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## **Freedom and Citizenship? The Legal Status of Servants and Domestic Workers in a Comparative Perspective (16<sup>th</sup> – 21<sup>st</sup> Centuries)\***

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### **Introduction**

This paper aims to analyse the legal status of servants and domestic workers. I will mainly focus on Italy and France, but I will also supply the reader with some information on other European contexts. Although studies on the legal status of servants are less developed than studies about, for example, their marital status or their age, this paper aims to summarize part of the available information to allow for the development of a comparative long term perspective.

The first part of the paper is about freedom. From the late Middle Ages up to the 18<sup>th</sup> century (but in some cases up to the 19<sup>th</sup> century), a central point in many legal texts dealing with servants was to distinguish between slaves and free servants. The distinction could seem very clear, but it isn't. In this paper I will focus on the different kinds of servants (from a legal point of view) that could be found during the *Ancien Régime*, as well as on regulations about them.

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\* The original title of the paper presented at the Barcelona seminar was: “Legal status, rights and duties of servants (Italy and France, 16<sup>th</sup> - 20<sup>th</sup> centuries)”. I have also dealt with some of the themes analysed in this paper in SARTI R., *Conclusion. Domestic Service and European Identity*, in PASLEAU S., SARTI R. and SCHOPP I., *Final Report. The Socio-economic Role of Domestic Service as a Factor of European Identity*, forthcoming on the web-site of the European Commission (pre-print available online: [http://www.uniurb.it/scipol/drs\\_servant\\_project\\_conclusiono.pdf](http://www.uniurb.it/scipol/drs_servant_project_conclusiono.pdf)). See also the Conclusion of these *Proceedings*, vol. V. English revision by C. Boscolo and S. Harrison, University of Birmingham. I am grateful to Salvatore Bono and Victor Crescenzi for suggestions and to Isabelle Schopp for her help.

**Abbreviations:** AP = *Archives Parlementaires de 1787 à 1860 : recueil complet des débats législatifs et politiques des Chambres françaises. Première série, 1787 à 1799*, Paris, P. Dupont, puis CNRS, 1867- ; CC = SAITTA A., *Costituenti e Costituzioni della Francia rivoluzionaria e liberale*, Milano, Giuffrè, 1975; CI = AQUARONE A., D’ADDIO M. and NEGRI G. (eds.), *Le costituzioni italiane*, Milano, Comunità, 1958; L. = Legge (Law); D. = Decreto (Decree); R.d. = Regio decreto (Royal decree); R.d.l. = Regio decreto legge (Royal decree-law); D.p.r. = Decreto del Presidente della Repubblica (Decree by the President of the Republic); T.U. = Testo Unico (Amalgamated Law).

The second part of the paper is about citizenship and the legal rights of servants in more recent times (19<sup>th</sup> and 20<sup>th</sup> centuries). It focuses on post-revolutionary France and post-Unification Italy. The point stressed in this part is that servants suffered (and partially still suffer) from discrimination in comparison with other workers because of the persistence of a patriarchal organisation of labour within the so-called “private sector”. From this point of view, the feminisation of domestic workers is a very important phenomenon. In fact, the similarity between servants and housewives made it particularly difficult to consider servants as “real” or “true” workers.

I will conclude by briefly dealing with informal work and mentioning the implications and consequences, from a legal point of view, of the increasing number of migrants among domestic workers in present times.

## Freedom

### *Italy*

At the end of the 17<sup>th</sup> century (1673) the author of a very important and influential legal text, Giambattista de Luca, devoted numerous sections of his treatise to servitude and service. Introducing the theme, he distinguished many different kinds of servitudes: personal, real, mixed; moreover, according to his text, personal servitude could be active or passive.

As far as the so called “passive personal servitude” (“servitù personale passiva”), that is the servitude of an individual obliged to serve another person is concerned, he made further distinctions. A first kind of passive personal servitude implied a radical change in the legal status of the person who served. In this case the person who served lost his/her freedom and became a “servant in perpetuity” (“perpetuamente servo”). In the Italian language the definition for this kind of serving person was “schiavo”, slave.

The other kind of servitude was that of a free person who was obliged to perform some kind of service for a master. He or she could be obliged to work because of a contract (*locatio operarum*, in Italian “contratto di locazione delle sue opere”) and in this case his/her condition was legally called, in Italian, “famulato” (in Latin *famulus* meant servant). But he/she could be obliged to render some services to a master also because of other reasons linked to the “quality” (i.e. the “status”) of the master himself. Such was the case of the servitude of the son towards his father, or that of the vassals towards their lord<sup>1</sup>. This definition, as well as many others of that time, was extremely wide and ambiguous: servants, slaves, children and vassals were all involved in some kind of servitude!

In this paper I want to stress the legal distinction between slaves and free servants. In Italy one could find this distinction as late as the eighteenth century not only in long and difficult legal texts mainly written in Latin, such as the treatise *De servis vel famulis* by Ippolito Bonacossa<sup>2</sup>, but also in much more trivial books. “You can have two different kinds of servant at your service”, explained for example a Jesuit, Fulvio Fontana, at the beginning of the 18<sup>th</sup> century in a small book written to teach masters their duties toward their servants. “You can have servants whose condition is that of slaves, or you can have free servants who serve in exchange for a salary”<sup>3</sup>.

<sup>1</sup> DE LUCA G. B., *Dottor Volgare ovvero il compendio di tutta la legge Civile, Canonica, Feudale, e Municipale, nelle cose più ricevute in pratica; Moralizzato in Lingua Italiana*, t. I, In Colonia, A spese di Modesto Fenzo Stampatore in Venezia, 1755 (1673<sup>1</sup>), p. 471.

<sup>2</sup> BONACOSSA I., *De servis vel famulis tractatus. Vbi famulatus materia theorice & practice summa cum diligentia explicatur*, Venetiis, apud Damianum Zenarum, 1575. This text is not about slaves but only about the “homo liber” who, because of his poverty, is forced to work as a servant.

<sup>3</sup> FONTANA F., *Il Padrone Instruito overo Instruzione A chiunque tiene Persone al suo servizio, per conoscere le obbligazioni che hanno verso la propria Servitù*, Milano - Bologna, Pisarri, 1710 (1<sup>st</sup> ed. 1705 or 1706), p. 31.

Indeed in the Mediterranean region until the 18<sup>th</sup> century and even the 19<sup>th</sup>, among servants there were not only free people, but also slaves<sup>4</sup>. Most slaves were “imported” from “outside”: in early modern times they were mainly Muslims captured during the war between Christians and “Turks”, or Africans. Nevertheless, among slaves one could also find people who were not foreigners, as was the case with the “moriscos” from Granada studied by Aurelia Martín Casares<sup>5</sup>, and/or people who were Christians, as was the case with some Orthodox Christians born in countries under Ottoman rule, with some Protestants or even Catholics (i.e. Poles captured by Turks and then captured by Christians), even though, in these cases, the right of their masters to keep them as slaves was controversial<sup>6</sup>.

As far as Italy is concerned more specifically, at the time when the Jesuit Fontana wrote his instructions for masters, slaves were no longer very common, but in the 16<sup>th</sup> and 17<sup>th</sup> centuries they were quite numerous, particularly in Southern Italy. According to a source, in Naples at the beginning of the 17<sup>th</sup> century there were 22,000 slaves<sup>7</sup>. A recent research by Giuliana Boccadamo confirms that they were very numerous<sup>8</sup>. Slaves were not employed only as domestic servants; many were employed as rowers on ships and were public slaves<sup>9</sup>.

<sup>4</sup> ANGIOLINI F., “Slaves and Slavery in Early Modern Tuscany (1500-1700)”, *Italian History and Culture*, III, 1997, pp. 67-86; BONO S., *Schiavi musulmani nell’Italia moderna. Galeotti, vu’ cumprà, domestici*, Napoli Edizioni Scientifiche Italiane, 1999; SARTI R., “Viaggiatrici per forza. Schiave ‘turche’ in Italia in età moderna”, in SOCIETÀ ITALIANA DELLE STORICHE, *Altrove. Viaggi di donne dall’antichità al Novecento*, edited by D. Corsi, Roma, Viella, 1999, pp. 241-296; MARTÍN CASARES A. (ed.), “Género y escavidud”, special issue of *Arenal. Revista de Historia de las mujeres*, VII, 2000-1; STELLA A., *Histoires d’esclaves dans la Péninsule ibérique*, Paris, Éditions de l’École des Hautes Études en Sciences Sociales, 2000; FIUME G. (ed.), “La schiavitù nel Mediterraneo”, special issue of *Quaderni storici*, XXXVI, 2001, no. 107; FIUME G. (ed.), “Schiavi, corsari, rinnegati”, special issue of *Nuove effemeridi. Rassegna trimestrale di cultura*, XIV, 2001, no. 54; EPSTEIN S. A., *Speaking of Slavery. Colour, ethnicity and human bondage*, Ithaca - London, Cornell University Press, 2001 (but see also my review of this book in *Annales. Histoire, Sciences Sociales*, LVIII, 2003, pp. 527-529); VINCENT B., “Esclavage au Portugal : entre mer Méditerranée et océan Atlantique”, in *Le Portugal et la Méditerranée. Arquivos do Centro cultural Calouste Gulbenkian*, XLIII, Lisboa - Paris, Fundação Calouste Gulbenkian and Centre Culturel Calouste Gulbenkian, 2002; ESCALLIER R. (ed.), “L’esclavage en Méditerranée à l’époque moderne”, special issue of *Cahiers de la Méditerranée*, LXV, 2002 (available online: <http://revel.unice.fr/cmmedi/sommaire.html?id=11>), all with further references.

<sup>5</sup> MARTÍN CASARES A., *La esclavitud en la Granada del Siglo XVI*, Granada, Universidad de Granada, Diputación Provincial de Granada, 2000; MARTÍN CASARES A., “Antropología, genere e schiavitù (Granada, XVI secolo)”, *Genesis. Rivista della Società Italiana delle Storiche*, I/2, 2002, pp. 157-172; MARTÍN CASARES A., “Domestic Service in Spain. Legislation, Gender and Social Practice”, in FAUVE-CHAMOUX A. (ed.), *Domestic Service and the Formation of European Identity. Understanding the Globalization of Domestic Work, 16<sup>th</sup> - 21<sup>st</sup> Centuries*, Bern - Berlin etc., Peter Lang, 2004 (but 2005), pp. 189-209; MARTÍN CASARES A., “Domestic Service in Medieval and Early Modern Spain: Legislation and Social Practice” in this volume.

<sup>6</sup> SARTI R., “Esclavitud y religión en la Italia de la Edad Moderna”, *Arenal*, VII, 2000, pp. 63-122 (I am very grateful to Aurelia Martín Casares for translating this paper. Unfortunately, because of a misunderstanding, the proofs of this article were not sent to me. As a consequence it contains some imprecisions); SARTI R., “Bolognesi schiavi dei ‘Turchi’ e schiavi ‘turchi’ a Bologna tra Cinque e Settecento: alterità etnico-religiosa e riduzione in schiavitù”, *Quaderni storici*, XXXVI, 2001, no. 107, pp. 437-473, with further references.

<sup>7</sup> MONTI G. M., “Sulla schiavitù nel Regno di Napoli dagli Aragonesi agli Austriaci”, in REGIO ISTITUTO DI SCIENZE ECONOMICHE E COMMERCIALI DI BARI, *Archivio Scientifico*, VI, 1931-1932, pp. 127-153 (pp. 144-145).

<sup>8</sup> BOCCADAMO G., “Liberi, manomessi, schiavi. Musulmani a Napoli in età moderna”, *Nuove effemeridi. Rassegna trimestrale di cultura*, XIV, 2001, no. 54, pp. 113-125; BOCCADAMO G., “Tra croce e mezzaluna. Storie di schiavi”, in BARLETTA L. (ed.), *Integrazione ed emarginazione. Circuiti e modelli. Italia e Spagna nei secc. XV-XVIII*, Napoli, Cuen, 2002, pp. 309-351.

<sup>9</sup> ZYSBERG A., *Les galériens. Vies et destins de 60.000 forçats sur les galères de France 1680-1748*, Paris, Seuil, 1987; FONTENAY M., “L’esclave galérien dans la Méditerranée des Temps Modernes”, in *Figures de l’esclave au Moyen Âge et dans le monde moderne*, Paris, L’Harmattan, 1996, pp. 15-143 ; BONO S., *op. cit.*; LO BASSO L., *Uomini da remo: galee e galeotti del Mediterraneo in età moderna*, Milano, Selene, 2003 (but 2004), with further references.

Quite a rich iconography reminds us of this past<sup>10</sup>. See for instance the portrait of *Marchesa Cattaneo with a Servant* by Anthony Van Dyck (1623): the marquise is accompanied by a little black servant carrying an elegant umbrella. Perhaps when the portrait was painted the boy was no longer a slave (assuming that the boy portrayed was indeed a real person), but it is almost certain that he arrived in Italy as such<sup>11</sup>; or look at *The letter of the black servant* by Pietro Longhi (1751), that gives us another (but much later) example of a black slave (or former slave) who was a domestic servant<sup>12</sup>; or admire the enslaved rowers painted by Jan Asselijn in *A Waterside Ruin in Italy* (1620-1652)<sup>13</sup>.

It is noteworthy, however, that when analysing the whole of Europe in early modern times, it would be misleading to conclude that a master might have “two kinds of servants in his service”, i.e. slaves or free people, as stated by the Jesuit Fontana at the beginning of the 18<sup>th</sup> century. This statement was more or less right in relation to the Italian context of the 18<sup>th</sup> century, but not in relation, for instance, to Renaissance Italy, where the range of possibilities was much wider because of the presence of other kinds of servants, such as the so-called *anime* (literally “souls”), a kind of indentured servants who often ran the risk of becoming real slaves, or the free servants bound to their masters by long term contracts, etc.<sup>14</sup> Fontana’s statement would not be correct on a European scale either, because things could be much more complex and ambiguous. First, we have to remember that serfdom still existed, and that some serfs worked for their landlord as domestic servants. Between the 16<sup>th</sup> and 18<sup>th</sup> centuries, though declining in Western Europe, serfdom developed in the East. As is well known, serfdom was abolished in most Eastern European countries in the 19<sup>th</sup> century, in Russia as late as 1861<sup>15</sup>. Moreover, in many places people could be forced to enter service, as we shall see<sup>16</sup>. We also have to consider that the range of domestic servants who were likely to be enslaved and/or be bought and sold extended far beyond the Muslims captured by Christians or the blacks trafficked from Africa, as was the case in Italy. In England and France there were (mainly) slaves brought from the colonies. Finally, all over Europe individuals with some kind of physical or mental problem, such as fools and dwarfs, to quote but two, were also likely to be treated as cattle<sup>17</sup>.

<sup>10</sup> SARTI R., “Peut-on reconnaître un esclave en Italie aux XVI<sup>e</sup>-XVIII<sup>e</sup> siècles?”, paper presented at the Conférence *L’esclavage en Méditerranée*, Grasse, Université de Nice, Centre de la Méditerranée moderne et contemporaine, 30 May-1 June 2001.

<sup>11</sup> National Gallery of Art, Washington D.C. Unfortunately pictures cannot be reproduced in these *Proceedings*, but see <http://cgfa.sunsite.dk/dyck/p-dyck13.htm>.

<sup>12</sup> Cà Rezzonico, Venice, see <http://www.bta.it/img/a0/01/bta00187.jpg>.

<sup>13</sup> Rijksmuseum, Amsterdam, see <http://www.rijksmuseum.nl/images/aria/sk/z/sk-a-2313>.

<sup>14</sup> Children called “anime” were a kind of time-slaves or indentured servants (but often remained in slavery all their lives) see LAZARI V., “Del traffico e delle condizioni degli schiavi in Venezia nei tempi di mezzo”, in *Miscellanea di storia italiana edita per cura della Regia Deputazione di Storia Patria*, t. I, Torino, 1862, pp. 463-501; VERLINDEN Ch., *L’esclavage dans l’Europe médiévale*, 2 vols., Brugge, De Tempel, 1955 and Gent, Drukkerij Universa Te Wetteren, op Houtvrij Velijn, 1977, vol. II, pp. 674-686, 717-720; HEERS J., *Esclaves et domestiques au Moyen Age dans le monde méditerranéen*, Paris, Fayard, 1981, pp. 153-156; ROMANO D., *Housecraft and Statecraft. Domestic Service in Renaissance Venice 1400-1600*, Baltimore - London, The Johns Hopkins University Press, 1996, pp. 47-48; SARTI R., “Viaggiatrici per forza”. On the variety of servants as concerns their legal status see mainly KLAPISCH-ZUBER Ch., *La famiglia e le donne nel Rinascimento a Firenze*, chapter IX: “Le serve a Firenze nei secoli XIV e XV”, Roma - Bari, Laterza, 1988, pp. 253-283 (first published as “Women servants in Florence”, in HANAWALT B. (dir.), *Women and Work in Pre-industrial Europe*, Bloomington, Indiana University Press, 1986, pp. 56-80).

<sup>15</sup> RÖSENER W., *I contadini nella storia d’Europa*, Roma - Bari, Laterza, 1995; KASER K., “Serfdom in eastern Europe”, in KERTZER D. and BARBAGLI M. (eds.), *Family Life in Early Modern Times 1500-1789*, New Haven - London, Yale University Press, pp. 24-62; DENNISON T. K., “Servants and Labourers in a Serf Society: the Role of Service in Rural Russia, 1745-1825”, in these *Proceedings*, next volume.

<sup>16</sup> I am not analysing, here, indentured servants migrating to the colonies.

<sup>17</sup> See for instance LUZIO A. and RENIER R., “Buffoni, nani e schiavi dei Gonzaga ai tempi di Isabella d’Este”, in *Nuova Antologia di Scienze, Lettere ed Arti*, s. III, XXXIV, 1891, pp. 618-650 and XXXV, 1891, pp. 112-146; FRENCH A., “Jesters, champions and pipers”, in WATERFIELD G., FRENCH A. and CRASKE M., *Below Stairs. 400 years of servants’ portraits*, London, National Portrait

Anyway, what I want to stress here, is that in Italy slaves could be among domestic servants. In other words, it was legal to have a slave. The living conditions of different kinds of slaves were quite different. In any case slaves could be bought and sold and, interestingly, conversion to the Catholic faith did not automatically imply emancipation<sup>18</sup>. At the beginning of the 19<sup>th</sup> century, for instance, a Sicilian prince (the prince of Petrulla) asked the king to give him back a slave who had run away in 1808, had converted to Catholicism and enlisted with the Royal Navy. The king agreed that in his realm conversion did not emancipate any slave<sup>19</sup>.

However, by the late 17<sup>th</sup> to early 18<sup>th</sup> centuries there was a considerable fall in the number of slaves in Southern Italy as well. Giambattista de Luca, the jurist I quoted above, wrote that there was a considerable difference between the great importance of questions on slaves in Roman law and that given to questions on slaves in trials that actually took place in Italy in his time<sup>20</sup>. Since Roman law was still important, the legal discourse was more “conservative” than the socio-economic reality. This feature, in any case, was not without consequences, because it recalled and reaffirmed that slaves and free servants were not so distant from each other: they had to be classified under the same heading, though under this heading there were different categories. As we will see later, this association between servants and slaves contributed to the social stigmatisation of domestics.

Interestingly, slavery was legally abolished as late as the end of the 18<sup>th</sup> century, thanks to the so-called Jacobin constitutions. The Napoleonic Code of 1804, that was introduced in much of Italy (article 1780)<sup>21</sup>, the Neapolitan Code of 1819 (article 1626), the Parma Code of 1820 (article 1690), the so-called Albertino of Piedmont of 1837 (article 1802), the Estense of 1852 (article 1702) and the first Civil Code of unified Italy, the so-called Codice Pisanelli of 1865 (article 1628), all affirmed the principle that nobody could sell him/herself nor be sold, and/or the people could enter into the service of a master only for a specified period or to carry out a specified activity<sup>22</sup>. Yet slavery was not banned everywhere, both because the French armies did not conquer the whole Italy, and because during the Restoration previous laws were restored in some of the Italian states, at least for a certain period. As a consequence, some examples of slaves could still be found in the 19<sup>th</sup> century, as already mentioned, even though at that time they were rare. The decline in their numbers was also due to the modernisation of the navy, where galleys with rowers had disappeared by the late 18<sup>th</sup> century<sup>23</sup>.

For instance, we find that some slaves entered the House of Catechumens (“Casa dei Catechumeni”) in Rome at least until 1807 to convert to Catholicism<sup>24</sup>. The aforementioned story of the Prince of Petrulla’s black slave dates from a little later<sup>25</sup>; the family of the husband of Teresa Gamba Guiccioli, Lord Byron’s well known lover, had two slaves (one from Ethiopia, and the

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Gallery, 2003, pp. 21-35 (p. 23); SARTI R., *Lavori domestici. Servitori, casalinghe e padri di famiglia dal Cinquecento ad oggi*, Roma - Bari, Laterza, forthcoming (chap. 2).

<sup>18</sup> As for conversion, the situation was quite complex, see SARTI R., “Esclavitud y religi3n”; SARTI R., “Bolognesi schiavi dei ‘Turchi’ e schiavi ‘turchi’ a Bologna”.

<sup>19</sup> COSENTINO G., “Uno schiavo in Palermo nel 1812”, *Bullettino del Comitato antischiavista di Palermo*, January-April 1890; ZAMBONI F., *Gli Ezzelini, Dante e gli schiavi (Roma e la schiavit3 personale e domestica)*, Roma, Roux - Torino, Viarengo, 1906 (Vienna, 1865<sup>1</sup>), p. 457.

<sup>20</sup> DE LUCA G. B., *op. cit.*, vol. I, p. 474.

<sup>21</sup> It was not introduced in Sicily, Sardinia and the Republic of San Marino, see for instance PETRUCCI A., *La codificazione del diritto civile negli stati italiani preunitari ed il codice civile italiano del 1865*, available on the website <http://www.romanlaw.cn/sub2-22.htm>.

<sup>22</sup> SAITTA A., *Costituenti e Costituzioni della Francia rivoluzionaria e liberale*, Milano, Giuffr3, 1975; AQUARONE A., D’ADDIO M. and NEGRI G. (eds.), *Le costituzioni italiane*, Milano, Comunit3, 1958; *Codice Civile del regno d’Italia col confronto coi codici francese austriaco napoletano parmense estense col regolamento pontificio leggi per la Toscana e col diritto romano*, edited by D. Galdi, Napoli, Marghieri e Perrotti, 1865, pp. 1093-1094; D’AMARIO G., “Domestici (Contratto di servizio domestico)”, in *Enciclopedia Giuridica Italiana*, Milano, Societ3 Editrice Libreria, vol. IV, parte VI, 1921, pp. 513-536; ROSANVALLON P., *Le sacre du citoyen. Du suffrage universel en France*, Paris, Gallimard, 1992 (It. trans. *La Rivoluzione dell’uguaglianza. Storia del suffragio universale in Francia*, Milano, Anabasi, 1994), pp. 134-135.

<sup>23</sup> BONO S., *op. cit.*, pp. 362-363; LO BASSO L., *op. cit.*

<sup>24</sup> RUDT DE COLLENBERG W., “Le bapt3me des musulmans esclaves 3 Rome aux XVII<sup>e</sup> et XVIII<sup>e</sup> si3cles”, *M3langes de l’3cole fran3aise de Rome*, CI, 1989, no. 1, pp. 9-181 and no. 2, pp. 519-670.

<sup>25</sup> COSENTINO G., *op. cit.*

other from Guinea) in the 1820s and 1830s (the family lived in Ravenna, in the Papal State; then it moved to Venice, which at that time was under Austrian rule, for political reasons<sup>26</sup>). We are also told of the presence of a young African boy “aged about 16, not baptized nor instructed in religious matter” who was shown as a “cannibal” in a circus in Bologna in 1858: significantly, when the archbishop Viale Prelà decided to free the boy, baptize him and give him religious instruction, he simply bought him (and at a high price), which seems to indicate that the owners kept him legally<sup>27</sup>. Yet this young “cannibal” was not a member of the domestic staff, as were the slaves still present in the royal Palace of Caserta as late as 1851, shortly before the Italian Unification<sup>28</sup>: this case seems the last example of the “traditional” pattern of Mediterranean (legal) slavery, while some other cases still found in the second half of the 19<sup>th</sup> century seem to be the consequence of the interest in geographical exploration and of contact with people who seemed so different that they were not even considered “human”. In 1872, when he died during an expedition, the Italian explorer Giovanni Miani, for instance, left as a legacy (in the legal sense) to the Società Geografica Italiana (Italian Geographical Society) two “Akka” pigmies: yet the two youngsters were confiscated by the Sudanese authorities and eventually given as a *present* to the Italian king by the Egyptian viceroy in 1874<sup>29</sup>: even though, at that time, Italian law clearly forbade slavery, the King accepted the present. Yet the Italian geographer Pellegrino Matteucci thought that the Geographical Society had “patronage, not to say ownership [of them]”. Having been observed, examined, measured as an exotic curiosity for a while, the two pigmies were eventually employed as servants<sup>30</sup>. As for Spain, Aurelia Martín Casares has collected historical documents showing the presence of slaves at the Madrid Court during the 19<sup>th</sup> century<sup>31</sup>.

## France

“En France où il n’y a point d’esclaves, tous les domestiques sont libres”, could be read in the *Encyclopédie* under the heading *domestiques*<sup>32</sup>. The maxim that “there are no slaves in France” is “a very old one, thriving at least two hundred years before the phrase, ‘Liberté, égalité, fraternité’ echoed in the streets of Paris”<sup>33</sup>. While in Italy the law, as far as I know, never forbade the buying or selling of *foreign* slaves until the arrival of Napoleon and the French army at the end of 18<sup>th</sup> century, in France the notion became established as early as the sixteenth century that any slave who set foot on French soil became free. “La France, mère de la liberté, ne permet aucun esclave”, stated the Parlement de Guyenne in 1571<sup>34</sup>.

However, with the development of colonialism, the “Freedom Principle” created increasing problems. In fact, France became strongly involved in colonial slavery and slave-owners increasingly travelled from the colonies to France with their enslaved domestics. Initially, Louis XIV established that the Freedom Principle should be respected. However, in the following years the provincial courts, and in

<sup>26</sup> GUICCIOLI A., *I Guiccioli. Memorie di una famiglia patrizia (1796-1863)*, 2 vols., Bologna, Zanichelli, 1934-1935, vol. II, p. 68; ORIGIO I., “The Domestic Enemy: The Eastern Slaves in Tuscany in the Fourteenth and Fifteenth Centuries”, *Speculum*, XXX, 1955, pp. 321-366 (p. 356). The Austrian Civil Code (1811) forbade slavery (§ 16). It was extended to Lombardy-Venetia from 1.1.1816.

<sup>27</sup> *Della vita del Cardinale Michele Viale Prelà Arcivescovo di Bologna commentario con aggiunte*, Bologna, tipografia di S. Maria Maggiore, 1861, p. 125. I am grateful to David Kertzer for this information.

<sup>28</sup> BONO S., *op. cit.*, p. 363.

<sup>29</sup> PUCCINI S., *Andare lontano: viaggi ed etnografia nel secondo Ottocento*, Roma, Carocci, 1999, pp. 75-116 (in particular p. 76, 83, 112, note 4).

<sup>30</sup> *Ibid.*, p. 83, 100.

<sup>31</sup> MARTÍN CASARES A., “Domestic Service in Spain”, p. 206.

<sup>32</sup> (A) [= BOUCHER D’ARGIS A.-G.], “Domestiques”, in *Encyclopédie, ou Dictionnaire raisonné des sciences, des arts et des métiers par une société des gens de lettres*, Paris, chez Briasson, David l’Aîné, Le Breton, Durand, vol. V, 1755, p. 29.

<sup>33</sup> PEABODY S., “There are no slaves in France”. *The political Culture of Race and Slavery in the Ancien Régime*, New York - Oxford, Oxford University Press, 1996, p. 3.

<sup>34</sup> VERLINDEN Ch., *op. cit.*, vol. I, pp. 851-854.

particular the court of Nantes, demanded more precise legislation. The slave owners clearly wanted to be authorised to keep their slaves when they travelled to France as well.

In 1716 a royal edict authorized colonists and military officers to bring their slaves to France to learn a job as apprentices or to be instructed in the Catholic religion under certain conditions. In order to keep their slaves, owners who wanted to enter France without losing them had to ask for permission from the colonial authorities before departure and then register the slaves with the Admiralty when they arrived in France. Otherwise, the slaves would become free. As a consequence, for colonial slave-owners it became possible to lease slaves to French people living in France. To stop this abuse and to limit the arrival of blacks (who in any case were never so numerous in France as in England<sup>35</sup>), in 1738 apprenticeship and residence in France for slaves were limited to three years. Slaves who arrived without the colonial governor's permission or who were not registered would no longer be freed. According to the declaration of 1738, they would be sent back to the colonies<sup>36</sup>.

However, the *Parlement* de Paris, which was the most important court in France, registered neither the measure of 1716 nor that of 1738. According to French law this implied that within its jurisdiction (which was very wide) these measures were not in force. As a consequence, within its jurisdiction the only valid rule was the "old" Freedom Principle. Starting from the 1750s, blacks who petitioned for the recognition of their freedom before the court of Paris's Admiralty were systematically freed. It is not surprising that the flow of blacks to the capital grew. In the same period, however, the total number of registered slaves was also increasing, in particular during the Seven Years' War (1756-1763), which prevented many slave-owners from going back to the colonies with their slaves<sup>37</sup>. The point to be stressed, while trying to build a comparative picture, is that while in Italy between the 16<sup>th</sup> and the 18<sup>th</sup>-19<sup>th</sup> centuries slaves arrived mainly from the Mediterranean region "thanks" to the wars and conflicts with the Ottomans and the Kingdoms of North-Africa, and strongly diminished in the 18<sup>th</sup> century, in France they increasingly arrived from the colonies and were more numerous in the 18<sup>th</sup> century than in the 16<sup>th</sup>.

In 1762 a report by the *procureur du roi* (king's representative to the Admiralty Court), Guillaume Poncet de la Grave, denounced that "France, above all the capital, has become a public market where men are sold to the highest bidder"<sup>38</sup>. At the same time Poncet de la Grave was concerned with police problems due, in his view, to the number of blacks. After his report, two new measures were passed: the sale and trade of "negroes and mulattos" were forbidden and blacks and mulattos were forced to register (1762)<sup>39</sup>.

There was an extremely important shift in the ordinance of 1762: it was no longer a matter of "slaves" but rather of "negroes and mulattos". This shift from status to skin colour expressed the fear that a multiracial society could develop. It was the first step towards a more elaborate measure, the *Déclaration pour la police de noirs* of 1777. This law forbade "blacks, mulattos and other people of colour" from entering France. Depots should be created in the French ports where blacks arriving with their masters should stay until they could be sent back to the colonies. Anyway, there was another reason for avoiding the term "slave" in law. In fact it would have been more difficult for the *Parlement de Paris* to refuse to register a law not containing this term. Paradoxically, the effort to keep the Freedom Principle had as a consequence the development of a racist policy. However, the *Police des noirs* also encountered obstacles, both practical and theoretical. A practical problem was payment for keeping the blacks in the depots; even in 1783 there was a report that black men and women employed as domestic servants, whose

<sup>35</sup> According to PEABODY S., *op. cit.*, p. 4, there were about 4-5,000 slaves, while in England they probably were about 10,000. For a somewhat higher estimate, see HECHT J. J., "Continental and Colonial Servants in Eighteenth Century England", *Smith College Studies in History*, XL, 1954, pp. 1-61.

<sup>36</sup> VERLINDEN Ch., *op. cit.*, vol. I, pp. 851-854; ALLIER R., "L'esclavage domestique en France au dix-huitième siècle", *La Semaine Littéraire*, Genève, 1895, no. 59, pp. 80-82; GUTTON J.-P., *Domestiques et serviteurs dans la France de l'Ancien Régime*, Paris, Aubier Montaigne, 1981, p. 76; SARTI R., *Per una storia del personale domestico in Italia. Il caso di Bologna (secc. XVIII-XIX)*, PhD thesis, Università di Torino, 1994, p. 15; PEABODY S., *op. cit.*, pp. 15-22, 37-39.

<sup>37</sup> *Ibid.*, p. 72.

<sup>38</sup> Quoted *ibid.*, p. 73; ALLIER R., *op. cit.*, p. 82.

<sup>39</sup> PEABODY S., *op. cit.*, p. 74 and all the texts listed above (note 36).



masters didn't know of the import ban of 1777, were arriving every day from the colonies. As for theoretical problems, in the 1770s a strong "negrophilia" developed in France<sup>40</sup>.

During the Revolution many measures were taken. On 15 May 1791 the Constituent Assembly "granted franchise to blacks born from free parents" (but not to freed men). On 28 September 1791 the old "Freedom Principle" was ratified. In fact it was stated that every individual who entered France was free. On 24 April 1792 the Constituent Assembly extended the franchise to all free coloured people. Slavery was eventually abolished on 4 February 1794. But in 1802 Napoleon reintroduced slavery in the colonies and the *Police des noirs* in France. So once again, black people were forbidden from entering France. The ban was lifted in 1818, but not for slaves. Slavery was completely abolished in France in 1848<sup>41</sup>.

## Freedom?

In the eighteenth century, the entry "domestiques" in the French *Encyclopédie* stated that in France there were no slaves: clearly, the author of the entry, Antoine-Gaspard Boucher d'Argis, "Avocat au Parlement & Conseiller au Conseil souverain de Dombres", implicitly agreed with the *Parlement de Paris* which never accepted changes of the old "Freedom Principle" and regularly freed the colonial "slaves" that petitioned for their freedom. In France, according to him, all domestic servants were free: they could leave their masters when they wanted. When they left, the master could only claim compensation for damages. Yet there were some exceptions to this rule. The domestic servants of the officials of the royal palaces, councils, royal court and retinue could not leave without written leave from their masters or they would risk losing the wages due to them and being punished as vagrants (*Ordonnance de la prévôté de l'hôtel*, 20 September 1720). Those employed by army officers could not leave their master in wartime during a campaign if they had served him during the previous winter – or they would risk being punished as vagrants too. Finally, the king forbade domestic servants from certain establishments from quitting without written leave<sup>42</sup>. In fact, a written leave for any kind of servants had been introduced as early as 1565, but in early modern times this and other similar measures were not enforced<sup>43</sup>. Moreover, several *ordonnances* repeated that farm servants were not allowed to quit service before the end of the year (at St. Martin). The simple fact that Boucher d'Argis did not mention these measures in his entry of the *Encyclopedie* confirms that they were often ineffective, as clearly maintained by other authors. Moreover, even though jurisprudence often reiterated that any domestic quitting his/her masters before the end of the contracted time might be forced to continue his/her service and to pay for the

<sup>40</sup> VERLINDEN Ch., *op. cit.*, vol. I, pp. 851-854; PEABODY S., *op. cit.*, pp. 106-120. On the representation of blacks in early modern France see BELLHOUSE M., "Servants, Slaves, and Simians: Representing Black Males in the Visual Culture of Early Modern France", paper presented at the first seminar of the Servant Project, *Servants and Changes in Mentality (16<sup>th</sup> - 20<sup>th</sup> centuries)*, Florence, 14-16 February, 2002. According to FAIRCHILD C., *Domestic Enemies. Servants and Their Masters in Old Regime France*, Baltimore - London, The Johns Hopkins University Press, 1984, pp. 158-159, black servants were regarded and treated like pets. See also MAZA S., *Servants and Masters in Eighteenth Century France. The Uses of Loyalty*, Princeton, Princeton University Press, 1983, pp. 206-207.

<sup>41</sup> VERLINDEN Ch., *op. cit.*, vol. I, pp. 851-854; SARTI R., *Per una storia del personale domestico*, p. 15; PEABODY S., *op. cit.*, pp. 137-138 (quotation at p. 138).

<sup>42</sup> (A) [= BOUCHER D'ARGIS A.-G.], *op. cit.* For information on the author, see the "Avertissement des Éditeurs".

<sup>43</sup> *Edict du Roy pour contenir les serviteurs et servantes en leurs devoirs*, Paris, par Robert Estienne Imprimeur du Roy, 1565. On this measure and later ones see MITTRE M.-H.-C., *Des domestiques en France dans leurs rapports avec l'économie sociale*, Paris, M.-C.-H. Mitre, Delaunay & Dentu - Versailles, Angé, 1837, pp. 187-209; GUTTON J.-P., *op. cit.*, pp. 136-138. The written leave was eventually reintroduced with the laws of 24 *brumaire* of the Year VI, 17 *ventôse* of the Year VIII and the decree of 3 October 1810, but these measures too were quite ineffective.



damages possibly caused by his/her leaving, only very rarely did masters try to stop servants who wanted to leave them in advance, as openly admitted by Joseph-Nicolas Guyot<sup>44</sup>.

On the other side of the Channel the laws on domestic servants were seemingly harsher. I am not referring here to slaves: as for them, in England too, as in France, in the 18<sup>th</sup> century there was some confusion. In Britain there was no slave law and, according to certain interpreters, a “slave was free the moment he or she breathed Albion’s air”<sup>45</sup>. Yet slaves, mainly employed as domestic servants, were brought from the colonies or directly “imported” from Africa, and were openly bought and sold. Traditionally, the abolition of slavery in Britain dates from 1772, when judge Granville Sharp, persuaded that the law, if correctly interpreted, did not allow any kind of slavery, was able to bring the case of the slave James Somerset before the King’s Bench. The judgement of the Lord Chief Justice, Lord Mansfield, established that “the master had no power to take the slave by force out of the Kingdom”. Yet, as shown by Carolyn Steedman, Lord Mansfield himself did not think that this judgement abolished slavery. According to Steedman, “a major route to the end of slavery in Britain” was “brought about by the actions of slave-servants themselves”, who made themselves free, “rather than by the more conventionally evoked abolition established by legislation”<sup>46</sup>.

But to go back to servants who were not slaves. They were not free to leave their masters either. Indeed in the 18<sup>th</sup> century English servants could be punished by imprisonment for contract breaking, because it was a criminal offence: a fact that has led Robert J. Steinfield to conclude that in early modern England free labour as we conceive it “simply did not exist”. Most early modern English people thought of it differently: in their view personal freedom was not affected, as long as people entered service voluntarily. Yet in medieval and early modern England, there were also people who were forced to serve. Domestic service implies “a contract between two free people”, Abbot Grégoire wrote. “Nevertheless, in England, there are cases where the law seems to curb freedom, since some people can be forced to enter service; but this is a barrier that the policy maker thought he had to erect against laziness”<sup>47</sup>. The mid-14<sup>th</sup> century Ordinance and Statute of Labourers, which aimed to tackle the workforce shortage and consequent rise in wages and prices due to the Plague, had made “departure before one had fulfilled one’s ‘voluntary’ agreement to serve punishable by imprisonment”. Moreover, it had, among other things, forced people without means of support to compulsorily serve whoever required their work; had established maximum wage levels; and had forced servants to work for six months or for the year (never

<sup>44</sup> GRÉGOIRE B. H., *De la domesticité chez les peuples anciens et modernes*, Paris, Egron, 1814, pp. 181-185; MITTRE M.-H.-C., *op. cit.*, pp. 14-15; GUTTON J.-P., *op. cit.*, pp. 102-106, 133-139; GUYOT J.-N., *Répertoire universel et raisonné de jurisprudence civile, criminelle, canonique et bénéficiale*, Paris, J. Dorez (-Panckoucke), 1775-1783, 64 vols., vol. XX, p. 118, quoted by GUTTON J.-P., *op. cit.*, p. 138. As for apprentices, ninety-two percent of the 18<sup>th</sup> century Parisian apprenticeship contracts analysed by Kaplan included clauses according to which the persons who presented the apprentice committed themselves to catching him and taking him back to the master if he ran away, KAPLAN S., “L’apprentissage à Paris au XVIII<sup>e</sup> siècle”, *Revue d’Histoire moderne et contemporaine*, XL, 1993, pp. 436-479.

<sup>45</sup> “As early as the last quarter of the sixteenth century, we begin to hear that ‘England is too pure an air for slaves to dwell in’”, STEINFELD R. J., *The Invention of Free Labour. The Employment Relation in English and American Law and Culture, 1350-1870*, Chapel Hill - London, The University of North Carolina Press, 1991, p. 96.

<sup>46</sup> STEEDMAN C., “Lord Mansfield’s Women”, paper presented at the third seminar of the Servant Project, *Domestic Service and the Evolution of the Law*, Barcelona, 12-15 December 2002, and published in *Past and Present*, CLXXVI, 2002, pp. 105-143 (p. 138, 133). On the British case, see also HECHT J. J., *op. cit.*; STEINFELD R. J., *op. cit.*, pp. 96-97 with further references.

<sup>47</sup> GRÉGOIRE B. H., *op. cit.*, p. 178. Comparison between France and other European countries is also to be found in other books. GUIRAUDET T., *La famille considérée comme l’élément des sociétés*, Paris, Desenne, 1797, p. 189, maintained, for instance, that the master’s authority on their servants was much stronger in England than in France, though concluding (quite surprisingly) that this was a consequence of the high level of freedom enjoyed by the English. Thirty years later MITTRE M.-H.-C., *op. cit.*, pp. 203-204, compared the French case with that of North-European countries, Prussia and Austria, noting that, in those countries, servants did enjoy the same condition as the other classes because of surviving feudal distinctions. According to Kuklo and Kamecka, in early modern Poland servants who left their masters before the end of the contract could be imprisoned, see KUKLO C. and KAMECKA M., “Être domestique au sein d’une famille urbaine polonaise durant les XVI<sup>e</sup> - XX<sup>e</sup> siècles. Évolution du statut social et matériel des domestiques », in these *Proceedings*, vol. I.

by the day): for six centuries afterwards, commitments generally were “for a year although a great many, especially amongst domestic servants, were broken early” (and only seldom, it seems, did masters pursue runaway domestic servants). In 1547 the Statute of Legal Settlement established that “sturdy beggars” could be branded or enslaved for two years (or for life if they absconded), while the 1562-1563 Statute of Artificers confirmed that it was forbidden to leave before the agreements had been fulfilled, and extended both contracts by year and compulsory service (for instance, Justices of the Peace could place unmarried women over 12 and under 40 in service, or place people in apprenticeship or service in husbandry, if the need existed). Maximum wage rates, too, continued to be regulated, and much more strictly than before, as they would be until the 1830s. Some decades later, the Elizabethan Poor Law (1601) enacted that the overseers of the poor could place in apprenticeship or housewifery children whose parents could not support them<sup>48</sup>.

In several other European countries – particularly in Germany and in Scandinavia – people could be forced to enter domestic service: a measure adopted both to prevent the poor from becoming vagrants, thus keeping social order, and to guarantee the masters a cheap workforce, particularly in contexts where it was scarce. In her contribution to this volume Sølvi Sogner lists a long series of Norwegian orders and rules that from the Middle Ages onwards forced poor people to serve, noting that “by upholding obligatory service for unsettled young people, society [was] also protecting itself against vagrancy”. Significantly, the provisions of the 1687 Code, which established compulsory service for unmarried men who did not have acceptable alternatives (for instance running a farm), were strengthened in the 18<sup>th</sup> century. According to a decree of 1754 (abolished as late as 1854), “farmers were no longer allowed to have more unmarried children above the age of 18 at home than were needed for the running of the farm. Cottars were similarly only allowed to keep at home one son and one daughter above the age of 16. All others were obliged to enter service for at least a year”<sup>49</sup>. Similar provisions were present in Iceland<sup>50</sup> and Sweden: in Sweden, as explained by Christer Lundh, the last Servant Act, which was passed in 1833, “made it compulsory for anybody who did not own or lease land, or possess other sources of income, to find employment as a servant. This was a relic of the mercantilist era, once introduced to provide labour at reasonable wages to manors and peasants. The work obligation was not abolished until 1885”<sup>51</sup>. As for Germany, in 1553 the “Bayerische Landesordnungen” established that unmarried men and women who had no house or job, and who were therefore not able to feed themselves, should compulsorily enter domestic service. Working as day labourers was forbidden. In German states and cities there were many similar rules forcing the poor to work as servants. Clearly the authorities were worried about social order, but they also aimed to guarantee the masters a cheap workforce: in fact, servants were cheaper than day

<sup>48</sup> STEINFELD R. J., *op. cit.*, pp. 22-24 (first quotation p. 22); second quotation from MCISAAC-COOPER S., “Servants and the Law in Early-Modern England”, in this volume; HIGGINBOTHAM P., *Workhouse* (<http://users.ox.ac.uk/~peter/workhouse/index.html>). See also BLACKSTONE W., *Commentaries on the Laws of England* (1765-1769), book 1, chap. 14, available online. <http://www.lonang.com/exlibris/blackstone/bla-114.htm>: “All single men between twelve years old and sixty, and married ones under thirty years of age, and all single women between twelve and forty, not having any visible livelihood, are compellable by two justices to go out to service, for the promotion of honest industry: and no master can put away his servant, or servant leave his master, either before or at the end of his term, without a quarter’s warning; unless upon reasonable cause to be allowed by a justice of the peace: but they may part by consent, or make a special bargain. (...) And children of poor persons may be apprenticed out by the overseers, with consent of two justices, till twenty four years of age, to such persons as are thought fitting; who are also compellable to take them”.

<sup>49</sup> SOGNER S., “The Legal Status of Servants in Norway from the Seventeenth to the Twentieth Century”, in this volume and in FAUVE-CHAMOUX A. (ed.), *op. cit.*, pp. 175-187 (p. 180, 182). See also SCHRUMPF E., “Labour Organization of Domestic Servants in the 1880s and 1890s and the Opposition of the Employers”, paper presented at the second seminar of the Servant Project, *Domestic Service and the Emergence of a New Conception of Labour in Europe*, Oslo, 13-16 June 2002.

<sup>50</sup> GUTTORMSSON L., “Il servizio come istituzione sociale in Islanda e nei paesi nordici”, *Quaderni storici*, XXIII, 1988, pp. 355-379 (p. 361, 377).

<sup>51</sup> LUNDH Ch., “Life Cycle Servants in Nineteenth Century Sweden: Norms and Practice”, in this volume and in FAUVE-CHAMOUX A. (ed.), *op. cit.*, pp. 71-85 (p. 72, in a slightly different version).

labourers<sup>52</sup>. Moreover, in Germany it was quite common for servants who wanted to work to have to first offer their services to landlords (*Vormietrecht*): in Bavaria this landlords' right was not abolished until 1801<sup>53</sup>. In Austria, Kaiser Leopold I ruled in 1679 that the children of his subjects should compulsorily work as servants for their landlords (*Grundherr*)<sup>54</sup>.

Furthermore, unemployed servants often had no home and easily became vagrants, a category of people who in early modern times was considered particularly dangerous: Bronisław Geremek has given us a thorough description of the suspicions that surrounded the so-called *hommes sans maître*<sup>55</sup>. Consequently there were laws and customs that established quite a long period of service in the same house (generally a year in the countryside) and allowed a change of master only on certain dates: for example in Nuremberg a servant could leave his/her master only on 2 February, 30 April-1 May, 10 August, 29 September and 1 November<sup>56</sup>. In England Michaelmas (29 September) was the day when the contract for farm servants expired/began; in Sweden the official "Moving Day" was 24 October; in France St. Martin's Day (11 November), though this was not really adhered to<sup>57</sup>. At the same time, as I mentioned, there were rules limiting the servants' freedom to leave their masters before the end of the contracted time or unexpectedly<sup>58</sup>.

Sometimes, similar rules were also present in countries where, as far as I know, there was no compulsory service (except for slaves). I have already mentioned some French ones. As for Italy, according to Luciano Marcello, in the 16<sup>th</sup> century Florentine apprentices were "hostage" to their masters<sup>59</sup>; a 1585 edict for the Provinces of Apulia issued by the Neapolitan government established that farm servants were allowed to leave their masters only after sowing and finishing their yearly service, i.e. by Christmas,<sup>60</sup> and other rules against servants quitting their masters were to be found, for instance, in the Statutes of the Republic of San Marino<sup>61</sup>. Yet my hypothesis here is that, in early modern times, according to the law, the status of servants, particularly male ones (I am not speaking here of slaves), as far as their freedom to enter and quit domestic service is concerned, was closer to that of "modern workers" in Italy and France than in England, Scandinavia or Germany. Clearly, to support this hypothesis it would be important to carry out further research on the laws (particularly difficult in Italy, divided into several different states in early modern times). It would also be interesting to see whether laws were enforced, for example by an analysis of trials.

<sup>52</sup> DÜRR R., "Der Dienstbthote ist kein Tagelöhner...", *Zum Gesinderecht (16. bis 19. Jahrhundert)*, in GERHARD U. (ed.), *Frauen in der Geschichte des Rechts*, München, C.H. Beck, 1997, pp. 115-139 (pp. 129-131).

<sup>53</sup> *Ibid.*, p. 131.

<sup>54</sup> EHMER J., *Heiratsverhalten, Sozialstruktur, Ökonomischer Wandel*, Göttingen, Vandenhoeck & Ruprecht, 1991, p. 48.

<sup>55</sup> GEREMEK B., "Les Hommes sans maître. La marginalité sociale à l'époque préindustrielle", *Diogenes*, XCVIII, 1977, pp. 29-57 (It. trans. "Uomini senza padrone. La marginalità sociale nell'epoca preindustriale", in GEREMEK B., *Uomini senza padrone. Poveri e marginali tra Medioevo e Età moderna*, Torino, Einaudi, 1992, pp. 127-150).

<sup>56</sup> DÜRR R., *op. cit.*, p. 127.

<sup>57</sup> KUSSMAUL A., *Servants in Husbandry in Early Modern England*, Cambridge, Cambridge University Press, 1981; LUNDH Ch., *op. cit.*, p. 74; GUTTON J.-P., *op. cit.*, pp. 104-105.

<sup>58</sup> Besides texts quoted in previous notes see MARTÍN CASARES A., "Domestic Service in Spain", p. 205. "Any servant who left his/her job voluntarily and without the compliance of his/her master was obliged to leave the region".

<sup>59</sup> MARCELLO L., "L'apprendistato nell'industria fiorentina. Una ricerca sull'Arte della Lana Fiorentina nel XVI secolo", paper presented at the international conference *Mutamenti della famiglia nei paesi occidentali*, Bologna, 6-8 October 1994, p. 9.

<sup>60</sup> GALANTI G. M., *Descrizione delle Sicilie*, t. III, p. 199, quoted by GRÉGOIRE B. H., *op. cit.*, p. 180.

<sup>61</sup> *Statuta decreta, ordinamenta reipub. ac perpetuae libertatis terrae S. Marini*, 1600, Rubrica 38, quoted *ibid.*, p. 180 and also available online (in Italian): see <http://www.consigliograndeegenerale.sm/index.php3>. I am grateful to Victor Crescenzi for informing me about this website. Servants leaving masters without their permission before the agreed deadline should lose the fourth part of their wages.

## Citizenship?

### *The French Revolution and its Aftermath*

During the French Revolution, the measures taken to do with blacks and slaves were not the only ones affecting the legal condition of (some kinds) of domestics. In 1789 the committee in charge of preparing the first Constitution proposed excluding people who were working as servants from so-called “active citizenship”, that is from the right to vote. They thought that the dependence of servants was incompatible with the independence necessary to the exercise of civil rights, which was typical of a free citizen<sup>62</sup>. The proposal was approved on 27 October 1789 (*Constitution* of 3 September 1791, title III, chap. I, section II, article 2). Immediately, a problem arose: who should be excluded? Indeed the notion of *domesticité* was extremely ambiguous<sup>63</sup>. So in the following period there were attempts to draw up rules to specify who should be counted under the heading of domestics. In August 1790, in particular, it was decided that “clerks or administrators, people who have been subject to feudal power, secretaries, carters or farm managers employed by owners, tenants or share croppers (...) librarians, tutors, craftsmen who have completed their apprenticeship, shop assistants and book-keepers” should not be considered as servants. And a later measure (27 August 1792) further reduced the number of people who could be classed as domestics, excluding from them farm workers, wage-earners and odd-job men. The reason for the exclusion was that domestics were supposed not to be able to choose autonomously because of their dependency on their master. Though the notion of *domestique* was increasingly restricted, the exclusion of servants from the franchise was also confirmed for election to the “Convention”, which is often presented as an election with universal suffrage for men. The new emphasis on freedom and equality led to the stigmatisation of servants who voluntarily accepted the loss of their freedom and subjection to a master. “Free” domestic service became more associated with slavery than in the past<sup>64</sup>.

Thereafter, the idea spread that any forms of dependence which prevented an individual from following his own will were destined to disappear in a political regime based on freedom; in this kind of regime there would no longer be any form of dependence. The belief also spread that servants were “normal” salaried workers<sup>65</sup>. The declaration of rights of the Jacobin Constitution proclaimed that “the law does not recognize any domesticity; there can be only a bond of care and gratitude between the person who works and the person who employs him”<sup>66</sup>. Consistently with this declaration, the Jacobin Constitution of 1793 did not exclude servants from the franchise. Yet it was never enforced.

In France, discrimination against domestics was abolished in 1806 but was re-introduced afterwards. Male domestic servants were enfranchised in 1848. Nevertheless, they were not eligible for election to town councils and were excluded from juries. They only became “full citizens” as late as

<sup>62</sup> CC, p. 192 (*AP*, s. I, vol. IX, pp. 202-210). See also SARTI R., *Quali diritti per “la donna”? Servizio domestico e identità di genere dalla rivoluzione francese ad oggi*, Bologna, S.I.P., 2000 ([http://www.uniurb.it/scipol/drs\\_quali\\_diritti\\_per\\_la\\_donna.pdf](http://www.uniurb.it/scipol/drs_quali_diritti_per_la_donna.pdf)).

<sup>63</sup> SARTI R., “Who are servants? Defining Domestic Service in Western Europe, 16<sup>th</sup> – 21<sup>st</sup> Centuries”, in these *Proceedings*, previous volume.

<sup>64</sup> *Ibid.*; *AP*, vol. IX, p. 590 (27/10/1790), vol. XVIII, p. 41 (12/8/1790) and vol. XLIX, p. 35 (27/8/1792); ROSANVALLON P., *op. cit.*, pp. 131-132 (It. trans.); FAIRCHILD C., *op. cit.*, p. 18; STEINFELD R. J., *op. cit.*, pp. 53, 102-103, etc.

<sup>65</sup> ROSANVALLON P., *op. cit.*, p. 133 (It. trans.).

<sup>66</sup> “Dichiarazione dei diritti”, 29/5/1793, article 19, in CC, pp. 396-398 (*AP*, s. I, vol. LXV, pp. 579-580); “Atto costituzionale del 24 giugno 1793, Dichiarazione dei diritti dell’uomo e del cittadino”, article 18, in CC, pp. 418-430; original text also available online, see for instance [http://www.aidh.org/Biblio/Text\\_fondat/FR\\_04.htm](http://www.aidh.org/Biblio/Text_fondat/FR_04.htm) (“Tout homme peut engager ses services, son temps; mais il ne peut se vendre, ni être vendu; sa personne n’est pas une propriété aliénable. La loi ne reconnaît point de domesticité; il ne peut exister qu’un engagement de soins et de reconnaissance, entre l’homme qui travaille et celui qui l’emploie”).

1930<sup>67</sup>. From this point of view, for some decades the condition of male domestics was similar to the condition of women, who – in France – were enfranchised as late as 1944 (21 April 1944).

The conflicting attitude towards domestics that characterized 19<sup>th</sup> century France was further confirmed by the simultaneous presence, in the French Civil Code (1804), of quite inconsistent laws. Indeed, on the one hand people could be employed only for a limited period or in a specified undertaking to avoid any possible confusion between free workers and slaves (article 1780)<sup>68</sup>. On the other hand, article 1781 established a kind of moral superiority of masters towards servants since it affirmed that “the master is believed on his word in matters of the amount of wages, the payment for the year expired and the advances given for the current year”<sup>69</sup>. Moreover, before article 1781 – which was rooted in an *Ancien Régime* tradition<sup>70</sup> – was cancelled in 1868, some social groups tried to extend its application to factory workers<sup>71</sup>. Significantly, in 1870 (at a time when French women were still barred from the franchise) a journalist maintained that “la domesticité est le seul obstacle qui se dresse devant l’égalité complète en France”<sup>72</sup>. In Belgium the corresponding article was abolished in 1883<sup>73</sup>, while in Spain – where until 1889 it was still possible to sign a contract of service for all of one’s life – an analogous article establishing that the master was to be believed in case of disagreement on wages (article 1584 of the Civil Code of 1889) was abolished more than a century later, in 1984<sup>74</sup>.

Indeed, the French revolutionary constitutions and the French Civil Code had, directly and indirectly, enormous influence in Europe. In Spain, the 1812 Constitution also excluded domestics (article 25<sup>75</sup>). In Norway, as shown by Sogner in this volume, “when in 1814, one – for this time – extremely liberal constitution extended the vote to large contingents of the male population, it withheld the vote from ‘dependents’, that is persons in the service of others – universal suffrage for men only came in 1899”<sup>76</sup>.

## ***An Ancient Tradition***

The exclusion of both women and servants had very ancient roots. From this point of view, the French legislators who contributed so greatly to the development of the modern notion of citizenship were quite conservative.

<sup>67</sup> FOURCADE O., *De la condition civile des domestiques*, Paris, A. Rousseau, 1898; DUBOIS R., *De la condition juridique des domestiques*, Lille, H. Morel, 1907; SAUTY R., *De la condition juridique des domestiques*, Paris, Jouve & C<sup>ie</sup>, 1911; MAZA S., *op. cit.*, p. 312; ROSANVALLON P., *op. cit.*, pp. 210, 426-427 (It. trans.).

<sup>68</sup> “On ne peut engager ses services qu’à temps et pour une entreprise déterminée”.

<sup>69</sup> “Le maître est cru sur son affirmation, pour la quotité des gages; pour le paiement du salaire de l’année échue; et pour les à-comptes donnés pour l’année courante”, *Code Civil des Français*, Paris, Firmin Didot, an XII - 1804, livre III, titre VIII, chapitre III, section première, p. 334.

<sup>70</sup> POCQUET DE LIVONNIÈRE C., *Règles du droit français*, Paris, 1786, pp. 40-41, quoted by GUTTON J.-P., *op. cit.*, p. 134.

<sup>71</sup> CASTALDO A., “L’histoire juridique de l’article 1781 du Code Civil: ‘Le maître est cru sur son affirmation’”, *Revue historique de droit français et étranger*, s. IV, LV, 1977, pp. 211-237; COTTEREAU A., “La gestion du travail, entre utilitarisme heureux et éthique malheureuse. L’exemple des entreprises françaises au début du XIX<sup>e</sup> siècle”, *Le mouvement social*, no. 175, 1996, pp. 7-30.

<sup>72</sup> COURTY P., *Opinion Nationale*, 2 April 1870, quoted by GUIRAL P. et THUILLIER G., *La vie quotidienne des domestiques en France au XIX<sup>e</sup> siècle*, Paris, Hachette, 1978, p. 248.

<sup>73</sup> PIETTE V., *Domestiques et servantes. Des vies sous condition*, Bruxelles, Académie Royale de Belgique, 2000, p. 102.

<sup>74</sup> COLECTIVO IOÉ, *Mujer, Inmigración y trabajo*, Madrid, Imsero, 2001 (<http://www.imseromigraciono.upco.es/nojava/default2.asp>), p. 170.

<sup>75</sup> Article 25: “El ejercicio de los mismos derechos se suspende (...) 3.º Por el estado de sirviente doméstico”, see RICO LINAGE R., *Constituciones Historicas. Ediciones oficiales*, Sevilla, Univesidad de Sevilla, 1989, p. 23. I am grateful to Pier Maria Stabile for information on this point.

<sup>76</sup> Also published in FAUVE-CHAMOIX A. (ed.), *op. cit.*, quotation at p. 180.

In ancient Greece both women and servants (slaves) did not enjoy political rights<sup>77</sup>. In ancient Rome *servus* and *civis* (citizen) were two opposite concepts. Women were Roman citizens but they did not vote and were excluded from a wide range of rights (and duties) enjoyed by men<sup>78</sup>. In medieval cities the concept of citizen (or perhaps of “burgher” in English) after a long period of disuse gained new importance to distinguish people who took part in councils both from urban inhabitants who did not enjoy this right and from rural dwellers. Women were also excluded from political life, though women with property could sometimes take part in the *consilia*, in particular when something had to be decided about their property<sup>79</sup>.

This is also generally true in early modern times. In fact many cities, though included in national or regional states whose inhabitants were mainly subject to a prince or king, continued to recognize particular rights and duties of citizens. People were citizens because of birth, privilege, marriage or admission. Requirements for admission are particularly interesting for us, because often, mainly after the 15<sup>th</sup> century<sup>80</sup>, it was necessary to have a house in the city and to live there (to have *fuoco e loco*, i.e. fire and place)<sup>80</sup>. In the city of Bologna, for instance, in 1597 it was established that only people who had been living in the city for at least 25 years with their families, without doing any kind of agricultural work and while living as a citizen and having an “open house” (*tener casa aperta*: in practice, that is, that they should have been living in Bologna in a house really inhabited by them and their families) could become citizens; when counting the years one could not include the period spent working as a servant<sup>81</sup>. In conclusion, this kind of citizenship or right to be a burgher was fully enjoyed only by the head of the family. This point is crucial because this pattern affected the idea of citizenship in medieval and early modern times, and also had an influence much later and still plays some role today. It was consistent with the widely shared opinion that the family was the basic unit or element of society, represented in the public sphere by its head.

Clearly real life was more complicated than theory, in particular because – at least from the 17<sup>th</sup> century onwards – an increasing number of servants (at least in Italy) did not live with their masters, and were themselves heads of family<sup>82</sup>. But from a theoretical point of view, the exclusion of both women

<sup>77</sup> RIESENBERG P., *Citizenship in the Western Tradition. Plato to Rousseau*, Chapel Hill - London, The University of North Carolina Press, 1992, pp. 27-29.

<sup>78</sup> VIDAL NAQUET P., *Le chasseur noir. Formes de pensée et formes de société dans le monde grec*, Paris, Maspero, 1981, p. 26, quoted by THOMAS Y., “La divisione dei sessi nel diritto romano”, in DUBY G. and PERROT M. (eds.), *Storia delle donne. L'antichità*, ed. P. Schmitt-Pantel, Roma - Bari, Laterza, 1990, pp.103-176 (p. 110).

<sup>79</sup> RIESENBERG P., *op. cit.*, p. XI on women; BESTA E., “Cittadinanza”, in *Enciclopedia italiana*, Roma, Istituto della Enciclopedia italiana, X, 1931, pp. 498-503; CORTESE E., “Cittadinanza (dir. interno.)”, in *Enciclopedia del diritto*, Milano, Giuffrè, VII, 1960, pp. 132-139; BERENGO M., *L'Europa delle città. Il volto della società urbana europea tra medioevo ed Età moderna*, Torino, Einaudi, 1999, pp. 171-244. On citizenship in medieval thought see COSTA P., *Civitas. Storia della cittadinanza in Europa 1. Dalla civiltà comunale al Settecento; 2. L'età delle rivoluzioni (1789-1848)*, Roma - Bari, Laterza, 1999-2000, vol. I, pp. 3-50.

<sup>80</sup> CERUTTI S., DESCIMON R. and PRAK M. (eds.), “Cittadinanze”, *Quaderni storici*, XXX, 1995, no. 89, pp. 281-514; BERENGO M., *op. cit.*, pp. 160-162, 185-190; DE BENEDICTIS A., “‘Privilegio di Cittadinanza, Beneficio della Patria, Onore dei Magistrati’: Citizenship and Government in an Italian City (16<sup>th</sup> - 17<sup>th</sup> centuries)”, in KIRSHNER J. and MAYALI L. (eds.), *Privileges and Rights of Citizenship: Law and the Juridical Construction of Civil Society*, Berkeley, the Robbins collection, 2002, pp. 127-146.

<sup>81</sup> “Provvisione sopra li fumanti, che intendono acquistar le civiltà, esser levati dall'estimo, e gravezze rusticali”, 13 May 1597, in *Concessionones, brevia, ac alia Indulta Summorum Pontificum Civitati Bononiae concessa*, Bononiae, Typis Victorij Benatij Impressoris Cameralis, 1632, pp. 78-79. I am grateful to Giancarlo Angelozzi for information about this rule. On it and its application see ANGELOZZI G. and CASANOVA C., *Diventare cittadini. La cittadinanza ex privilegio a Bologna (secolo XVI-XVII)*, Appendice a cura di R. Belenghi, Bologna, Biblioteca de “L'Archiginnasio”, 2000, s. III, no. 1.

<sup>82</sup> ARRU A., *Il servo. Storia di una carriera nel Settecento*, Bologna, Il Mulino, 1995; SARTI R., “L'Università dei Servitori di Bologna, secc. XVII-XIX”, in GUENZI A., MASSA P. and MOIOLI A. (eds.), *Corporazioni e Gruppi Professionali nell'Italia Moderna*, Milano, Angeli, 1999,

and servants was reaffirmed with incredible perseverance by the main political writers of the *Ancien Régime* (among the few exceptions is Christine de Pisan's, *Cité des dames*). The exclusion was maintained also by writers, like Jean Bodin, who no longer saw citizenship as something linked to a city but rather as something linked to a (national) state<sup>83</sup>. Even Spinoza, while dealing with democracy in his *Political Treatise* (1677), excluded servants (as well as women and children) because of their lack of independence<sup>84</sup>. Eighteenth century natural law, philosophy and political theory, too, often assumed that the only individual who enjoyed, or should enjoy, political rights was the *paterfamilias*, the head of the family<sup>85</sup>. Even the Levellers, during the English Revolution, excluded servants from the franchise, although they were against suffrage restricted to the rich<sup>86</sup>. This seems to me particularly interesting, because in England between 1622 and 1834, a "man or a woman hired to work in a particular place and fulfilling the contract for a year's agreement to serve, had an important claim to settlement" in the parish where they worked. Since the poor claiming relief from a local authority were required to demonstrate their "settlement" in that place, domestic service represented a very common route to get settlement and therefore public relief<sup>87</sup>. In other words, while in many other cases being a migrating servant made it difficult, or even impossible, to enjoy the same rights enjoyed by people who legally "belonged" to a certain place (as citizens), in England working in a parish for a year entitled the worker to important rights. Nevertheless, the right to settle in order to be entitled to relief in case of poverty was clearly considered as something different from the right to take part in "power" through the vote. Significantly, however, it was established that people brought to England as slaves and working there as servants could not benefit from the aforementioned right; for them work as domestic servants did not imply the acquisition of any settlement and public relief. From some points of view, their condition was similar to that of contemporary migrant domestic workers, whose hard work in countries they enter illegally generally does not imply the acquisition of a residence permit or citizenship, and thus does not entitle them to social services and welfare, even though there are some exceptions to this rule. Moreover, even those who have a regular residence permit do not enjoy the same rights as the citizen<sup>88</sup>. In England, indeed, "servants were one of the last groups to gain citizenship either in the form of the franchise or citizen's rights in the form of insurance"<sup>89</sup>. The Third Reform Act (1884), which introduced a uniform franchise for the United Kingdom and enabled the majority of adult males to vote, excluded domestic servants resident with their employers. These were to be enfranchised with the Representation of the People Act (1918), which also enfranchised women over 30 if they or their husbands were householders<sup>90</sup>.

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pp. 717-754; SARTI R., "The True Servant. Self-definition of Male Domestics in an Italian City (Bologna, 17<sup>th</sup>-19<sup>th</sup> centuries)", *The History of the Family*, X, 2005, pp. 407-433.

<sup>83</sup> GROSSO E., *Le vie della cittadinanza. Le grandi radici, i modelli di riferimento*, Padova, Cedam, 1997, pp. 146-165; COSTA P., *op. cit.*, vol. I, in particular p. 77.

<sup>84</sup> SPINOZA B., *Trattato Politico*, Torino, Einaudi, 1991, p. 111; MATHERON A., "Femmes et serviteurs dans la démocratie spinoziste", *Revue Philosophique*, 1977, no. 2, pp. 181-200; HESSING S. (ed.), *Speculum Spinozanum*, London, Routledge - Boston, Kegan Paul, 1977, pp. 368-386 (re-publ. in MATHERON A., *Anthropologie et Politique au XVIII<sup>e</sup> siècle. Études sur Spinoza*, Paris, Vrin, 1986, pp. 181-200). I am grateful to Stefano Visentin for some very useful information on Spinoza's thought.

<sup>85</sup> COSTA P., *op. cit.*, vol. I, *passim*.

<sup>86</sup> BROUGH MACPHERSON C., *The Political Theory of Possessive Individualism*, Oxford, Clarendon, 1964 (1962<sup>1</sup>), pp. 107-159, 281-292; BROUGH MACPHERSON C., *Democratic Theory*, Oxford - New York, Oxford University Press, 1973, pp. 207-223; LASLETT P., "Market Society and Political Theory", *Historical Journal*, VII, 1964, pp. 150-154; LASLETT P., *The World We Have Lost*, London, Methuen, 1971 (1965<sup>1</sup>), p. 191.

<sup>87</sup> STEEDMAN C., *op. cit.*, p. 106 (quotation), 113. See also MCISAAC-COOPER S., *op. cit.*

<sup>88</sup> England is not the only country in which working as a domestic could represent a way to get settlement and thus enjoy connected rights: in the German city of Hamburg, for instance, on the basis of the 1303 statute, the acquisition of citizenship (that could be bought) was free after ten years of continuous service in the same household, and this was reaffirmed in 1820, see LEE R., "Migration patterns and female employment: the significance of domestic service in Bremen, c.1800 to 1914", paper presented at the *XIII Economic History Congress*, Buenos Aires, 22-26 July 2002.

<sup>89</sup> DAVIDOFF L., "Mastered for Life: Servant and Wife in Victorian and Edwardian England", *The Journal of Social History*, VII, 1974, pp. 406-428 (p. 417).

<sup>90</sup> BLEWETT N., "The Franchises in the United Kingdom 1885-1918", *Past and Present*, XXXII, 1965, pp. 27-56 (p. 33); <http://www.knowingbritishhistory.co.uk/franchise.htm>.



## Italy

As in French revolutionary constitutions, in Italy all the so-called “Jacobin” constitutions, except the Bolognese one of 1796 (never applied), barred servants from the enjoyment of political rights. Yet, the exclusion of servants was not reaffirmed in Italian law after the national unification<sup>91</sup>. Did, therefore, servants have the same rights as other people in general, and as other workers in particular?

Initially, lawmakers in Italy did not regulate domestic service as a particular institution. The articles of the Civil Code (1865-1866) covering this matter, on the model of the Napoleonic Code, merely stated that one of the “three major types of hiring of labour and industry” was “that for which people oblige others to carry out services for them” (article 1627) and that performing work could only be “for a limited period or for a specific undertaking” (article 1628)<sup>92</sup>. The only worry on the part of lawmakers was therefore that of eliminating the possible residues of personal subordination. Compared to the French model, lawmakers in Italy turned out to be more careful in placing worker and employers on an equal footing: in fact, they did not adopt the aforementioned article of the Napoleonic Code<sup>93</sup> according to which “the master is believed on his word in matters of the amount of wages, the payment for the year expired and the advances given for the current year”<sup>94</sup>.

However, this does not mean that the new Italian State always treated the domestic as an independent and responsible worker. In fact, article 1153 established that each person was responsible not only for damage that he had caused personally, but also for that caused by people “which he has to answer for”. The employers were thus responsible “for damage caused by their domestics [...] in carrying out the duties to which they [had been] assigned”. This regulation (still in force today<sup>95</sup>) certainly protected the employee. However, in doing so, it also equated domestics to minors<sup>96</sup>.

In line with the principle that he was responsible for damage caused by domestics, the employer could use means of correction or discipline towards them. Recourse to means such as to cause “damage or danger to the health” of the person punished would constitute a specific crime<sup>97</sup>. Furthermore, if the employer had reduced the domestic to slavery or similar condition by “abusing his moral superiority” or in any other way, he would have committed a crime against individual liberty, punished very severely<sup>98</sup>.

However, other anomalies derived from the conviction that domestics should be supervised. The 1889 law on public safety, in the article relating to the employment card, in fact obliged the employer to make a declaration not just on the duration and nature of the service exercised by the servant, but also on his or her conduct<sup>99</sup>.

Traditionally, suspicions concerning servants had often also been expressed in regulations which allowed for severe punishments in cases of domestic theft<sup>100</sup>. That tradition was confirmed by the Piedmont Penal Code of 1859, extended subsequently to the rest of Italy; this Code classified domestic theft among the types of aggravated larceny. However, in 1889, the new Penal Code (the so-called

<sup>91</sup> SARTI R., *Quali diritti per “la donna”?*, with further references.

<sup>92</sup> D’AMARIO G., “Domestici (Contratto di servizio domestico)”, in *Enciclopedia Giuridica Italiana*, Milano, Società Editrice Libreria, vol. IV, parte VI, 1921, pp. 513-536 (p. 521); *Codice Civile del Regno d’Italia col confronto*, pp. 1093-1094.

<sup>93</sup> This article was deleted in 1868, see CASTALDO A., *op. cit.*, p. 227.

<sup>94</sup> *Code Civil des Français*, livre III, titre VIII, chapitre III, section première, p. 334.

<sup>95</sup> Article 2049 of the Civil Code.

<sup>96</sup> D’AMARIO G., *op. cit.*, pp. 528-529.

<sup>97</sup> *Codice Penale*, in *Codici e leggi complementari*, edited by E. Protto and L. Trompeo, Roma, 1913, book II, title IX, chap. VI, article 390, p. 69.

<sup>98</sup> *Codice Penale*, book II, title II, chap. III, article 145, p. 31; D’AMARIO G., *op. cit.*, p. 531.

<sup>99</sup> L. 30/6/1889, no. 6144, s. III; T.U. di pubblica sicurezza 18/6/1931, no. 771, article 130.

<sup>100</sup> MANZINI V., *Trattato del furto e delle varie sue specie. Le varie specie di furto nella Storia e nella Sociologia*, 5 vols, Torino, Utet, 1902-1905; LION A., “Famulato”, in *Enciclopedia Giuridica Italiana*, vol. VI, part I, Milano, Società Editrice Libreria, 1900, pp. 694-704.

Zanardelli Code) also classified as aggravated larceny the theft committed by the employer against the servant<sup>101</sup>.

Like article 1627 of the Civil Code, such articles of the Zanardelli Code tried to legally take servants away from consolidated traditions of inferiority compared to their employers. From this point of view, it is important that the law should, with a specific regulation, guarantee the right of servants to the wages agreed upon<sup>102</sup>. However, the law had plenty of contradictions, as has partly been seen. The very choice of limiting the regulation of domestic work to a few rules, and moreover subjecting it to general standards, in the end made recourse to traditions inevitable. And these traditions were largely based on an asymmetry between worker and employer which was not just profound, but also different from that which characterised other work relations, firstly those between entrepreneurs and labourers.

For example, according to authoritative jurists, servants, being accepted into the family community, were expected to “follow its running and habits” and not to reveal its secrets<sup>103</sup>, to change residence at “their master’s pleasure”<sup>104</sup>, to bear true *affectio* towards their employer; to carry out their own duties with the “diligence of a good head of family”; and to show their employers a respect which had “the same content and the same foundation as the *obsequium* of German and feudal law”, although it did not have “the condition of personal subjection which was inherent to this”<sup>105</sup>. In this sense, servants would have to be of good behaviour, even beyond the domain of their work, in such a way as not to “upset the prestige of the family business”; and such an obligation should be “just as strict” as the social condition of the employer was “pre-eminent”. In 1933, a servant’s illegitimate pregnancy could thus be listed among the just causes to terminate an employment contract in that it could harm “the esteem, honour and decorum of the employer and his family”, whereas “in the a case of a factory worker’s” it was thought that it “could not be so serious as to warrant dismissal”<sup>106</sup>.

In France, until the late eighteenth century, the paternity of a child born of a servant living with the family was attributed to the head of the family, unless it was possible to demonstrate the contrary<sup>107</sup>. Although it is difficult to indicate its extent, sexual exploitation of servants still continued<sup>108</sup>. It is therefore not surprising that the honour of a servant, especially if employed by an unmarried man living alone, was judged in danger. However, it was believed that a wife could be a servant only if rendering her service was “compatible with the duties that she had towards her husband, and especially with the obligation that she had to accompany him anywhere he wished to reside”. Any opposition to continuing service therefore made it possible to decide on the “invalidity of the contract as homage to the authority of the husband who is head of the family, and for the good of the family”<sup>109</sup>. In short, the husband had the right to “ask, *jure proprio*, as head of the family, for the termination of his wife’s work contract, if this contract should prove harmful to the fundamental duties of the married woman, that is, faithfulness, cohabitation and assistance to her husband; because in that sense the work contract would be illegal [...] and therefore invalid”<sup>110</sup>.

In brief, as the duties of servants to their employers largely coincided with those of a wife to her husband, work as a servant could find itself on a collision course with the family role of women even more than “modern” jobs which so worried the ruling classes. This partly depended on the difficulty of distinguishing clearly – in the life of servants (as in those of housewives) – between working time and

<sup>101</sup> *Codice penale*, book II, title X, chap. I, articles 402-404, pp. 71-72 and LION A., *op. cit.*, p. 696; *Codice “Rocco”*, article 61, no. 11, and articles 519, 521, 531. See DE LITALA L., *Il contratto di servizio domestico e il contratto di portierato*, Roma, U.S.I.L.A., 1933, p. 38.

<sup>102</sup> *Codice civile* (edited by T. Bruno), book III, title XXIII, chap. I, par. I, article 1956, p. 471; book III, title XXVIII, sect. III, articles 2139 and 2142, pp. 526-528; *Codice Civile* of 1942, articles 2751 and 2955, see DE LITALA L., *Contratti speciali di lavoro*, Torino, Utet, 1958<sup>2</sup>, pp. 62-63.

<sup>103</sup> D’AMARIO G., *op. cit.*, p. 524.

<sup>104</sup> DE LITALA L., *Il contratto di servizio domestico*, p. 67.

<sup>105</sup> D’AMARIO G., *op. cit.*, p. 524.

<sup>106</sup> DE LITALA L., *Il contratto di servizio domestico*, p. 67, 77.

<sup>107</sup> FAIRCHILD C., *op. cit.*, p. 168, 188.

<sup>108</sup> GIUSTI PESCI C., *Proposta per la classe delle domestiche presentata alla assemblea della Federazione Emiliana delle Donne Italiane il 3 Marzo 1913*, Bologna, without publisher, [1913], p. 5.

<sup>109</sup> BRUNO T., “Domestico”, in *Il Digesto Italiano*, vol. IX, part III, Torino, Utet, 1899-1902, pp. 652-654 (p. 652) and PACIFICI-MAZZONI E., *Codice civile italiano commentato, Trattato delle locazioni*, Firenze, Cammelli, 1872<sup>2</sup>, pp. 417-418, quoted *ibidem*.

<sup>110</sup> DE LITALA L., *Il contratto di servizio domestico*, p. 34; ADDEO P., “Il contratto di lavoro domestico”, in *Diritto commerciale*, s. II, XII, 1920, pp. 58-78, 89-108 (p. 75).

leisure, working spaces and domestic spaces, or between the “public” and “private” spheres<sup>111</sup>. In short, it depended on archaisms, on “feudal” elements which characterised domestic service. In fact, Riccardo Bachi was able to contend that the domestic sphere was experiencing a “regressive evolution”: it was affected by the “the echoes and reflections of all the changes” giddily taking place in society. Yet it remained “backward”: “the spirit [...] of the past phase, tormented by the vigorous and sometimes tempestuous winds of the new economic life, seems to take refuge behind the domestic walls, as if in a last venerable fortress”<sup>112</sup>.

Another opinion was held by those jurists who – with naive nostalgia for the past<sup>113</sup> – reported the “levelling” of domestic service to the pattern of industrial work: in their view, the latter had ended up by eliminating the assistance which had once been guaranteed by the employer towards his servant; in this new situation, “for cases of serious illness, inability to work for prolonged periods, and especially for old age”, the domestic servant risked being left to his own devices. This made it necessary for the state to intervene. But the request for a legislative intervention also sprang from the need to regulate that specificity of domestic service the classification of which as a job category did not allow it to be subjected to discipline<sup>114</sup>.

Nevertheless, both female and male servants were for a long time excluded from many of the laws relating to work regulation or workers’ protection which had been introduced in Italy. In fact, they were not included in those on the work of minors and women and on the protection of maternity<sup>115</sup>; on the limitation of working hours to a maximum of eight per day and forty-eight, then forty, per week<sup>116</sup>; on collective wage agreements<sup>117</sup>; on the subjection of jurisdiction, in the case of dispute, to work tribunals established by the authorities<sup>118</sup>; on protection in case of involuntary unemployment and so on<sup>119</sup>. The only provisions from which men and women servants benefited in the first forty years of the twentieth century were those of 1923 on compulsory insurance against invalidity and old age, extended, in 1927, to tuberculosis<sup>120</sup>.

In other words, paid domestic work was still left almost “completely to the judgement of individuals”. This depended on the prevailing opinion according to which “a working relationship normally taking place within the sphere of the domestic walls, and which must be pervaded by the employer’s sense of benevolence to people in his service, is better regulated between private individuals”<sup>121</sup>. There must certainly have been great fear of turning to legal procedure if Rodolfo Nenci in 1938, proposing that domestic servants should be unionised, felt it important to tell the *matres familias*

<sup>111</sup> SARTI R., “Spazi domestici e identità di genere tra età moderna e contemporanea”, in GAGLIANI D. and SALVATI M. (eds.), *Donne e spazio nel processo di modernizzazione*, Bologna, Clueb, 1995, pp. 13-41.

<sup>112</sup> BACHI R., *La serva nella evoluzione sociale*, Torino, Sacerdote, 1900, pp. 15-16.

<sup>113</sup> On assistance to servants in early modern age see SARTI R., “L’Università dei Servitori”; SARTI R., “The True Servant”.

<sup>114</sup> ADDEO P., *op. cit.*; BRUGI B., “Rappresentanza del padrone per compere a credito fatte dal domestico”, *Rivista di diritto commerciale*, 1905, part II, pp. 410-414 were the first ones to plead for specific intervention by the State. See DE LITALA L., *Il contratto di servizio domestico*, p. 8.

<sup>115</sup> L. 11/2/1886, no. 3657; l. 19/6/1902, no. 242; l. 7/7/1907, no. 416 and r.d. 10/11/1907, no. 818; l. 17/7/1910, no. 520; r.d. 13/3/1923, no. 748 and l. 17/4/1925, no. 437; r.d.l. 13/11/1924, no. 1825; r.d.l. 13/5/1929, no. 850; l. 26/4/1934, no. 653; r.d.l. 22/3/1934, no. 654 and l. 5/8/1934, no. 1347.

<sup>116</sup> R.d.l. 15/3/1923, no. 692, article 1, paragraph 2 and l. 17/4/1925, no. 473; r.d.l. 29/5/1937, no. 1768, article 3, letter ‘a’ and l. 13/1/1938, no. 203.

<sup>117</sup> Regolamento sindacale 1/7/1926, no. 1130, article 52.

<sup>118</sup> D. 26/2/1928, no. 471, article 1. The l. 15/6/1893, no. 26 had excluded disputes between domestic workers and their employers from those dealt with by arbiters (“collegi dei probiviri”).

<sup>119</sup> R.d.l. 4/10/1935, no. 1827, article 40,4.

<sup>120</sup> Article 1, no. 2, d. 30/12/1923, no. 3184; d. 27/10/1927, no. 2055 and r.d.l. 4/10/1935, no. 1827, article 37; l. 6/4/1936, no. 1155.

<sup>121</sup> DE LITALA L., *Il contratto di servizio domestico*, p. 5.

that this would not result in “any interference or limitation of freedom in domestic or family affairs” or create “difficulties or problems”<sup>122</sup>.

The contents of the proposals gradually put forward to regulate this matter on the one hand, and, on the other, the difficulties and delays met with in guaranteeing by law even minimum protection constitute a further confirmation of the extent to which domestic work continued to be dominated by traditions of subordination. For example, in 1933, Luigi De Litala summed up under twelve points the matters in which specific provisions should be made for service staff: “division into categories, according to the capacity easily ascertainable by an office responsible”; “fixing of minimum salaries by category”; “the establishment of an employment office for every city exceeding a certain number of inhabitants”; “the right to holidays”; “enforced rest periods”; “supplementary benefit for work carried out beyond midnight”; “extension of insurance against accidents; “extension of regulations issued for maternity of women workers, by the decree of 13 May 1929 referring to the security of one’s position”; “concession of a long-service allowance”; “obligation of a caution to cover damage; “obligation of trade union contributions”; “jurisdiction of work tribunals to decide on disputes between employers and domestics”<sup>123</sup>.

The idea that domestic work possessed peculiarities which needed specific regulations was accepted by the authors of the new Civil Code in 1942<sup>124</sup>. But the articles which regulated it, as with the law which in 1958 was to intervene to control this matter, starting off with the recognition of the specificity of domestic workers, did not extend to them many rights which were granted to other categories<sup>125</sup>.

In 1938, in his *Saggi ed esperienze di diritto fascista e corporativo* (Essays and experiences of fascist and corporate law), Rodolfo Nenci declared that he was sure that the minister of corporations would promote “the abolition of the prohibition which prevented collective agreements in the sector of domestic work”: this prohibition was “now in opposition to the principles of right of defence recognised to the workers” and determined “an unjust consideration of moral and material inferiority of domestic servants, the remains of an out-of-date ideology and mentality”<sup>126</sup>. However, Fascist Italy did not accept this proposal, although, in Nenci’s intentions, far from wanting to realise those principles of trade union freedom today associated with collective agreements, it was to become part of a Fascist programme of authoritarian control of society realised also thanks to detailed control of the world of work<sup>127</sup>. Democratic and Republican Italy behaved for a long time in exactly the same way: only in 1969 did the Constitutional Court declare unlawful the article of the Civil Code which excluded collective agreements from the sector of domestic work. The first national contract finally saw the light in 1974<sup>128</sup>.

Another request put forward by Nenci and others had been the introduction of employment exchanges. In this case also, Republican Italy did not turn out to be any better than Fascist Italy. In fact, the law of 1958, which is described by Claudia Alemanni in this volume<sup>129</sup>, did not make it compulsory for

<sup>122</sup> NENCI R., “Dell’educazione e disciplina sindacale degli addetti al servizio domestico”, in NENCI R., *Saggi ed esperienze di sindacalismo fascista e corporativo*, Firenze, Cya, 1938, pp. 14-20.

<sup>123</sup> DE LITALA L., *Il contratto di servizio domestico*, p. 8.

<sup>124</sup> *I codici commentati con la giurisprudenza – Il codice civile*, edited by M. Abate, P. Dubolino and G. Maiani, Piacenza, La Tribuna, 1980, book V (*Del lavoro*), tit. IV (*Del lavoro subordinato in particolari rapporti*), chap. II (*Del lavoro domestico*), articles 2240-2246, pp. 933-935.

<sup>125</sup> L. 2/4/1958, no. 339. See DE LITALA L., *Contratti speciali*; BALZARINI R., “Contratti speciali di lavoro”, in BORSI U. and PERGOLESI F. (dir.), *Trattato di diritto del lavoro*, 3<sup>rd</sup> ed., vol. II, *Il contratto individuale di lavoro*, Padova, Cedam, 1958, pp. 401-418; PERSIANI M., “Domestici”, in *Enciclopedia del diritto*, Milano, Giuffrè, 1964, vol. XIII, pp. 826-837; BIANCHI D’URSO F., “Lavoro domestico”, in *Enciclopedia Giuridica*, Roma, Istituto della Enciclopedia Italiana fondata da Giovanni Treccani, vol. XVIII, 1990; SARTI R., *Quali diritti per “la donna”?*; BASENGHI F., *Il lavoro domestico*, Milano, Giuffrè, 2000; ALEMANNI C., “Le colf: ansie e desideri delle datrici di lavoro”, *Polis*, XVIII, 2004-1, pp. 137-164; ALEMANNI C., “Les lois relatives au travail domestique en Italie, 1950-2000”, in this volume.

<sup>126</sup> NENCI R., *op. cit.*, p. 20.

<sup>127</sup> *Ibid.*, p. 15.

<sup>128</sup> Judgement by the “Corte costituzionale”, 9/4/1969, no. 68, see BIANCHI D’URSO F., *op. cit.*, p. 5; TALINI S. and MASIM., *Il contratto di lavoro domestico. Lavoratori comunitari ed extracomunitari*, Roma, EPC Editoria Professionale, 1995, pp. 7-10; ALEMANNI C., “Le colf: ansie e desideri”.

<sup>129</sup> ALEMANNI C., “Les lois relatives au travail domestique en Italie”. See also SARTI R., *Quali diritti per “la donna”?*; BASENGHI F., *op. cit.*; ALEMANNI C., “Le colf: ansie e desideri”, appendix.

employers to hire domestic staff from the official unemployed list, flaunting the constitutional principle on the basis of which employment is a public function<sup>130</sup>.

The law prohibiting the dismissal of a pregnant female worker dates back to 1929. Even today, the prohibition of dismissal during pregnancy and until the child has reached the age of one year, is not valid in the case of domestic servants. The Constitutional Court has on several occasions confirmed the legitimacy of the regulation, despite the fact that Italy has undersigned international agreements extending prohibition of dismissal to all pregnant female workers. Only collective agreements have partially obviated legislative limits. According to the last collective contract (2001), a domestic worker cannot be dismissed during pregnancy and for three months after childbirth, except for justified dismissal (article 25)<sup>131</sup>.

Moreover, those engaged in domestic work constitute one of the few categories in which the termination of employment is governed only by the Civil Code. In fact, they have been excluded from those rules which were introduced later in order to govern this matter. This means that the employer may dismiss staff without having to put his decision in writing and, in the case of justified dismissal, even without fore-warning<sup>132</sup>.

Collective bargaining has recently established that home-helpers living in with their employers cannot work more than ten hours a day, and those living out cannot exceed eight hours, adding up to a weekly total of fifty-four for the former and forty-four for the latter<sup>133</sup>. Yet the legislation in force merely regulates not the maximum working hours, as happens for other categories, but the minimum rest periods, fixed at eight consecutive hours per night and a “convenient” rest period during the day. Not without certain contradictions, it also established that in some cases, night service should be followed by a “suitable compensatory” rest period during the day<sup>134</sup>.

Although after the reform of the Civil Code, domestic workers began to see their work regulated by law and to have a right to rest periods, as well as holidays, sick benefit, the thirteenth-month salary and so on<sup>135</sup>, they are still today under heavy discrimination compared to other employees. The rights which they presently enjoy are, moreover, the result of a tardy, and in some cases partial, extension of rights won some time ago by other workers. And this is even more so for workers employed for fewer than four hours a day, outcasts among outcasts, for a long period excluded even from the few guarantees that other domestic workers had won<sup>136</sup>.

## ***Other European Countries***

The Italian case is not exceptional: servants’ rights in the 19<sup>th</sup> century and in the first half of the 20<sup>th</sup> century generally did not improve, or did not improve as the rights of other workers did. At the beginning of the 20<sup>th</sup> century complaints were generalized because domestic service had been excluded almost everywhere and almost completely from the first protection laws. As in Italy, the legal condition of domestic workers in many other European countries slowly started to improve in the 1940s-1950s.

In Spain, for instance, subsidies and national insurance were extended to domestic workers in 1944 (though this law was really enforced in 1959, when the Montepío Nacional del Servicio

<sup>130</sup> Article 2, l. 339/1958; article 11, paragraph 3, points 5 and 6, l. 29/4/1949, no. 264; d.l. 494/1994; BIANCHI D’URSO F., *op. cit.*, p. 3; TALINI S. and MASI M., *op. cit.*, p. 27.

<sup>131</sup> D. 13/5/1929, no. 850; l. 30/12/1971, no. 1204; judgements by the “Corte costituzionale” 13/2/1974, no. 27 and 15/1/1976, no. 9, 15/3/1994, no. 86; article 19 of the collective contract of 1992, see TALINI S. and MASI M., *op. cit.*, pp. 46-47; article 25 of the collective contract of 1996 and article 25 of the collective contract of 2001 (available online: see for instance <http://www.stranieriinitalia.it/news/approcolf27ago.htm>).

<sup>132</sup> L. 604/1966 and 11/5/1990, no. 108, cfr. TALINI S. and MASI M., *op. cit.*, pp. 46-48.

<sup>133</sup> Collective contract of 2001, article 17.

<sup>134</sup> Article 8, l. 339/1958.

<sup>135</sup> Respectively article 2243 of the Civil Code; l. 18/1/1952, no. 35; l. 27/12/1953, no. 940.

<sup>136</sup> Law 339/1958 did not concern domestics employed for less than 4 hours a day. With the d.p.r. 1403/1971 guarantees were extended to all home-helpers.

Domestico was created). Previously, in spite of the fact that, during the Second Republic, domestic service had not been excluded from the *Ley de Contratos de Trabajo* (Law on work contract) of 1931, it was not included in the rules regulating working time, insurance etc., and in any case, the 1931 law was abolished by Franco. Significantly, domestic workers from 14 to 55 had to enrol into the Montepío but were required to be unmarried or widows: in other words, married women were not supposed to work as domestics and if they did so, they had no right to social protection. In 1969 the so-called *Régimen especial de la Seguridad para el Servicio domestico* was created. It was enforced in 1970 and granted some more rights to domestic workers. However, the end of Franco's regime did not imply a significant improvement in the working conditions of Spanish domestic workers, because they were not included in the *Estatuto de los Trabajadores* of 1980. Domestic service was regulated in 1985 by the *Real Decreto* 1424 which assumed that the private sphere cannot be "invaded" by the law. Social security is granted only to people who work at least 72 hours monthly over at least 12 days<sup>137</sup>.

In Norway, for instance, the aforementioned Norwegian Code of 1687, according to which servants were subject to the paternalistic power of the head of the family, was definitively replaced as late as 1948<sup>138</sup>. According to the German *Gesindeordnungen*, too, domestic workers were subject to the *paterfamilias* and this lasted until 1918<sup>139</sup>.

In France, according to Guiral and Thuillier, "l'ancien régime de la domesticité a duré jusqu'aux années 1950"<sup>140</sup>. In fact, in France things were not as bad as in many other European countries. Domestics there had been excluded from the first laws regulating labour, introduced in the 19<sup>th</sup> century. Yet at the beginning of the 20<sup>th</sup> century they had began to enjoy some rights. In 1909 they were not excluded from the law which forbade the dismissal of a pregnant woman four weeks before the birth and four weeks thereafter<sup>141</sup>. Nor were they left out when the pension for workers and peasants was introduced (1910). But it was only in 1923 that protection in case of industrial injury, already introduced for workers in 1898, was at last extended to servants as well. From the end of the 1920s their inclusion in such measures gathered pace: they were explicitly mentioned among people having the right to social insurance (1928, 1930 and 1945) and to paid holidays (1936)<sup>142</sup>. But they were excluded from many other laws, in particular from the regulation of daily working time, weekly rest periods and collective bargaining<sup>143</sup>. An important step towards a greater regulation was represented by the law of 1950 on collective bargaining, which expressly named domestic service among the fields to which it was applicable. In 1951 a national contract was signed, but it could not come into force, because employers were not entitled to have unions. Only in 1957 were the employers of domestic personnel definitively authorised to have unions, a fact that led to the drawing up of many collective agreements, normally on a departmental level, which allowed the numerous gaps existing in labour law with respect to domestics to be overcome. In 1980 the first national contract to be effectively applied was at last signed. Other important steps were the law of 1956 about paid holidays and the one which extended to domestics the jurisdiction of the so-called *prud'hommes* (with a delay of about 150 years in comparison with industrial workers)<sup>144</sup>.

<sup>137</sup> PEDREGAL L. J., *Evolución legal del servicio doméstico (estudio histórico-jurídico)*, Sevilla, Imp. Carlos Acuña, 1951, pp. 21-22; COLECTIVO IOÉ, *op. cit.*, pp. 170-171; MUÑOZ RUIZ M., "Domestic service and Social Security in Franco's Spain: The *Montepío Nacional del Servicio Doméstico*", in this volume.

<sup>138</sup> AUBERT V. A., "The Housemaid. An Occupational Role in Crisis", *Acta Sociologica*, I, 1955, pp. 149-158; SCHRUMPF E., *op. cit.*; SOGNER S., *op. cit.*, p. 186.

<sup>139</sup> WIERLING D., *Mädchen für alles. Arbeitsalltag und Lebensgeschichte städtischer Dienstmädchen um die Jahrhundertwende*, Berlin - Bonn, J. H. W. Dietz, 1987, pp. 85-88; MÜLLER-STAATS D., *Klagen über Dienstboten. Eine Untersuchung über Dienstboten und ihre Herrschaften*, Frankfurt a. M., Insel, 1987, pp. 112-128; ORTH K., "Nur weiblichen Besuch". *Dienstbotinnen in Berlin 1890-1914*, Frankfurt am M. - New York, Campus, 1993, pp. 30-39.

<sup>140</sup> GUIRAL P. et THUILLIER G., *op. cit.*, p. 250.

<sup>141</sup> CUSENIER M., *Les domestiques en France*, Paris, A. Rousseau, 1912, pp. 73-74, 322.

<sup>142</sup> MARTIN-HUAN J., *La longue marche des domestiques en France du XIX<sup>e</sup> siècle à nos jours*, Nantes, Opéra, 1997, p. 135.

<sup>143</sup> LAZARD O., *Le statut professionnel des gens de maison et des concierges, avec les lois et la jurisprudence applicables en France et à l'étranger (accidents du travail, assurances sociales, congés payés, etc.)*, l'étude des revendications syndicales, l'état des travaux législatifs en cours, Paris, Éditions A. Pedone, 1939.

<sup>144</sup> TILLHET-PRETNAR J., "Employés de maison", in *Dalloz Encyclopédie Juridique*, 2<sup>e</sup> éd., Répertoire du droit du travail, publié sous la direction de J. Laroque et G. H. Camelynck, vol. II, Paris, Éditions Dalloz-Sirey, 1976; MARTIN-HUAN J., *op. cit.*, pp. 140-142.

In Belgium domestic workers were excluded from the laws on work contracts (1900); on injuries and accidents at work (1903); on free Sundays (1905); on daily and weekly working hours (respectively 8 and 48); on paid holidays (1936); and on social security (1944). Only in the 1960s were social protection, the right to holidays, fixed working hours and maternity protection extended to domestic workers and a specific law on domestic work contracts was finally approved in 1970<sup>145</sup>.

The list could continue, but this information seems to be sufficient to show that the progress towards modern work regulation has been difficult and slow for domestic service. In several cases further improvements are still needed for servants to enjoy parity with other workers.

(Male) servants' exclusion from citizenship I described above was mainly a consequence of the idea that they were not in a condition to choose and vote freely because of their dependence on their master. However, the more recent exclusion of domestic workers from several rules regulating and protecting work was primarily due to the ambiguous position of servants, by then almost exclusively female because of the increasing feminisation of domestic staff that generally took place in the 19<sup>th</sup> century and in the first half of the 20<sup>th</sup>. Domestic workers, indeed, were paid for carrying out the "natural" unpaid (and "unproductive") duties of wives and mothers. Indeed, we cannot forget that, from the late 18<sup>th</sup> century, domestic work was seen by economists, and then also by common people, as "unproductive work", another shift – besides the new emphasis on freedom and independence – which contributed to worsen the social consideration of domestic service<sup>146</sup>.

### ***Enforcement of the Law***

In 1951 the International Labour Organisation (ILO) urged all countries to introduce a *minimum* regulation of domestic service, stressing its social importance<sup>147</sup>. Indeed, in many European countries in the last 50 to 60 years domestic workers have at least partly caught up with other workers. The gap between factory and domestic workers has generally narrowed, if we consider the rights enjoyed by the latter according to the law. Yet, ironically, the widening of domestic workers' rights has often been (more or less) paralleled by a dramatic increase in the number of people – mainly migrants, but also native – who work irregularly.

In Italy, for instance, in the 1970s "irregular" workers are estimated to have represented only 20 percent<sup>148</sup> of the total while they are thought to have made up 74.5 percent in 1992 and 77 percent in 2000<sup>149</sup>. The presence of many such irregulars among domestic workers is not peculiar to Italy. Colectivo IOÉ estimated, for instance, that in 1999 in Spain there were 565,000 domestic workers<sup>150</sup>. In 2001 those registered with the Department of Social Security's Special Regime for Domestic Workers totalled only 155,900<sup>151</sup>. In 2002 the German Hartz Commission concluded that in the household sector

<sup>145</sup> PIETTE V., *op. cit.*, pp. 104-109; PASLEAU S. et SCHOPPI I., "La domesticité en Belgique de 1947 à l'aube du XXI<sup>e</sup> siècle", *Sextant*, nos 15-16, 2001, pp. 235-277 (pp. 250-255).

<sup>146</sup> SARTI R., "Work and Toil. Breadwinner Ideology and Women's Work in 19<sup>th</sup> and 20<sup>th</sup> century Italy", Salzburg, 10-11/12/1999 (available online: [http://www.uniurb.it/scipol/drs\\_work\\_and\\_toil.pdf](http://www.uniurb.it/scipol/drs_work_and_toil.pdf)); SARASÚA C., "Were Domestic Servants Paid according to their Productivity?", in FAUVE-CHAMOUX A. (ed.), *op. cit.*, pp. 516-541. On the feminisation of domestic personnel see SARTI R., "Notes on the feminization of domestic service. Bologna as a case study (18<sup>th</sup> - 19<sup>th</sup> Centuries)", in FAUVE-CHAMOUX A. et FIALOVÁ L. (eds.), *Le phénomène de la domesticité en Europe, XVI<sup>e</sup> - XX<sup>e</sup> siècles* (Acta Demographica, XIII), Praha, Česká Demografická Sociologický Ústav av CR, 1997, pp. 125-163.

<sup>147</sup> TILLHET-PRETNAR J., *op. cit.*

<sup>148</sup> My calculation on the data published by TURRINI O., *Casalinghe di riserva. Lavoratrici domestiche e famiglia borghese*, Roma, Coines, 1977, pp. 21, 51-53.

<sup>149</sup> SARTI R., "Noi abbiamo tante città, abbiamo un'altra cultura?. Servizio domestico, migrazioni e identità di genere in Italia: uno sguardo di lungo periodo", *Polis*, XVIII, 2004-1, pp. 17-46 (p. 19).

<sup>150</sup> COLECTIVO IOÉ, *op. cit.*, p. 450.

<sup>151</sup> PARELLA RUBIO S., *Mujer, inmigrante, trabajadora: la triple discriminación*, Barcelona, Anthropos, 2003, p. 512.



there were between 1.2 and 2.9 million undeclared jobs<sup>152</sup>. As a consequence, a high proportion of domestic workers do not even enjoy the rights and protection granted to regular domestic workers.

Though the increasing presence of undocumented migrant domestic workers partially accounts for this increasing presence of undeclared workers, we cannot forget that native people as well may work irregularly: in Italy, for instance, among native workers there are retired Italian women who don't want to legally work so as not to lose, or have reduced, their pensions (obviously there also are employers who don't want to pay social contributions). As for irregular work, the Italian case is particularly telling. In 2002 an amnesty took place there<sup>153</sup>. As a consequence, in 2003 almost 350,000 domestic workers were regularized, gaining both residence and work permits. Before the amnesty there were only about 250,000 regular domestic workers. Foreigners represented 56 percent of regular domestic workers, while thereafter they are more than 80 percent<sup>154</sup>. Yet this case shows that regularizing the workers' residence status by giving them permits does not necessarily imply a complete regularisation of their working conditions. Indeed, even though, as I mentioned, regularized domestic workers get both residence and work permits, this measure has overcome "illegalisation" deriving from irregular migration but has not led to a corresponding result on irregular employment. This is firstly because (obviously) Italian law does not foresee any possible labour contract for 24 hours of work a day, as is often the case for international migrants, particularly for the carers of the elderly<sup>155</sup>. Thus, if they continue to work as they did before the regularisation, they are inevitably employed irregularly for a part of their work. Secondly, many families (and some workers) are not willing to declare the maximum number of work hours allowed by Italian work-contracts, and only declare a small part of them<sup>156</sup>. According to a recent survey carried out in Faenza (Northern Italy) after the regularisation, only 57 percent of foreign domestic workers interviewed have declared the real number hours they work<sup>157</sup>. In other words this measure is insufficient to guarantee domestic workers the rights guaranteed by Italian law to "really" regular domestic workers. At the same time, it does not allow implementation of the right to "limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave" established by article II/91 of the European Constitution.

From certain points of view therefore, paid domestic work remains the icon of bad working conditions and marginalisation. Efforts by the authorities to reduce "black" labour as well as unemployment, thanks to the expansion of a kind of employment in the so-called "proximity services" that does not enjoy exactly the same social protection as other occupations, have further complicated the situation in some European nations. In Belgium, for instance, according to Suzy Pasleau and Isabelle Schopp, it is possible, today, to distinguish three different colours, so as to speak, of domestic service: the "white" workers, i.e. the regular workers who are "under contract and receive wages declared to the income tax authorities (with social security contributions/national insurance paid by the employer)"; the "grey" or semi-official workers employed in the "proximity services" (*services de proximité*) and the "black" domestic workers who work informally (with no contract nor social security). Clearly the "creation" of "grey" workers cannot be considered a real success in the fight against irregular work<sup>158</sup>. Yet

<sup>152</sup> RENOY P., IVARSSON S., VAN DER WUSTEN-GRITSAI O. and MEIJER E., *Undeclared work in an enlarged Union. An analysis of undeclared work: an in-depth study of specific items*, European Union, Directorate General for Employment and Social Affairs, May 2004, p. 169.

<sup>153</sup> BARBAGLI M., COLOMBO A. and SCIORTINO G. (eds.), *I sommersi e I sanati. Le regolarizzazioni degli immigrati in Italia*, Bologna, Il Mulino, 2004; IOLI A., "Incoming Workers and Housework", in this volume.

<sup>154</sup> INPS/CARITAS – Monitoraggio dei flussi migratori in collaborazione con il "Dossier Statistico Immigrazione Caritas/Migrantes", *Il mondo della collaborazione domestica: i dati del cambiamento*, 2004.

<sup>155</sup> DE FILIPPO E., "Le lavoratrici 'giorno e notte'", in VICARELLO G. (ed.), *Le mani invisibili. La vita e il lavoro delle donne immigrate*, Roma, Ediesse, 1994, pp. 65-72; MINGOZZI A., "Il lavoro domestico nel distretto faentino. Effetti della regolarizzazione sulle lavoratrici provenienti dall'ex Unione Sovietica", in CAPONIO T. and COLOMBO A. (eds.), *Migrazioni globali, integrazioni locali*, Bologna, Il Mulino, 2005, pp. 117-143.

<sup>156</sup> *Ibid.*

<sup>157</sup> Acli-Colf, in collaborazione con l'Iref, "Cosa penso di voi". *Le opinioni delle colf in Italia*, Rapporto di ricerca, Roma, Marzo 2005, p. 24.

<sup>158</sup> PASLEAU S. and SCHOPP I., "Les trois couleurs du service domestique en Belgique au début du XXI<sup>e</sup> siècle", in these *Proceedings*, previous volume, and English version in FAUVE-CHAMOIX A. (ed.), *op. cit.*, pp. 435-453.

measures undertaken in several countries to reduce black labour in domestic service and to expand regular employment in this sector have not really succeeded, as also shown, for instance, by Karen Jaehrling in her paper on Germany, where different kinds of measures were adopted in the last few years<sup>159</sup>. Even the French policy in this field has been criticized. From 1992 onwards French authorities encouraged the expansion of paid services to families through tax discounts and exemption from social charges for employers, as well as through the reduction of the red tape involved in employing workers. As a result, an increasing number of households declared enjoyment of some kind of paid domestic help, particularly after the introduction, in 1994, of the so called *chèque-emploi-service*, which allows for the buying of domestic services without hiring a domestic worker. There has not, however, been a corresponding increase in employees; moreover, those who are employed often work only a few hours weekly, often in different households<sup>160</sup>. Therefore, diverging opinions have been expressed about this system. Its supporters stress the reduction of “black” labour, the creation of employment, the “professionalisation” of the new services and the “democratisation” of the ability to have domestic help. Its critics denounce the risk of a “new domesticity” and argue that it only creates some *petits boulots* (minor casual jobs). However in France domestic workers paid by the *chèques-emploi-service* enjoy all social rights<sup>161</sup>.

In conclusion, domestic service often still bears the signs of its original feature, i.e. personal dependency, as if it were an original sin. Significantly, in the 19<sup>th</sup> century, when men slowly obtained independence and were enfranchised, domestic service became feminized; now that European women have been enfranchised and have entered the labour market, domestic servants are increasingly migrants, as if only people who are not full citizens might be fitting to be employed as domestic workers<sup>162</sup>. This reveals deep contradictions between the European emphasis on freedom, equality, dignity and social protection and the real everyday life of many workers<sup>163</sup>. Indeed our societies are still in search of a satisfactory solution to the problem of managing production and reproduction, and hopefully historical and sociological analyses can help in this task. There is no doubt, however, that neither restoration of traditional hierarchies nor exploitation of new inequalities can offer a real solution to the dilemma.

<sup>159</sup> JAEHRLING K., “Political Reforms in the Domestic Service Sector, Aims and Impact”, in these *Proceedings*, vol. V, and in FAUVE-CHAMOUX A. (ed.), *op. cit.*, pp. 235-273. See also MAYER-AHUJA N., “Three worlds of cleaning: women’s experiences of precarious labor in the public sector, cleaning companies and private households of West Germany, 1973-1998”, *Journal of Women’s History*, June 2004, pp. 116-141.

<sup>160</sup> AUDIRAC P.-A., TANAY A. et ZILBERMAN S., “L’évolution du poids des services et des emplois familiaux en France”, in CONSEIL D’ANALYSE ÉCONOMIQUE, *Emplois de proximité*, Paris, La Documentation Française, 1998, pp. 94-98.

<sup>161</sup> On the debate see DUSSUET A., “‘On n’est pas des domestiques!’ La difficile professionnalisation des services à domicile”, *Sextant*, nos. 15-16, 2001, pp. 279-296 (pp. 279-280).

<sup>162</sup> SARTI R., *Quali diritti per “la donna”?*

<sup>163</sup> See on this BLACKETT A., “Promoting Domestic Workers’ Human Dignity through Specific Regulation”, in this volume and in FAUVE-CHAMOUX (ed.), *op. cit.*, pp. 247-273.

## Résumé

### *Liberté et citoyenneté ? Le statut légal des serviteurs et des travailleurs domestiques dans une perspective comparatiste (XVI<sup>e</sup> - XXI<sup>e</sup> siècles)*

Dans cet article, l'auteure analyse le statut légal des domestiques. Elle se focalise principalement sur l'Italie et la France, mais en même temps elle développe une comparaison à l'échelle européenne. Bien que les études relatives au statut légal des domestiques soient moins nombreuses que, par exemple, celles portant sur leur statut marital ou leur âge, l'auteure voudrait synthétiser l'information disponible afin de proposer une perspective comparatiste sur le long terme.

La première partie de l'article concerne la liberté. Depuis la fin du Moyen Age jusqu'au XVIII<sup>e</sup> siècle (dans quelques cas jusqu'au XIX<sup>e</sup> siècle), un aspect fondamental des différents types de textes légaux qui envisagent les domestiques se rapporte à la distinction entre les esclaves et les domestiques libres. Cette distinction pourrait paraître très claire, mais elle ne l'est pas. Ainsi, le premier objectif de l'article est d'esquisser un genre de carte de l'Europe illustrant les différents types de domestiques (du point de vue de leur condition légale) que l'on peut trouver dans plusieurs régions ou pays européens sous l'Ancien Régime.

La seconde partie se rapporte à la citoyenneté et aux droits légaux des domestiques à une époque plus récente (XIX<sup>e</sup>-XX<sup>e</sup> siècles). Elle s'intéresse surtout à la France post-révolutionnaire et à l'Italie après son unification. Le point central de cette partie est que les domestiques souffraient (et souffrent encore) de discrimination, en comparaison des autres travailleurs, en raison de la persistance d'une organisation patriarcale du travail à l'intérieur de la sphère privée. À partir de cette considération, la féminisation du travail domestique est un phénomène de grande importance. En fait, la similarité entre les domestiques et les femmes au foyer rend particulièrement difficile la prise en compte des domestiques en tant que travailleuses « réelles » ou « véritables ».

En conclusion, l'auteure aborde brièvement la question du travail informel et analyse les conséquences, sur base d'un point de vue légal, de l'augmentation du nombre de migrants parmi les domestiques à l'époque actuelle.