SPIRITUAL FREEDOM—PHYSICAL SLAVERY: THE MEDIEVAL CHURCH AND SLAVERY

James Muldoon[†]

One of the great themes of the Bible is freedom—freedom from the burden of sin and freedom from slavery. According to the Book of Genesis, man was destined for freedom in the Garden of Eden, but when Adam sinned and fell from grace, he and his descendants were then condemned to a life of labor, suffering, pain, and all of the evils that affect humanity.[1] Among these evils was slavery—both the spiritual slavery, resulting from man's ouster from Eden, that bound man to sin, and the physical slavery that men imposed upon one another. Likewise, the story of the exodus of the Hebrew people from physical captivity in Egypt symbolized the way in which Jehovah would free His worshippers from the burden of sin and slavery that prevented man from becoming a fully developed person.[2] The death of Christ, the new Adam, on the cross, redeeming man from the captivity of sin, was the moment of spiritual exodus; Christian theology emphasizes that this was the moment at which true freedom was available to all mankind. This spiritual freedom was, in turn, one of the prevailing themes in the writings of St. Paul, whose epistles ring with assertions of the liberty that comes with faith in Christ. Paul's work teaches that Christian faith even exempts men from the yoke of sin symbolized by the laws of the Old Testament.[3]

There is, however, a paradox in the Christian treatment of slavery, a paradox that has troubled modern critics. If freedom is so important, why did not the Christianization of Europe bring a rapid end to slavery and to the slave trade? The standard answer is that Christian liberty emphasizes spiritual liberty, freedom from sin and its consequences, not physical liberty. The best example of this view

---

[†] Professor of History Emeritus, Rutgers University; Invited Research Scholar, The John Carter Brown Library.

1. *See Genesis* 3.

2. *See Exodus* 3. On the importance of the image of exodus, see DAVID BRION DAVIS, THE PROBLEM OF SLAVERY IN WESTERN CULTURE 4-7 (1966).

3. *See Galatians* 4; *Galatians* 5:1, 13; *Romans* 3:27-31; *Romans* 7:4.

exists in the letters of St. Paul, who strongly stressed the spiritual freedom of the Christian, but who also returned an escaped slave who had become a Christian to his Christian master, instructing the master to treat the slave well but not requesting his freedom.[4]

Given the biblical emphasis on freedom, one might have expected that as European society became increasingly Christian, this Christianization would have been accompanied by a strong denunciation of the slavery that lay at the core of the economy of the ancient world. This was not the case, however. One of the most famous instructional tales from the Middle Ages explains why Pope Gregory I (590-604) sent a mission to convert the English to Christianity in 597. According to Bede (672-735), a historian of the English Church, while walking through Rome one day before becoming pope, Gregory saw some Englishmen for sale in the slave market.[5] Noticing their fair skin, he inquired who they were and, on learning they were Angles, he responded they were not Angles but angels.[6] The physical attractiveness of the Englishmen drew the attention of the future pope to what was presumably a routine aspect of Roman life—the sale of slaves in the public market. This story is also a metaphor for natural innocence that is in itself attractive but that will be even more attractive once people are baptized.[7] The pope's concern was only for the freeing of these physically attractive people from sin. He showed no surprise at the existence of a slave market in Rome, nor did he speak of having the Angles manumitted in a physical sense.

What commentators on this story usually fail to underscore is the location where Gregory encountered the Angles—the slave market in the city of Rome. The existence of a Roman slave market would seem rather surprising three centuries after Constantine allowed for the practice of Christianity,[8] beginning the process that culminated in 380

---

4. *See Philemon* 1: 12-14.

5. BEDE, A HISTORY OF THE ENGLISH CHURCH AND PEOPLE 99-100 (R. E. Latham ed., Leo Sherley-Price trans., Dorset Press 2d ed. 1985) (731). The story appears to be of Northumbrian origin and does not stem from Gregory's own writings. *See* R. A. MARKUS, GREGORY THE GREAT AND HIS WORLD 178 (1997). The story appears to be written to praise the natural qualities of the English, qualities that baptism would enhance.

6. BEDE, *supra* note 5, at 100.

7. *See id.*

8. The Emperor Constantine ended the persecution of Christians in the Edict of Milan. MATTHEW BUNSON, *Milan, Edict of, in* OUR SUNDAY VISITOR'S ENCYCLOPEDIA OF CATHOLIC

when the emperors Valentinian II and Theodosius I declared Christianity the only legal religion in the Roman world.[9]

One might have thought that an evil as egregious as slavery would have been one of the first things that the Christianizing of the Roman world would have ended, yet it is clear that this did not happen. As Michael McCormick has recently illustrated, although there exists a general belief that slavery gradually died out in Europe during the Middle Ages, slavery and slave markets existed in Christian Europe throughout this period.[10] Italian merchants, Genoese and Venetians in particular, were major figures in the trade.[11]

One could further postulate that Pope Gregory's indifference to the existence of a slave market in Rome and his interest only in the spiritual state of the slaves suggests his hierarchy of priorities. The spiritual condition of the Angles was deemed more important than their physical status. Moreover, while the pope could do something about the former, he could do nothing about the latter. Thus, Gregory's reaction to the sight of the slaves only involved their physical attractiveness—not their physical enslavement—and this impression subsequently inspired him to dispatch missionaries to England.[12] He seems to have had no reaction to the sight of the slave market itself and apparently accepted its existence as a fact of Roman life.

The question remains, then, that if freedom played such an important role in Christian theology, why did not the Christianization of Europe bring a rapid end to slavery and to the slave trade? Indeed, slavery remained a fact of European life throughout the Middle Ages and beyond.[13] Even as European thinkers in the early modern world were developing theories of human rights, slavery was becoming more important in the Western world than it had been since the end of the Roman Empire in the West. Samuel Johnson famously pointed

---

HISTORY 558, 558 (1995). For the text of the Edict itself, see THE EDICT OF MILAN, *reprinted in* DOCUMENTS OF THE CHRISTIAN CHURCH 22 (Henry Bettenson ed., 2d ed. 1963).

    9.   JOSEPH CANNING, A HISTORY OF MEDIEVAL POLITICAL THOUGHT, 300-1450, at 5 (1996).

    10.   Michael McCormick, *New Light on the 'Dark Ages': How the Slave Trade Fuelled the Carolingian Economy*, 177 PAST & PRESENT 17, 41-53 (2002).

    11. *Id.*; *see also* MICHAEL MCCORMICK, ORIGINS OF THE EUROPEAN ECONOMY: COMMUNICATIONS AND COMMERCE, A. D. 300-900 (2001).

    12.   Bede himself simply says that Gregory "was inspired by God" to send missionaries to England. BEDE, *supra* note 5, at 66.

    13. *See, e.g.*, Iris Origo, *The Domestic Enemy: The Eastern Slaves in Tuscany in the Fourteenth and Fifteenth Centuries*, 30 SPECULUM 321 (1955).

to the paradox of liberty and slavery in the eighteenth century when he said of the American revolutionaries: "'How is it' . . . 'that we hear the loudest *yelps* for liberty among the drivers of negroes?'"[14]

While early discussions of slavery did not explicitly raise questions of slaves' rights, or call for the abolition of slavery, an understanding of these historical developments—particularly the Christian dialogue in the Middle Ages—is essential in any modern debate concerning slavery and its egregious violation of human rights. In order to appreciate the paradox of liberty and slavery that developed within the Christian intellectual world, this article considers the various traditions that medieval thinkers examined in order to sustain this synthesis. The oldest of these traditions involves the works of ancient Greek philosophers and Roman lawyers. With the revival of classical learning and the creation of universities in the twelfth and thirteenth centuries, scholastic philosophers and canon lawyers coupled the ancient analyses of slavery with the biblical tradition to create what might be termed the medieval papal position on slavery. Finally, these pages end with an examination of the ways in which this medieval discussion of slavery responded to the conquest of the New World and to the creation of a slave-based economy there.

I.   ANCIENT PHILOSOPHICAL AND LEGAL BASES FOR SLAVERY

Why did not the Christianization of Europe lead to the ending of slavery? The answer to this inquiry is complex and involves several explanations. In the first place, slavery was so pervasive in the ancient Mediterranean world that to call for its elimination would have had enormous social and economic consequences. In addition, there were long-standing justifications for slavery that Christian thinkers adopted in the course of developing a Christian social ethic. These justifications were drawn from ancient philosophy as in the case of Aristotle's theory of natural slavery and from the Roman Law discussion of the difference between natural law (*ius naturale*) and the law of nations (*ius gentium*). Both of these intellectual traditions later became important elements of the medieval intellectual world in

---

14.   *See* DAVIS, *supra* note 2, at 3 (quoting Samuel Johnson).

the eleventh and twelfth centuries as the ancient learning was revived to become the core of university education.[15]

Generally speaking, slavery in the ancient world was linked to war and conquest.[16] For example, defeated peoples were enslaved instead of being killed.[17] The expansion of the Roman Empire generated a huge supply of prisoners who were enslaved to work on the great Roman estates, providing the labor basis for the economy.[18] This source of slaves was accepted as a fact of life.

Greek philosophers, however, raised the question of whether there might also be persons who were by nature destined to be slaves. Aristotle (384-322 BC) suggested that there were natural slaves, people who lacked a natural capacity for fully human existence.[19] He even suggested that there might be entire human communities whose members could never become fully mature individuals like the Greeks, specifically like Greek men.[20] The philosopher wrote "that some should rule and others be ruled is a thing not only necessary, but expedient; from the hour of their birth, some are marked out for subjection, others for rule."[21] After further development of this argument, Aristotle concluded, "It is clear, then, that some men are by nature free, and others slaves, and that for these latter slavery is both expedient and right."[22] Like women and children, such peoples would require paternal supervision by the fully human Greeks.[23] It is now evident that the brief consideration of this issue in Aristotle's writings leaves many practical questions unanswered. For example, how were such inferior peoples to be identified? What would be the status of the offspring of marriage between a civilized individual and

---

15. On the importance of this intellectual revival, see Stephan Kuttner, *The Revival of Jurisprudence*, *in* RENAISSANCE AND RENEWAL IN THE TWELFTH CENTURY 299 (Robert L. Benson & Giles Constable eds., 1982).

16. *See* WILLIAM D. PHILLIPS, SLAVERY FROM ANCIENT TIMES TO THE EARLY TRANSATLANTIC TRADE 17 (1985).

17. *Id.* (quoting D.1.5.9 (Florentinus, Institutes 9), *reprinted in* THOMAS WIEDEMANN, GREEK AND ROMAN SLAVERY 15 (1981)).

18. *Id.* at 17-19.

19. *See* ARISTOTLE, POLITICS, Book I, ch. 5, *reprinted in* THE POLITICS AND THE CONSTITUTION OF ATHENS 16-17 (Stephen Everson ed., 1996).

20. *Id.*

21. *Id.* at 16.

22. *Id.* at 17.

23. JUDITH A. SWANSON, THE PUBLIC AND THE PRIVATE IN ARISTOTLE'S POLITICAL PHILOSOPHY 33-43 (1992). For the application of Aristotle's ideas about natural slaves, see LEWIS HANKE, ARISTOTLE AND THE AMERICAN INDIANS 44-61 (1959).

a natural slave? Would it be possible to raise such people to a fully civilized level of existence over several generations through intermarriage and education?

Moreover, this Aristotelian notion of naturally servile peoples was at odds with the Christian notion that all of mankind, having descended from Adam and Eve, was biologically alike. It followed from this Christian view that any differences among peoples were necessarily cultural rather than biological.[24] Even the members of one of Aristotle's servile societies should, therefore, have had the ability to become fully human under the guidance of civilized masters. On the other hand, if Aristotle was correctly understood to mean that there were natural slaves who were biologically different from Europeans, the manumission of these slaves might have been deemed inappropriate because it would set free those who could never function at the level expected of a citizen. Slavery in this case would not be a stage of development but a permanent status, and the slaves would be considered members of a caste, required to live under the supervision of those capable of full human development.

In the intellectual revival of the eleventh and twelfth centuries, universities began to transmit ancient knowledge, especially philosophy and law.[25] The reappearance of Aristotle's *Politics* and his *Ethics* caused scholars such as Thomas Aquinas (1225-1274) to consider Aristotle's views on slavery in light of the Christian tradition that associated slavery with the fall of man rather than with nature. While it does not appear that Aquinas agreed natural servitude was based on the inability of certain peoples to become fully developed human beings, some of his followers "seem[ed] to accept the Aristotelian conception of slavery without any apparent qualification."[26] Nevertheless, the general medieval conception of slavery was that slavery was not a consequence of biological

---

24. Some scholars have suggested that medieval observers did in fact see the differences among human communities in biological terms that approached the notion of racism. *See* Richard C. Hoffmann, *Outsiders by Birth and Blood: Racist Ideologies and Realities Around the Periphery of Medieval European Culture*, 6 STUDIES IN MEDIEVAL AND RENAISSANCE HISTORY 3 (1983); ROBERT BARTLETT, THE MAKING OF EUROPE: CONQUEST, COLONIZATION AND CULTURAL CHANGE, 950-1350, at 236-42 (1993).

25. *See* Kuttner, *supra* note 15, at 305.

26. 5 R. W. CARLYLE & A. J. CARLYLE, A HISTORY OF MEDIÆVAL POLITICAL THEORY IN THE WEST 23-24 (1903).

inferiority, but rather a result of the fall of man and a consequence of sin.[27]

A second source of justifications for slavery came from the Roman law. The *Corpus Iuris Civilis*, compiled at the command of the Emperor Justinian (527-565), explained the existence of slavery in light of Aristotle's famous distinction between *ius naturale* and *ius gentium*. The Roman law taught that when mankind lived according to the terms of the *ius naturale*, there was no slavery, no war, and no private property. In the world as it actually existed, however, the world of the *ius gentium*, slavery, along with these other evils, did exist.[28] Being practically inclined, the Romans paid little attention to theoretical underpinnings of this debate and to the *ius naturale*.[29] Instead, stressing law rather than theory, Roman lawyers rarely discussed the origins of slavery but rather accepted the fact that slavery existed and developed a body of law applicable to slaves and slave owners.[30]

In an important sense, the Roman legal tradition regarding the distinction between *ius naturale* and the *ius gentium* fit neatly—perhaps too neatly—with the Christian concept of the fall of man. Both Christians and pagans of the time agreed that the abolition of slavery was as likely as the abolition of war and private property.[31] This did not mean, however, that manumission should be discouraged. Neither did it imply that slaves should be treated inhumanely.[32] While these fundamental evils of the world could not

---

27. DAVIS, *supra* note 2, at 88.

28. The discussion of the *ius naturale* and the *ius gentium* is found in J. INST. 1.2. These statements of the Roman Law were subsequently incorporated in the canon law, D.1 c.7, 9. On the Roman law of slavery, see 1 CARLYLE & CARLYLE, *supra* note 26, at 33-44.

29. *See* 1 CARLYLE & CARLYLE, *supra* note 26, at 77.

30. *See id.* at 45-54.

31. *See, e.g.*, PHILLIPS, *supra* note 16, at 17 (citing Aristotle's belief that slavery "was part of natural law"). It is worth noting that while Christians opposed war, they were not pacifists. Until the development of the theory of the just war and the crusade in the twelfth century, a soldier who killed another was guilty of a sin that had to be forgiven. The development of the ideology of the crusade is of special interest here, because it served to justify war against the infidels and subsequently against heretics. As a number of commentators have pointed out, the efforts to pacify Christendom in the eleventh and twelfth centuries focused on re-directing the violent members of the knightly class away from Europe and toward the Muslims. This is a far cry from ending the evil of war. For an interesting but rather extreme treatment of the medieval Church's acceptance of war in its own interests that relates medieval peace movements to current ideas about war with Muslims, see TOMAŽ MASTNAK, CRUSADING PEACE: CHRISTENDOM, THE MUSLIM WORLD, AND WESTERN POLITICAL ORDER 10-11 (2002).

32. *See* PHILLIPS, *supra* note 16, at 27-28.

be eliminated, they could nevertheless be ameliorated. Roman law itself made manumission a real possibility, and the large number of freedmen in the Roman world suggested that slavery need not be a permanent status lasting over several generations.[33]

The notion that slavery was the result of misfortune, of the consequences of the human condition, was central to the Roman and Christian conception of slavery.[34] With this, both the Romans and the Christians understood that there could also be other ways of dealing with the defeated that did not involve enslavement. The alternative practice of ransom, for example, became increasingly common in European wars.[35] Furthermore, as Christ came not to transform the world but to transcend it, slavery, like the other evils that arose from the Fall of Adam, was commonly understood as something that might need to be endured.[36] Moreover, physical slavery received less sympathy in the Christian context than the spiritual slavery that binds the sinner. Christian thinkers sometimes wrote of physical enslavement as God's punishment for sin, a foretaste of the eternal suffering that the sinner must endure unless he threw off the bonds of sin and gained his spiritual freedom.[37] As St. Augustine argued, slavery, like other forms of physical coercion, was necessary for the good order of society in man's fallen state.[38]

II. CANON LAW APPROACH TO SLAVERY

The medieval canon lawyers, unlike the philosophers and theologians who preceded them, turned their focus from slavery's fundamental origins to two practical problems associated with slavery: baptism and marriage law.[39] In the first place, the canonists wrestled with the effects of baptism on an "infidel" slave who converted to Christianity. The general practice of medieval European slavery was that Christians were not to be enslaved, and that Christian prisoners should be ransomed rather than sold into

---

33. On manumission in the Roman world, see *id.* at 28-31.

34. *See* DAVIS, *supra* note 2, at 88.

35. M. H. KEEN, THE LAWS OF WAR IN THE LATE MIDDLE AGES 70, 156-57 (1965).

36. *See* DAVIS, *supra* note 2, at 88.

37. *See id.* at 86-90.

38. *See* John B. Killoran, *Aquinas and Vitoria: Two Perspectives on Slavery*, THE MEDIEVAL TRADITION OF NATURAL LAW 87, 88 (Harold J. Johnson ed., 1987).

39. The *Decretum* did mention the *ius naturale* and the *ius gentium*, but there was little commentary on these issues. D.1 c.7, 9.

slavery.[40]   But what of non-Christians who were enslaved and then sold to Christian masters and who then accepted baptism? Would the acceptance of baptism automatically free such a slave?   The importance of this issue is obvious; if baptism automatically secured manumission, slaves would be likely to seek it and slave owners would lose both the slave's labor and the financial investment that it involved. The canon lawyers' solution to this dilemma was that while it was good to free slaves who chose to become Christians, this emancipation was not required because their status as slaves preceded their baptism.[41]

A second issue involved the marriage of slaves.   The clergy encouraged the marriage of slaves and canon law recognized the legitimacy of such marriage.[42]   Inherent in this recognition was an acknowledgement of the slaves' humanity and their capacity for reception of the sacrament of marriage. Nonetheless, as with baptism, slave owners often found canonically legitimate marriage of slaves a problem, because canon law also required the slave owner not to separate slave couples.[43] Thus, for practical reasons, the slave owners would often leave their slaves unbaptized and unmarried rather than bringing them into the sacramental system, and therefore into the ecclesiastical legal system that recognized their humanity and offered them some legal protections.[44]

A. *A Conquest of the New Frontier*

It would seem that, for the canonists at least, slavery was not an issue of great significance, because slavery was generally being replaced by other forms of bonded status in many parts of Europe.[45] There was, however, an important exception to this generalization: the Mediterranean, where Christendom existed along a frontier with

---

40.   KEEN, *supra* note 35, at 70.

41.   DAVIS, *supra* note 2, at 100-01. Muslim society followed the same rule; Muslims were not to be enslaved but conversion did not bring freedom. *See* William D. Phillips, Jr., *Continuity and Change in Western Slavery: Ancient to Modern Times, in* SERFDOM AND SLAVERY: STUDIES IN LEGAL BONDAGE 71, 79 (M. L. Bush ed., 1996).

42.   JAMES A. BRUNDAGE, LAW, SEX, AND CHRISTIAN SOCIETY IN MEDIEVAL EUROPE 196 (1987).

43.   *Id.* at 196.

44.   RICHARD FLETCHER, THE BARBARIAN CONVERSION: FROM PAGANISM TO CHRISTIANITY 324-25 (1997).

45.   PHILLIPS, *supra* note 16, at 51, 88.

the Islamic world. The re-conquest of the Iberian lands and the crusades in the Holy Land brought European Christians into extensive contact with slave-owning societies.[46] Christian conquest did not free the slave populations of these regions; indeed, Christian conquerors even took slaves from among their captives.[47] Thus, the new Christian lords had to develop a body of law to deal with slaves and slavery. In Spain, this problem was addressed by issuing the Castilian law code, the *Siete Partidas* of Alfonso X (1252-1284), placing slaves within a legal system based on the principles of Roman law.[48]

The successful Reconquista in Spain and the unsuccessful crusades in the Holy Land illustrate the way in which Europeans were introduced to slavery on a large scale. Furthermore, the wars with the Muslims generated prisoners. Could, or should, they be enslaved? Finally, the need for laborers to work on the estates established on the islands of the eastern Mediterranean led Christian businessmen to acquire slaves for the work.[49] These questions and practices foreshadowed the great debate that roiled the Spanish world in the sixteenth and seventeenth centuries as the conquistadores brought the Americas under Spanish control and created an economy based on slave labor.[50]

1. *Justification by Fallen Nature*

The primary discussion of the legitimacy of the conquest of non-Christian societies and therefore one of the bases for the legitimate acquisition of slaves appeared during the mid-thirteenth century in Innocent IV's (1243-1254) commentary on a decretal of Innocent III (1198-1216).[51]   That decretal, *Quod super his*, dealt with the commutation of a crusading vow when the individual who made the

---

46. *Id.* at 97, 104.

47. *Id.* at 92.

48. *Id.* at 110-11.

49. Charles Verlinden, *Some Aspects of Slavery in Medieval Italian Colonies*, *in* THE BEGINNINGS OF MODERN COLONIZATION 79, 83 (Yvonne Freccero trans., 1970).

50. The fundamental study of the debates about the legitimacy of the conquest of the Americas and its consequences is LEWIS HANKE, THE SPANISH STRUGGLE FOR JUSTICE IN THE CONQUEST OF AMERICA (1949). There is a new edition with some reflections by Hanke. *See* LEWIS HANKE, THE SPANISH STRUGGLE FOR JUSTICE IN THE CONQUEST OF AMERICA (Southern Methodist Univ. Press 2002) (1949). Further citations to this work will reference the 1949 edition.

51. *See* JAMES MULDOON, POPES, LAWYERS, AND INFIDELS: THE CHURCH AND THE NON-CHRISTIAN WORLD 1250-1550, at 5-6 (1979).

vow was unable to fulfill it.[52]   The decretal encouraged those who
were unable to go or who were incapable of going into combat to
commute their vow and pay for a more suitable person, a warrior in
fit condition, to go in his stead.[53]

When Innocent IV in his capacity as a canon lawyer came to
comment on *Quod super his*, he made only a brief comment on the
narrow issue of commuting the crusader's vow and instead raised the
larger theoretical question: by what right did the pope authorize
crusades at all?[54]   In his opinion, the pope had the right to authorize
crusades designed to regain possession of the Holy Land because that
land had been taken from its rightful Christian possessors in an unjust
war.[55]   Christians had no right, however, to wage war against other
Muslims who occupied lands that they had not taken from Christians,
because all mankind, Christians and infidels alike, since the fall of
man in the Garden of Eden, possessed property legitimately.[56]
Innocent went on, however, to consider some possible exceptions to
the general rule that non-Christians legitimately possessed their
lands.[57]   In particular, he raised the issue of whether Christians had
the right to invade societies whose members violated the natural law
or that refused to admit peaceful preachers of the Gospel.[58]   The
argument that Christians could punish those who violated the natural
law raised yet another issue: who possessed the competence to
determine such violations and to order them punished? Innocent IV
argued that the pope could make such judgments and could order

---

52.   *See id.*

53.   Innocent IV, *Commentaria Doctissima in* QUINQUE LIBROS DECRETALIUM (1581),
portions reprinted in THE EXPANSION OF EUROPE: THE FIRST PHASE 191-92 (James Muldoon ed.,
1977).   A decretal is a decision issued by the papal court on a point of canon law.   The
Decretales, a collection of such decisions issued by popes of the twelfth and thirteenth centuries,
was published in 1234 and served as the basis of the law for the working canonist.   Various
canonists wrote commentaries on some or all of the decretals, leading eventually to the
publication of a standard commentary, the *Glossa Ordinaria of Bernard of Parma* that first
appeared in 1241.   It was often published in the margins of the manuscript copies of the
Decretales and subsequently in the published editions.   In addition, there were a number of
other commentaries that received wide circulation.   One of these was that of Sinibaldo Fieschi,
better known as Pope Innocent IV (1243-1254).   On the history and development of canon law,
see JAMES A. BRUNDAGE, MEDIEVAL CANON LAW (1995).

54.   Innocent IV, *supra* note 53, at 191-92.

55.   *Id.*

56.   *Id.*

57.   *Id.*

58.   *Id.*

Christian rulers to implement his decisions.[59]   Furthermore, he asserted that all mankind was subject to one of three fundamental laws: Christians to canon law; Jews to the Law of Moses; all other people to the Law of Nature. In all three legal systems, the pope was the ultimate judge.[60] In raising these points, Innocent laid the legal foundations for the sixteenth-century debate regarding the legitimacy of the Spanish conquest and occupation of the Americas and, indirectly, the foundation of the early modern debate about slavery.[61]

Innocent IV did not discuss the possibility of enslaving those Muslims seized in the reconquest of the Holy Land, nor did he discuss the situation of those found enslaved on the reconquered lands. He only mentioned slavery tangentially when he observed that there was no slavery "before the *ius gentium* . . . because by nature all men are free."[62] Given the overall tone of his commentary, however, it is reasonable to conclude that Innocent would have argued that although men are by nature free, that is, before Adam's Fall, the world as it existed had generated circumstances stemming from the fallen nature of mankind that would justify their enslavement.

2.   *Overseas Expansion—Rationalizing Conquest and Slavery*

As Europeans began to expand overseas in the fifteenth century, slavery began to play a larger role in the European economy than it had since the end of the ancient world. Furthermore, instead of buying slaves from slave traders who had acquired the slaves in the course of trade, the Europeans began to deal directly with the societies that were the sources of slaves and, eventually, to enslave directly the people who inhabited the lands they conquered. The roots of this process can be seen in the experience of the Portuguese and the Castilians as they pushed down along the west coast of Africa and then out into the Atlantic.[63] Although some of the island chains

---

59. *Id.*

60. *Id.* Several popes, including Innocent IV, ordered the burning of copies of the Talmud on the grounds that it contained material that was corrupting true Judaism, an action these popes argued, the rabbis should have done but had not, thus requiring the popes to do so. *See* MULDOON, *supra* note 51, at 10-11, 30-31.

61. On the relation between Innocent IV's commentary and later debates, see MULDOON, *supra* note 51, at 153-58.

62. MULDOON, *supra* note 51, at 8.

63. For an introduction to Portuguese and Castilian expansion into the Atlantic and its consequences, see BOIES PENROSE, TRAVEL AND DISCOVERY IN THE RENAISSANCE 1420-1620

they discovered—the Azores, Madeira, and Cape Verde—were uninhabited, the Canary Islands were inhabited and both Iberian nations endeavored to reduce the Canarians to slavery.[64]

The European encounter with the peoples of Africa, the Atlantic islands, and, eventually, the Americas, generated not only conquest and slavery but an extensive debate regarding the legitimacy of these activities.[65]   This discussion would later contribute to the development of international law in the sixteenth and seventeenth centuries, at the roots of which laid the papacy's conception of itself as a court with universal jurisdiction, a theory derived from, among other sources, Innocent IV's theory of universal papal jurisdiction.[66]

As has been previously discussed, slavery had been justified on the grounds that those who were enslaved were those defeated in battle whose lives had been spared but who were condemned to a life of servitude.[67]   Furthermore, as Europeans did not enslave fellow Europeans, slaves in Europe had come from elsewhere by way of Muslim slave merchants, so that there was little direct involvement in enslaving people.[68]   The conquest of the Atlantic islands and contacts with the peoples of the West African coast, however, brought Europeans face to face with the sources of their slaves.[69]   It was at this point that the papacy became involved in the acquisition of the islands and in the development of the slave trade by mediating the dispute that resulted when both the Portuguese and the Castilians laid claim to various islands, especially the Canary Islands.[70]

(Atheneum 1962) (1952); C. R. BOXER, THE PORTUGUESE SEABORNE EMPIRE, 1415-1825 (J. H. Plumb ed., 1969).

64.   The discovery and conquest of the Canary Islands was in many ways a forerunner and model for the Spanish experience in the Americas. On the place of slavery in the conquest, see PHILLIPS, *supra* note 16, at 168-69; Anthony M. Stevens-Arroyo, *The Inter-Atlantic Paradigm: The Failure of Spanish Medieval Colonization of the Canary and Caribbean Islands*, 35 COMP. STUDIES SOC'Y & HIST. 515 (1993).

65.   Lewis Hanke labeled this debate "the Spanish struggle for justice in the Conquest of America"—the title of his book on the subject. *See* HANKE, *supra* note 50.

66.   On the relation between this debate and the development of modern international law, see RICHARD TUCK, THE RIGHTS OF WAR AND PEACE: POLITICAL THOUGHT AND INTERNATIONAL ORDER FROM GROTIUS TO KANT (1999); Walter Ullmann, *The Medieval Papal Court as an International Tribunal*, 11 VA. J. INT'L L. 356 (1971).

67.   PHILLIPS, *supra* note 16, at 17.

68.   *Id.* at 6.

69.   Conflict between Portugal and Castile over the islands in the Atlantic was only one aspect of Portuguese-Castilian conflict in the fifteenth century. *See* JOSEPH F. O'CALLAGHAN, A HISTORY OF MEDIEVAL SPAIN 556-57 (1975).

70.   *See id.*

The conflict between Castile and Portugal eventually reached the papal court, because the claimants sought to legitimize their possession of the Atlantic islands by obtaining papal authorization for their actions.[71] One result was the issuance between 1415 and 1517 of approximately 100 papal letters addressing these newly discovered lands to settle disputes between the Castilians and the Portuguese about the possession of specific islands in the Atlantic.[72]

The crucial stage of development of theories justifying the conquest, occupation, and, when necessary, the enslavement of non-Christian peoples, came in a series of papal letters concerning the Canary Islands. Unlike the other island chains that Europeans encountered in the Atlantic, the Canaries were inhabited and, according to the Europeans who went there, the Canarians lived a very primitive existence.[73] The papacy had first become involved with discussions regarding the Canary Islands in 1344 when Pope Clement VI awarded the islands to a member of the Castilian royal family, even though the Portuguese had landed there some years earlier.[74] The fierce resistance of the inhabitants prevented any permanent European occupation of the entire chain. Eventually, the pope banned further European penetration of the islands.[75]

In 1436, the Portuguese requested that Pope Eugenius IV authorize them to occupy the islands.[76] The pope in turn requested two lawyers to provide opinions on the legitimacy of the Christian occupation of these islands.[77] The two opinions foreshadowed the various opinions, legal, philosophical, and theological, that were to emerge in connection with the conquest of the Americas. The issue of slavery was not directly raised by any of the participants in the discussion of the Portuguese request to occupy the Canaries, but the potential enslavement of the Canarians was implicit in the discussion.[78] If the Canarians prevented peaceful missionaries from entering and preaching, the Portuguese would be within their rights

---

71. *See id.*

72. *See, e.g.*, D. J. Wölfel, *La Curia Romana y la Corona de España en la Defense de los Aborigines Canarios* [*The Roman Curia and the Spanish Crown in the Defense of the Canary Aborigines*], 25 ANTHROPOS 1011 (1930).

73. MULDOON, *supra* note 51, at 121.

74. *Id.* at 120.

75. *Id.* at 120-21.

76. *Id.*

77. *Id.* at 124.

78. *See id.* at 128.

to send troops to protect the missionaries.[79]   If, defeated and still recalcitrant, the Canarians continued to attack the Portuguese, the discussion concluded that slavery would be one legitimate consequence.[80]

The Portuguese king's letter to the pope raised another basis for enslaving the Canarians and, by extension, other similar peoples. The king pointed out that those who had encountered the Canarians described them as living at a very primitive level, rather like the animals of the forest.[81]   At the very least, the king argued, such primitive people must have been constantly violating the law of nature and therefore deserved punishment.[82]   Furthermore, if these people were to be prevented from continuing to violate the law of nature, they would require instruction in the ways of civilized societies.[83]   In effect, under the guidance of the Portuguese, the Canarians would not only be converted to Christianity, but also be placed on the path that leads to civilization.[84]

Two decades later, Pope Nicholas V issued a bull, *Romanus Pontifex* (1455), that "mark[ed] a definite stage in the colonial history of Portugal" because it granted to the king of Portugal "general and indefinite powers to search out and conquer all pagans, enslave them and appropriate their lands and goods."[85]   The text of *Romanus Pontifex* recognized that the slave trade from Africa to Europe already existed.   With the conquest of part of the African coast, "many Guineamen and other negroes, taken by force, and some by barter of unprohibited articles, or by other lawful contract of purchase, ha[d] been sent" to Portugal.[86]   The papal document emphasized the legitimate acquisition of African slaves as a consequence of acquiring lands that were "subdued and peacefully possessed."[87]   There is a positive advantage for those slaves in that a "large number of these

---

79. *Id.* at 129.

80. *See id.* at 122-23.

81. *Id.* at 121.

82. *Id.* at 124.

83. *Id.*

84. *Id.* at 121. On the importance of the Spanish experience in the Canaries for the subsequent Spanish conquest of the Americas, see Stevens-Arroyo, *supra* note 64.

85. EUROPEAN TREATIES BEARING ON THE HISTORY OF THE UNITED STATES AND ITS DEPENDENCIES TO 1648, at 12 (Frances Gardiner Davenport ed., Peter Smith Pub. 1967) (1917) [hereinafter EUROPEAN TREATIES].

86. *Id.* at 22.

87. *Id.*

have been converted to the Catholic faith," illustrating the beginning of what the pope envisioned as the eventual conversion of the African peoples.[88]

In *Romanus Pontifex,* Nicholas V raised the issue of slavery only in connection with the legitimacy of the means employed by Europeans to acquire them. As long as the slaves were obtained by purchase, barter, or as a result of being conquered in a just war before Europeans purchased them, the terms of the legal theory concerning slavery were fulfilled; the papal position did not consider in detail how the specific individuals that the Portuguese had purchased had been enslaved. Underlying the papal position on the legitimacy of slavery was the assumption that the slaves the Europeans were buying had been legitimately enslaved in the first place.[89] The validity of such a presumption, aimed at quieting the qualms of those who might have some concern about the legitimacy of what they were doing, could not be proved.[90] This was a point that continued to be raised as the African slave trade expanded over the next two centuries.[91]

Having resolved this initial issue of the legitimacy of Portuguese possession of certain lands in the Atlantic, Nicholas V further discussed the future of the Portuguese expansion effort. On the basis of their achievements thus far, the Portuguese were authorized "to invade, search out, capture, vanquish, and subdue all Saracens and pagans whatsoever, and other enemies of Christ wheresoever placed . . . and to reduce their persons to perpetual slavery."[92] The assumption here was that all of the peoples the Portuguese would encounter—not just the Muslims—were enemies of the Christian faith. Enslaving would be a legitimate act—a consequence of a legitimate war that the Christians were waging against those who would otherwise prevent peaceful European expansion. Here again, slavery was seen as an appropriate punishment for the enemies of Christendom.

Thus, on the eve of Columbus's first voyage, European thinkers had already begun to consider the consequences of a European

---

88. *Id.*

89. *See* DAVIS, *supra* note 2, at 187-88.

90. *See id.* at 187-96.

91. *See id.* (explaining that the critics of slavery took issue, not with slavery itself but the means by which slaves were obtained).

92. *See* EUROPEAN TREATIES, *supra* note 85, at 23.

encounter with other societies and had begun to contemplate the legal issues that would arise. As we have already seen, the legal tradition accepted the legitimacy of slavery and placed the slave within a legal framework. Slaves were presumed to be those defeated in a just war, those who were in serious violation of the Law of Nature, or those who were otherwise deserving of punishment at the hands of legitimate authorities. There was also the possibility that there were people who were natural slaves and who would require enslavement under the direction of responsible leadership to guide and protect them. This basis for slavery was always subject to criticism in Christian society, because it suggested the possibility that all mankind was not a single community descended from Adam and Eve. It held out the possibility of Aristotle's earlier suppositions, that there existed humanoid creatures not of the same species as mankind.[93]

The discussion of the Canarians provided a new justification for slavery, the enslaving of a people who existed at a primitive level of existence and required forceful guidance if they were to attain a fully civilized level of existence. The underlying assumption here is that all human beings once lived at a primitive level but then some groups gradually developed more sophisticated ways of life, ultimately reaching civilized status. This concept, derived in part at least from the writings of Cicero, provided a justification for conquering primitive societies without having to employ the theory of natural slavery.[94]

B. *New World Voyages with Columbus*

As long as slavery existed largely on the fringes of European society and as long as slaves and slavery could be considered within the traditional legal and theological framework, slavery seems not to have greatly concerned European thinkers. The voyages of Columbus, however, revealed to Europeans a number of new

---

93. *See* RICHARD H. POPKIN, ISAAC LA PEYRÈRE (1596-1676): HIS LIFE, WORK AND INFLUENCE 146 (1987). Christian teaching asserts that all mankind is descended from Adam and Eve. In the seventeenth century this theory, monogenesis, was challenged by the theory of polygenesis, that is, that there were various races of men descended from various original parents. It thus became possible to assert that Africans, for example, were not true human beings and could therefore be enslaved. *Id.* at 152.

94. Cicero described humans as originally living "a brutish existence in the wilderness" until a gifted speaker brought them together in order to develop a civilized way of life. CICERO, DE ORATORE I. viii. 33, at 25 (E. W. Sutton trans., Harvard Univ. Press 1942).

frontiers, raising the question of whether traditional conceptions of mankind could be applied to these new contexts. Could the inhabitants of the Americas be judged enemies of Christendom and therefore subject to conquest and enslavement? Were they the natural slaves that Aristotle discussed, or did they belong to some other category of humanity, or were they not even human at all? The legitimacy of slavery was not in question. Questions could, however, be raised regarding the specific circumstances under which individuals were enslaved. That is, although slavery itself was legitimate, an individual, or group of people, might have been enslaved illegally—without legitimate cause such as defeat in a just war. On his return from the New World in 1493, for example, Christopher Columbus brought Indians as slaves, but Queen Isabella ordered them freed and returned to their homes, presumably on the grounds that they were not the enemies of Christians and had not engaged in war against Columbus and his men.[95]

Debate about the legitimacy of enslaving the Indians went hand in hand with the larger question surrounding the legitimacy of the conquest of the Americas.[96] By what right did Europeans claim possession of the Americas, and, as a consequence, by what right did the Spanish enslave Indians? Underlying the papal bulls of the fifteenth century and the subsequent Spanish documents concerning the conquest of the Americas was a body of legal thought about human rights that, as we have seen, the canon lawyers had begun to develop in the mid-thirteenth century.

In addition to the traditional justifications of slavery, the European conquest of the New World contributed to the development of a new justification that had begun to develop—the racist argument.[97] Racism, the modern theory that certain peoples are inherently inferior and incapable of rising to a civilized level of existence,[98] is obviously linked to the Aristotelian notion of the natural slave. It differs from Aristotle's argument, however, by going beyond mere hypothesis and eventually specifying which peoples were in this

---

95. J. H. PARRY, THE SPANISH SEABORNE EMPIRE 48 (Univ. of Cal. Press 1990) (1966).

96. *See generally* HANKE, *supra* note 50.

97. For more information on the development of racism in the modern world and the role of the physical and the social sciences in the creation of racism, see IVAN HANNAFORD, RACE: THE HISTORY OF AN IDEA IN THE WEST 187-276 (1996) (discussing the development of the idea of race from 1684-1815).

98. *Id.*

category.   Furthermore, by the nineteenth century proponents of racism claimed to have found support in contemporary science.[99]

The most famous of this line of papal bulls dealing with the European conquest of newly discovered lands was Pope Alexander VI's (1492-1503) *Inter caetera*, one of three bulls issued in 1493 following Columbus's first voyage.[100] These bulls practically applied the assertions of universal papal jurisdiction that popes and canonists had been developing since the mid-thirteenth century.   From the papal perspective, the specific goal of these bulls was to regulate European Christian contacts with the newly discovered lands in order to prevent wars among Christians over access to these regions.[101] That is, *Inter caetera* specified which Christian kingdom possessed an exclusive right to trade and to other contact with specified newly-encountered lands.[102] Alexander's intention was to prevent conflict between expanding European empires by defining boundaries between them.[103] The occupation of these lands and domination of those who lived there were justified on the grounds that the Christian rulers would undertake the work of preaching the Gospel and converting the native inhabitants.[104] No other Christian ruler could allow his subjects to enter the specified region without the permission of the monarch to whom the region had been assigned.[105]

The three letters that Alexander VI issued in 1493 in response to the announcement of Columbus's safe return from his first voyage made no mention of slavery. These letters did, however, contain many of the same elements found in the earlier papal letters, *Romanus Pontifex* for example, which dealt with the Atlantic islands and West Africa.[106] The pope decreed that Columbus and his Spanish sponsors were working so that "the Catholic faith and the Christian religion [would] be exalted and everywhere increased and spread, that the health of souls [would] be cared for and that barbarous

---

99.   *See id.* at 287.

100.   For the texts and English translations of these bulls, see EUROPEAN TREATIES, *supra* note 85, at 56-78. There were three bulls involved in this exchange; two were headed *Inter Caetera* and were dated on May 3 and May 4, 1493, and the third, *Eximiae Devotionis*, was dated May 3, 1493. For further information on these bulls, see MULDOON, *supra* note 51, at 137-39.

101.   EUROPEAN TREATIES, *supra* note 85, at 77.

102.   *Id.*

103.   *See id.*

104.   *Id.* at 76-77.

105.   *Id.* at 77.

106.   *See supra* note 85 and accompanying text.

nations [would] be overthrown and brought to the faith itself."[107] The reference to overthrowing barbarous nations presumed that there would be opposition to the entry of Christians into these lands and that those overthrown could be enslaved as a consequence of their opposition.

The description of the actual inhabitants of the Caribbean islands, however, suggested that they would not offer much opposition to the Christians. Echoing the description of the Indians that Columbus provided in his letter announcing his return, the papal letters describe a primitive society whose members "seem sufficiently disposed to embrace the Catholic faith and be trained in good morals."[108] This suggests that there would be no need to employ force against these people.

The experience of the Spanish in the Americas soon made it clear that the Indians were not going to accept Spanish domination easily. The opposition to what the Spanish would describe as peaceful passage meant that the Indians could be enslaved. In order to justify in legal terms the conquest of the Americas, in 1513 the Spanish authorities issued a document, the *Requerimiento*, or the *Requirement*, that was to be read to any newly encountered Indian people. This document explained who the Spanish were, why they were there, and why the pope had authorized them to take possession of these lands.[109] If the Indians accepted Spanish over-lordship and if they listened to the preaching of Christian missionaries, the document stated that the Spanish "[would] receive you in all love and charity, and [would] leave you your wives, and your children, and your lands, free without servitude."[110] If the natives refused to accept these terms, however, the Spanish "[would] take you and your wives and your children, and [would] make slaves of them."[111]

As Sir John Elliot, Anthony Grafton, and other scholars have stressed in recent years, Europeans came only slowly to appreciate

---

107. EUROPEAN TREATIES, *supra* note 85, at 61.

108. *Id.* at 62.

109. For the full text of the document, see *The Requirement, 1513, A Most Remarkable Document*, *in* LATIN AMERICA: A HISTORICAL READER 46-47 (Lewis Hanke ed., 1974).

110. *Id.* at 47.

111. *Id.*

exactly how new the New World really was.[112]   Initially, the Europeans who came to the Americas perceived the land and the people in terms of the European experience and the knowledge of other peoples and societies gained over centuries. Columbus, for example, believing that he had reached the outer edge of Asia from whence spices came, initially identified some of the products he found growing in the Americas as some of the various spices he sought.[113] Some missionaries claimed to see in Aztec religion some similarities to Christian practices and rituals, indicating that the Apostle Thomas had once preached there.[114]   Lee Huddleston rationalized this and other behaviors through the observation that, because Christian teaching postulated that all mankind descended from Adam and Eve, Europeans generally "assumed that the American Indians derived from some Old World group."[115]

Other observers sought to resolve the difference between the Americans and the Europeans with which they were familiar by drawing upon traditional European images of various bestial and deformed creatures. These argued the possibility that the peoples of the New World were not truly human, but some sort of lesser creature, humanoid in external form but lacking the mental and moral capacity of true human beings. Perhaps, as some argued, these people were the natural slaves that Aristotle had described.[116]

From the perspective of the Church, the question of the origin and nature of the inhabitants of the New World was crucial to its role in the Americas. If the Indians were not truly human, if they did not possess souls, then the Church would have no more responsibility for

---

112. *See generally* J. H. ELLIOTT, THE OLD WORLD AND THE NEW 1492-1650 (Canto ed. 1992); ANTHONY GRAFTON, NEW WORLD, ANCIENT TEXTS: THE POWER OF TRADITION AND THE SHOCK OF DISCOVERY (1992).

113. *See* 1492: DISCOVERY, INVASION, ENCOUNTER 133 (Marvin Lunenfeld ed., 1991).

114. For greater detail on the perceived relationship between the Aztec religion and the evangelization of St. Thomas, see ANTHONY PAGDEN, SPANISH IMPERIALISM AND THE POLITICAL IMAGINATION 102 (1990).

115. LEE ELDRIDGE HUDDLESTON, ORIGINS OF THE AMERICAN INDIANS: EUROPEAN CONCEPTS, 1492-1722, at vii (1967). For further development of the concept of non-human or sub-human creatures, rather than monogenetic theories, see generally JOHN BLOCK FRIEDMAN, THE MONSTROUS RACES IN MEDIEVAL ART AND THOUGHT (1981).

116. For further historical development of the debate whether the native peoples of the Americas were Aristotle's natural slaves or some other form of less than human creature, see ANTONELLO GERBI, THE DISPUTE OF THE NEW WORLD: THE HISTORY OF A POLEMIC, 1750-1900, at 67-68 (Jeremy Moyle trans., Univ. of Pittsburgh Press 1973) (1955).

them than it had for the care of animals.[117] If they were natural slaves, the Spanish would have the right, perhaps even the obligation, to rule them in order to protect them from themselves, and the Church would have a role in protecting them from abuse.[118] The discussion of the nature of the Indians generated a great deal of polemical literature on each side of the question, much of it associated with Bartolomé de Las Casas, an associate of Columbus, and Juan Ginés de Sepúlveda, one of the leading humanists of the day.[119] Slavery was no longer an item for discussion solely among rulers, theologians, and canon lawyers; it was increasingly becoming a matter of great intellectual concern.[120]

In 1537, responding to calls for the protection of the peoples of the Americas, Pope Paul III issued the bull *Sublimis Deus* to defend the human status of the Indians. He observed that those who denied the humanity of the Indians were under the influence of the "enemy of the human race, who opposes all good deeds in order to bring men to destruction [and who] . . . invented a means never before heard of, by which he might hinder the preaching of God's word of Salvation to the people."[121] The means to which the pope referred was the practice

---

117.   The division of the newly discovered regions of the New World between Castile and Portugal by Alexander VI in 1493 was based on the obligation of Christians to seek the conversion of all mankind or, as Alexander explained, to insure "that the health of souls be cared for." EUROPEAN TREATIES, *supra* note 85, at 61. All of the papal documents allotting newly discovered lands to Christian rulers were based on the papal responsibility for the salvation of all human kind. If the inhabitants of these regions were not truly human, specifically, if they lacked souls, then the papacy had no responsibility for them. *See id.*

118.   *See id.*

119.   If the peoples of the New World were defined as natural slaves in Aristotle's terms, then the Spanish might have made the argument that by nature they should be subject to a superior people, in this case the Spanish. One leading Spanish writer, Juan Ginés de Sepúlveda (1490-1573) attempted what he saw as an Aristotelian-based defense of the Spanish conquest and subjugation of the peoples of the Americas, but this line of argument was not well-received by the Spanish government. *See* HANKE, *supra* note 50, at 129-30.

120.   *See generally id.* It is worth noting that the great debate about the legitimacy of the conquest of the newly encountered regions, about slavery, and, finally, about whether or not the peoples of the New World were Aristotle's natural slaves focused on the nature of the *American* natives. Indeed, one of the interesting paradoxes of this debate is that some of the defenders of the American people, Las Casas most notably, recommended the importation of African slaves to provide the labor necessary to enrich the Spanish conquerors of the Americas in place of the natives. *See* PHILLIPS, *supra* note 16, at 180. This, as well as the spread of disease causing a very high death rate among the Indian population, encouraged the Spanish to replace Indian slaves with African on the grounds that the Africans were healthier and more suitable for the work. *Id.*

121.   1 READINGS IN CHURCH HISTORY 625 (Colman J. Barry, O.S.B. ed., 1960); *see also* Lewis Hanke, *Pope Paul III and the American Indians*, 30 HARV. THEOLOGICAL REV. 65 (1937).

of treating the Indians "as dumb brutes created for our service, pretending that they are incapable of receiving the catholic faith."[122] In reality, however, according to Paul III, "the Indians are truly men and . . . are not only capable of understanding the catholic faith, but, according to our information, they desire exceedingly to receive it."[123] That being the case, the pope insisted that they "are by no means to be deprived of their liberty or the possession of their property . . . nor should they be in any way enslaved."[124]

Sublimis Deus re-stated the traditional Catholic position on slavery—that non-belief in itself did not justify conquest and enslavement.[125]   Furthermore, the pope emphasized that the main goal of contact with the New World was the conversion of the inhabitants who were clearly capable of hearing the Gospel and responding to it.[126]   Treating the Indians harshly, through enslavement or other means, would impede the process of conversion. The pope did not object to enslaving those who attacked missionaries or who otherwise engaged in actions that impeded Spanish control of the Americas. In other words Paul III did not issue a ban on slavery entirely, only on the claim that the Indians were not fully human.[127]

The debate about the intellectual and moral capacity of the Indians, Africans, and other peoples of the various new worlds that Europeans encountered from the sixteenth to the nineteenth century continued throughout this period. The rise of the modern state in the wake of the Protestant Reformation reduced the Church to an arm of the state and the legal opinions of the papacy to irrelevance even in Catholic countries.   Furthermore, the emergence of theories of polygenesis, the theory that there were several races of human beings each derived from a separate set of initial parents, made it possible to provide a theoretical basis for the notion of natural slaves.[128] Modern

---

122.   1 READINGS IN CHURCH HISTORY, *supra* note 121, at 625.

123.   *Id.*

124.   *Id.* at 626.

125.   *See id.* at 625-26.

126.   *See id.* at 625.

127.   *See id.* at 625-26.

128.   *See* POPKIN, *supra* note 93, at 151.

racism thus served to revive and justify the kind of natural slavery about which Aristotle had speculated.[129]

CONCLUSION

In the final analysis, the history of the Catholic Church's position on slavery reflects the world—or worlds—within which the Church operated, and illustrates the priorities that determined ecclesiastical policies. It also illustrates the way in which Christian thinkers often linked biblically-based ideas about the social order with the ideas of Greek and Roman philosophers and lawyers. The linkage almost always was somewhat contentious as the medieval Church-State conflict demonstrates. Each side believed in its own autonomy and also the need to cooperate with the other in the direction of Christian society. Slavery after all, like war and private property, was, as the Roman lawyers had noted, an element of the world as it actually exists, a concept that Christians could assimilate to the consequences of Adam's fall. Salvation, escape from the ills and evils of this world, and eternal life were what Christians sought, not social and political reform in this world. At the same time, however, Catholic teaching assumed that not all Christians would withdraw from the larger society within which they lived. Catholic teaching stressed involvement with the world as the Church-State conflict of the Middle Ages demonstrated. Such involvement could lead to the amelioration of social ills, if not their total abolition. Slavery could not be abolished, but slaves could be treated humanely and their manumission encouraged. They could be baptized, receive the sacraments (especially marriage), and otherwise participate in the Christian community. Having been freed from eternal death, the consequence of the slavery to sin from which baptism had freed them, slaves could look forward to the freedom that eternal life would grant them.

The fact that slavery declined significantly in medieval Europe suggests that within Christian society slavery would be discouraged, but that there would be no campaign to eliminate it. Furthermore, the very active role of Christian merchants, especially Italians, in the slave trade reminds us that the papacy showed an interest in slavery only when it involved Christians held as slaves. Christians were not to be

---

129. For an extensive discussion of the development of slavery in the modern world, with particular focus on the economic causes of it, see ROBIN BLACKBURN, THE MAKING OF NEW WORLD SLAVERY: FROM THE BAROQUE TO THE MODERN, 1492-1800 (1970).

enslaved, only infidels. To some extent, slavery, such as in the case of the Angles whom Gregory I is said to have encountered, could even be seen in Christian terms as a positive good because those who were physically enslaved might be better off if this slavery brought them to the baptismal font and freed them from the slavery to sin. During the fifteenth century, as the Portuguese encountered the inhabitants of the Canary Islands, it even became possible to argue that those fierce peoples who lived at a very primitive level of existence would be better off if enslaved and civilized in order to become suitable candidates for baptism.

From the perspective of the twenty-first century, what is obviously missing in the medieval discussions of slavery is the notion of human rights. That is, does not every human being possess the right to be free by the terms of the law of nature? Innocent IV suggested something of that sort in his commentary on *Quod super his* and his opinion dominated canonistic discussions of the right to property and to self-government for several centuries. There was virtually no intellectual movement beyond his opinion, however. Only in the thirteenth century did there begin to emerge a conception of natural rights that all men possessed, but the relation between the law of nature and the natural rights of all men is highly contested at the moment, as Brian Tierney has demonstrated.[130]

In the Middle Ages, slavery was understood in terms of the *ius gentium*, that is, in terms of the world as it existed, not as it ought to have been. For the most part, the question of human rights as they have come to be understood did not enter the discussion. The most that could be said, as Innocent IV suggested, was that although men were free by the terms of the natural law, failure to adhere to the terms of that law could justify enslavement. Rights only existed in balance with responsibilities.

---

130. *See* BRIAN TIERNEY, THE IDEA OF NATURAL RIGHTS: STUDIES ON NATURAL RIGHTS, NATURAL LAW AND CHURCH LAW, 1150-1625, at 2 (1997).