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SEVENTEENTH-CENTURY JURISTS, ROMAN LAW, AND THE LAW OF SLAVERY

ALAN WATSON*

Issues of slavery and slave law were of considerable theoretical interest to continental European jurists in the seventeenth century. They lived in a different world from American colonists of European descent because they had no direct experience of slave holding and no immediate financial involvement. Their interest stemmed from the fact that their education was in Roman law; and not only was Roman law the most revered system, but slaves were prominent in it. For the jurists' attitudes we must remember that, at least in theory, there were no slaves in territories such as the Dutch Republic, Germany, or France. (What slaves there were were the innocuous domestic servants of colonists back for a visit.) The writings of the jurists had implications for slavery in the Americas partly because their views might be translated into actual law, but mainly because respect for these jurists could influence contemporary and later opinion on theoretical issues of the morality—or otherwise—of slave holding. This theoretical opinion could then have practical implications. We must not forget that since these jurists wrote mainly in Latin, a language which a large proportion of the educated understood, their ideas could have an impact across local, national and continental boundaries.

In this paper I will not expressly consider the impact of juristic writing on slavery in the Americas. Rather, I wish to consider aspects of the intellectual “baggage” that some jurists of the seventeenth century themselves brought to the task of framing their opinions.¹ Scholars do not develop their theories just as they like, in isolation: they are also bound by what they know and what they do not know, by what they have read and what they cannot read, by the intellectual cultural tradition in which they work, and by the outside world.² I will not stress the idiosyncracies

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1. This same baggage is found in 18th century writers as well. See, e.g., JOHANN GOTTLIEB HEINECCIUS, *ELEMENTA JURIS NATURAE ET GENTIUM* [ELEMENTS OF THE LAW OF NATURE AND OF NATIONS] (1725).

2. See, e.g., DAVID DAUBE, *Fashions and Idiosyncracies in the Exposition of the Roman Law of Property*, in 2 COLLECTED STUDIES IN ROMAN LAW 1325 (David Cohen & Dieter Simon eds., 1991).

of individuals, but what the jurists of the time had in common, as part of their heritage. A prime purpose of this paper is, in fact, to alert scholars of American slavery to this common, European, legal heritage.

I. ROMANIST IDEOLOGY

Scholars who rise to the top of their profession usually have a fondness for their discipline. They are even tempted to exaggerate its virtues, and downplay its weaknesses. Thus, at the outset of the first edition of his *Institutions of the Law of Scotland*, Lord Stair writes: "The Law of Scotland, in its Nearness to Equity, plainness and facility in its Customs, Tenors and Forms, and in its celerity and dispatch in the Administration and Execution of it, may be well paralleled with the best Law in Christendom."³ And William Blackstone's complacency in his admiration for the law of England, as set out in the first edition of his *Commentaries on the Law of England*,⁴ is notorious.⁵

Nevertheless, the primary training of the continental jurists with whom we are concerned was in Roman law, and their high esteem of it is a commonplace. Thus, Hugo Grotius of Holland states:

When no general written laws, privileges, by-laws or customs were found touching the matter in hand, the judges were from times of old admonished by oath to follow the path of reason according to their knowledge and discretion. But since the Roman laws, particularly as codified under Justinian, were considered by men of understanding to be full of wisdom and equity, these were first received as patterns of wisdom and equity and in course of time by custom as law.⁶

And the Frisian, Ulrich Huber, proclaims:

But because the laws of the State of Rome spread with her ancient empire through the whole of Europe, and because they surpass all other known systems of law in sagacity and justice, Roman law kept its force among almost all Christian peoples, so much so that it has been adopted by many of them; not, however, without every free nation taking away or adding what seemed to it good. Among some nations also it has no binding power, but rather serves as a pattern of wisdom and legality, without the judges being actually bound by it.⁷

This praise for Roman law is especially significant because both these

3. 1 JAMES DALRYMPLE, LORD STAIR, INSTITUTIONS OF THE LAW OF SCOTLAND 1.1.15 (Edinburgh 1681).

4. 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND (1765-1769).

5. See especially JEREMY BENTHAM, A FRAGMENT ON GOVERNMENT (1776).

6. HUGO GROTIUS, INLEIDING TOT DE HOLLANDSCHE RECHTSGELEERTHEYD [INTRODUCTION TO THE JURISPRUDENCE OF HOLLAND] 1.2.22 (1631). This edition was written between 1619 and 1621, while Grotius was in prison.

7. 1 ULRICH HUBER, HEEDENDSAEGSE RECHTSGELEERTHEYT [CONTEMPORARY JURISPRUDENCE] 1.2.24 (1686).

quotations are taken from treatises in which the jurists were expounding their own local law.

Their admiration was for Roman private law in general, not just for one branch of it. The Romans were among the world's most prolific slave users, and had a highly developed law of slavery. Admiration for Roman law in general induced later jurists to be less critical of Roman slave law.

I deliberately say "to be less critical," not "to praise." Johannes Voet, another scholar from Holland, provides a good example of what I mean in the first edition of his *Commentary on Justinian's Digest*.⁸ Because he was producing a commentary that in fact was geared towards the law of his own time, slave law was naturally deemphasized, because it did not exist in Holland. Still, although the main passage "On the Status of Humans" (1.5.3) occupies less than one page in a standard edition, Voet managed to emphasize that the rights of owners had come to be restricted to moderate punishment; that though slavery between Christians had been ended, yet where barbarians enslave Christians, so Christians by the *ius talionis* (law of retaliation) also enslave barbarians, and sometime in such circumstances Roman law applies, as by the Ordinances of the Belgian Federation.⁹ Voet devotes almost half his text to persons in Gelderland, Zutphen and elsewhere, where slavery did not exist, who were attached to the soil, and who, he said, in fact were free from none of the stains of slavery.¹⁰ Nowhere does he condemn slavery or criticize Roman slave law. Rather, there is almost pride, not in the institution of slavery, but in the quality of the rules. Thus masters' rights to punish, Voet said, were restricted to moderate punishment; when by *ius talionis* Christians took barbarians as slaves it was the Roman rules that applied at such times; and in any event, though slavery did not then exist in Holland, contemporary and neighboring states had a status that was not much different.

Even more instructive is Voet's treatment of the Augustan *Senatus consultum Silanianum* of A.D. 10.¹¹ This decree of the Roman senate is, in my opinion, the most horrifying manifestation of law as applying to slaves at Rome, to the extent even that, so far as I am aware, it was not accepted in any American colony of a European power. The main provision was that when an owner was murdered in his home all the slaves normally resident there were tortured and then executed. The full horror

8. 1 JOHANNES VOET, COMMENTARIUS AD PANDECTAS (1698, 1704).

9. *Id.* at 1.5.3.

10. *Id.*

11. *Id.* at 29.5.

is that the jurists interpreted this as they did any other piece of law.¹² It was quite irrelevant that a slave could have shown that he had had no part in the crime and could not have prevented the murder. Moreover, by typical legal logic the jurists could reach conclusions quite hostile to the spirit of the decree. Thus, for example, if someone was killed at home, those slaves whom he possessed in good faith thinking he was owner, or in whom he had a life-rent, were spared because the victim was not in fact the owner. By similar reasoning, a son who had been given in adoption was not treated as owner even though he was murdered in his real father's house. The savagery of the law appalled the common people at Rome.¹³ But of this nothing appears in Voet. His emphasis is all on the justification of the *senatus consultum*: that otherwise no home would be safe, and that slaves ought to guard their master's life with their own.¹⁴

Thus, because of their love for Roman law, leading jurists of the 17th century presented Roman slave law—the slave law that was known to them—more kindly than did the Roman legal sources themselves. This should not surprise us, or be taken as an indication that they had a personal, if indirect, interest in the maintenance of slavery in the American colonies. Exactly the same over-generous estimate of slave law in the Roman legal sources appears in the writings of 20th century Roman law scholars.¹⁵

II. JURISTIC BIAS

Nevertheless, if subsequent jurists tend to represent Roman slave law as less harsh than it appears in the sources, then it must also be said that the Roman sources themselves depict a distorted, gentler picture of the institution than its ancient reality.

To the outsider looking in, every legal system, especially a past system, presents only a partial profile. Our information is incomplete, and shows us only the concern of certain groups. This is very true for Roman law. We have almost no information on Roman private law except what the legal sources contain, especially Justinian's *Code* (which contains the legal rulings of the emperors) and *Digest* (which contains excerpts from the writings of the classical jurists). The *Digest* is twice as large as the

12. See, e.g., ALAN WATSON, *ROMAN SLAVE LAW* 134-138 (1987); ALAN WATSON, *SLAVE LAW IN THE AMERICAS* 7-10 (1989).

13. TACITUS, *ANNALES* 14.42-45.

14. VOET, *supra* note 8, at 29.5.

15. See ALAN WATSON, *Roman Slave Law and Romanist Ideology*, in *LEGAL ORIGINS AND LEGAL CHANGE* 279 (1991).

Code, and more important. The Roman jurists in the earlier days were gentlemen who treated legal interpretation as a hobby that brought them social prestige and political prominence. From the second century, they were imperial bureaucrats. They were in general not interested in law in the round: not in law reform, or what went on in court, or in the structure of the system. In their interpretation of the law, they discussed the problems that interested them, not necessarily those that actually arose often. For example, in the whole of the *Digest* there are only two texts that expressly mention the market.¹⁶ The jurists were just not concerned about policing arrangements or in administrative matters.

This tunnel vision has three consequences for our knowledge of Roman slave law. First, the sources say almost nothing about policing issues that relate to slavery. Thus, they are in marked contrast to the sources for, say, English or Dutch America. Only one *Digest* text, reporting a letter of the Emperors Severus and Antoninus to the prefect of the city guard, reveals that the prefect had the duty to hunt down runaway slaves and return them to their owners.¹⁷ Often, however, it is policing regulations that are most informative about unpleasant and nasty restrictions in the society. Second, just as the jurists were uninterested in what went on in court and in issues of proof, so likewise they were uninterested in the difficulties of showing that an owner had punished a slave beyond reason. That these difficulties were well-nigh insuperable is revealed only incidentally by a few imperial rulings in the *Theodosian Code*.¹⁸ The absence of such discussion tends not to bring the issue before the mind of a later reader. Not one legal text even mentions sexual abuse of slave children by their owner.¹⁹ Third, the juristic emphasis on complex situations and the absence of focus on matters just because they were important in the society means that relatively very little is said about the condition of the poorer sort of slave.

Roman slaves were of many types. At the high end of the scale, slaves might be set up by their owners as doctors, ship masters, bankers, or business entrepreneurs with even hundreds of other slaves in their *peculium*. The *peculium* was a fund in the ownership of the master but

16. One, DIG. 1.12.1.11, says that the supervision of the pig market is within the charge of the urban prefect. The other, DIG. 42.4.7.13, mentions the market only incidentally. I am here ignoring the famous aedilician edicts concerning warranties in sale of beasts and slaves. DIG. 21.1.

17. DIG. 1.15.4.

18. CODE TH. 9.12.1; 9.12.6; 9.6.2. CODE TH. 9.12.1 is repeated at CODE J. 9.14.1. See WATSON, *supra* note 15, at 287-91.

19. There can be no doubt that even adult male slaves suffered frequently from sexual abuse. In the late Republic, Cato the Censor is made to lament that pretty boys fetched more on the market than fields. POLYBIUS, HISTORIES 31.25.5.

under the control of the slave, who might even be allowed to use it to buy his freedom.²⁰ At the low end of the scale were the slaves who toiled in the poisonous air of the silver mines or labored in chains in the fields. But all the interesting legal questions concern the slaves at the upper end of the scale: the measurement of the *peculium*, the effect of a contract made by a slave, a ship captain operating beyond his instructions, a surgeon cutting carelessly, the complexities of manumission, the division of a slave's acquisitions when he or she was owned by one person but another person had a life-rent. Slave miners and agricultural workers scarcely have the opportunity to appear as heroes or villains of legally interesting situations, so are seldom the subject of discussion by the jurist. Consequently, the slaves that appear in the *Digest* are those—and usually only those—who are relatively affluent. In addition, they are slaves who had been well treated in the past (or they would not have figured in such situations) and who were likely to continue to be favorably treated by their owners.

III. NATURAL LAW AND THE *IUS GENTIUM*

For most of our history, the most powerful legal theories in the western world have been theories of natural law. Such theories almost always insist that, independently of any acceptance by a state, there exists a higher law binding as law, whether because of its innate and obvious morality, its being in accordance with reason or nature, or its deriving from god's will. The moral goodness of natural law is its primary characteristic. This description, however, does not fit the definition of natural law given in Justinian's *Institutes* and *Digest*, and which derives from the classical jurist Ulpian. This must be emphasized at the beginning of this section because, as later jurists approached and modified the Justinianian definition, they tended to attach to it a notion of inherent moral rightness, because of the impact of theories of natural law.

For Justinian, law is divided into three kinds: natural law, the law of all peoples (*ius gentium*), and civil law. He defines natural law as the law that nature teaches all animals.²¹ It is not restricted to humans, but is common to all animals. This definition, which has no philosophical interest, was, I believe, used to deny significance to natural law, because

20. See Alan Watson, *Thinking Property at Rome*, 68 CHI.-KENT L. REV. 1355, 1356-59, 1364 n.28 (1993).

21. J. INST. 1.2pr; DIG. 1.1.1.3.

for the jurists law was always purely positivist. Neither does the definition have practical value. As Grotius puts it:

The distinction, which appears in the books of Roman law, between an unchangeable law common to animals and man, which the Roman legal writers call the law of nature in a more restricted sense, and a law peculiar to man, which they frequently call the law of nations, is of hardly any value. For, strictly speaking, only a being that applies general principles is capable of law, as Hesiod rightly observed.²²

Grotius' heading introducing that passage reads: "That the instinct common to other animals, or that peculiar to man, does not constitute another kind of law."²³ That the natural law as defined by Justinian was not law, but instinct, was a commonplace for seventeenth-century jurists.²⁴

Justinian proceeded to define *ius gentium* as the law established by reason and common to all people.²⁵ Civil law was the law peculiar to a particular state.²⁶

The uselessness of the Justinianian definition of natural law, coupled with the strength of natural law theories, caused later jurists to reassess the situation. A standard position in the seventeenth century would be as follows: The term natural law is used, it is claimed, both properly and improperly. The improper sense is that found in Justinian's *Institutes*, which defines not law but instinct.²⁷ The proper sense is the natural law of men, dictated by right reason, hence discovered easily, thus found in all (civilized) nations, and it is always fair and good. *Ius gentium* has a primary and secondary meaning. The primary meaning is that just designated as natural law, properly so called. The secondary meaning is what we nowadays call international law.²⁸

Justinian, however, had described slavery as part of *ius gentium*, found everywhere, though contrary to nature.²⁹ In the Roman texts, this "contrary to nature" had no moral significance. Under the common seventeenth-century reinterpretation, however, the *ius gentium* found in this passage described natural law in its proper sense. Hence, slavery could be described, as indeed on this basis it was, as part of natural law. Both

22. 1 HUGO GROTIUS, DE JURE BELLII AC PACIS [ON THE LAW OF WAR AND PEACE] 1.2.11.1 (1625).

23. *Id.*

24. See the discussion in Alan Watson, *Some Notes on Mackenzie's Institutions and the European Legal Tradition*, 16 IUS COMMUNE 303, 303-07 (1989).

25. J. INST. 1.2.1; DIG. 1.1.1.4.

26. J. INST. 1.2; DIG. 1.1.6pr.

27. J. INST. 1.2.pr. The *Institutes* was originally an elementary textbook, issued with the force of statute in A.D. 533.

28. For the 17th century position, see generally Watson, *supra* note 24.

29. J. INST. 1.3.2; DIG. 1.5.4.1.

because of the jurists' reinterpretation of the Justinianian definition and because of the moral force of theories of natural law, slavery could be regarded as consistent with reason, consented in by nations, and fair and good.

IV. *SERVARE*, TO SAVE

There is yet another Roman strand to the intellectual baggage of these seventeenth-century jurists. This emerges from the very next texts in Justinian's *Institutes* and *Digest*, following on his remark that slavery is an institution of the law of nations that is found everywhere and is contrary to nature: "Slaves (*servi*) are so called because commanders order their captives to be sold, and thereby they are accustomed to save (*servare*) rather than kill them."³⁰

The tone of this text is not entirely clear. When the Roman jurists said that slavery was contrary to nature they were in no way suggesting it was immoral or blameworthy.³¹ But this succeeding text may be self-justification or self-praise. Whichever it is, it pointed out a problem to the seventeenth-century jurists. In their day, as before, wars whether local or extensive, of short or long duration, were frequent, and many prisoners, military and civilian, were taken.

But what was to be done with the prisoners? The problem was precisely that they could not be enslaved. The nobility could be ransomed.³² But that left the great majority in captivity. Simply to keep them as prisoners was wasteful both of supplies and of soldiers to guard them. Yet to return the soldiers even at the end of the war was dangerous, because there was no telling when the war might restart, even if with some rather different contenders. Moreover, some prisoners were, or could become, mercenaries, and if freed might later fight for a different army against their captors. One rather obvious way out of the dilemma was simply to kill those prisoners who could not be ransomed or exchanged.

Grotius' main treatment of the right over prisoners of war is instructive.³³ He opens by claiming that slavery is contrary to nature, but "it is not in conflict with natural justice that slavery should have its origin in a

30. J. INST. 1.3.3; DIG. 1.5.4.2.

31. For an analysis of the Roman attitude, see WATSON, *SLAVE LAW IN THE AMERICAS*, *supra* note 8, at 115-119.

32. Ransoming was a standard practice. See, e.g., 1 ROBERT WARD, *AN ENQUIRY INTO THE FOUNDATION AND HISTORY OF THE LAW OF NATIONS IN EUROPE 178-80* (1795).

33. GROTIUS, *supra* note 22, at 3.7.

human act, that is, should arise on an agreement or a crime.”³⁴ He continues that “without exception all who have been captured in a formal public war become slaves from the time they are brought within the lines.”³⁵ Not only prisoners of war but also, he says, their descendants born of a slave woman are slaves. Even the incorporeal property of captives belongs to the master. He continues:

All these rights have been introduced by the law of nations, with which we are dealing, for no other reason than this: that the captors, mollified by so many advantages, might willingly refrain from recourse to the utmost degree of severity, in accordance with which they could have slain the captives, either immediately or after a delay, as we have said before. ‘The name of slaves (*servi*)’ says Pomponius, ‘comes from the fact that commanders are accustomed to sell prisoners and thereby to save them (*servare*) and not to kill them.’ I have said ‘that they might willingly refrain’; for there is no suggestion of an agreement whereby they may be compelled to refrain, if you are considering this law of nations, but a method of persuading them by indicating the more advantageous course.

For the same reason this right is transferred to others, just as the ownership of things. Further, it has been agreed that ownership should be extended to children; the reason is that otherwise if the captors had used their full right, the children would not have been born. Whence it follows that children who were born before the catastrophe do not become slaves, unless they are themselves captured.³⁶

And he explains:

The rights under consideration, moreover, have not been introduced by the nations in vain. This we may perceive from what happens in civil wars, in which we find that on many occasions captives have been killed because they could not be reduced to slavery. The fact is noted by Plutarch in his *Otho* and by Tacitus in the second book of his *Histories*.³⁷

Grotius goes on to consider whether such captives have the right to flee, and to resist their master.

So far we have been dealing with the main and major portion of Grotius’ treatment. He accepts that the law of nations is that prisoners of war and their descendants do become slaves. He accepts this with approval because otherwise the prisoners would simply be killed. He strengthens this position by arguing, on the basis of classical authors, that when enslavement is not permitted, as in civil wars, the prisoners are, in fact, simply killed. For Grotius, it seems, enslavement by capture in a formal, public war is ethically correct.

34. *Id.* at 3.7.1.1.

35. *Id.* at 3.7.1.2.

36. *Id.* at 3.7.5.1f.

37. *Id.* at 3.7.5.3.

But there remain two short sections in Grotius' chapter. In Section 8, he points out that not all nations have observed this rule.³⁸ And Section 9 begins:

Christians furthermore have as a whole agreed that those who are captured in a war which has arisen among themselves do not become slaves so as to be liable to be sold, constrained to labour, and suffer the fate of slaves in other respects. In this they are surely right, because they have been, or should have been, better instructed in the teachings of Him who has sanctioned all charity, than to be unable to be restrained from the slaughter of unfortunate men in any other way than by the concession of a lesser cruelty.³⁹

The chapter goes on to end very weakly. In the passage just quoted, the words "because they have been, or should have been, better instructed" are noteworthy. Grotius knew from personal experience that Christianity had not always taught generosity towards Christian prisoners, and he was too much of a historian to be unaware of numerous instances where Christian victors massacred Christian prisoners of war who could not be ransomed. In 1625, when *De Jure Belli ac Pacis* was first published, the Thirty Years' War was in progress, and the atrocities of the St. Bartholomew Day massacre of the Huguenots (1572) and those committed during the Dutch Revolt from 1565 onward were fresh in the memory.

"Or should have been" gives the game away. It appears a cruel joke to claim slavery of Christians was abolished because of Christ's teaching of all charity so that men ought not to be persuaded away from slaughter by permitting them a lesser cruelty. In fact, Christians had not always been so persuaded. Grotius is aware that enslavement could be a benefit. Cornelis van Bynkershoek claimed that the practice of massacring prisoners of war had grown almost obsolete but, he goes on, "this fact is to be attributed solely to the voluntary clemency of the victor, and we cannot deny that the right might still be exercised if anyone wished to avail himself of it."⁴⁰ He also says, "Since the conqueror may do what he likes with the conquered, no one doubts that he also has the power of life and death over him."⁴¹

The structure and emphasis in Grotius' chapter is as important for reconstructing his thought as is the substance itself. His opening is that slavery is contrary to nature, but not to natural justice. Enslavement of prisoners of war is part of the law of nations. And he himself has previ-

38. *Id.* at 8.

39. *Id.* at 9.1.

40. 1 CORNELIS VAN BYNKERSHOEK, *QUAESTIONES JURIS PUBLICI* [PUBLIC LAW QUESTIONS] 1.3 (1737).

41. *Id.*

ously reinterpreted his sources so that natural law is this very same law of nations. He proceeds to detail the conditions of this slavery, and maintains that it was introduced for humanitarian reasons. He sticks closely to the short treatment in the Justinianian texts, and he uses Roman legal authority. He writes always in the present tense as if this law exists. Indeed, if it did not still exist it would not be *ius gentium*. Close to the end of the chapter, however, he explains that not all nations have had this law, and that it is now obsolete for Christians to take Christian slaves. His rationale for this is weak in itself, and seems to have been unconvincing even to him.

Ulrich Huber puts the matter even more clearly when he interprets *Institutes* 1.3 in his 'Lectures on the Civil Law':

As we just said, slavery is not necessarily at odds with reason. For the Christians themselves only late disapproved of slavery, nor is it disapproved of in the Old or New Testament. Likewise laws of Charlemagne, Louis the Pious, and Lothar on slaves survive in the *Laws of Charlemagne and the Lombards*. Indeed, there exist rulings of King William of Sicily and of the Emperor Frederick on runaway slaves in *Neapolitan Decisions*. But from that time, that is 1212 A.D. or not much later, Christians stopped enslaving one another, which is also the case among the Muslims and Turks according to Busbequius, *Letter 3*, where he also argues that slavery was not rightly removed from among us. The specious pretext of charitableness was adduced, but in vain. The result was a flood of free persons whom wantonness and need drove to wickedness or beggary. The ministrations of the enlarged family were reduced. Add that slaughter in war became more frequent when slavery was removed, which the Romans put to the test in civil wars in which the captives were not made slaves. Tacitus, *Histories* 2, cap. 44, Plutarch, *Otho*, and *D.49.15.21.1*. This reasoning is not without weight. See Berneggerus on Tacitus, *Germania*, question 134.⁴²

For Huber it was a "specious pretext" to claim that the abolition of enslavement of co-religionists was on account of benevolence. Moreover, for Huber, the result was bad, leading "a flood" of free persons to crime or beggary.⁴³ The passage suggests that Huber would have found the enslavement of Christian prisoners preferable to their becoming criminals or beggars.

V. CONCLUSIONS

The European jurists of the seventeenth century wrote about slave law either when discussing Roman law or their own system. For them

42. ULRICH HUBER, *PRAELECTIONES JURIS CIVILIS* 1.3 (1678).

43. *Id.* For the Dutch horrors of beggars and vagabonds, see SIMON SCHAMA, *THE EMBARRASSMENT OF RICHES* 15-24 (1988).

slavery was an abstract issue, but one to which they brought considerable intellectual baggage. They approached the subject through Roman law and, because they admired Roman law in general, they were less critical of slave law than they might have been. Moreover, for historical reasons the Roman legal texts put the stress on the more benign aspects of slavery and downplayed the horrors. For reasons unconnected with slave law, the jurists of the seventeenth century reinterpreted the Justinianian definitions of natural law and *ius gentium* in such a way that natural law properly became the law based on reason, found among (civilized) nations. Since slavery was assuredly part of the *ius gentium* it was also part of natural law. And it was impossible to exclude the notion of fairness and justice from natural law. Indeed, they claimed, slavery was a benefit in so far as it was an alternative to killing prisoners of war.⁴⁴

44. I do not intend to relate here how other scholars and theologians took over these ideas, which then influenced thinking in America. For one detail, however, see WATSON, *SLAVE LAW IN THE AMERICAS*, *supra* note 12, at 158 n.19.