

## THE LIBERTARIAN CASE FOR SLAVERY

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*Our property in man is a right and title to human labor. And where is it that this right and title does not exist on the part of those who have money to buy it? The only difference in any two cases is the tenure.*<sup>1</sup>

### INTRODUCTION

A prominent economist has quipped that free market libertarianism is derived from liberalism by taking the limit as common sense goes to zero. There is an element of truth in this because what liberals take as "common sense" often turns out to be only a shared prejudice. The Harvard philosopher, Robert Nozick, has carried out this limiting process of taking liberalism to its only logical conclusion: libertarianism.<sup>2</sup> Nozick's uncompromising statement of the libertarian credo represents something of a watershed in modern social and moral philosophy because of its explicit acceptance of voluntary contractual slavery.

The comparable question about an individual is whether a free system will allow him to sell himself into slavery. I believe that it would.<sup>3</sup>

It seems to be a basic shared prejudice of liberalism that slavery is inherently involuntary, so the issue of genuinely voluntary slavery has received little scrutiny. The perfectly valid liberal argument that involuntary slavery is inherently unjust is thus taken to include voluntary slavery (in which case, the argument, by definition, does not apply). This has resulted in an abridgement of the freedom of contract in modern liberal society.

Since slavery was abolished, human earning power is forbidden by law to be capitalized. A man is not even free to sell himself: he must *rent* himself at a wage.<sup>4</sup>

People are only allowed the temporary security afforded by capitalizing a portion of their earning power (i.e., by renting or hiring themselves out for a specified time period), but are denied the freedom of obtaining a maximum of security by selling all of their human capital. The owners of non-human capital (e.g., money, machines, buildings, etc.) enjoy the contractual freedom of either hiring out their capital or selling it, but state interference in the marketplace prevents the owners of human capital from exercising the same liberty. And yet the principal difference between selling and only hiring out an entity is that of selling all or only a part of the services provided by the entity, i.e., the tenure of the contract.

The labourer, who receives wages sells his labour for a day, a week, a month, or a year, as the case may be. The manufacturer, who pays these wages, buys the labour, for the day, the year, or whatever period it may be. He is equally therefore the owner of the labour, with the manufacturer who operates with slaves. The only difference is, in the mode of purchasing. The owner of the slave purchases, at once, the whole of the labour, which the man can ever perform: he, who pays wages, purchases only so much of a man's labour as he can perform in a day, or any other stipulated time.<sup>5</sup>

For the worker's viewpoint, the "only difference" is not just the mode of selling if the slavery is involuntary, as in the customary juxtaposition of "free labor" and (involuntary) "slave labor." But we are discussing voluntary self-enslavement, i.e., people's sale of their labor by the "lifetime" (that is, up to some specified retirement age) instead of just by the hour, day, week, or year.

### WARRANTEEISM

Since the voluntary contracts to rent oneself out or to sell oneself differ primarily in their extent and duration, what are the relative advantages of the slavery contract? People enter the marketplace with different attitudes and preferences about the holding of responsibility and authority. In the colorful but blunt language of George Fitzhugh:

It would be far nearer the truth to say, "that some were born with saddles on their backs, and others booted and spurred to ride them."<sup>6</sup>

This needlessly abrasive (and illiberal) formulation of the insight should be recast in terms of the technical language used by the Chicago school of

libertarian economics to explain the social function of the wage contract. People enter the marketplace with risk preference differentials: some are risk averters and others are risk takers.

This fact is responsible for the most fundamental change of all in the form of organization, the system under which the confident and venturesome "assume the risk" and "insure" the doubtful and timid by guaranteeing to the latter a specified income in return for an assignment of the actual results. . . . The result of this manifold specialization of function is the enterprise and wage system of industry. Its existence in the world is a direct result of the fact of uncertainty.<sup>7</sup>

This specialization in the risk-bearing function is, however, incomplete in modern liberal societies.

A principal failure of liberal capitalism has been its inability to provide maximal "cradle-to-grave" economic security to those who desire it. This failure has been an important force behind the development of welfare-state capitalism (not to mention socialism), where the state forces everyone to provide security to those who cannot or will not provide it for themselves. A standard liberal argument against many free market libertarians is that the laissez faire market does not provide adequate security for the needy. But Robert Nozick, by strictly adhering to libertarian principles, has shown that there is a free market solution to the problem of providing a maximum of economic security to those who desire it, namely, voluntary contractual slavery. As any libertarian would expect, the problem may be solved not by increasing government interference and coercion (as in welfare-state capitalism/socialism), but by removing the legal restrictions on the lifetime sale of labor.

If contractual slavery were legally permitted, then risk averters with little non-human capital could utilize the free market to obtain lifetime security by capitalizing all of their earning power. American slavery, in the *antebellum* era, was typically not based on an explicit contract. However, some pro-slavery writers, such as Reverend Samuel Seabury, gave a liberal contractarian defense of *antebellum* slavery by interpreting it as being based on an implicit contract like the implicit social contract of liberal political theory.

What is a competent consideration for the labor of the poor if it be not nurture in infancy, maintenance in health, support in sickness and old age, and a relief from the uncertainty and mental anxieties inseparable from the lot of those who are compelled to provide for themselves?<sup>8</sup>

Reverend Seabury's liberal arguments are far more sophisticated than the feudalistic appeals given by George Fitzhugh, and thus Reverend Seabury has received far less attention than Fitzhugh from liberal historians of thought.

Many pro-slavery writers have emphasized the risk bearing and risk averting roles of the master and slave. Some considered the insurance provisions to be so central to the institution that they suggested it be renamed "warranteeism."

Slavery is the duty and obligation of the slave to labor for the mutual benefit of both master and slave, under a warrant to the slave of protection, and a comfortable subsistence, under all circumstances. The person of the slave is not property, no matter what the fictions of the law may say; but the right to his labor is property, and may be transferred like any other property.... Nor is the labor of the slave solely for the benefit of the master, but for the benefit of all concerned; for himself, to repay the advances made for his support in childhood, for present subsistence, and for guardianship and protection, and to accumulate a fund for sickness, disability, and old age. The master, as the head of the system, has a right to the obedience and labor of the slave, but the slave has also his mutual rights in the master; the right of protection, the right of counsel and guidance, the right of subsistence, the right of care and attention in sickness and old age.... Such is American slavery, or as Mr. Henry Hughes happily terms it, "Warranteeism."

No one would take this seriously as a description of *antebellum* slavery, but recent research<sup>10</sup> indicates that the standard histories of the institution should also not be taken at face value. In any case, since so many people are slaves to the connotation of involuntariness in the word "slavery," it may be better to refer to voluntary contractual slavery as "warranteeism."

#### SOME HISTORICAL PRECEDENTS

Contractual slavery has existed from antiquity up to the Civil War. In Roman Law, as codified in the *Institutes* of Justinian, the self-sale contract was one of the three legal means of becoming a slave. Jurists also saw some of the incidents of contract in the other two legal means of becoming a slave: being taken prisoner of war and being born of slave parentage. If the alternative was execution, a prisoner might choose instead a lifetime of servitude in return for his life. And servitude was seen as the recompense to the master for the food, clothing, and shelter advanced to the children of slaves.

In feudal times, the homage contract was a warranty arrangement whereby the vassal acquired security and protection in return for lifetime service.

While slavery is widely accepted as being an involuntarily achieved status (although there were cases of voluntary entry and sales of children in ancient and medieval Europe), other forms of what are sometimes called “forced labor” are the result of voluntary agreement. Recently economic historians have reopened the discussion of whether European serfdom represented a voluntary exchange—protection for labor services—or whether it was a form of forced labor imposed from above.<sup>11</sup>

In the *antebellum* South, there were a number of voluntary contractual enslavements which were secured by the passage of private bills in the state legislatures. For example, in 1858, the North Carolina legislature passed “A Bill for the Relief of Emily Hooper of Liberia” which provided

That Emily Hooper a negro, and a citizen of Liberia, be and she is hereby permitted, voluntarily, to return into a state of slavery, as the slave of her former owner, Miss Sally Mallet of Chapel Hill....<sup>12</sup>

In the period just before the Civil War, general legislation was passed in six states “to permit a free Negro to become a slave voluntarily.”<sup>13</sup> For instance in Louisiana, legislation was passed in 1859 “which would enable free persons of color to voluntarily select masters and become slaves for life.”<sup>14</sup> The racist character of these laws—and of *antebellum* slavery in general—would have no place in a libertarian society where the freedom to contractually alienate one’s labor for any time period would extend to everyone regardless of race, creed, color, or sex.

#### THE CLASSICAL LIBERAL CASE AGAINST VOLUNTARY SLAVERY

What are the liberal arguments against voluntary contractual slavery? There are none which are substantial. The whole subject of voluntary slavery is usually passed over in an embarrassed silence. When liberal thinkers do attempt to argue against the permissibility of voluntary slavery, their arguments are surprisingly superficial and inconsistent with other liberal tenets. Indeed some “arguments” against voluntary slavery seem more like special pleas to the effect: “Let’s just agree to rule it out for what-

ever reason.” It quickly becomes clear that the general disapprobation of voluntary slavery is based less on rational argumentation than on an emotional reaction to the word “slavery” (with its connotation of involuntariness).

Many liberal philosophers and legal theorists have argued against voluntary slavery only because they construed slavery as entailing the master’s power of life and death over the slave.

For a Man, not having the Power of his own Life, *cannot*, by Compact, or his own Consent, *enslave* himself to any one, nor put himself under the Absolute, Arbitrary Power of another, to take away his Life, when he pleases.<sup>15</sup>

Locke construes such slavery as a state of war continued between conqueror and captive. There is no need to evaluate these objections since they would not apply to a civilized form of contractual slavery where both parties had certain rights as well as obligations.

For, if once *Compact* enter between them, and make an agreement for a limited Power on the one side, and Obedience on the other, the State of War and *Slavery* ceases, as long as the Compact endures.... I confess, we find among the *Jews*, as well as other Nations, that Men did sell themselves; but, ’tis plain, this was only to *Drudgery*, not to *Slavery*. For, it is evident, the Person sold was not under an Absolute, Arbitrary, Despotical Power.<sup>16</sup>

Montesquieu attempts to criticize the self-sale contract on legalistic grounds.

Neither is it true that a freeman can sell himself. Sale implies a price; now, when a person sells himself, his whole substance immediately devolves to his master; the master, therefore, in that case, gives nothing, and the slave receives nothing.<sup>17</sup>

Blackstone introduced this argument into English Common Law.

Every sale implies a price, a *quid pro quo* (value for value); can an equivalent be given for life, and liberty, both of which (in absolute slavery) are held to be in the master’s disposal? His property also, the very price he seems to receive, devolves to his master, the instant he becomes a

slave. In this case, therefore, the buyer gives nothing, and the seller receives nothing: of what validity, then can a sale be, which destroys the very principles upon which all sales are founded?<sup>18</sup>

This *quid pro quo* argument is, at best, a shallow legalism (and, at worst, just a special plea). The *quid pro quo* in the warrantee contract is a lifetime guarantee of food, clothing, and shelter (or equivalent money income) in return for the lifetime right to one's labor services. Moreover, there is no more need for a warrantee to give up his personal property and political rights in the lifetime labor contract than there is for an employee to do the same in the short term labor contract.

A closer examination of Montesquieu's and Blackstone's arguments shows that they—like Locke—objected, not to the lifetime labor contract, but only to the absolute slavery which permits the master to kill the slave (e.g., early Roman slavery). When Montesquieu says "To sell one's freedom," he refers to "slavery in a strict sense, as it formerly existed among the Romans, and exists at present in our colonies."<sup>19</sup> Blackstone makes a similar distinction when he discusses the contract whereby "one man sells himself to another."

This, if only meant of contracts to serve or work for another is very just: but when applied to strict slavery, in the sense of the laws of old Rome or modern Barbary, is ... impossible.<sup>20</sup>

Blackstone then states that the law of England abhors slavery, and that a slave becomes a freeman the instant he lands in England.

Yet, with regard to any right which the master may have lawfully acquired to the perpetual service of John or Thomas, this will remain exactly in the same state as before: for this is no more than the same state of subjection for life, which each apprentice submits to for the space of seven years, or sometimes for a longer term.<sup>21</sup>

Locke, Montesquieu, and Blackstone (as a representative of the English common law tradition) are among the founders of modern liberal thought. The case against voluntary slavery is often based on their authority. Yet we have seen that, upon closer examination, they only objected to a rather extreme form of slavery, and that they did not object to a civilized contract for the sale of labor services by the lifetime instead of by the day, month, or year.

## MODERN ARGUMENTS AGAINST VOLUNTARY SLAVERY

One modern legal argument against contractual slavery is based on the doctrine of specific performance. This doctrine holds that, except as an occasional equitable remedy, the law will generally require only material damages for breached contracts and will not enforce specific performance. It is argued that the slavery contract is null and void because it is unenforceable. It should be noted that the doctrine of specific performance applies to all contracts, not just to labor contracts. Hence, if a contract is to be void because it is unenforceable (in the sense of specific performance), then all contracts which require some future performance, i.e., all contracts, would be invalid. The doctrine, of course, implies nothing of the sort. In the case of the lifetime labor contract, the doctrine only implies that if the warrantee chooses to breach the contract then he or she must pay appropriate material damages (possibly over a period of time as in alimony payments), i.e., restore to the warrantor a portion of the purchase price and human capital investment.

Thus, if A has agreed to work for life for B in exchange for 10,000 grams of gold, he will have to return the proportionate amount of property if he terminates the arrangement and ceases to work.<sup>22</sup>

That is effectively self-manumission, and it would be a legal possibility at any point in time.

Another argument is that a lifetime labor contract should be invalid because it involves a lifetime personal commitment. The principal counter-example to this argument is, of course, the marriage contract ("till death do us part"). Moreover, the slavery contract compares favorably with the marriage contract since the former could be dissolved at any time by the mutual agreement of both parties whereas the marriage contract cannot.

The last resort, in the liberal case against voluntary slavery, is pure and simple paternalism. People must be protected against their own judgment; people must be forced to be free.

A... basic policy that is justified this way in part is the prohibition against a person's selling or mortgaging himself: Freedom is a paramount value, and whenever a person feels that he wants to sell himself for something else offered in return, he should be protected against his own poor judgment.<sup>23</sup>

Security—the freedom from want—is also a paramount value. By what right does the liberal state forbid the full range of voluntary trade-offs between freedom (risk bearing) and security (risk aversion) in the marketplace? Why is it good judgment for the risk adverse human capital owner to sell his labor day by day—never knowing if he will have his job the next day, and yet “poor judgment” to finally obtain security and insure his future by selling his labor all at once?

Some reflective liberals point to an alleged analogy with suicide. Although they have no valid theoretical case against genuinely voluntary suicide, they would nevertheless be willing to coercively prevent any given suicide attempt on a paternalistic basis. But the suicide analogy is faulty because of the irreversibility of a successful attempt. As mentioned above, the slavery contract, like any contract, could be breached at any point in time by either party if that party was willing to incur the material damages.

Another reason why the paternalistic argument is given particular credence, in the case of voluntary slavery, is that slavery is only thought of in terms of the involuntary slavery of the past. That is only a failure of the imagination. It is surely not beyond the wit of man to design a civilized contract for the sale of labor by the lifetime which would contain the same safeguards as the present contract for the sale of labor by the day, week, or year.

There already exists a *de facto* system of lifetime employment in at least one capitalist country, Japan. This system includes many aspects of warranteeism even though it is not based on an explicit lifetime contract. For example, there are *de facto* penalties of social disapprobation against either party if the party “breaches” the agreement. It is most interesting that almost all observers agree that the Japanese system of lifetime employment is based on paternalism. It thus seems somewhat ironic that Western liberals should cite “paternalism” as the reason for exactly the opposite policy of prohibiting lifetime labor contracts. One suspects that the root of the matter is not “paternalism” at all but the conditions of supply and demand on the labor market. Japan had an abnormal labor shortage in the postwar years, whereas the other liberal capitalist countries have a relative surplus of labor—or, at least, of the type of labor that would be offered by potential warrantees. Why assume the risks and responsibilities involved in buying workers when they can always be rented by the day, week, month, or year?

If there are no valid legal or moral arguments against genuinely voluntary slavery, then perhaps it can be condemned on grounds of economic inefficiency. Quite to the contrary, the competitive capitalist system cannot be shown to be allocatively efficient without permitting voluntary slavery in the system. In their celebrated general equilibrium model<sup>24</sup> of a competitive

capitalist economy, Kenneth Arrow and Gerard Debreu prove the basic efficiency theorem that a competitive equilibrium is allocatively efficient (Pareto optimal). The Arrow-Debreu model utilizes complete future markets in all goods and services. Thus the model assumes that a person is legally permitted to sell all of his or her future labor services. If it was legally prohibited to sell certain commodities—such as future dated labor service—then the efficiency theorem for competitive capitalism would fail.

Given the conventional liberal prejudice against voluntary slavery, it is not surprising that neoclassical economists are loath to admit that their fundamental efficiency theorem for competitive capitalism requires the assumption that voluntary slavery is permitted. But some economists have been courageously frank about the matter.

Now it is time to state the conditions under which private property and free contract will lead to an optimal allocation of resources. . . . The institution of private property and free contract as we know it is modified to permit individuals to sell or mortgage their persons in return for present and/or future benefits.<sup>25</sup>

Hence, far from voluntary slavery being condemnable on efficiency grounds, its permissibility is a necessary condition for the efficient functioning of the system of private property and free contract—as any consistent free market libertarian would expect.

When all serious arguments fail, modern liberals are reduced to procedural fussing about the “quality of the consent.” It should be clear by now that there are no valid libertarian arguments against genuinely voluntary slavery on moral, legal, or economic grounds. There are no valid reasons for prohibiting acts of enslavement between consenting adults. It must be concluded that the prohibition of contractual slavery in modern liberal societies is based on little more than an irrational and emotional reaction to the historical connotations of the word “slavery.” If voluntary slavery is to be outlawed because of the violence and coercion that was a part of involuntary slavery, then shouldn’t voluntary sexual intercourse be outlawed because of the violence and coercion involved in rape? The logic is the same in either case.

#### CONSTITUTIONAL DICTATORSHIP

There is an analogous problem in political theory which should be mentioned. Just as liberals always tend to interpret slavery as being inherently involuntary, so they also tend to construe non-democratic forms of govern-

ment as being coercively imposed. But that is only another shared prejudice. A dictatorship, an autocracy, an oligarchy, or some other form of non-democratic government could be based on the consent of the governed just as well as democracy. Grotius, not to mention Hobbes, was quite explicit on this point.

A man may by his own act make himself the slave of any one: as appears by the Hebrew and the Roman law. Why then may not a people do the same, so as to transfer the whole Right of governing it to one or more persons?...But as there are many ways of living, one better than another, and each man is free to choose which of them he pleases; so each nation may choose what form of government it will: and its right in this matter is not to be measured by the excellence of this or that form, concerning which opinions may be various, but by its choice.<sup>26</sup>

The voluntaristic principles of liberalism and libertarianism do not entail that the form of government should be democratic. Rousseau saw the analogy with voluntary slavery and tried to respond.

If an individual, says Grotius, can alienate his liberty and make himself the slave of a master, why could not a whole people do the same and make itself subject to a king?<sup>27</sup>

Rousseau inveighed against these contractual freedoms on the basis of the *quid pro quo* and the "poor judgment" arguments (which we have already considered). He concluded that people should be forced to be "free." But such coercion cannot be justified on libertarian grounds. Democracy is only one among an indefinite number of voluntary forms of government, each of which embodies a different social division of authority, responsibility, and risk bearing. People should not be forced to "consent" to one form of government and thus be denied the freedom to make alternative voluntary arrangements. There is no necessary connection between libertarian principles and democracy (and thus the word "democracy" does not even appear in the index of Nozick's book).

### THE EMPLOYER-EMPLOYEE CONTRACT

In the free market private enterprise system, most work is performed under the auspices of the "legal relationship normally called that of 'master and servant' or 'employer and employee.'"<sup>28</sup> In order to give the "essen-

tials of this relationship," the Chicago free market economist, Ronald Coase, quotes from a legal reference book.

The master must have the right to control the servant's work, either personally or by another servant or agent. It is this right of control or interference, of being entitled to tell the servant when to work (within the hours of service) or when not to work, and what work to do and how to do it (within the terms of such service), which is the dominant characteristic in this relation and marks off the servant from an independent contractor, or from one employed merely to give to his employer the fruits or results of his labor.<sup>29</sup>

Coase concludes: "We thus see that it is the fact of direction which is the essence of the legal concept of 'employer and employee.'"

The free enterprise or capitalist firm is based on the employment relation (as Coase points out). A capitalist firm is not a democracy. In the employment contract, the employees voluntarily transfer to the employer the right of government or management of their labor (within the limits of the contract). Thus the employment contract establishes a non-democratic form of industrial government or management—a limited Hobbesian *pactum subjectionis* for the workplace—that is based on the consent of the governed. In a constitutional but non-democratic form of government, the citizens would similarly make a voluntary transfer of the general right of government to the person or persons constituting the sovereign body. Hence a constitutional non-democratic form of political government, a peacetime constitutional dictatorship, could be seen as an extension of the existent contractual basis for the free enterprise firm to the overall political sphere.

It was noted above that the warrantee contract for voluntary contractual slavery would be a sale of labor services by the lifetime (or up to retirement) instead of by the hour, week, or year. It would allow human capital<sup>30</sup> to be purchased as well as rented like the other forms of capital.

By outright purchase, you might avoid ever renting any kind of land. But in our society, labor is one of the few productive factors that cannot legally be bought outright. Labor can only be rented, and the wage rate is really a rental.<sup>31</sup>

The warrantee contract would remove this labor market imperfection by extending the duration and extent of the employer-employee contract. By allowing both the self-ownership and the absentee ownership of human

capital, the full powers of free markets could be used to obtain an optimal allocation of human and non-human resources.

We are finally in a position to see why classical and modern liberals have not been able to express any serious arguments (*ad hoc* special pleas aside) against voluntary contractual slavery and its political analogue of non-democratic government. Contractual slavery and constitutional non-democratic government are, respectively, the individual and social extensions of the employer-employee contract. Any thorough and decisive critique of voluntary slavery or constitutional non-democratic government would carry over to the employment contract—which is the voluntary contractual basis for the free market free enterprise system. Such a critique would thus be a *reductio ad absurdum*.

### FINAL REMARKS

There are many types of human activity which occur in both a voluntary and an involuntary form, such as the voluntary transfer of property and theft, or voluntary intercourse and rape. Since both forms occur, it is easy to separate and distinguish them, and to understand that a libertarian society would permit the voluntary form and prohibit the involuntary form. However, there are certain human institutions, such as slavery and non-democratic government, which have, as a matter of historical fact, almost always occurred in an involuntary and coercive form. These uniformities of historical experience have led to the common liberal prejudice that those institutions are somehow intrinsically coercive. The coercive forms of these institutions have been appropriately prohibited. But the prohibition has been carried over, by the inertia of prejudice, to voluntary and non-coercive forms of the institutions.

This situation has led to what might be termed the fundamental contradiction of modern liberalism: it claims to lay the foundation for a free and just society and yet it coercively prohibits certain voluntary contractual arrangements. This basic contradiction is best summarized in the Rousseauian dictum that people must be “forced to be free.”

The problem of voluntary slavery and its political analogue is the fundamental paradigmatic problem of modern social philosophy. The time has come for liberal economic and political thinkers to stop dodging this issue and to critically re-examine their shared prejudices about certain voluntary social institutions. Under the leadership of the Harvard philosopher, Robert Nozick, and the Chicago school of free market economists, this critical process will inexorably drive liberalism to its only logical conclusion:

libertarianism—which finally lays the true moral foundation for economic and political slavery.

### FOOTNOTES

- 1 Edward B. Bryan, *Letters to the Southern People* (Charleston, SC: 1858), p. 10. Quoted in W. S. Jenkins, *Pro-Slavery Thought in the Old South* (Chapel Hill: University of North Carolina Press, 1935), p. 109.
- 2 Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).
- 3 Nozick, p. 331.
- 4 Paul Samuelson, *Economics*, 9th ed. (New York: McGraw-Hill, 1973), p. 52.
- 5 James Mill, *Elements of Political Economy*, 3rd ed. (London: 1826), Chapter I, Section II.
- 6 Quoted in C. Vann Woodward, “George Fitzhugh, *Sui Generis*” which is the Foreword to George Fitzhugh, *Cannibals All! Or, Slaves Without Masters* (Cambridge: Belknap, 1960), p. xix.
- 7 Frank H. Knight, *Risk, Uncertainty and Profit* (1921; rpt. New York: Harper & Row, 1965), pp. 269-71.
- 8 Samuel Seabury, *American Slavery Justified by the Law of Nature* (1861; rpt. Miami: Mnemosyne, 1969), p. 150.
- 9 E. N. Elliott, *Cotton is King and Pro-Slavery Arguments* (Augusta, GA: 1860), p. vii.
- 10 Robert Fogel and Stanley Engerman, *Time on the Cross* (Boston: Little, Brown and Co., 1974).
- 11 Stanley Engerman, “Some Considerations Relating to Property Rights in Man,” *Journal of Economic History*, XXXIII, No. 1 (1973), 44.
- 12 John Hope Franklin, *The Free Negro in North Carolina 1790-1860* (New York: Russell & Russell, 1969), quoted on p. 219.
- 13 Lewis Cecil Gray, *History of Agriculture in the Southern United States to 1860*, Vol. I (Gloucester, MA: Peter Smith, 1958), p. 527.
- 14 H. E. Sterkx, *The Free Negro in Ante-Bellum Louisiana* (Cranbury, NJ: Associated University Presses, 1972), p. 149.
- 15 John Locke, *Two Treatises of Government*, Laslett ed. (New York: Mentor, 1965), p. 325 (Second Treatise, section 23).
- 16 Locke, p. 326 (Second Treatise, section 24).
- 17 Montesquieu, *The Spirit of the Laws*, Vol. I (New York: Appleton, 1912), p. 283 (Book XV, section II).
- 18 William Blackstone, *Ehrlich's Blackstone*, ed. J. W. Ehrlich (New York: Capricorn, 1959), p. 71 (Book 1, Master and Servant).
- 19 Montesquieu, p. 284.
- 20 Blackstone, p. 71.
- 21 Blackstone, p. 72.
- 22 Murray Rothbard, *Man, Economy, and State*, Vol. I (Los Angeles: Nash, 1962), p. 441.
- 23 Carl F. Christ, “The Competitive Market and Optimal Allocative Efficiency,” in John Elliott and John Cownie, eds., *Competing Philosophies in American Political Economics* (Pacific Palisades, CA: Goodyear, 1975), pp. 337-38.

- 24 Kenneth Arrow and Gerard Debreu, "Existence of an Equilibrium for a Competitive Economy," *Econometrica*, 22 (1954), 265-90; or Gerard Debreu, *Theory of Value* (New York: Wiley, 1959).
- 25 Christ, p. 334.
- 26 Hugo Grotius, "The Law of War and Peace," in *The Great Legal Philosophers*, ed. Clarence Morris (Philadelphia: University of Pennsylvania Press, 1959), p. 89 (Book I, Chapter III).
- 27 J. J. Rousseau, *The Social Contract and Discourses*, trans. G. D. H. Cole (New York: Dutton, 1950), pp. 7-8 (Book I, Chapter IV).
- 28 Ronald Coase, "The Nature of the Firm," *Economica*, IV, 16 (1937), 403.
- 29 Francis Batt, *The Law of Master and Servant*, 5th ed. by G. Webber (London: Pitman, 1967), p. 8. Quoted in Coase, p. 403.
- 30 The human capital concept has been developed by Chicago economists such as T. W. Schultz and Gary Becker. For example, Gary Becker, *Human Capital* (New York: National Bureau of Economic Research, 1964).
- 31 Samuelson, p. 567.

## BIBLIOGRAPHY

- Arrow, Kenneth and Gerard Debreu. "Existence of an Equilibrium for a Competitive Economy." *Econometrica*, 22 (1954), 265-90.
- Batt, Francis. *The Law of Master and Servant*. 5th ed. by G. Webber. London: Pitman, 1967.
- Becker, Gary. *Human Capital*. New York: National Bureau of Economic Research, 1964.
- Blackstone, William. *Ehrlich's Blackstone*. Ed. J. W. Ehrlich. New York: Capricorn, 1959.
- Bryan, Edward B. *Letters to the Southern People*. Charleston, 1858.
- Christ, Carl F. "The Competitive Market and Optimal Allocative Efficiency." In *Competing Philosophies in American Political Economics*. Eds. John Elliott and John Cownie. Pacific Palisades, CA: Goodyear, 1975, pp. 332-38.
- Coase, Ronald. "The Nature of the Firm," *Economica*, IV, 16 (1937), 386-405.
- Debreu, Gerard. *Theory of Value*. New York: Wiley, 1959.
- Elliott, E. N. "Introduction," *Cotton is King and Pro-Slavery Arguments*. Augusta, GA: 1860.
- Engerman, Stanley. "Some Considerations Relating to Property Rights in Man." *Journal of Economic History*, XXXIII, No. 1 (1973), 43-65.
- Fitzhugh, George. *Cannibals All! Or, Slaves Without Masters*. 1857; rpt. Cambridge: Belknap, 1960.
- Fogel, Robert, and Stanley Engerman. *Time on the Cross*. Boston: Little, Brown and Co., 1974.
- Franklin, John Hope. *The Free Negro in North Carolina 1790-1860*. New York: Russell & Russell, 1969.
- Gray, Lewis Cecil. *History of Agriculture in the Southern United States to 1860*. Vol. I. Gloucester, MA: Peter Smith, 1958.
- Grotius, Hugo. "The Law of War and Peace." In *The Great Legal Philosophers*. Ed. Clarence Morris. Philadelphia: University of Pennsylvania Press, 1959.
- Jenkins, W. S. *Pro-Slavery Thought in the Old South*. Chapel Hill: University of North Carolina Press, 1935.

- Knight, Frank H. *Risk, Uncertainty and Profit*. 1921; rpt. New York: Harper & Row, 1965.
- Locke, John. *Two Treatises of Government*. Laslett ed. New York: Mentor, 1965.
- Mill, James. *Elements of Political Economy*. 3rd ed. London: 1826.
- Montesquieu. *The Spirit of the Laws*. Vol. I. New York: Appleton, 1912.
- Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 1974.
- Rothbard, Murray. *Man, Economy, and State*. Vol. I. Los Angeles: Nash, 1962.
- Rousseau, J. J. *The Social Contract and Discourses*. Trans. G. D. H. Cole. New York: Dutton, 1950.
- Samuelson, Paul A. *Economics*. 9th ed. New York: McGraw-Hill, 1973.
- Seabury, Samuel. *American Slavery Justified by the Law of Nature*. 1861; rpt. Miami: Mnemosyne, 1969.
- Sterkx, H. E. *The Free Negro in Ante-Bellum Louisiana*. Cranbury, NJ: Associated University Presses, 1972.
- Woodward, C. Vann. "George Fitzhugh, Sui Generis." Foreword to George Fitzhugh, *Cannibals All! Or, Slaves Without Masters*. 1857; rpt. Cambridge: Belknap, 1960.



This is a historically important paper, by one J. Philmore, arguing along with Robert Nozick from a free-market libertarian viewpoint that the self-sale contract and the current employment or self-rental contract are on the same moral footing. Click here to download the paper. Filed Under: Property Theory Tagged With: Economic Theory, Inalienable rights, Intellectual history, Legal Theory, Nozick, Political Economy. Tags. But, libertarians argue, that appearance is deceiving. The fact that taxation is enacted by a government in accordance with written laws is, libertarians think, morally irrelevant. There are distinctions, of course, between taxation and armed robbery, but they are not distinctions that make much of a moral difference. [Nozick's famous claim that taxation is morally on a par with forced labor seems, in my view, much more difficult to defend]. This just isn't the case with universal health care and slavery. Again, I'm willing to grant that both are morally wrong. But the weight and scope of the doctrinaire libertarian defense of the owner is pretty straightforward: A business owner should have the right to refuse service to anyone for any reason, good, bad, and stupid. (Note: Such a position is not the law of the land due to various antidiscrimination laws). Just as an anti-gay cake baker should be able to pass on making a wedding cake, or a racist can refuse service because she doesn't like the skin color of a potential customer, the Red Hen's owner should be able to kick out this or that customer just because. Those arguments make sense, I guess. But I think the decis