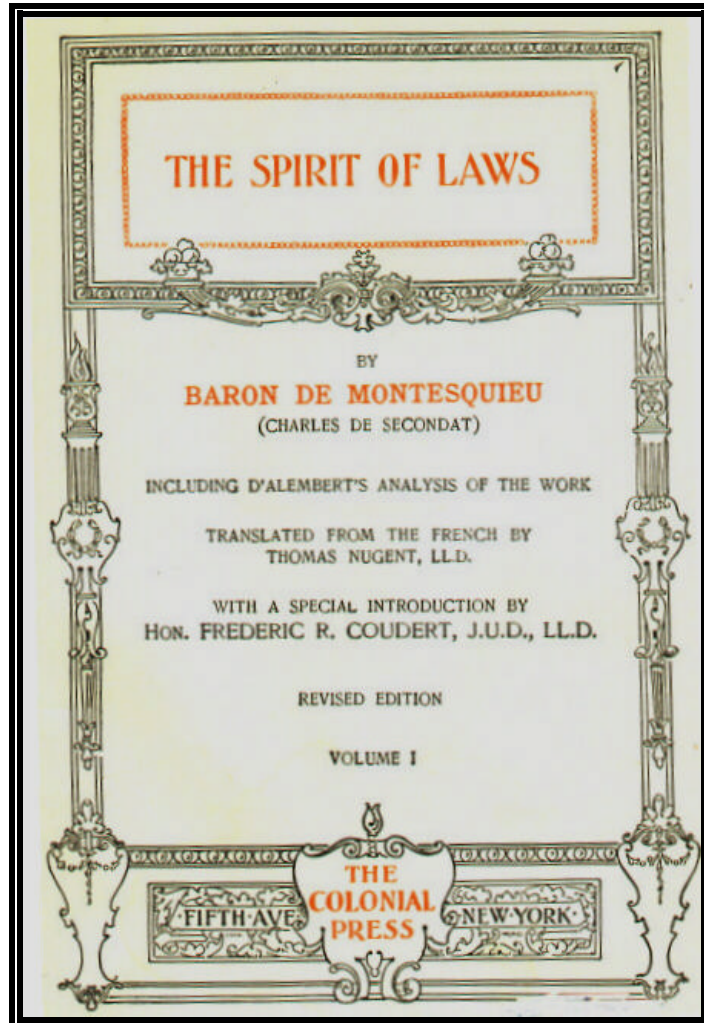


Montesquieu



THE SPIRIT OF LAWS

Translated from the french by
Thomas Nugent
(1900)



BOOK XV

IN WHAT MANNER THE LAWS OF CIVIL SLAVERY RELATE TO THE NATURE OF THE CLIMATE

I.--Of civil Slavery

SLAVERY, properly so called, is the establishment of a right which gives to one man such a power over another as renders him absolute master of his life and fortune. The state of slavery is in its own nature bad. It is neither useful to the master nor to the slave ; not to the slave, because he can do nothing through a motive of virtue; nor to the master, because by having an unlimited authority over his slaves he insensibly accustoms himself to the want of all moral virtues, and thence becomes fierce, hasty, severe, choleric, voluptuous, and cruel.

In despotic countries, where they are already in a state of political servitude, civil slavery is more tolerable than in other governments. Every one ought to be satisfied in those countries with necessities and life. Hence the condition of a slave is hardly more burdensome than that of a subject.

But in a monarchical government, where it is of the utmost importance that human nature should not be debased or dispirited, there ought to be no slavery. In democracies, where they are all upon equality ; and in aristocracies, where the laws ought to use their utmost endeavors to procure as great an equality as the nature of the government will permit, slavery is contrary to the spirit of the constitution : it only contributes to give a power and luxury to the citizens which they ought not to have.^a

^a Montesquieu seems to have forgotten that all the democracies of Greece adopted domestic servitude as the basis of social independence.—Ed.

2.—*Origin of the Right of Slavery among the Roman Civilians*

One would never have imagined that slavery should owe its birth to pity, and that this should have been excited in three different ways.^b

The law of nations to prevent prisoners from being put to death has allowed them to be made slaves. The civil law of the Romans empowered debtors, who were subject to be ill used by their creditors, to sell themselves. And the law of nature requires that children whom a father in a state of servitude is no longer able to maintain should be reduced to the same state as the father.

These reasons of the civilians are all false. It is false that killing in war is lawful, unless in a case of absolute necessity : but when a man has made another his slave, he cannot be said to have been under a necessity of taking away his life, since he actually did not take it away. War gives no other right over prisoners than to disable them from doing any further harm by securing their persons. All nations *c* concur in detesting the murdering of prisoners in cold blood.

Neither is it true that a freeman can sell himself. Sale implies a price ; now when a person sells himself, his whole substance immediately devolves to his master ; the master, therefore, in that case, gives nothing, and the slave receives nothing. You will say he has a *peculium*. But this *peculium* goes along with the person. If it is not lawful for a man to kill himself because he robs his country of his person, for the same reason he is not allowed to barter his freedom. The freedom of every Citizen constitutes a part of the public liberty, and in a democratic state is even a part of the sovereignty. To sell one's freedom *d* is so repugnant to all reason as can scarcely be supposed in any man. If liberty may be rated with respect to the buyer, it is beyond all price to the seller. The civil law, which authorizes a division of goods among men, cannot be thought to rank among such goods a part of the men who were to make this division. The same law annuls all iniquitous contracts ; surely then it affords redress in a contract where the grievance is most enormous.

b Justinian's "Institutes," book I.

c Excepting a few cannibals.

d I mean slavery in a strict sense, as formerly among the Romans, and at present in our colonies.

The third way is birth, which falls with the two former ; for if a man could not sell himself, much less could he sell an unborn infant, If a prisoner of war is not to be reduced to slavery, much less are his children.

The lawfulness of putting a malefactor to death arises from this circumstance: the law by which he is punished was made for his security. A murderer, for instance, has enjoyed the benefit of the very law which condemns him ; it has been a continual protection to him ; he cannot, therefore, object to it. But it is not so with the slave. The law of slavery can never be beneficial to him ; it is in all cases against him, without ever being for his advantage ; and therefore this law is contrary to the fundamental principle of all societies.

If it be pretended that it has been beneficial to him, as his master has provided for his subsistence, slavery, at this rate, should be limited to those who are incapable of earning their livelihood. But who will take up with such slaves? As to infants, nature, who has supplied their mothers with milk, had provided for their sustenance ; and the remainder of their childhood approaches so near the age in which they are most capable, of being of service that he who supports them cannot be said to give them an equivalent which can entitle him to be their master.

Nor is slavery less opposed to the civil law than to that of nature. What civil law can restrain a slave from running away, since he is not a member of society, and consequently has no interest in any civil institutions? He can be retained only by a family law, that is, by the master's authority.

3.—*Another Origin of the Right of Slavery*

I would as soon say that the right of slavery proceeds from the contempt of one nation for another, founded on a difference in customs.

Lopez de Gama^e relates "that the Spaniards found near St. Martha several basketfuls of crabs, snails, grasshoppers, and locusts, which proved to be the ordinary provision of the natives, This the conquerors turned to a heavy charge against the conquered." The author owns that this, with their smok-

ing and trimming their beards in a different manner, gave rise to the law by which the Americans became slaves to the Spaniards.

Knowledge humanizes mankind, and reason inclines to mildness; but prejudices eradicate every tender disposition.

4.—*Another Origin of the Right of Slavery*

I would as soon say that religion gives its professors a right to enslave those who dissent from it, in order to render its propagation more easy.

This was the notion that encouraged the ravagers of America in their iniquity.^f Under the influence of this idea they founded their right of enslaving so many nations; for these robbers, who would absolutely be both robbers and Christians, were superlatively devout.

Louis XIII ^g was extremely uneasy at a law by which all the negroes of his colonies were to be made slaves; but it being strongly urged to him as the readiest means for their conversion, he acquiesced without further scruple.

5.—*Of the Slavery of the Negroes*

Were I to vindicate our right to make slaves of the negroes, these should be my arguments :—

The 'Europeans, having extirpated the Americans, were obliged to make slaves of the Africans, for clearing such vast tracts of land.

Sugar would be too dear if the plants which produce it were cultivated by any other than slaves.

These creatures are all over black, and with such a flat nose that they can scarcely be pitied.

It is hardly to be believed that God, who is a wise Being, should place a soul, especially a good soul, in such a black ugly body.

It is so natural to look upon color as the criterion of human nature, that the Asiatics, among whom eunuchs are employed, always deprive the blacks of their resemblance to us by a more opprobrious distinction.

^f See "History of the Conquest of Mexico," by Solís, and that of "Péru," by Garcilasso de la Vega.

^g Labat's "New Voyage to the Isles of America," vol. iv. p. 114, in 1752, 12mo.

The color of the skin may be determined by that of the hair, which,, among the Egyptians, the best philosopher-s in the world, was of such importance that they put to death all the red-haired men who fell into their hands.

The negroes prefer a glass necklace to that gold which polite nations so highly value. Can there be a greater proof of their wanting common sense?

It is impossible for us to suppose these creatures to be men, because, allowing them to be men, a suspicion would follow that we ourselves are not Christians.^h

Weak minds exaggerate too much the wrong done to the Africans. For were the case as they state it, would the European powers, who make so many needless conventions among themselves, have failed to enter into a general one, in behalf of humanity and compassion ?

6.—*The true Origin of the Right of Slavery*

It is time to inquire into the true origin of the right of slavery. It ought to be founded on the nature of things; let us see if there be any cases where it can be derived thence.

In all despotic governments people make no difficulty in selling themselves ; the political slavery in some measure annihilates the civil liberty.

According to Mr. Perry,ⁱ the Muscovites sell themselves very readily : their reason for it is evident-their liberty is not worth keeping.

At Achim every one is for selling himself. Some of the chief lords ^a have not less than a thousand slaves, all principal merchants, who have a great number of slaves themselves, and these also are not without their slaves. Their masters are their heirs, and put them into trade. In those states, the freemen being overpowered by the government, have no better resource than that of making themselves slaves to the tyrants in office.

This is the true and rational origin of that mild law of slavery which obtains in some countries: and mild it ought to be, as founded on the free choice a man makes of a master, for his

^h The above arguments form a striking instance of the prejudice under which even a liberal mind can labor.—Ed.

ⁱ "Present State of Russia."
^a Dampier's "Voyages," vol. iii.

own benefit; which forms a mutual convention between the two parties.

7.—*Another Origin of the Right of Slavery*

There is another origin of the right of slavery, and even of the most cruel slavery which is to be seen among men.

There are countries where the excess of heat enervates the body, and renders men so slothful and dispirited that nothing but the fear of chastisement can oblige them to perform any laborious duty: slavery is there more reconcilable to reason; and the master being as lazy with respect to his sovereign as his slave is with regard to him, this adds a political to a civil slavery.

Ristotle ^b endeavors to prove that there are natural slaves; but what he says is far from proving it. If there be any such, I believe they are those of whom I have been speaking.

But as all men are born equal, slavery must be accounted unnatural, though in some countries it be founded on natural reason; and a wide difference ought to be made between such countries, and those in which even natural reason rejects it, as in Europe, where it has been so happily abolished.

Plutarch, in the "Life of Numa," says that In Saturn's time there was neither slave nor master. Christianity has restored that age in our climates.

8.—*Inutility of Slavery among us*

Natural slavery, then, is to be limited to some particular parts of the world. In all other countries, even the most servile drudgeries may be performed by freemen.

Experience verifies my assertion. Before Christianity had abolished civil slavery in Europe, working in the mines was judged too toilsome for any but slaves or malefactors: at present there are men employed in them who are known to live comfortably. The magistrates have, by some small privileges, encouraged this profession: to an increase of labor they have joined an increase of gain; and have gone so far as to make those people better pleased with their condition than with any other which they could have embraced.

^b "Polit." lib. I. cap. i.

^c As may be seen in the mines of

Hartz, in Lower Saxony, and in those of Hungary.