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SLAVERY AND THE GENESIS OF AMERICAN RACE PREJUDICE

Over a century ago, Tocqueville named slavery as the source of the American prejudice against the Negro. Contrary to the situation in antiquity, he remarked: "Among the moderns the abstract and transient fact of slavery is fatally united with the physical and permanent fact of color." Furthermore, he wrote, though "slavery recedes" in some portions of the United States, "the prejudice to which it has given birth is immovable".¹ More modern observers of the American past have also stressed this causal connection between the institution of slavery and the color prejudice of Americans.² Moreover, it is patent to anyone conversant with the nature of American slavery, particularly as it functioned in the nineteenth century, that the impress of bondage upon the character and future of the Negro in the United States has been both deep and enduring.

But if one examines other societies which the Negro entered as a slave, it is apparent that the consequences of slavery have not always been those attributed to the American form. Ten years ago, for example, Frank Tannenbaum demonstrated that in the Spanish and Portuguese colonies in South America, slavery did not leave upon the freed Negro anything like the prejudicial mark which it did in the United States.³ He and others⁴ have shown that once the status of slavery was left behind, the Negro in the lands south of the Rio Grande was accorded a remarkable degree of social equality with the whites. In the light of such differing consequences, the role of slavery in the development of the American prejudice against the Negro needs to be reexamined, with particular attention paid to the historical details of origins.

I

Tannenbaum showed that in the Portuguese and Spanish colonies there were at least three historical forces or traditions which tended to prevent the attri-

¹ *Democracy in America* (New York, 1948), I, 358-60.

² Most recently, Oscar and Mary Handlin, "The Origins of the Southern Labor System", *William and Mary Quarterly*, 3rd Series, VII (April, 1950), 199-222.

³ *Slave and Citizen; The Negro in the Americas* (New York, 1947).

⁴ Gilberto Freyre, *Brazil: An Interpretation* (New York, 1945), pp. 96-101; Donald Pierson, *Negroes in Brazil* (Chicago, 1942), pp. 330-6.

bution of inferiority to the Negro aside from the legal one of slavery. One was the continuance of the Roman law of slavery in the Iberian countries, another was the influence of the Roman Catholic Church, and the third was the long history – by Anglo-American standards – of contacts with darker-skinned peoples in the course of the Reconquest and the African explorations of the fifteenth and sixteenth centuries. Roman law, at least in its later forms, viewed slavery as a mere accident, of which anyone could be the victim. As such it tended to forestall the identification of the black man with slavery, thus permitting the Negro to escape from the stigma of his degraded status once he ceased to be a slave. The same end, Tannenbaum showed, was served by the Roman Church's insistence upon the equality of all Christians and by the long familiarity of the Iberians with Negroes and Moors.

In North America, of course, none of these forces was operative – a fact which partly explains the differing type of slavery and status for Negroes in the two places. But this cannot be the whole explanation since it is only negative. We know, in effect, what were the forces which permitted the slave and the Negro in South America to be treated as a human being, but other than the negative fact that these forces did not obtain in the North American colonies, we know little as to why the Negro as slave or freedman, occupied a degraded position compared with that of any white man. A more positive explanation is to be found in an examination of the early history of the Negro in North America.

It has long been recognized that the appearance of legal slavery in the laws of the English colonies was remarkably slow. The first mention does not occur until after 1660 – some forty years after the arrival of the first Negroes. Lest we think that slavery existed in fact before it did in law, two historians have assured us recently that such was not the case. "The status of Negroes was that of servants", Oscar and Mary Handlin have written, "and so they were identified and treated down to the 1660's".⁵ This late, or at least, slow development of slavery⁶ complicates our problem. For if there was no slavery in the beginning, then we must account for its coming into being some forty years after the introduction of the Negro. There was no such problem in the history of slavery in the Iberian colonies, where the legal institution of slavery came in the ships with the first settlers.

The Handlins' attempt to answer the question as to why slavery was slow in appearing in the statutes is, to me, not convincing. Essentially their explanation is that by the 1660's, for a number of reasons which do not have to be discussed

⁵ Handlin, "Origins of Southern Labor", p. 203.

⁶ Virtually all historians of the institution agree on this. See U. B. Phillips, *American Negro Slavery* (New York, 1933), pp. 74–77; J. C. Ballagh, *History of Slavery in Virginia* (Baltimore, 1902), pp. 28–35. More recently, however, Susie Ames, *Studies of the Virginia Eastern Shore in the Seventeenth Century* (Richmond, 1940), pp. 101–10 and W. F. Craven, *Southern Colonies in the Seventeenth Century, 1607–1689* (Baton Rouge, 1949), pp. 217–9 have more than suggested that it is possible that slavery existed in Virginia almost from the very beginning of the Negro's history in America.

here, the position of the white servant was improving, while that of the Negroes was sinking to slavery. In this manner, the Handlins contend, Negro and white servants, heretofore treated alike, attained different status. There are at least two major objections to this argument. First of all, their explanation, by depending upon the improving position of white servants as it does, cannot apply to New England, where servants were of minor importance. Yet the New England colonies, like the Southern, developed a system of slavery for the Negro that fixed him in a position of permanent inferiority. The greatest weakness of the Handlins' case is the difficulty in showing that the white servant's position was improving during and immediately after the 1660's.

Without attempting to go into any great detail on the matter, several acts of the Maryland and Virginia legislatures during the 1660's and 1670's can be cited to indicate that an improving status for white servants was at best doubtful. In 1662, Maryland restricted a servant's travel without a pass to two miles beyond his master's house;⁷ in 1671 the same colony lengthened the time of servants who arrived without indenture from four to five years.⁸ Virginia in 1668 provided that a runaway could be corporally punished and also have additional time exacted from him.⁹ If, as these instances suggest, the white servant's status was not improving, then we are left without an explanation for the differing status accorded white and Negro servants after 1660.

Actually, by asking why slavery developed late in the English colonies we are setting ourselves a problem which obscures rather than clarifies the primary question of why slavery in North America seemed to leave a different mark on the Negro than it did in South America. To ask why slavery in the English colonies produced discrimination against Negroes after 1660 is to make the tacit assumption that prior to the establishment of slavery there was none. If, instead, the question is put, "Which appeared first, slavery or discrimination?" then no prejudgment is made. Indeed, it now opens a possibility for answering the question as to why the slavery in the English colonies, unlike that in the Spanish and Portuguese, led to a caste position for Negroes, whether free or slave. In short, the recent work of the Handlins and the fact that slavery first appeared in the statutes of the English colonies forty years after the Negro's arrival, have tended to obscure the real possibility that the Negro was actually *never* treated as an equal of the white man, servant or free.

It is true that when Negroes were first imported into the English colonies there was no law of slavery and therefore whatever status they were to have would be the work of the future. This absence of a status for black men, which, it will be remembered was not true for the Spanish and Portuguese colonies, made it possible for almost any kind of status to be worked out. It was con-

⁷ *Maryland Archives*, I, 451.

⁸ *Ibid.*, II, 335.

⁹ W. W. Hening, *Statutes at Large; being a Collection of all the Laws of Virginia...* (Richmond, 1809), II, 266.

ceivable that they would be accorded the same status as white servants, as the Handlins have argued; it was also possible that they would not. It all depended upon the reactions of the people who received the Negroes.

It is the argument of this paper that the status of the Negro in the English colonies was worked out within a framework of discrimination; that from the outset, as far as the available evidence tells us, the Negro was treated as an inferior to the white man, servant or free. If this be true, then it would follow that as slavery evolved as a legal status, it reflected and included as a part of its essence, this same discrimination which white men had practised against the Negro all along and before any statutes decreed it. It was in its evolution, then, that American colonial slavery differed from Iberian, since in the colonies of Spain and Portugal, the legal status of the slave was fixed before the Negro came to the Americas. Moreover, in South America there were at least three major traditional safeguards which tended to protect the free Negro against being treated as an inferior. In summary, the peculiar character of slavery in the English colonies as compared with that in the Iberian, was the result of two circumstances. One, that there was no law of slavery at all in the beginning, and two, that discrimination against the Negro antedated the legal status of slavery. As a result, slavery, when it developed in the English colonies, could not help but be infused with the social attitude which had prevailed from the beginning, namely, that Negroes were inferior.

II

It is indeed true as the Handlins in their article have emphasized that before the seventeenth century the Negro was rarely called a slave. But this fact should not overshadow the historical evidence which points to the institution without employing the name. Because no discriminatory title is placed upon the Negro we must not think that he was being treated like a white servant; for there is too much evidence to the contrary. Although the growth of a fully developed slave law was slow, unsteady and often unarticulated in surviving records, this is what one would expect when an institution is first being worked out.¹⁰ It is not the same, however, as saying that no slavery or discrimination against the Negro existed in the first decades of the Negro's history in America.

As will appear from the evidence which follows, the kinds of discrimination

¹⁰ John C. Hurd, *Law of Freedom and Bondage in the United States* (Boston, 1858-61), I, 163, points out that the trade "in negroes as merchandise was ... recognized as legitimate by European governments, without any direct sanction from positive legislation, but rested on the general customs among nations, known both in municipal and international private law". Furthermore, he reported that none of the colonies ever found it necessary to pass laws legalizing slavery. He quotes from the Connecticut Code of 1821: "Slavery was never directly established by statute; but has been indirectly sanctioned by various statutes and frequently recognized by courts, so that it may be said to have been established by law." I, 212 n.

visited upon Negroes varied immensely. In the early 1640's it sometimes stopped short of lifetime servitude or inheritable status – the two attributes of true slavery – in other instances it included both. But regardless of the form of discrimination, the important point is that from the 1630's up until slavery clearly appeared in the statutes in the 1660's, the Negroes were being set apart and discriminated against as compared with the treatment accorded Englishmen, whether servants or free.

The colonists of the early seventeenth century were well aware of a distinction between indentured servitude and slavery.¹¹ This is quite clear from the evidence in the very early years of the century. The most obvious means the English colonists had for learning of a different treatment for Negroes from that for white servants was the slave trade¹² and the slave systems of the Spanish and Portuguese colonies. As early as 1623, a voyager's book published in London indicated that Englishmen knew of the Negro as a slave in the South American colonies of Spain. The book told of the trade in "blacke people" who were "sold unto the Spaniard for him to carry into the West Indies, to remaine as slaves, either in their Mines or in any other servile uses, they in those countries put them to".¹³ In the phrase "remaine as slaves" is the element of unlimited service.

The Englishmen's treatment of another dark-skinned, non-Christian people – the Indians – further supports the argument that a special and inferior status was accorded the Negro virtually from the first arrival. Indian slavery was practised in all of the English settlements almost from the beginning¹⁴ and, though it received its impetus from the perennial wars between the races, the fact that an inferior and onerous service was established for the Indian makes it plausible to suppose that a similar status would be reserved for the equally different and pagan Negro.

The continental English could also draw upon other models of a differen-

¹¹ The Handlins, "Origins of Southern Labor", pp. 203–4, have argued that in the early years slavery meant nothing more than a low form of labor and that it had no basis in law. This is true insofar as statute law is concerned, but, as will appear later, in practice quite a different situation obtained.

¹² The Handlins, "Origins of Southern Labor", pp. 203–4, argue that the continental colonies could not have learned about a different status for Negroes from that of white servants from the slave trade because, they say, "the company of Royal Adventurers referred to their cargo as 'Negers', 'Negro-servants', 'Servants... from Africa', or 'Negro Persons' but rarely as slaves." They overlook, however, abundant references to Negro slaves in the correspondence of the contemporary Royal African Company. Thus in 1663 a warrant for that company refers to "negro slaves" as a part of its monopoly. *Calendar of State Papers, Colonial*, V, 121; see also p. 204. In that same year the Privy Council wrote that the Spanish were "seeking to trade with our island of Barbada for a supply of Negro Slaves...". And then the letter referred to a "supply of Negro Servants", and later still "for every Negro Person a Slave" and then "all such Negro Slaves". K. Donnan, *Documents Illustrative of the History of the Slave Trade*, (Washington, 1930), I, 161–2.

¹³ Quoted in Donnan, *Slave Trade*, I, 125.

¹⁴ See particularly, Almon Lauber, *Indian Slavery in Colonial Times Within the Present Limits of the United States* (New York, 1913), Chap. IV.

tiated status for Negroes. The earliest English colony to experiment with large numbers of Negroes in its midst was the shortlived settlement of Providence island, situated in the western Caribbean, just off the Mosquito Coast. By 1637, long before Barbados and the other British sugar islands utilized great numbers of Negroes, almost half of the population of this Puritan venture was black. Such a disproportion of races caused great alarm among the directors of the Company in London and repeated efforts were made to restrict the influx of blacks.¹⁵ Partly because of its large numbers of Negroes, Old Providence became well known to the mainland colonies of Virginia and New England.¹⁶ A. P. Newton has said that Old Providence

forms the connecting link between almost every English colonising enterprise in the first half of the seventeenth century from Virginia and Bermuda to New England and Jamaica, and thus it is of much greater importance than its actual accomplishments would justify.¹⁷

Under such circumstances, it was to be expected that knowledge of the status accorded Negroes by these Englishmen would be transmitted to those on the mainland with whom they had such close and frequent contact.

Though the word "slave" is never applied to the Negroes on Providence, and only rarely the word "Servant", "Negroes", which was the term used, were obviously *sui generis*; they were people apart from the English. The Company, for example, distrusted them. "Association [Tortuga island] was deserted thro' their mutinous conduct", the Company told the Governor of Old Providence in 1637. "Further trade for them prohibited, with exceptions, until Providence be furnished with English."¹⁸ In another communication the Company again alluded to the dangers of "too great a number" of Negroes on the island and promised to send 200 English servants over to be exchanged for as many Negroes.¹⁹ A clearer suggestion of the difference in status between an English servant and a Negro is contained in the Company's letter announcing the forwarding of the 200 servants. As a further precaution against being overwhelmed by Negroes, it was ordered that a "family of fourteen" – which would include servants – was not to have more than six Negroes. "The surplusage may be sold to the poor men who have served their apprenticeship".²⁰ But the Negroes, apparently, were serving for life.

Other British island colonies in the seventeenth century also provide evidence which is suggestive of this same development of a differing status for Negroes,

¹⁵ A. P. Newton, *The Colonising Activities of the English Puritans* (New Haven, 1914), p. 258.

¹⁶ *Ibid.*, p. 260.

¹⁷ A. P. Newton, *The European Nations in the West Indies, 1493–1688* (London, 1933), pp. 173–4.

¹⁸ *Calendar of State Papers, Colonial*, I, 249.

¹⁹ *Ibid.*, pp. 277–8.

²⁰ *Ibid.*, pp. 278–9.

even though the word "slave" was not always employed. Though apparently the first Negroes were only brought to Bermuda in 1617,²¹ as early as 1623 the Assembly passed an "Act to restrayne the insolencies of Negroes". The blacks were accused of stealing and of carrying "secretly cudgels, and other weapons and working tools". Such weapons, it was said, were "very dangerous and not meete to be suffered to be carried by such Vassals . . .", Already, in other words, Negroes were treated as a class apart. To reinforce this, Negroes were forbidden to "weare any weapon in the daytyme" and they were not to be outside or off their master's land during "any undue hours in the night tyme . . .".²²

During the 1630's there were other indications that Negroes were treated as inferiors. As early as 1630 some Negroes' servitude was already slavery in that it was for life and inheritable. One Lew Forde possessed a Negro man, while the Company owned his wife; the couple had two children. Forde desired "to know which of the said children properly belong to himself and which to the Company". The Council gave him the older child and the Company received the other.²³ A letter of Roger Wood in 1634 suggests that Negroes were already serving for life, for he asked to have a Negro, named Sambo, given to him, so that through the Negro "I or myne may *ever* be able" to carry on an old feud with an enemy who owned Sambo's wife.²⁴

There is further evidence of discrimination against Negroes in later years. A grand jury in 1652 cited one Henry Gaunt as being "suspected of being unnecessarily conversant with negro women" – he had been giving them presents. The presentment added that "if he hath not left his familiarity with such creatures, it is desired that such abominations be inquired into, least the land mourne for them".²⁵ The discrimination reached a high point in 1656 when the Governor proclaimed that "any Englishman" who discovered a Negro walking about at night without a pass, was empowered to "kill him then and there without mercye". The proclamation further ordered that all free Negroes "shall be banished from these Islands, never to return eyther by purchase of any man, or otherwise . . .".²⁶ When some Negroes asked the Governor for their freedom in 1669, he denied they had any such claim, saying that they had been "purchased by" their masters "without condition or limitation. It being likewise soe practised in these American plantations and other parts of the world."²⁷

²¹ J. H. Lefroy, *Memorials of the Discovery and Early Settlement of the Bermudas or Somers Islands, 1515–1685* (London, 1877), I, 127.

²² *Ibid.*, I, 308–9.

²³ *Ibid.*, I, 505. Cases in 1676 and 1685 indicate that this practice of dividing the children became the standard practice under slavery in a colony where the parcels of slaves were so small that few masters could have a spouse on their plantations for each of his adult Negroes. *Ibid.*, II, 427, 547–8.

²⁴ *Ibid.*, I, 539. Emphasis added.

²⁵ *Ibid.*, II, 30.

²⁶ *Ibid.*, II, 95–6.

²⁷ *Ibid.*, II, 293. As late as 1662 the perpetual character of slavery for Negroes was being obscured by their serving for ninety-nine years. See *Ibid.*, II, 166, 184.

In Barbados Negroes were already slaves when Richard Ligon lived there in 1647–50. “The Iland”, he later wrote, “is divided into three sorts of men, viz: Masters, servants, and slaves. The slaves and their posterity, being subject to their masters for ever,” in contrast to the servants who are owned “but for five years . . .”.²⁸ On that island as at Bermuda it was reported that Negroes were not permitted “to touch or handle any weapons”.²⁹

On Jamaica, as on the other two islands, a clear distinction was made between the status of the Negro and that of the English servant. In 1656 one resident of the island wrote the Protector in England urging the importation of African Negroes because then, he said, “the planters would have to pay for them” and therefore “they would have an interest in preserving their lives, *which was* wanting in the case of bond servants . . .”.³⁰

It is apparent, then, that the colonists on the mainland had ample opportunity before 1660 to learn of a different status for black men from that for Englishmen, whether servants or free.

III

From the evidence available it would seem that the Englishmen in Virginia and Maryland learned their lesson well. This is true even though the sources available on the Negro's position in these colonies in the early years are not as abundant as we would like. It seems quite evident that the black man was set apart from the white on the continent just as he was being set apart in the island colonies. For example, in Virginia in 1630, one Hugh Davis was “soundly whipped before an Assembly of Negroes and others for abusing himself to the dishonor of God and the shame of Christians, by defiling his body in lying with a negro”.³¹ The unChristian-like character of such behavior was emphasized ten years later when Robert Sweet was ordered to do penance in Church for “getting a negro woman with child”.³² An act passed in the Maryland legislature in 1639 indicated that at that early date the word “slave” was being applied to non-Englishmen. The act was an enumeration of the rights of “all Christian inhabitants (slaves excepted)”.³³ The slaves referred to could have been only Indians or Negroes,³⁴ since all white servants were Christians. It is

²⁸ Richard Ligon, *A True and Exact History of the Island of Barbados* (London, 1657), p. 43.

²⁹ *Ibid.*, p. 46.

³⁰ Quoted in Richard B. Morris, *Government and Labor in Early America* (New York, 1946), p. 499. As early as 1633, on the island of Tortuga, the separation of whites, servants or no, from Negroes was in evidence. At a time of anarchy on the island, “The eighty-odd Englishmen in the island had formed a council among themselves for the government of the colony and to keep in subjection the one hundred and fifty negroes, twenty-seven of whom were the company's property”. Newton, *Colonising Activities*, p. 214.

³¹ Hening, *Statutes*, I, 146.

³² *Ibid.*, I, 552.

³³ *Maryland Archives*, I, 80.

³⁴ It is not known whether there were any Negroes in Maryland at that date. J. R. Brackett, *The Negro in Maryland* (Baltimore, 1889), p. 26 found no evidence of Negroes before 1642.

also significant of the differing treatment of the two races that though Maryland and Virginia very early in their history enacted laws fixing limits to the terms for servants who entered without written contracts, Negroes were never included in such protective provisions.³⁵ The first of such laws were placed upon the books in 1639 in Maryland and 1643 in Virginia; in the Maryland statute, it was explicitly stated: "Slaves excepted".³⁶

In yet another way, Negroes and slaves were singled out for special status in the years before 1650. A Virginia law of 1640 provided that "all masters" should try to furnish arms to themselves and "all those of their families which shall be capable of arms" – which would include servants – "(excepting negroes)"³⁷. Not until 1648 did Maryland get around to such a prohibition, when it was provided that no guns should be given to "any Pagan for killing meate or to any other use", upon pain of a heavy fine.³⁸ At no time were white servants denied the right to bear arms; indeed, as these statutes inform us, they were enjoined to possess weapons.³⁹

One other class of discriminatory acts against Negroes in Virginia and Maryland before 1660 also deserves to be noticed. Three different times before 1660 – in 1643, 1644 and 1658 – the Virginia assembly (and in 1654, the Maryland legislature) included Negro and Indian women among the "tithables". But white servant women were never placed in such a category⁴⁰, inasmuch as

³⁵ Handlin, "Origins of Southern Labor", p. 210; Hening, *Statutes*, I, 411, 539. This is not to say that some Negroes were not indentured servants, for there is evidence to show that limited service was enjoyed by some black men. This was true even during the period after the recognition of slavery in the statutes. In October, 1673, for instance, the Council and General Court of Virginia ordered that "Andrew Moore A Servant Negro", who asserted he was to serve only five years, and who had the support of several "oathes", was declared free. Moreover, his erstwhile master was compelled to "pay him Corne and Clothes According to the custome of the country" and 400 pounds of tobacco and cask for the Negro's service since his time expired and to "pay costs". *Minutes of the Council and General Court of Colonial Virginia*, edited by H. R. McIlwaine (Richmond, 1924), p. 354.

³⁶ Hening, *Statutes*, I, 257; *Maryland Archives*, I, 80.

³⁷ *William and Mary Quarterly*, Second Series, IV (July, 1924), 147.

³⁸ *Maryland Archives*, I, 233.

³⁹ Handlin, "Origins of Southern Labor", p. 209, implies that these early restrictions were later repealed. "Until the 1660's", the Handlins write, "the statutes on the Negroes were not at all unique. Nor did they add up to a decided trend." In substantiation of this point they instance the "fluctuations" in the Negro's right to bear arms. Their cited evidence, however, does not sustain this generalization. Four references to the statutes of Virginia are made; of these four, only two deal with arms bearing. The first one, that referred to in the text above, indicates that Negroes were not to be armed. The other reference is at best an ambiguous statement about who is taxable and which of the taxables are to serve in the militia. It in no wise constitutes either a repeal or even a contradiction of the earlier statute, which, therefore, must be presumed to be controlling. Their evidence for "fluctuations" in the right of Indians to bear arms suffers from the same weakness of sources. The two statutes they cite merely confirm the right of certain Indians to possess guns and deny them to other Indians. No "fluctuation" in rights is involved.

⁴⁰ Hening, *Statutes*, I, 242, 292, 455; *Maryland Archives*, I, 342. The statement in Handlin, "Origins of Southern Labor", p. 217 n, that the "first sign of discrimination was in 1668 when white but not Negro women were exempt", is therefore erroneous.

they were not expected to work in the fields. From the beginning, it would seem, Negro women, whether free or bond, were treated by the law differently from white women servants.⁴¹

It is not until the 1640's that evidence of a status for Negroes akin to slavery, and, therefore, something more than mere discrimination begins to appear in the sources. Two cases of punishment for runaway servants in 1640 throw some light on the working out of a differentiated status for Negroes. The first case concerned three runaways, of whom two were white men and the third a Negro. All three were given thirty lashes, with the white men having the terms owed their masters extended a year, at the completion of which they were to work for the colony for three more years. The other, "being a Negro named John Punch shall serve his said master or his assigns for the time of his natural Life here or elsewhere".⁴² Not only was the Negro's punishment the most severe, and for no apparent reason, but he was, in effect, reduced to slavery. It is also clear, however, that up until the issuing of the sentence, he must have had the status of a servant.

The second case, also of 1640, suggests that by that date some Negroes were already slaves. Six white men and a Negro were implicated in a plot to run away. The punishments meted out varied, but Christopher Miller "a dutchman" (a prime agent in the business) "was given the harshest treatment of all: thirty stripes, burning with an "R" on the cheek, a shackle placed on his leg for a year "and longer if said master shall see cause" and seven years of service for the colony upon completion of his time due his master. The only other one of the seven plotters to receive the stripes, the shackle and the "R" was the Negro Emanuel, but, significantly, he did not receive any sentence of work for the colony. Presumably he was already serving his master for a life-time – *i.e.*, he was a slave.⁴³ About this time in Maryland it does not seem to have been unusual to speak of Negroes as slaves, for in 1642 one "John Skinner mariner" agreed "to deliver unto... Leonard Calvert, fourteen negro-men-slaves and three women-slaves".⁴⁴

From a proceeding before the House of Burgesses in 1666 it appears that as early as 1644 that body was being called upon to determine who was a slave. The Journal of the House for 1666 reports that in 1644 a certain "mulata" bought "as a slave for Ever" was adjudged by the Assembly "no slave and but

⁴¹ In his well-known emigrant pamphlet, *Leah and Rachel* (London, 1656), p. 12, John Hammond casts some interesting light on contemporary opinion regarding women who worked in the fields in Virginia. "The Women are not (as is reported) put into the ground to work, but occupie such domestique employments and housewifery as in England ... yet some wenches that are nasty, beastly and not fit to be so employed are put into the ground..."

⁴² *Minutes of the Council*, p. 466.

⁴³ *Ibid.*, p. 467.

⁴⁴ Catterall, *Judicial Cases*, I, 57 n. Mrs. Catterall does not think any Negroes came under this agreement, but the language itself testifies to an accepted special status for Negroes at that time.

to serve as other Christian servants do and was freed in September 1665".⁴⁵ Though no reason was given for the verdict, from the words "other Christian servants" it is possible that he was a Christian, for it was believed in the early years of the English colonies that baptism rendered a slave free. In any case, the Assembly uttered no prohibition of slavery as such and the owner was sufficiently surprised and aggrieved by the decision to appeal for recompense from the Assembly, even though the Negro's service was twenty-one years, an unheard of term for a "Christian servant".⁴⁶

In early seventeenth century inventories of estates, there are two distinctions which appear in the reckoning of the value of servants and Negroes. Uniformly, the Negroes were more valuable, even as children, than any white servant. Secondly, the naming of a servant is usually followed by the number of years yet remaining to his service; for the Negroes no such notation appears. Thus in an inventory in Virginia in 1643, a 22-year old white servant, with eight years still to serve, was valued at 1,000 pounds of tobacco, while a "negro boy" was rated at 3,000 pounds and a white boy with seven years to serve was listed as worth 700 pounds. An eight-year old Negro girl was calculated to be worth 2,000 pounds. On another inventory in 1655, two good men servants with four years to serve were rated at 1,300 pounds of tobacco, and a woman servant with only two years to go was valued at 800 pounds. Two Negro boys, however, who had no limit set to their terms, were evaluated at 4,100 pounds apiece, and a Negro girl was said to be worth 5,500 pounds.⁴⁷

These great differences in valuation of Negro and white "servants" strongly suggest, as does the failure to indicate term of service for the Negroes, that the latter were slaves at least in regard to life-time service. Beyond a question, there was some service which these blacks were rendering which enhanced their value – a service, moreover, which was not or could not be exacted from the whites. Furthermore, a Maryland deed of 1649 adumbrated slave status not only of life-time term, but of inheritance of status. Three Negroes "and all their issue both male and female" were deeded.⁴⁸

Russell and Ames culled from the Virginia court records of the 1640's and 1650's several instances of Negroes held in a status that can be called true slavery. For example, in 1646 a Negro woman and a Negro boy were sold to

⁴⁵ *Journals of the House of Burgesses of Virginia*, edited by H. R. McIlwaine (Richmond, 1914), II, 34.

⁴⁶ *Ibid.*, II, 34–5. His plea, however, was turned down, the Assembly not knowing "any Reason why the Publick should be answerable for the inadvertency of the Buyer..."

⁴⁷ John H. Russell, *The Free Negro in Virginia, 1619–1865* (Baltimore, 1913), p. 36. Russell concludes from his survey of inventories of estates for this early period that Negroes were valued from 20 to 30 pounds sterling, "while white servants of the longest term... receive a valuation of not more than £15 sterling". *Ibid.*, p. 35. Catterall, *Judicial Cases*, I, 58 n, upon concluding her investigation of inventories of estates, picked 1644 as the date at which "servant" standing alone, had generally become synonymous with 'white servant' and 'negro' with 'negro slave', ..."

⁴⁸ Catterall, *Judicial Cases*, IV, 9.

Stephen Charlton to be of use to him and his "heyers etc. for ever". A Negro girl was sold in 1652 "with her Issue and produce . . . and their services forever". Two years later a Negro girl was sold to one Armsteadinger "and his heyers . . . forever with all her increase both male and female".⁴⁹ For March 12, 1655 the minutes of the Council and General Court of Virginia contain the entry, "Mulatto held to be a slave and appeal taken".⁵⁰ Yet this is five years before Negro slavery is even implied in the statutes and fifteen before it is declared. An early case of what appears to be true slavery was found by Miss Ames on the Virginia eastern shore. In 1635 two Negroes were brought to the area; over twenty years later, in 1656, the widow of the master was bequeathing the child of one of the original Negroes and the other Negro and her children.⁵¹ This was much more than mere servitude – the term was longer than twenty years and apparently the status was inheritable.

Wesley Frank Craven, in his study of the seventeenth-century Southern colonies, has concluded that in the treatment of the Negro "the trend from the first was toward a sharp distinction between him and the white servant".⁵² In view of the evidence presented here, this seems a reasonable conclusion.

Concurrently with these examples of onerous service or actual slavery of Negroes, there were of course other members of the race who did gain their freedom.⁵³ But the presence of Negroes rising out of servitude to freedom⁵⁴ does not destroy the evidence that others were sinking into slavery; it merely underscores the unsteady evolution of a slave status. The supposition that the practice of slavery long antedated the law is strengthened by the tangential manner in which recognition of Negro slavery first appeared in the Virginia statutes.⁵⁵ It occurred in 1660 in a law dealing with punishments for runaway servants, where casual reference was made to those "negroes who are incapable

⁴⁹ Russell, *Free Negro in Virginia*, pp. 34–5. He also reports the instance of a Negro by the name of John Casor who was claimed, in 1655, as a "Negro for his life", but he was rescued from such a status by two witnesses testifying that he had an indenture. *Ibid.*, pp. 32–3.

⁵⁰ *Minutes of the Council*, p. 504. Handlin, "Origins of Southern Labor", p. 216, in arguing the late development of a different status for Negroes as compared with whites in Virginia, says: "As late as the 1660's the law had not even a word to describe the children of mixed marriages. But two decades later, the term mulatto is used..." Such a statement is obviously misleading, for though the Handlins presumably mean statute law, the decisions of the General Court were also "law". The *Oxford English Dictionary* cites references for the word "mulatto" for 1595, 1613 and 1657.

⁵¹ Ames, *Eastern Shore*, p. 105.

⁵² Craven, *Southern Colonies*, p. 219.

⁵³ See especially Russell, *Free Negro in Virginia*, pp. 36–9. See also Brackett, *Negro in Maryland*, p. 37.

⁵⁴ An indication that even freedom for the Negro carried certain disabilities is afforded by an instance reported by Ames, *Eastern Shore*, p. 107 from the Northampton County court records of 1654. For contempt of authority and abuse of certain persons, Anthony Longoe, a Negro, was ordered, almost twenty years after his release from service, to receive "thirty lashes now applied, and tomorrow morning thirty lashes more".

⁵⁵ A year earlier, 1659/60, a statute dealing with trade with the Dutch promised remission of a ten shilling tax if "the said Dutch or other forreiners shall import any negro slaves...". This is the first reference in the Virginia statutes to Negroes as slaves. Hening, *Statutes*, I, 540.

of making satisfaction by addition of time",⁵⁶ since they were already serving for life.

Soon thereafter, as various legal questions regarding the status of Negroes came to the fore, the institution was further defined by statute law. In 1662 Virginia provided that the status of the offspring of a white man and a Negro would follow that of the mother – an interesting and unexplained departure from the common law and a reversion to Roman law. The same law stated that "any christian" fornicating "with a negro man or woman . . . shall pay double the fines imposed by the former act". Two years later Maryland prescribed service for Negroes "durante vita" and provided for hereditary status to descend through the father. Any free white woman who married a slave was to serve her husband's master for the duration of the slave's life, and her children would serve the master until they were thirty years of age. Presumably, no penalty was to be exacted of a free white man who married a Negro slave.⁵⁷

As early as 1669 the Virginia law virtually washed its hands of protecting the Negro held as a slave. It allowed punishment of refractory slaves up to and including accidental death, relieving the master, explicitly, of any fear of prosecution, on the assumption that no man would "destroy his owne estate".⁵⁸

In fact by 1680 the law of Virginia had erected a high wall around the Negro. One discerns in the phrase "any negro or other slave" how the word "negro" had taken on the meaning of slave. Moreover, in the act of 1680 one begins to see the lineaments of the later slave codes. No Negro may carry any weapon of any kind, nor leave his master's grounds without a pass, nor shall "any negroe or other slave . . . presume to lift his hand in opposition against any christian", and if a Negro runs away and resists recapture it "shalbe lawful for such person or persons to kill said negroe or slave . . .".⁵⁹

Yet it would be a quarter of a century before Negroes would comprise even a fifth of the population of Virginia. Thus long before slavery or black labor

⁵⁶ Hening, *Statutes*, II, 26. The equivalent Maryland statute (1663) referred to "Negroes and other Slaves, who are incapeable of makeing Stisfaction [*sic*] by Addition of Tyme..." *Maryland Archives*, I, 489.

⁵⁷ Hening, *Statutes*, II, 170; *Maryland Archives*, I, 533–4. Handlin, "Origins of Southern Labor", p. 215 sees the genesis of these prohibitions in concern over status rather than in objection to racial intermarriage. This seems to be true for Maryland. But in speaking of the Virginia circumstances they write: "It was to guard against the complications of status that the laws after 1691 forbade 'spurious' or illegitimate mixed marriages of the slave and the free..." Actually, however, the Virginia statute of 1691 (Hening, *Statutes*, III, 87) clearly aimed at the prevention of "abominable mixture and spurious issue" by forbidding marriage of "English or other white man or woman being free" with "a negro, mulatto or Indian man or woman *bond or free*". (Emphasis added.)

⁵⁸ Hening, *Statutes*, II, 270. The working out of the exact legal status of slave property, however, was a slow one. A Virginia law of 1705 (Hening, *Statutes*, III, 333–4), declared "Negro, Mulatto and Indian Slaves . . . to be real estate", but there were a number of exceptions which suggest the later chattel nature of property in slaves. In South Carolina slaves were decreed to be real estate in 1690 and not until 1740 were they said to be legally chattels. Hurd, *Law of Freedom*, I, 297, 303.

⁵⁹ Hening, *Statutes*, II, 481–2.

became an important part of the Southern economy, a special and inferior status had been worked out for the Negroes who came to the English colonies. Unquestionably it was a demand for labor which dragged the Negro to American shores, but the status which he acquired here cannot be explained by reference to that economic motive. Long before black labor was as economically important as unfree white labor, the Negro had been consigned to a special discriminatory status which mirrored the social discrimination Englishmen practised against him.⁶⁰

IV

In the course of the seventeenth century New Englanders, like Southerners, developed a system of slavery which seemed permanently to fasten its stigma upon the Negro race. But because of the small number of Negroes in the northern provinces, the development of a form of slavery, which left a caste in its wake, cannot be attributed to pressure from increasing numbers of blacks, or even from an insistent demand for cheap labor. Rather it seems clearly to be the consequence of the general social discrimination against the Negro. For in the northern region, as in the southern, discrimination against the Negro preceded the evolution of a slave status and by that fact helped to shape the form that institution would assume.

References to the status of the Negroes in New England in this period are scattered, but, as was true of the Southern provinces, those references which are available suggest that from the earliest years a lowly, differential status, if not slavery itself, was reserved and recognized for the Negro – and the Indian, it might be added. The earliest date asserted in the sources for the existence of Negro slavery in Massachusetts is that of 1639. John Josselyn tells of a Negro woman held on Noddles Island in Boston harbor. Her master sought to mate her with another Negro, Josselyn says, but she kicked her prospective lover out of the bed, saying that such behavior was “beyond her slavery. . .”.⁶¹ Though the first legal code of Massachusetts, the Body of Liberties of 1641, prohibited “bond-slavery” for the inhabitants, it clearly permitted enslavement of those

⁶⁰ Like Virginia, Maryland developed its slave law and status long before the Negroes had become an important aspect of the labor force. As late as 1712, Negroes made up only slightly more than 20 per cent of the population. Brackett, *Negro in Maryland*, pp. 38–9. If Virginia was slow in bringing her slave practices out into the open air of the statute books, the same could not be said of Carolina. In the Fundamental Constitutions, drawn up in 1669, it is stated in article CX that “Every freeman of Carolina shall have absolute power and authority over his negro slaves, of what opinion or religion so ever”.

⁶¹ Massachusetts Historical Society, *Collections*, Third Series, III, 231. There is no doubt that there were Negroes at this time in Massachusetts, for in 1638 Winthrop reported that Capt. Peirce brought back from Old Providence “some cotton, and tobacco and negroes...” John Winthrop, *History of New England*, James Savage, ed. (Boston, 1853), I, 305.

who are "sold to us",⁶² which would include Negroes brought in by the international slave trade.⁶³

Such use of Negroes was neither unknown nor undesirable to the Puritans. Emanuel Downing wrote to John Winthrop in 1645 about the desirability of a war against the Indians so that captives might be taken who, in turn, could be exchanged

for Moores, which wilbe more gayneful pilladge for us then [*sic*] wee conceive, for I doe not see how wee can thrive untill wee gett into a stock of slaves sufficient to doe all our busines, for our children's children will hardly see this great Continent filled with people, soe that our servants will still desire freedome for themselves, and not stay but for verie great wages. And I suppose you know verie well how we shall maynteyne 20 Moores cheaper than one English servant.⁶⁴

The following year the Commissioners of the United Colonies recommended that in order to spare the colonies the cost of imprisoning contumacious Indians they should be given over to the Englishmen whom they had damaged or "be shipped out and exchanged for Negroes as the cause will justly serve".⁶⁵ Negroes were here being equated with Indians who were being bound out as prisoners: this was treatment decidedly a cut lower than that visited upon white servants.⁶⁶ That enslavement of Negroes was well known in New England by the middle of the century at the latest is revealed by the preamble to an act of Warwick and Providence colonies in 1652. It was said that it "is a common course practised amongst Englishmen to buy negers, to that end they may have them for service or slaves forever...".⁶⁷

⁶² Some events of 1645 indicate that those few words were of crucial importance to the Puritans. That year some Negroes were brought to Massachusetts by a Captain Smith and they were ordered by the General Court to be returned to Africa on the ground that their importation constituted "the hainous and crying sinn of man-stealing". But this was man-stealing only because Smith and his men had captured the Negroes in a raid, instead of buying them from traders. *Records of Massachusetts*, III, 48, 58, 84.

⁶³ Very early in New England history the concept of perpetual servitude – one of the distinguishing marks of slavery – appears in the records. In 1637 Roger Williams, in pleading for the lives of the captured Indians during the Pequot War, alludes to "perpetuall slavery" as an alternative to their execution. Massachusetts Historical Society, *Collections*, Fourth Series, VI, 214. The will of John Winthrop, written in 1639, deeded to his son Adam "my island" and "also my Indians there and my boat and such household as is there" Robert C. Winthrop, *Life and Letters of John Winthrop* (Boston, 1869), II, 252. Though at least three white men were sentenced to "slavery" in Massachusetts in the early years, in at least two cases this did not, in fact, amount to perpetuity, for they appear to have been released in a short time. The use of the word as a special form of service, however, is most interesting. *Records of Massachusetts*, I, 246, 310, 269.

⁶⁴ Massachusetts Historical Society, *Collections*, Fourth Series, VI, 65.

⁶⁵ *Records of the Colony of Plymouth* (Boston, 1859), IX, 71.

⁶⁶ John Cotton in 1651 clearly distinguished between slavery and servitude. He wrote Cromwell in that year in regard to the Scottish prisoners sent to New England, that "we have been desirous... to make their yoke easy... They have not been sold for slaves to perpetuall servitude, but for 6, or 7 or 8 yeares, as we do our owne". Quoted in George H. Moore, *Notes on the History of Slavery in Massachusetts* (New York, 1866), p. 17 n.

⁶⁷ *Records of the Colony of Rhode Island...* (Providence, 1856), I, 243.

By mid-century, Negroes were appearing in the inventories of estates and, significantly, the valuation placed upon them was very close to that found in Virginia inventories of the same period. Their worth is always much more than that of a white servant. Thus in 1650 "a neager Maide" was valued at £ 25; in 1657 the well-known merchant, Robert Keayne left "2 negros and a negro child" estimated to be worth £ 30. "A negro boy servant" was set at £ 20 in an estate of 1661.⁶⁸ A further indication of the property character of Negroes was the attachment by the constable of Salem in 1670 of a Negro boy "Seasar" as the "proper goods of the said Powell".⁶⁹

Despite the small numbers of Negroes in New England in this early period, the colonies of that region followed the example of the Southern and insular provinces in denying arms to the blacks in their midst – a discrimination which was never visited upon the English servant. In 1652 Massachusetts provided that Indians and Negroes could train in the militia the same as whites, but this apparently caused friction. The law was countermanded in 1656 by the statement "henceforth no negroes or Indians, altho servants of the English, shalbe armed or permitted to trayne".⁷⁰ Although as late as 1680 it was officially reported to London that there were no more than thirty "slaves" in Connecticut, that colony in 1660 excluded Indians and "negar servants" from the militia and "Watch and Ward".⁷¹

Edward Randolph in 1676 reported that there were a few indentured servants in Massachusetts "and not above two hundred slaves", by which he meant Negroes, for he said "they were brought from Guinea and Madagascar".⁷² But it was not until 1698 that the phrase "Negro slave" actually appeared in the Massachusetts statutes.⁷³ The practice of slavery was preceding the law in Massachusetts precisely as it had in the South. Though an official report to London in 1680 distinguished between Negro slaves and servants in Connecticut,⁷⁴ the law of that colony did not bother to define the institution of slavery. Indeed, as late as 1704, the Governor gave it as his opinion that all children born of "negro bond-women are themselves in like condition, i.e., born in servitude", though he admitted that there was no statute which said so. His

⁶⁸ Quoted in William B. Weedon, *Economic and Social History of New England* (Boston, 1891), p. 149 n. It was officially reported in 1680 by Connecticut colony that three or four "Blacks" were imported each year from the Barbados, and that they usually sold for £22 apiece. This was much more than the going price for servants. *Public Records of the Colony of Connecticut* (Hartford, 1850-90), III, 298.

⁶⁹ Quoted in Lorenzo Greene, *The Negro in Colonial New England, 1620-1776* (New York, 1942), p. 172.

⁷⁰ *Records of Massachusetts*, III, 268, 397.

⁷¹ *Records of Connecticut*, III, 298, I, 349.

⁷² Quoted in Palfrey, *History of New England*, III, 298.

⁷³ Hurd, *Law of Freedom*, I, 262. Greene, *Negro in New England*, pp. 65-6, says that in 1670 slavery in Massachusetts became legally inheritable, for in that year the word "strangers" was dropped from the Body of Liberties as a description of those who might be enslaved.

⁷⁴ *Records of Connecticut*, III, 298.

contention was, however, that such legislation was "needless, because of the constant practice by which they are held as such . . .".⁷⁵

During the last years of the seventeenth century, laws of Connecticut and Massachusetts continued to speak of Negroes as "servants", but it was very clear that the Negro's status was not being equated with that of the white servant. The General Court of Connecticut observed in 1690 that "many persons of this Colony doe . . .purchase negroe servants" and, since these servants run away, precautions have to be taken against such eventualities. It was therefore laid down that all "negroe or negroes shall" be required to have a pass in order to be outside the town bounds. Any inhabitant could stop a Negro, free or slave, and have him brought before a magistrate if the black man were found to be without such a pass. Moreover, all ferrymen, upon pain of fine, were to deny access to their ferries to all Negroes who could not produce a pass.⁷⁶ Massachusetts in 1698 forbade trade with "any Indian, or negro servant or slave, or other known dissolute, lewd, and disorderly person, of whom there is just cause of suspicion".⁷⁷

By the early years of the eighteenth century, the laws of Connecticut and Massachusetts had pretty well defined the Negro's subordinate position in society. Massachusetts acted to restrict the manumission of slaves by providing in 1703 that "molatto or negro slaves" could be freed only if security was given that they would not be chargeable upon the community. Another law set a curfew upon Indians, mulattoes and Negroes for nine o'clock each night. In 1705 Massachusetts became the only New England province to prohibit sexual relations between Negroes and mulattoes and Englishmen or those of "any other Christian nation".⁷⁸ Moreover, "any negro or mulatto" presuming to "smite or strike" an English person or any of another Christian nation would be "severely whipped".⁷⁹ In 1717 Negroes were barred from holding land in Connecticut.⁸⁰

Thus, like the colonists to the South, the New Englanders enacted into law, in the absence of any prior English law of slavery, their recognition of the Negroes as different and inferior. This was the way of the seventeenth century; only with a later conception of the brotherhood of all men would such legal discrimination begin to recede; but by then, generations of close association between the degraded status of slavery and black color would leave the same prejudice against the Negro in the North that it did in the South.

⁷⁵ Quoted in Bernard C. Steiner, *History of Slavery in Connecticut* (Baltimore, 1893), p. 18.

⁷⁶ *Records of Connecticut*, IV, 40.

⁷⁷ Hurd, *Law of Freedom*, I, 262-3.

⁷⁸ *Ibid.*, I, 263, Massachusetts had prohibited marriages between whites and Negroes, mulattoes and Indians in 1692. Lauber, *Indian Slavery*, p. 253.

⁷⁹ Hurd, *Law of Freedom*, I, 263. Rhode Island, too, in 1728, provided that before a Negro or mulatto could be manumitted, security had to be given that he would not become a public charge. Hurd, *Law of Freedom*, I, 276.

⁸⁰ Greene, *Negro in New England*, p. 312.

It would seem, then, that instead of slavery being the root of the discrimination visited upon the Negro in America, slavery was itself molded by the early colonists' discrimination against the outlander. In the absence of any law of slavery or commandments of the Church to the contrary – as was true of Brazil and Spanish-America – the institution of slavery into which the African was placed in the English colonies inevitably mirrored that discrimination and, in so doing, perpetuated it.

Once the English embodied their discrimination against the Negro in slave law, the logic of the law took over. Through the early eighteenth century, judges and legislatures in all the colonies elaborated the law along the discriminatory lines laid down in the amorphous beginnings. In doing so, of course, especially in the South, they had the added incentive of perpetuating and securing a labor system which by then had become indispensable to the economy. The cleavage between the races was in that manner deepened and hardened into the shape which became quite familiar by the nineteenth century. In due time, particularly in the South, the correspondence between the black man and slavery would appear so perfect that it would be difficult to believe that the Negro was fitted for anything other than the degraded status in which he was almost always found. It would also be forgotten that the discrimination had begun long before slavery had come upon the scene.

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