

Doing Justice to the Dead

Date: Thursday 25 November 2004

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Venue: Old Theatre, Old Building

Speakers: Lincoln Crawford OBE, David Ould and Dr John Torpey

Chair: Professor Conor Gearty

Lincoln Crawford

As I consider how we rectify the past for the enslavement of Africans, I am conscious of the fact that their suffering took place a long time ago. But the passage of time should not be an excuse for refusing to face up to the fact that transatlantic slavery made fortunes for individuals and laid the basis of wealth for the British society. The slave trade dehumanised millions of African people who were collected from the interior of Africa, fastened one to the other in columns, loaded with heavy stones of 40-50 pounds in weight to prevent attempts at escape. They were then marched the long journey to the sea, often for hundred of miles, many dying en-route in the African jungle. Some were brought to the coast by canoe, lying in the bottom of boats for days on end, their hands bound, their faces exposed to the tropical sun and tropical rain, their backs in the water collected in the boat which was never bailed out. At the slave ports they were penned into "trunks" for inspection by the buyers. Night and day thousand of human beings were packed in these "dens of putrefaction" so that no European could stay in them for longer than a quarter of an hour without fainting. The Africans fainted and recovered or fainted and died. No one at these ports cared about the suffering of the Africans, the sole preoccupation was profit, indeed so clear was the conscience of the slavers that while waiting to load his cargo of slaves one of the British ship captain composed the hymn, "How Sweet the Name of Jesus sounds!".

The slaves were then stripped naked on the ship taking them to the Americas, packed in the hold on galleries one above the other and held in leg irons. Each was given only four

or five feet in length and two or three feet in height, so that they could neither lie at full length nor sit upright. As one writer observed, the close proximity of so many naked human beings, their bruised and festering flesh, the foetid air, the prevailing dysentery, the accumulation of filth, turned these hold into a hell. At times, more than 30 per cent would die en route, and their bodies would be cast into the water. The most notorious of such cases involved the slave ship **Zong**, whose voyage to the West Indies in 1783 lasted 18 weeks instead of an estimated 6 and ended in 132 slaves being thrown overboard, probably with the intention that their loss should fall on the underwriters and not on the ship. Less well known but scarcely less horrifying was another case two years later in 1785, in which 55 slaves died, in various ways during the voyage. Although there was some moral outrage from the public, the question which came before Lord Mansfield in the Court, was whether the relevant loss fell within the terms of the insurance policy. Those who reached the Americas were sold into slavery to create wealth for others.

The dehumanising of the African was so complete it is surprising that any survived the journey to the Americas let alone being able to work. Yet, their suffering on the plantations of the colonies continued. A Swiss traveller Girod-Chantrons in his book *Voyage d'un Swiss en différentes colonies*, left a famous description of a gang of slaves at work. "They were about a hundred men and women of different ages, all occupied in digging ditches in a cane-field, the majority of them naked or covered with rags. The sun shone down with full force on their heads. Sweat rolled from all parts of their bodies. Their limbs, weighed down by the heat, fatigue with the weight of their picks and by the resistance of the clayey soil baked hard enough to break their implements, strained themselves to overcome every obstacle. A mournful silence reigned. Exhaustion was stamped on every face, but the hour of rest had not yet come. The pitiless eye of the Manager patrolled the gang and several foremen armed with long whips moved periodically between them, giving stinging blows to all who, worn out by fatigue, were compelled to take a rest – men or women, young or old".

The slaves were worked worse than animals and had to cultivate their own

food to supplement the meagre ration from their masters. Breadfruit was one of the provisions the slaves were encouraged to cultivate for food, but as fate would have it a shipment of breadfruit plant from Tahiti was lost on its way to the West Indies. In 1789 the HMS Bounty commanded by captain William Bligh had set off on the long voyage to Tahiti to collect a shipment of breadfruit plants. After the Bounty left Tahiti on the second leg of its mission, a mutiny led by Master's mate Fletcher Christian and other crewmen against the tyrannical regime of Captain Bligh broke out, they took over the ship and set Bligh and 18 others adrift in the Pacific Ocean. The mutineers then made an amazing 4000 mile voyage in the open boat to reach East Timor. They settled on Pitcairn island where their descendants still live today. The breadfruit plants never reached the slaves in the West Indies.

The ownership of slaves under domestic law was not illegal and, although most slaves were taken to the colonies some were sold in Britain. The last slave sold in England, was in Liverpool in 1779. However, their status upon arrival was always ambiguous. In 1569 when one Cartwright brought a slave from Russia whom he proposed to scourge: he was questioned, and the Court of Star Chamber declared that 'England was to pure an air for slaves to breath in'. A century later, in 1677 in a case concerning 100 black slaves, the Court gave judgment to the Plaintiff on the grounds that, 'negroes being usually bought and sold among merchants as merchandise, and also being infidels, there might be a property in them sufficient to maintain trover'. In 1701 the Lord Chief Justice Sir John Holt determined that 'one may be a villein in England, but not a slave', and, 'as soon as a negro comes to England, he becomes free'. However, Mr Justice Powell who sat with Holt thought that 'the laws of England take no notice of a negro'. When eventually the Court was forced to make a decision about the status of slaves in England, in the celebrated case of James Somerset in 1772, the Court of King's Bench took refuge in what would now seem an untenably narrow principle, recognising the legitimacy of slavery in our overseas dominions but prohibiting the compulsory return of slaves or former slaves from this country to places where they would be held in bondage.

James Somerset, who was born in Africa, was taken as a slave to America. He was bought in Virginia by one Stewart who later brought Somerset to London. After a period Somerset absconded. He was recaptured but refused to return to Stewart's service. Stewart had him captured and sent him by force to the *Anne and Mary*, a vessel commanded by Captain Knowles, there to be held in irons until the vessel sailed to Jamaica, where Somerset was to be sold as a slave. Two days after he was captured Lord Mansfield issued a writ of *habeas corpus* directed to Captain Knowles. Giving Judgment after the case ended, he said:

"The state of slavery is of such a nature, that it is incapable of being introduced on any reason, moral or political: but only positive law, which preserves its force long after the reasons, occasion and time itself from whence it was created, is erased from memory; it is so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow for a decision, I cannot say this case is allowed or approved by the law of England: and therefore the black must be discharged"

Somerset was freed. It was not until statute law responded to public opinion in 1833, that the matter was finally settled for this country and her colonies.

The treatment of the slaves touched unimaginable depth of human depravity and the only reason the death toll was not sometimes higher, was because the slave owners were concerned about making less money from their cargo of human beings. In the Americas they worked on the sugar, cotton and tobacco plantations. Some 70 per cent were used on the sugar plantations where they lived out their lives in servitude.

The enslavement of Africans was a crime against humanity. A decade after its abolition in 1833, Lord Palmerston in the House of Commons in 1844 said:

“If all crimes, which the human race has committed from creation down to the present day were added together in one vast aggregate, they would scarcely equal the amount of guilt which has been incurred by mankind in connection with this diabolical slave trade”.

On Thursday 14 October 2004, 160 years after that remark by Lord Palmerston, there was a debate in the House of Commons following an early-day motion sponsored by Mrs Louise Ellman MP (Liverpool, Riverside –Lab) which had cross-party support. The motion called upon the government to recognise slavery as a crime against humanity. The debate which followed was led by the Home Office minister Fiona Mactaggart who in response to the motion said on behalf of the government: “Slavery is a crime against humanity. Slavery and the slave trade were, and are, appalling tragedies in the history of humanity”.

The acknowledgment of this awful crime by the government was long overdue. If we then accept, as I do, the validity of four propositions:

- (a) That slavery was a crime against humanity;
- (b) That it was abolished because it was an appalling crime against African people;
- (c) That the consequences of slavery manifest themselves today in racism against and the disadvantage experienced by of people of African descent;
- (d) That no compensation was ever paid by any of the perpetrators to any of the sufferers.

then a case for Reparations is made out. Indeed, in summing up the recent debate in the House of Commons, the Minister said: “I believe that those who have spoken in this debate share a sense of horror about the history of slavery, a sense of shame that

Britain's history and prosperity were built on such a tragic trade, and a sense of determination to ensure that the abuse of human rights inherent in the slave trade is not repeated. I believe that we also have a shared determination to make appropriate reparations for slavery ...”

It was inevitable that the scale of the injustice created by slavery would present us with a momentous challenge whenever a claim for Reparations is made. Such a claim would by its very nature be unique and multi-faceted, but I believe the cause of Reparations is a just one. I will therefore seek to justify my position by suggesting: (a) Britain's wealth was built on slavery (b) the enslavement of Africans was a crime against humanity, (c) for the majority of slaves, abolition of slavery only partially freed them from servitude (d) historic injustices can be remedied under human rights remedies (e) there is both a legal and moral case against governments for making Reparations.

Let me first dispel a common misconception. Reparations are commonly interpreted as consisting of only one element, payment of cash. This narrow view is often used by detractors to argue that Black people all over the world will be seeking enormous cash handouts from governments, once it is conceded that there should be some redress for the crime of slavery. While cash payment is one element, reparations are not about cash payments to individuals. It is my thesis that Reparations are about change and consist of a number of different elements of which compensation is only one, for example:

An Apology: An apology was given in the name of the Queen to the Maoris through an Act of Parliament in 1995 which she personally signed in New Zealand. In addition to the apology there was the restoration and compensation for lands seized by British settlers in 1863. There were also other compensatory programmes for the Maoris

Memorials: A national remembrance day commemorated annually, and not used as a token gesture, is a form of reparations. It is my firm belief that collective

memory is a powerful way of reminding people of the suffering of African people through slavery.

Public education: The evil of slavery and the idea it gave that Black people are somehow inferior to white people is still with us. Some of the racist behaviour we witness in the UK today stems directly from this belief. The history of slavery and the slave trade should become an important part of the school curriculum.

Development of Africa: This should also be regarded as an element of reparations. The Prime Minister's Commission on Africa is a significant step in dealing with the "scar" of the continent's under-development, even if he did not put this in the context of reparations.

Debt relief: This could also be a form of reparations to those countries that were suffocated by the evil of slavery.

In addition to the action the government is taking over Africa, it is my firm belief that it should take the lead in setting up an International Organisation based in Britain to deal with reparations for slavery and the slave trade. Its remit could also cover issues arising out of contemporary slavery.

Britain built its wealth from Slavery and the Slave Trade

England became involved in the slave trade in 1562 when under the reign of Queen Elizabeth I, Captain John Hawkins initiated the trade. Although the English were not pioneers, they became avid participants to an extent that the presence of black people in Britain so alarmed the Queen that she pressed for the "blackamores" (as she called them) to be sent out of the country. But the desire to exploit Africa and the African people was overwhelming. The next century saw a growing involvement in the trade,

with members of the Royal Family and the government among the principal investors. Indeed, in 1660 the Royal Adventurers of Africa were founded in London under the auspices of Prince Rupert with the blessing of King Charles II. The Royal Adventurers of Africa were the first of several companies licensed by the Crown to monopolise the slave trade. The South Sea Company had a contract (which it bought from the government following the Treaty of Utrecht in 1713) to import slaves and other goods to the Spanish Indies. Its list of shareholders in 1720 included 462 members of the House of Commons, 100 members of the House of Lords and most of the Royal Family.

A triangular economic cycle sprang up (the Triangular Trade), whereby British ships carried guns and currency to Africa to trade for slaves, who were then taken to the Caribbean and the Americas to work on sugar and cotton plantations. Sugar and cotton were then shipped to Britain where they soon came to dominate the domestic market.

One of the arguments sometimes advanced by conservative historians against the claim for reparations is that it arises only where damage is inflicted by one state upon another during wartime. The counter argument to that is that, although slavery was generally not conducted in the furtherance of a war, nor against states that are now in existence, the British Army did use slaves as porters and general assistants in the Seven Years War of 1756-63. More than a thousand of these slaves were sold by the army in Havana at the end of the campaign. This argument against reparations is not on any view sustainable.

The wealth that Britain built from slavery and the slave trade was so gigantic it led Robert Harley, the Chancellor of the Exchequer at the time of the signing of the Treaty of Utrecht in 1713, to believe that the new trade generated by the treaty would help to wipe out the national debt. The historian Robin Blackburn put it succinctly when he said: "The use of African slaves has enabled Britain to vault to the premier position as an American colonial power".

Britain owes Africa and the African people a huge debt which can only sound in reparations.

The enslavement of Africans was a crime against humanity

The Nuremberg principles give us some clarification on crimes against humanity even where they are lawful under domestic law. The Charter of the Nuremberg Tribunal defined crimes against humanity in these words:

“Murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population...whether or not in violation of the domestic law of the country here perpetrated”.

It is considered by international lawyers that the Nuremberg Charter did not create new law, but declared and confirmed concepts of international criminality which had been accepted over centuries. As one writer puts it:

“The tribunal found that acts so reprehensible as to offend the conscience of mankind, directed against civilian population, are crimes in international law”.

It would not be a difficult task for historians and their experts to show that the invasion of African territories, the mass capture of Africans, the inhumane conditions under which they were transported, the chattelisation of Africans in the Americas, the eradication of the language and culture of the Africans constituted violations of international law.

The argument such crimes were ‘legal’ under European law, and accepted as normal by most European is not nor could it be a defence. Europeans did not, then or now, constitute all mankind and the conscience of all decent mankind must always have been outraged by the atrocities which European inflicted on Africans over 400 years. Indeed, it can be said that it was the ultimate crime against humanity, to deny human status to a vast section of mankind.

The fact that in some African societies such as Sudan, the Democratic Republic of Congo and Mauritania forms of slavery are still practised cannot be used to exonerate the British and other European slavers. Modern day slavery is a crime against humanity which is to be opposed. But the transatlantic slave trade was a different and uniquely horrific phenomenon, different in its scale, its cruelty, its racist basis, the greed which motivated it and its consequences for Africans and their descendants globally. Britain was a prime mover in slavery and the slave trade and should now be the prime mover in reparations for it.

Abolition of Slavery did not mean abolition of Servitude.

A clear prohibition of slavery and the slave trade is to be found in both Article 4 of the European Convention on Human Rights and Article 4 of the Universal Declaration of Human Rights. What these two documents show is that the right to freedom from slavery was the first human right to be protected by international treaty. Britain's role in this international agreement is demonstrated by its action to abolish slavery and the slaver trade. For example, it regulated the conduct of the slave trade in 1788, 1790 and 1794, prohibited the participation of British ships in the Atlantic slave trade in 1807, made it a felony to be engaged in the slave trade in 1811, gave statutory effect to bilateral treaties providing for the abolition of slave trade in 1818 and it emancipated slaves throughout its dominions in 1833.

Emancipation did not come about solely through the actions of campaigners in England or as a result of the agreement reached between nations. Slaves revolted and put up great resistance, sometimes successfully. The most notable being the uprising in Santo Domingo – now Haiti – where a rebellion led by the slave Toussaint L'Ouverture rose up against the French on the 23 August 1791, defeated them and created the first black state.

However, the passing of the 1833 Act did not mean freedom for all. Freedom was only granted to those slaves within the Empire who were under the age of 6 years. Those above that age were apprenticed for 4-6 years to their owners before they could finally receive their freedom. But for even those who were free life was uncertain. Many of the slaves in England were resettled in Sere Leone. Those in the Americas eked out a living in very difficult circumstances. As the historian and writer Preston King put it: “.... emancipation was the end of an old game, but was also the old game being played in a new and more complex way”.

Remedying Historic Injustice

The common law response to slavery and the status of slaves in England was for many years timid, confused and contradictory. Now, like then we face a similar prospect as to how the law would respond to a claim for reparations for slavery.

The right to reparations is recognised by international law. In the case of **Germany v Poland 1928**, the Permanent Court of International Justice (the predecessor of the International Court of Justice), defined the right to reparations in these terms:

“The essential principle contained in the actual notion of an illegal act – a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals – is that reparations must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it – such are the principles which should serve to determine the amount of compensation due for an act contrary to international law”.

Although most case law on reparations concerns the compensation for specific losses such as destruction of property, building, ships etc., the principle is just as valid in the case of illegal actions on a larger scale which affect whole people. Indeed there are direct precedents for the payment of reparations in such cases:

Conclusion

A crime was committed by the British upon the African people. Britain built its wealth on the proceeds of that crime. An implied apology was given to the slavers owners for the abolition of slavery and compensated in the sum of £20M was paid to them after abolition. No apology was given to the slave, their descendants or the African people, nor has any compensation been paid to them. The Minister acknowledged that slavery was a crime against humanity and that appropriate reparations must be made. Not only do I agree with her, it is my firm belief that the only way the past can be rectify is by reparations, and this can only be made by the successor of those who committed the crime and were enriched by it, to the successor of the victims who still suffer damage as a result of it.

Lincoln Crawford OBE

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