A Liberal Argument for Slavery

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Slavery is the legal, quasi-legal, or coercive relation whereby one person owns another. A common result of this relation is that the slave lacks certain significant legal rights, such as a right of access to the courts, rights against seizure, detention, and violence, and the liberty to go where he wants to go and to work where he chooses to work (Hare, 1986, pp. 67–68). In this paper, I argue that state recognition and enforcement of slavery contracts is consistent with the value of autonomy and with liberalism. By “liberalism” I mean the notion that preventing unjust harm to others is a good reason, and the only good reason, for state coercion (Feinberg, 1986, p.14). My strategy is to show that formation and enforcement of a slavery contract does not necessarily infringe upon anyone’s moral rights or lead to unjust exploitation. This argument thus challenges the current international ban on slavery at least insofar as the ban rests on considerations of justice.

The argument in this essay does not apply to most cases of slavery in the contemporary world (e.g., the enslavement of minors captured in a civil war), since they are the result of unjust coercion. Still, the notion of a slavery contract is relevant for a number of reasons. First, certain contractual relations (e.g., membership in the armed forces) resemble temporary slavery contracts insofar as they involve the waiver of many legal rights. Another type of case involves criminals who have been convicted and received extremely severe penalties (e.g., the death penalty or a life sentence). Where agreed to by the relevant parties, substituting slavery for the death penalty or life sentence results in a transaction that might be mutually beneficial. Indeed, it could be used to provide the means by which some compensation can be provided to the family of a murder victim.

I am assuming that all rights rest on the value of autonomy. Hence, a person has the right to enter into a legally enforceable slavery contract only if such a right is grounded in autonomy. The first step in showing this is to provide an account of autonomy. The model of autonomy I adopt is a variant of Harry Frankfurt's (1982) theory of a person and freedom of the will. On his account, a person has first-order desires, which are desires to do or not do a particular action, and second-order desires, which are desires to have or not have a particular first-order desire. This helps to make sense of the notion of a person as a self-determining—or autonomous—being, because it explains how a person can constitute herself by gradually choosing her desires and beliefs in such a way as to form her character. A person is thus a being that is self-determining insofar as she shapes (or can shape) her self, character, and actions.

In some cases a person may rationally act on the basis of values that lead to the elimination of her autonomy. For instance, a person suffering from the earliest stages of a debilitating neurological disease may place great disvalue on humiliation and physical degradation, and thus desire death.

The waiver of future options may even end up decreasing the degree of self-determination a person has over her lifetime. How then can self-determination justify the waiver of future options? On my account, future options and the exercise of autonomy are valuable because they allow us to shape our life in accordance with
self-chosen principles. The value of the waiver rests on the value of having complete control over one’s life. If rights protect autonomous decisions about one’s life, and if one can autonomously decide to become a slave, then a right protects this decision.

John Stuart Mill (1859-1978) argues against slavery on the basis that the justification of liberty is the value of voluntary choice. He writes:

“But by selling himself for a slave, he abdicates his liberty. . . . He therefore defeats, in his own case, the very purpose which is the justification of allowing him to dispose himself. . . . The principle of freedom cannot require that he should be free not to be free” (Chap. V, sec. 11, pp. 101–102; emphasis added).

For Mill, the value of voluntary choice is grounded by the value of utility, autonomy, or both. Mill argues that liberty does not include within its scope the liberty to alienate one’s future liberty. His argument for this is that such an option would thwart the justification of liberty. The problem with Mill’s argument is that it does not follow if we assume that the value of liberty rests on the value of autonomy. The more valuable options are those that are important to the process of shaping oneself. The option of selling oneself into slavery is one of these valuable options in part because it forces a person to consider the nature and value of self-determination. It encourages us to determine for ourselves the value and priority to be placed on future options. Even though there is instrumental value in having good and bad options, the option to eliminate future options is valuable. The option of selling oneself into slavery is therefore valuable in part in part because it is an option that can close off many other valuable options.

An objector might further argue that being a slave excludes being an active moral agent, and one has a duty to be a moral agent. However, in some cases it is permissible to choose to no longer be a moral agent. For example, it seems intuitively permissible to choose euthanasia in some cases. If this is correct, then there is no duty simpliciter to retain one’s moral agency.

In conclusion, the slavery contract is not a human rights violation, since the right not to be enslaved is waivable. Hence given the general presumption in favor of liberty of contract, such a transaction ought in principle to be permitted. The contract is also not invalid on the grounds that consent to it necessarily reflects involuntariness or irrationality. Allowing such contracts may have other undesirable consequences, but as for the right to autonomy in general, this by itself is not a sufficient reason against allowing them.

References