means to bring about the salvation of the heathen.<sup>25</sup> On the other hand, to admit to baptism would, according to the doctrines of the Reformation, destroy the slave status entirely. By virtue of having entered the democracy of grace represented by the Church of Christ, the distinction of bond and free disappeared. To keep out the slave would be to hamper the spread of Christianity; to admit him would be to eliminate slavery.

<sup>22</sup> Jellinek, *op. cit.*, pp. 88, 89.

<sup>23</sup> Moore, *op. cit.*, pp. 2, 30.

<sup>24</sup> *Ibid.*, p. 58.

<sup>25</sup> Cotton Mather, who sanctioned slavery, evidently had this in mind as the following observations show: "We know not when or how these Indians first became inhabitants of this mighty continent, yet we may guess that probably the devil decoyed these miserable savages hither, in hopes that the gospel of the Lord Jesus Christ would never come here to destroy or disturb his absolute empire over them." (Quoted by Moore, *op. cit.*, p. 31.)

This problem, however, seems never to have troubled the Puritan's conscience greatly.<sup>26</sup> From his stern, high Calvinistic point of view he was the elect of the earth, to whom the Almighty had given the heathen for an inheritance, and in this he found a satisfactory justification for his harsh and high-handed dealings with weaker races such as the Indian and the Negro. Yet the germ of freedom contained in the limited democracy of the elect of Calvinism was bound in time to break the hard theological moulds in which it was originally cast. It did this subsequently under the stress of external events in the effort to throw off the shackles of British oppression. Nowhere did the essential injustice of slavery become more evident to the minds of men than in the healthful humanizing and socializing atmosphere of the progressive industrial democracy of New England.

In the southern colonies especially, the question about the status of the converted slave threatened to interfere with the slave-traffic so that several of them passed acts to relieve the consciences of its citizens. That of Virginia in 1667 is typical. It was enacted that "Baptism doth not alter the condition of the person as to his bondage or freedom; in order that diverse masters freed from this doubt may more carefully endeavor the propagation of Christianity."<sup>27</sup> This act is interesting as showing the appearance even at this early period of the ethical dualism between free spiritual personality and the physical disabilities of slavery. This in time became classic with pro-slavery writers and perhaps received its strongest statement in a book that appeared even after emancipation.<sup>28</sup>

In the constitution of the province of Carolina, drawn up by John Locke in 1669, we have another interesting instance of the way in which the traditions of freedom associated with religion conflicted with slavery. The author of the famous *Treatise on Government*, which was in part the inspiration of our Declaration of Independence, did not feel that slavery was in any way in-

<sup>26</sup> Moore, *op. cit.*, pp. 58, 71.

<sup>27</sup> Ballagh, *op. cit.*, pp. 46, 47.

<sup>28</sup> Dabney, *Defence of Virginia*, pp. 158 ff.

compatible with the doctrine of freedom. Locke's constitution takes it for granted that slaves would form part of the population of the province, though the constitution was drawn up possibly two years before the first slave was brought to the colony.<sup>29</sup> Locke insists upon entire religious freedom. "No person whatsoever shall disturb, molest, or persecute another for his speculative opinions in religion or his way of worship." But he stipulates that this spiritual freedom shall in no way affect the status of the slave. "Since charity obliges us to wish well to the souls of all men, and religion ought to alter nothing in any man's civil estate or right, it shall be lawful for slaves, as well as others, to enter themselves, and be of what church or profession any of them shall think best and, therefore, be as fully members as any freeman. But no slave shall hereby be exempted from that civil dominion his master hath over him, but be in all things in the same state and condition he was in before." And again, even more explicitly in section 110: "Every freeman of Carolina shall have absolute power and authority over his negro slaves, of what opinion or religion soever." These sections were evidently intended to meet any scruples that might arise as to the effect of conversion upon the slave's status. The culmination of this discussion was an opinion of the Crown-Attorney and Solicitor-General of England, given in 1729 in response to an appeal from the colonists, to the effect that baptism in no way changed the status of the slave.<sup>30</sup> The trade of British merchantmen was being endangered and it was important to remove the scruples of the religious slaveholder.

In this feeling of Christian sympathy and fellowship for the slave who professed Christianity undoubtedly lay potentialities for the betterment of his conditions. Had there been favorable economic and political forces working to bring these notions of equality more and more to the con-

<sup>29</sup> McCrady, *op. cit.*, p. 644; for the text of the constitution see Perley Poore, "The Federal and State Constitutions, Colonial Charters and other Organic Laws of the United States," Part II, pp. 1397 ff.

<sup>30</sup> Brackett, *op. cit.*, p. 30.

sciousness of men, just as the storm and stress of political struggle forced them to espouse the doctrines of inalienable human rights, doubtless freedom would have come to the slave with the growing sense of the wider implications of democracy. Certainly had there prevailed in the South economic and social forces similar to those in the North, the emancipation of the Negro would have taken place naturally and normally in both sections. That Locke and his contemporaries felt no incongruity between their ideas of liberty and the existence of slavery must be attributed to the fact that the full social implications of their doctrines had not yet been brought home to them by industrial development. They accepted the status of the slave as a matter of course in the existing agricultural order.

It is easy to see in Virginia, the chief slave-holding State of the earlier period, how economic interests in time narrowed the sphere of action and finally counteracted entirely the tendency of religion to extend to the slave the ideal of freedom. In the act of 1670, the first which dealt with slaves in Virginia, the enfranchising effect of conversion was limited to servants imported from Christian lands; thus were excluded at once the great majority of Negroes who came, of course, from Africa. The few Negroes brought in from Christian lands, such as England and the West Indies, were assigned by the act to the status of servants from which many attained freedom. It was inevitable that, in Virginia and the southern colonies especially, the religious notion that profession of Christianity made a difference in status should disappear before the more practical principle of race and color. By the time of the Revolution the matter of religion had practically disappeared as a factor in the status of the slave,<sup>31</sup> except in so far as it continued in the form of the vicious ethical dualism which asserted that the slave could enjoy equality and freedom in the spiritual sphere while enduring physical bondage. This provided an effective salve for many a pious slaveholder's conscience.

At the time of the American Revolution before the real

<sup>31</sup> Ballagh, *op. cit.*, pp. 46 ff.

problem of slavery was felt, except in the minds of a few prophetic spirits such as Jefferson, we can still detect two clearly marked tendencies. At the South economic forces were combining with the social and racial conditions to fix the status of slave as the normal condition of the Negro, a most portentous fact for the future of that section. At the North economic and social conditions were pointing already towards a gradual emancipation of the slave in a democratic order that was becoming more and more conscious of the full significance of the ideas of freedom and equality.

What was the effect upon the status of the slave North and South of the struggle for independence and the adoption of a declaration to the effect that all men are free and equal and possessed of certain inalienable rights?<sup>32</sup> In Pennsylvania from the very beginning of the war of independence interest in the manumission of slaves increased until it finally culminated in the act of 1780, an "Act for the Gradual Abolition of Slavery," by adopting which Pennsylvania became the first State to pass an abolition law.<sup>33</sup> The preamble of this act asserts it to be the duty of Pennsylvanians to give substantial proof of their gratitude for deliverance from the oppression of Great Britain "by extending freedom to those of a different color but the work of the same Almighty hand." Previous to 1776 discussion had been going on also in Massachusetts looking to the abolition of slavery and in 1777 there was introduced an act with the preamble declaring that "the practice of holding Africans and the children born of them, or any other persons in slavery, is unjustifiable in a civil government, at a time when they are asserting their natural freedom."<sup>34</sup> This act never became law and it is an interesting commentary upon conditions in the North, and especially in New England, that in Massachusetts slavery was not abolished by legislation but by the slow working of public sentiment.

<sup>32</sup> Brackett, "The Status of the Slave, 1775-1789," pp. 263 ff of "Essays in the Constitutional History of the United States," edited by Jameson, 1889.

<sup>33</sup> Turner, *op. cit.*, p. 79.

<sup>34</sup> Moore, *op. cit.*, p. 182.

The assembly of Rhode Island, likewise, prefaced an act against the importation of slaves in 1774 by asserting that those who were struggling for the preservation of their rights and liberties, among which that of personal freedom is greatest, must be willing to extend a like liberty to others.<sup>35</sup> Similar agitation and legislation were going on in almost all the Northern and Middle States under the stimulus of the spirit of freedom of the time.<sup>36</sup>

It is easy to note a change in the mental atmosphere as we pass to the States farther south. The Assembly of Delaware tabled indefinitely a bill of 1785 for the gradual abolition of slavery, and Maryland in her declaration of rights adopted in 1776 restricted the enjoyment of certain rights *to freemen only*. A petition introduced in the House of Burgesses of Virginia in 1785, asking for general emancipation on the ground that slavery was contrary to the principles of religion and the ideas of freedom on which the government was founded, was read and rejected without an opposing voice; Washington remarked in a letter to Lafayette that it could hardly get a hearing.<sup>37</sup> In fact, there is evidence for believing that, while leading men such as Jefferson, Madison, Washington, Mason and Pinkney saw the evil of slavery and wished heartily to rid their States of it, the mass of the citizens of Maryland and Virginia did not wish to do away with the institution either because of social habits and economic interests, or because they felt unable to cope with the problem of an emancipated black population. It must be remembered that in Maryland there were three slaves to five whites, in Virginia and Georgia the numbers were about equal, in South Carolina there were two slaves to one white, while in Massachusetts there were sixty whites to one slave.<sup>38</sup> In the States farther south, the Carolinas and Georgia, no change or attempted change in the status of the slave seems to have occurred. The force

<sup>35</sup> Johnston, *op. cit.*, p. 22.

<sup>36</sup> Brackett, "The Status of the Slave, etc.," pp. 296 ff.

<sup>37</sup> *Ibid.*, p. 305.

<sup>38</sup> *Ibid.*, p. 265.

of social and economic habits was already too strong for the movings of the spirit of freedom to affect the status of the slave.

The leaders of the time realized this only too well. Patrick Henry, writing to a Quaker in 1773, said that slavery was "as repugnant to humanity as it is inconsistent with the Bible and destructive of liberty. Every thinking honest man rejects it as speculation, but how few in practice from conscientious motives! Would any one believe that I am a master of slaves of my own purchase? *I am drawn along by the general inconvenience of living without them.*"<sup>39</sup> Jefferson in a letter written in 1815 expressed the hope that slavery would in time yield "to the enlargement of the human mind, and its advancement in science," but he confessed also that "where the disease is most deeply seated, there it will be slowest in eradication. In the Northern States it was merely superficial and easily corrected; in the Southern, it is incorporated with the whole system, and requires time, patience and perseverance in the curative process. That it may finally be effected and its progress hastened, will be my last and fondest prayer."<sup>40</sup>

Little light is gained as to the position occupied by the slave in the social mind from the discussions and debates of the constitutional convention of 1787, although slavery is tacitly recognized in the clauses on representation and taxation, the extension of the slave-trade, and the regulation of fugitive slaves. In connection with the basis of representation and taxation the question arose whether the slave was a person or a chattel, but it was debated not with the view of bringing out what the consensus of opinion of the nation at large was but rather with a view to the political exigencies of the situation. The individual States had never been inclined nor did they now propose to surrender to the Union the right to determine the status of persons within their limits so that the debates were begun with the general concession of the fact that slavery existed in some

<sup>39</sup> Quoted by Merriam, "The Negro and the Nation," p. 19.

<sup>40</sup> Wks., VI, 456; IX, 515, Ford Ed.

of the States, that it would in all probability continue to exist, and that the future of the institution was primarily a problem that belonged to the individual States where it was found.

The problem facing the members of the convention was, therefore, to provide a system of representation that would ensure political equality to all sections and at the same time safeguard the peculiar conditions and social and economic institutions of each State. To base representation entirely upon the number of the free population would give an undue preponderance to the free States, while to base it upon all, both slave and free, would give an undue advantage to the five slave States. Hence the rather queer compromise that representation "shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, *three fifths of all other persons*"—"all other persons" being a euphemism for "slaves," a term which does not occur in the document. By this measure the slave was made to be only three fifths of a full social unit, or three fifths of a man. This would seem to imply that in the social consciousness of the nation at large the slave was part chattel and part person and this doubtless was the fact. Certainly this is not the last instance where a tendency has manifested itself to assign to the Negro a sort of intermediary status between a chattel and a full social unit. The question came up in 1829 in the Virginia constitutional convention in the struggle between the slaveholding eastern and the free western section of that State.<sup>41</sup> Doubtless one reason for the refusal of Congress to reduce the representation of the Southern States, after the legislation of a few years ago, that practically disfranchised the Negro in the far South, has been an unwillingness thus to lend national sanction to the inferior political as well as social status to which this legislation has at least for the time being reduced the Negro.

The clause in the constitution which subjected its framers to the bitterest criticism at the hands of anti-slavery agi-

<sup>41</sup> Greeley, "The American Conflict," I, p. 109 ff.

tators is that which requires that a "person held to service"—the term "slave" is here avoided also—in one State and escaping to another shall be delivered up on claim of the party to whom the service is due. In view of the interests to be reconciled this clause was undoubtedly necessary to union.<sup>42</sup> If the free States were to become a place of refuge for escaping slaves it meant disaster for the States in which the institution of slavery existed and they insisted upon this as a self-protective measure. The constitution recognized the right of each State to preserve the integrity of its own domestic institutions. "It can never too often be called to mind," says Rhodes, "that the political parties of the Northern States and their senators and representatives in Congress, scrupulously respected the constitutional protection given to the peculiar institution of the South, until, by her own act, secession dissolved the bonds of union."<sup>43</sup> The tragedy of the situation lay in the fact that the political necessities of the time made unavoidable this strange union between freedom and slavery, the fundamental incompatibility of which the expanding national life was bound to make clear to the minds of men.

Looking back on this momentous period we are struck with what Lecky calls "the grotesque absurdity of slave-owners signing a Declaration of Independence which asserted the inalienable right of every man to liberty and equality."<sup>44</sup> That the contradiction existed, that it was felt by men like Jefferson, and that it was destined to become more prominent in the mind of the nation as the implications and applications of the great ideas of freedom and equality were enriched and enlarged in the expanding life of a virile democracy, can not be denied. But it may be remarked in the defense of our Revolutionary fathers that they were facing the practical problem of effecting national unity and that "it is a tendency of the Anglo-Saxon race to take the expedient in politics when the absolute right can

<sup>42</sup> Curtis, "Constitutional History of the United States," I, p. 606.

<sup>43</sup> History of the United States, I, p. 24.

<sup>44</sup> Lecky, "A History of England in the Eighteenth Century," VI, p. 282.

not be had.”<sup>45</sup> They compromised on slavery and on the whole wisely. Moreover, the history of the development of great moral and political concepts indicates that men often formulate principles the logical implications of which are not grasped until new problems and the demand for new social adjustments emerge. The great moral categories of courage, temperance and justice first received scientific formulation at the hands of the Greeks; the ever swelling stream of human civilization has vastly enriched and enlarged these conceptions but without altering their essential meaning. When the idea of liberty which in 1776 included only one class, namely, those who owned the property and administered the government of the nation, was expanded so as to include every member of the social order, at that moment slavery was doomed.

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<sup>45</sup> Rhodes, “History of the United States,” I, p. 18.