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Some of the biggest changes in History happen so gradually that they do not get attention proportionate to their importance.[1] So it is with the history of slave marriage. Most historians focus on one period only,[2] and are hardly aware of these very gradual transformations. Looking at an individual over a section of their life a person may hardly seem to age at all. Put a photograph of the man at his matriculation together with another at his retirement, and the process is all too evident. So we may begin by juxtaposing a situation from the fifth century with one from the sixteenth. The first is known through a famous decision by Pope Leo the Great. He had been asked if a girl could marry a man who had been living with an unfree partner, and replied as follows:

>»Not every woman joined to a man is the man's wife, for not every son is his father's heir. The bonds of marriage between free men and women follow the rule of law and are between equals, as the Lord established, long before the beginning of Roman law. Therefore a wife is one thing, a concubine is another, just as a slave girl is one thing, and a free woman another. … Therefore if a cleric anywhere has given his daughter in marriage to a man who has a concubine, it should not be treated as if he has given her to a married man, unless perchance that woman has been freed, and given a dowry in accordance with the law, and accorded the honour of a public wedding.«[3]

The problem no doubt came to him because a married cleric was anxious to make sure his daughter would not be living in sin – for this was still a world of married clerics with children. The salient point here is that the prospective husband's previous partner is not judged to be married to him if she is still a slave. Slaves could be freed and married thereafter, but a slave could not get married while still a slave. This is something that historians of the Roman Empire and late Antiquity more or less take for granted.

Now we may fast forward a dozen centuries and quote from a recent study by Herman Bennett of Colonial Mexico:

>»In 1620, Juan de la Cruz and Isabel de la Cruz, two enslaved persons ›from Angola‹ who belonged to Pedro Martín de Loa, petitioned for a marriage licence. Instead of asking their master or his respective servants to stand in as witnesses, the prospective couple relied on two other enslaved persons ›from Angola‹.«[4]

The transformation is immediately apparent: in the fifth century, it was a contradiction in terms to speak of the marriage of a slave. In the seventeenth century, a slave's right to marry was taken for granted by the Church. Surely this is one of the most important developments in Western history.

Milestones along the way are not unknown to specialists. One is decree 30 of the Council of Châlons-sur-Saone, 813:

>»It has been said to us that certain men break up the legitimate marriage of slaves [*servorum*] by a certain presumptuous exercise of authority, paying no attention to the words of the Gospel:

1 My thanks to Dr Benedetta Albani for bibliographical references.

2 Relatively recent studies of the crucial medieval phase include VERLINDEN (1977); GILCHRIST (1976), esp. 288–294; HOFFMANN (1986), esp. 13–14; SHEEHAN (1988); STUARD (1999); WEBER (2008), I, 252–283, esp. 263–264, 303, 374; LAMBERTINI (2008).

3 Leo I, *Ep.* 167.4, in *Patrologia Latina*, ed. J. P. MIGNE, 54, 1204–5, passage translated in D'Avray (2005) 177. For the position in classical Roman Law see SHEEHAN (1988) 466 note 26.

4 BENNETT (2003) 88. In Mexico City at least marriage between slaves was common: see VELÁZQUEZ GUTIÉRREZ (2006) 250–251: »un número considerable de esclavos en la ciudad de México, sobre todo bozales [newly arrived slaves], contrajo matrimonio con mujeres de su misma condición jurídica y racial«.

What God has joined together, let no man put asunder [Matth. 19: 6]. Therefore it is our judgement that the marriage of slaves should not be broken up, even if they have different lords, but that they should remain in one marriage while serving their lords. And this is to be observed in the case of those who were married legally and with the assent of the lords.«[5]

Now it may be that the evolution of unfree status towards a class of dependents occupying plots of land had much to do with this change of attitudes, though the causal flow need not have been all in that direction: recent scholarship takes seriously the idea that the Church's influence was a real causal factor in bringing about the decline of slavery.[6] However this may be, the decree just quoted helped remove the legal legitimation from the assumption that slavery and marriage were incompatible. This ruling (and the later Canon Law which took the same new thinking further) drew no distinction between serfs and what we would call »real« slaves. Thus, the validity of the marriages of unfree men and women of any kind became embedded in Canon Law tradition. We find the idea affirmed in the Decretum of Burchard of Worms (c. 1000), in collections by Ivo of Chartres (c. 1100),[7] and in Gratian's *Decretum*.[8]

Perhaps the crucial milestone, however, was the incorporation into *Liber Extra* the official thirteenth century collection of (mostly) papal decretals of a papal decree denying lords the power to veto the marriages of the unfree – the decree itself seems to date from the 1150s.[9] As transmitted by the *Liber Extra*,[10] the passage with the key decision runs as follows:

»Indeed, as St Paul says, just as in Jesus neither free man nor slave is to be separated from the sacraments of the Church, thus marriages between the unfree [*servos*] should not in any way be prohibited either. And, should they have been contracted when their masters object and against the will of the latter, there are no grounds on this account for dissolving them; their obligation to their own lords in terms of dues and customary services is not however diminished.«[11]

A recent study emphasizes the influence of this decision on Theology: »The reception of this decision meant that for theologians it was no longer so much a matter of discussing whether the marriage of the unfree [*servi*] in these circumstances [*condizioni*] might be legitimate, as of providing a rational justification for the new legal situation.«[12] The legal implications are, however, even more important than the stimulus to theological reflection. The *Liber Extra* would remain part of the Catholic Church's official law until 1917 and its influence must have been considerable in the long term, though not immediately.[13]

Of course it would be naïve to assume that social practice immediately fell into line with Canon Law. Law is one thing; what happened on the ground with marriages of the unfree is another. What can be said is that from the time of the *Liber Extra*'s promulgation in 1234 the Church's law could not be used to legitimate any restrictions on the freedom of the unfree to marry. Susan Mosher Stuard has argued that the canon law ruling would not have helped slave women to find a husband because their unfree condition would be transmitted to their children, thus putting off potential *partis*. »A man, unfree or free, marrying an ancilla, gained the limited right of cohabiting with his wife; he did not gain full parental rights over his children any more than did his enslaved

5 Werminghoff (1906) 279. For the Carolingian background see Devroey (2000) 8, 19, 24–25; Nelson (2004) 11, with further bibliography.

6 Nelson (2004) 11.

7 References in Brundage (1987) 196 note 81.

8 PARS II C. 29 Q. 2, Corpus Iuris Canonici, i, Decretum Magistri Gratiani, ed Aemilius Friedberg (1922), col. 1095.

9 Jaffé/Wattenbach (1885–1888) 10445 (7068), ii, 136.

10 In the Friedberg edition the passages in italics were not included in the *Liber Extra* itself, but were supplied by the editor from fuller versions of the papal letter. The omissions make a difference to the syntax and my translation follows the version that users of the *Liber Extra* would have seen.

11 Decretals of Gregory IX, the *Liber Extra* as X.4.9.1: see Corpus Iuris Canonici, ii, Decretalium Collectiones, ed. Aemilius Friedberg (1922), col.

691–2. On this decree see Landau (1967).

12 Lambertini (2008) 240–241 (my translation). Lambertini does not give a precise canon law reference but his page references to Friedberg's edition and the content of his comment suggest that he has the same decretal in mind.

13 For the absence of immediate influence see Landau (1967) 514, 552–553.

wife. Under these circumstances, would any man wish to marry an ancilla?«[14] The answer is of course that unfree men would.. The attraction of marital status should not be underestimated!

Let us look back over the path traversed. It starts in a world where the West was still ruled by Roman Emperors, and ends with the Spanish Colonial Empire in Mexico. The anecdote from Colonial Mexico is the tip of the iceberg of findings in Hermann Bennett's study about slave marriages and their integration into the Canon Law system. Over and over again, his data answers Stuard's question, »would any man wish to marry an ancilla?«, in the affirmative.

Can we claim that a twelfth century pope's decision defined the relation between marriage and slavery centuries later in the Catholic New World? Yes – and also No. The general rule applies: when we find legislation, we know that the opposite was happening. The same evidence shows the influence of Canon Law and the social forces it tried to overcome – failing, no doubt, more often than not. Spanish American synods excommunicated Spaniards who obstructed slave marriages, and demand also under pain of communication that the faithful denounce those who hindered the marriages of blacks or mulattos in their service.[15] Furthermore, synods in the seventeenth and eighteenth century legislated under pain of severe penalties to prevent slaves from being sold separately or punished in any other way for getting married.[16] This was not just a matter of legislation. Through pastoral visits, they got to grips with the problem on the ground, dealing with opposition from masters of new slaves.[17] A study by Kathy Waldron of a private journal kept by Bishop Mariano Martí of Venezuela in the late eighteenth century shows him dealing with a case where a female slave, Juana, accused her master of lusting after her and preventing her marriage – a *Promessi Sposi* situation with slavery as an extra element. Furthermore, in the course of her struggle to avoid her master's advances her betrothed turned his attentions elsewhere. The bishop »reprimanded [the master], removed Juana from her owner's hacienda, and ordered the two slaves to marry«.[18] This example shows how the very nature of slavery had been transformed from within by Canon Law and papal authority, with global implications.

In the Portuguese colony of Brazil we find a similar pattern to that of the Spanish colonies. As soon as the Jesuits arrived, in the mid sixteenth century, they set about encouraging slave marriage, against the opposition of the masters who feared that slave marriage would lead to emancipation.[19] In the seventeenth century, in the great Benedictine estates of the Recôncavo region, slave marriage seems to have been the norm,[20] though one cannot generalize from this. The first ecclesiastical constitutions of Portuguese America are relatively late, 1707, but they reprise the rulings of synods in Spanish territories on slave marriage. Canon 303 of Book 1 states that masters who use force or threats to stop slaves marrying are in a state of mortal sin.[21]

This paper has focused on a single, crucial, line of development: the global implications of a medieval subversion of an assumption hardly ques-

14 Stuard (1999) 119.
15 »Pronto comienzan los concilios americanos del siglo XVI – que habrían de ser imitados por los de las centurias siguientes – a insistir en la libertad de elección de los esclavos; a declarar excomulgados, siguiendo al Tridentino, a los españoles que embarazaran sus matrimonios o los forzaran a ellos; y a aprobar – come el III Limense – textos de edictos generales donde se exige que los fieles, so pena de excomunión, denuncien a las personas que estorbaren el matrimonio de negros y mulatos a su servicio.« Rípodas Ardanaz (1977) 256 and with source references in note 102. Cf. Velázquez Gutiérrez (2006) 252

at note 42: »el III Concilio Provincial Mexicano decretó pena de excomunión contra cualquier español que obligase a indio o esclavo alguno a contraer matrimonio o bien les impidiese hacerlo.«

16 »varios sínodos celebrados durante los siglos XVII y XVIII y alguna instrucción pastoral procuran remover estorbos relacionados con esa intervención abusiva de los amos: … para alentar uniones obstaculizadas, mandan bajo penas graves que los esclavos no sean vendidos *por separado* o castigados de cualquier otra manera por el solo hecho de haberse casado.« Rípodas Ardanaz (1977) 257 with source references in note 103.

17 »Estas resoluciones, … tampoco quedan necesariamente en letra muerta: las visitas pastorales dan lugar a que los obispos se ocupen sobre el terreno del problema planteado por la oposición de los amos de novios esclavos, y a que apunten en más de una ocasión un ›ya consiente […] que se case su esclava‹ o un ›quedan ya casados‹ como saldo de su gestión.« Rípodas Ardanaz (1977) 257.
18 Waldron (1989) 163.
19 Castelnau-L'Estoile (2010) 1354.
20 Ibid. 1356.
21 Ibid. 1360.

tioned in the Ancient World. We have left aside many other themes discussed by specialists on slave marriage in the New World, such as forced unions imposed on slaves by their masters,[22] and the reluctance of slaves to get married in some circumstances even aside from pressure from their masters.[23] Slave marriage in the colonies of Protestant powers has not been discussed at all.

Finally, the perspective employed here has been from the Ancient World looking forward, rather than from our own times looking back. From the latter perspective, the salient fact may seem to be not that the Church insisted on freedom of slaves to marry, but that it did not question the institution of slavery as such, and even reaffirmed it while defending slave marriage.[24] Two final thoughts about that: Firstly, even if the papacy had been before its time and opposed slavery as such, and had wanted to link freedom to marry with freedom

tout court, a campaign on those lines would probably have proved counterproductive. As noted above, some masters opposed slave marriage precisely because they thought it implied emancipation.[25] A close link between the two would have militated against slave marriage rather than ending the institution of slavery. The power of the papacy over Colonial monarchies should not be overestimated.[26] Secondly, a slave system where slaves could marry against their masters wishes was simply not the same system as the slave system of the Ancient World: its »inner side« had been transformed. If »social relations between men and the ideas which men's actions embody are really the same thing«,[27] then slavery in the New World was a different social structure from slavery in the Ancient World. Ultimately, Hadrian IV's decision had a global significance.

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22 Ibid. 1358; RÍPODAS ARDANAZ (1977) 253, 257.
23 CASTELNAU-L'ESTOILE (2010) 1357.
24 See CASTELNAU-L'ESTOILE (2010) *passim.*
25 Ibid. 1354.
26 Cf. GRAY (1987) 66.
27 WINCH (1990) 121.

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