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African Slaves and English Law

by V.C.D. Mtubani

The development of the Slave Trade from the second half of the sixteenth century onwards resulted in Africans being brought to Britain in large numbers.¹ Their presence led to bitter arguments concerning the morality and legality of the institution of slavery itself. Propaganda material, in the form of prose pamphlets, poems and travel accounts, was published by both supporters and opponents of slavery. This controversial issue was not settled in Britain itself until 1807, when Parliament finally passed the Abolition Act. This paper discusses the legal situation in England concerning slavery and the slave trade from the second half of the sixteenth century to Abolition.

As early as 1569, in a case involving a certain Cartwright, who had brought a slave from Russia, it had been ruled that English law could not recognise slavery.² Such a ruling was, however, overshadowed by later developments.

After the Restoration, England began to take a more active interest in the slave trade than she had done before. She now regarded this form of trade as crucial to the exploitation of her sugar and tobacco colonies in the Americas. By the eighteenth century the slave trade had become the cornerstone of the economies of the West Indian islands, if not of Britain itself:

... the African's labour tapped the resources of the Americas. The African, by universal agreement, was the flexed muscle of the British empire. Produce and profits from the West Indies flowed into Britain while the needs of the plantation economies were met with British manufactures. Through the African trade fishing villages blossomed into international ports.³

London, Bristol and Liverpool are examples of the ports which benefited a great deal from the slave trade, and there are many more, such as Lancaster, which declined after abolition. The importance that England attached to the slave trade can be seen, for example, in 1663, in the incorporation by royal charter, for a thousand years, of the Company of Royal Adventurers Trading in Africa.⁴ This company made great losses as a result of the Anglo-Dutch wars and went out of business. In 1672, however, a new trading company, the Royal African Company, was set up. Its charter granted it monopoly to trade in 'any redwood, elephants' teeth, negroes, slaves, hides, wax, guinea grains, or other commodities'.⁵ The use of the final word here shows the African to have been regarded as nothing but an article of trade.

The cornerstone of the economics of slavery were the Navigation Acts which were based on strict, monopolistic, mercantilist principles. These, among other things, demanded that all goods for trade should be carried by English ships. The problem was whether African slaves should be regarded as goods in conformity with the Navigation Acts regulating maritime trade. An appeal was, therefore, made to the Solicitor-General for a ruling. In 1677 the Solicitor-General declared, unequivocally, that 'negroes ought to be esteemed goods and commodities within the Acts of Trade and Navigation.'⁶ This legal view of black slaves as goods and chattels was confirmed in the common-law case of Butts V. Penny (1677) where it was ruled that since

Africans were 'usually bought and sold among merchants, as merchandise, and being infidels, there might be a property in them to maintain trover'.⁷ This ruling did not, however, clear the confusion. On the contrary, it created more complications, as will appear below. To add to the confusion, the Habeas Corpus Act was passed in 1679. This gave everyone in England, whether subject, inhabitant or resident, protection against illegal arrest, imprisonment or removal to a foreign country. The ambivalence in English law is obvious here. On the one hand there was now a legal guarantee of the rights of the individual. And it is worth noting that the African was not excluded by the provisions of the Habeas Corpus Act. Yet, on the other hand, the Navigation Acts practically stripped him of his humanity. The conflict between these two pieces of legislation was not resolved until abolition was achieved in 1807.

In the 1569 case it had been ruled that English law could not recognise slavery. This view, although overturned by the ruling in Butts V. Penny, was subsequently upheld in 1701 when the Chief Justice, Sir John Holt, ruled that a slave became free as soon as he arrived in England. In this view, different from, but no less unequivocal than that of the Solicitor-General in 1677, slavery was illegal. As he said, 'one may be a villein in England but not a slave'.⁸ In the same case, Mr Justice Powell, concurring, was of the opinion that 'the Laws of England take no notice of a Negroe'.⁹ Five years later, Chief Justice Holt further ruled, in the case of Smith V. Gould (1706) that 'By the common law no man can have a property in another'.¹⁰ While such a ruling was seemingly clear, it had, however, no effect in practice. Slaves continued to be bought and sold in England.

In the case of Butts V. Penny the ruling was in favour of property in slaves. Those Englishmen sympathetic to the African were, however, not slow to recognise a possible flaw in this ruling. If Africans were sold because they were 'infidels', then surely baptism should free them from their slavery. It was with this view in mind that a number of them challenged the continued slavery of those Africans who had been baptised. Their actions, in encouraging Africans to be baptised and then to claim their freedom, so worried and alarmed the slave owners that they sought the opinion of two senior officers of the law in England, the Attorney-General, Philip Yorke (1690-1764) and the Solicitor-General, Charles Talbot (1685-1737). When, in January 1729, these two were asked whether residence in England or baptism gave the slave his freedom, they declared that neither did. They were

of the Opinion, that a Slave by coming from the West-Indies to Great Britain, doth not become free, and that his Master's Property or Right in him is not thereby determined or varied: And that Baptism doth not bestow freedom on him, nor make any Alterations in his Temporal Condition in these Kingdoms'.¹¹

While it can be stressed that this was only an 'Opinion', expressed not in a court of law, but after dinner at Lincoln's Inn Hall, there can be no doubt, however, that in reality and in practice it had all the gravity and solemnity of a ruling passed in Court. In fact the Yorke-Talbot opinion became an important argument in favour of 'property' in slaves, and against the mounting pressure to abolish the institution. The 1729 opinion was given the full respect and authority of a legal ruling twenty years later, in the case of Pearne V. Lisle (1749). In it Philip Yorke, now the Lord Chancellor Hardwicke, ruled that African slaves were, indeed, chattels as far as English law was concerned. Overturning the 1706 ruling by Chief Justice Holt, in the Smith V. Gould case, he held that a slave 'is as much property as any other thing'. Blacks, he added unequivocally,

cannot be delivered in the plight in which they were at the time of the demand, for they wear out with labour, as cattle or other things, nor could they be delivered on demand, for they are like stock on a farm, the occupier could not do without them'.¹²

This ruling, cold, pitiless and shocking as it may be, came closest to describing the utter dehumanisation of the African slave. It gave a much clearer and more realistic picture of the white man's view of the African in the eighteenth century than the more moral view expressed in the 1706 ruling, for example. African slaves were regarded and treated as chattels and property, whatever Chief Justice Holt and other men of liberal inclination might wish or declare. English law, despite the Habeas Corpus Act, did not give protection to the black slave. In the fundamental conflict between the Habeas Corpus Act and the Navigation Acts, the latter won. Even where humanity seemed to have won, as in the case of Smith V. Gould, such victory was never realised in practice. The reality is that each ruling seemed to interest the lawyers rather than change the condition of the black slaves.

But if Lord Chancellor Hardwick's ruling of 1749 had been intended as a final legal pronouncement on the position of the slaves in England, it failed. Thirteen years later, English law was thrown into deeper confusion than ever before. In the case of Shanley V. Harvey (1762), the Lord Chancellor Henly reversed such previous judgements as those in Butts V. Penny and Pearne V. Lisle and upheld those in Smith V. Gould. For example, he was clearly following the judgement of 1569 when he ruled that 'As soon as a man sets foot on English ground he is free'. And, going further than previous authorities, he declared firmly that 'a negro may maintain an action against his master for ill usage, and may have a Habeas Corpus if restrained of his liberty'.¹³ Many aspects of this ruling were not new. What was new, however, was the mood of the period in which it was made. This was slowly changing in favour of the slave. A new awareness of the evils of slavery was growing in England in the second half of the eighteenth century. The supporters of the black slaves were now prepared to challenge oppression and to campaign vigorously against it. They were ready and prepared to use the courts to challenge the so-called right of property in human beings. For example, Granville Sharp (1735-1813) challenged in the courts 'the accepted morality and inhumanity of the age which', in Shyllon's words, 'believed that 'Blacks are Property'.¹⁴ In 1767 he brought the case of a slave named Jonathan Strong before the Court at the Mansion House, London, which resulted in Strong's being given his freedom.¹⁵

It was also Sharp who brought the case of Somerset V. Stewart before the Court, finally forcing the reluctant Lord Chief Justice Mansfield to make the well-known ruling of June 22, 1772, which declared that a slave could not be forcibly removed from England.¹⁶ This was a limited ruling which only dealt with the forcible removal of a slave from England and not with slavery itself.¹⁷ It gave no security to the Blacks as it did not really clarify the issue. In fact, because the 1772 ruling was a limited one, slaves in the West Indies were often forced to sign indentures before accompanying their masters to England. Thus, as Walvin points out, they were liable to prosecution if they tried to leave their masters' services or refused to return with them to the West Indies.¹⁸ By contrast, the ruling in Scotland in the case of Joseph Knight (a Negro) V. Wedderburn (1778) was less ambiguous. The Sheriff of Perthshire ruled that 'the state of slavery is not recognised by the laws of this Kingdom' and, more important, that 'the law of Jamaica, being unjust, could not be supported in this country... That, therefore, the defender had no right to the Negro's service... That the Negro was likewise protected under the Act of 1701, c.6 from being sent out of the country against his consent'.¹⁹ This ruling was upheld by the Court of Session.

So, while in Scotland the court came firmly against the injustice of West Indian laws, that in England did not. Also, while in Scotland the court made clear its intention and obligation to protect the Blacks, in England it left the issue ambiguous and confused.

Such ambiguity and confusion can be seen in that even after the 1772 ruling, a number of cases were reported of Blacks being forcibly removed from England and sent to slavery in the West Indies.²⁰ In fact, not until the Abolition Act came into force in 1807 was the legal ambiguity finally resolved in England and the Blacks given full protection.

Yet even then ambivalence persisted in some cases involving the decisions of colonial courts referred to London on appeal. One of the best known of these was the case of Mrs Grace Jones, a slave who was brought from Antigua to England by a certain Mrs. Allen in 1822. When she returned to Antigua, Mrs Allen forced Mrs Jones to accompany her back. In 1825 proceedings were started in the Vice- Admiralty Court in Antigua against Mrs Allen, alleging illegal action in relation to the exit and entry of Mrs Jones. What is important here is that the prosecution based its case on the Mansfield ruling of 1772. After throwing the case out, the Antigua Court allowed appeal to the High Court of Admiralty in London. The ambiguous stand of the English court was shown when Lord Stowell upheld the ruling of the Antigua Court and said that Mrs Jones's temporary residence in England did not free her from slavery; rather it only suspended it and, therefore, on return to Antigua she legally became a slave again;²¹ this despite the fact that slavery itself had been abolished in England in 1807.

It is clear from this brief survey that English law remained ambivalent in its attitude towards slavery and the slave trade. Rulings went one way or the other like a see-saw, without making a fundamental change in the condition of the slaves. The reason for this is not far to seek. The issue of slavery could only be solved at a political rather than judicial level, for it was essentially political. The conflict between the Habeas Corpus Act and the Navigation Acts or between English common law and the Navigation Acts could not really be solved until Parliament decided which one had to take precedence. Since Parliament itself, in the Navigation Acts, considered Blacks to be property and commodities, it would be difficult to apply the Habeas Corpus Act to them, although they were implicitly covered by it. Even when Blacks were recognised as human beings, no steps were taken to enforce such recognition. In any case, judges and other officers of the law sympathetic to the cause of the planters found it easy to overturn such rulings by citing the Navigation Acts as the basis for their decisions. It was only when Parliament removed the stigma of Blacks as property and articles of trade, in the 1807 Act, that the legal ambiguity and confusion were finally removed in England. Similarly, it was only after the 1833 Act that confusion was largely removed in the Colonies.

Notes

1. James Walvin, Black and White: The Negro and English Society 1555-1945, (London, 1973) pp. 9-10.
There were slaves in the British isles as early as the Viking period, however. The Irish Annals record the bringing of a number of black slaves from Mauritania to Dublin around A.D. 862. See, also, Paul Edwards and James Walvin, 'Africans in Britain, 1500-1800' in The African Diaspora: Interpretive Essays ed. Martin L. Kilson and Robert I. Rotberg. (Cambridge, Mass. 1976) p.172.

2. F.O. Syllon, Black People in Britain, (London, 1977) p.17
3. James Walvin, The Black Presence. A documentary history of the Negro in England, 1550-1860. (London, 1971) p.10.
4. F.O. Syllon, op.cit. p.7
5. Quoted by James Walvin, Black and White, p.39.
6. Ibid. p.39 Cf. the will of a certain Thomas Papillon. In 1700 Papillon wrote of his slave: 'I take (him) to be in the nature and quality of my goods and chattels.'
-Quoted James Walvin, Black and White, p.42. Also, in 1718 a certain Becher Fleming left to Mrs Mary Becher 'my negro boy, named Tallow'.
-John Latimer, Annals of Bristol in the Eighteenth Century. (Bristol, 1893) p.15.
7. H.T. Catterall (ed.), Judicial Cases concerning American Slavery and the Negro 5 vols. (Washington, 1926-1936). Re-issued, New York, 1968, Vol.I, p.9. Henceforth referred to as Judicial Cases.
8. Quoted by F.O. Syllon, op.cit., p.17
9. Ibid., p.17
10. Judicial Cases vol.I, p.11.
11. Ibid. Vol.I, p.12.
12. Ibid. Vol.I, p.13.
13. Ibid. Vol.I, p.13
14. FO. Syllon, Black Slaves in Britain (London, 1974) Preface, p.xi.
15. Ibid. pp. 17-23.
16. Judicial Cases Vol.I, p.15. For a detailed study of the Somerset Case and the role that Sharp played in it see, for example, F.O. Syllon, Black Slaves in Britain. See also Walvin's Black and White, pp.117-131.
17. For a study of the implications of the Somerset Case see, for instance, Jerome Nadelhaft, 'The Somerset Case and Slavery: Myth, Reality and Repercussions' in Journal of Negro History Vol. LI, 1966. pp.193-208.
18. James Walvin, Black and White. p.135.
19. Judicial Cases, Vol.I, pp.18-19.
20. F.O. Syllon, Black Slaves in Britain, pp.167-169.
21. Judicial Cases Vol.I, p.34.