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## Note to Blackstone's Commentaries, Vol. I. Page 423

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in the highest relief and in the most favorable light whatever is praiseworthy. But while I acknowledge this, I cannot allow to him, and them who think with him, a monopoly of this pious reverence for the institutions of their forefathers. I would rather follow their example, and, cherishing this sentiment so essential to the preservation of every thing that is valuable, would ask, on behalf of it, the like indulgence to what may be urged in defence of domestic slavery.

I shall not stop to show (what is incontestably true) that it has done more to elevate a degraded race in the scale of humanity; to tame the savage; to civilize the barbarous; to soften the ferocious; to enlighten the ignorant; and to spread the blessings of christianity among the heathen, than all the missionaries that philanthropy and religion have ever sent forth. This would be no vindication, for he who can make the wrath of man to praise him; who can overrule evil, and make it an instrument of good, might have made it conducive to these ends, however wicked in itself it might be. "Be it a spirit of health, or goblin damned," on his errand it has gone forth. "Be its intents wicked or charitable," it is his instrument, in his hands, doing his work. When that is done, and not till then, it will cease, as will all things else, when their appointed course is run, and their appointed end fulfilled.

It is hardly necessary to expose the sophistry by which Mr. Blackstone affects to prove, that slavery cannot have had a lawful origin. We do not pretend to trace our title to its source. We have no call to sit in judgment between the conquered African and his conqueror. We rest our defence on principles which legitimate our title, whatever its origin may have been. Yet it may not be amiss to say a few words to show the fallacy of those plausible and imposing dogmas, with which we too often suffer ourselves to be talked down.

"Slavery," says Mr. Blackstone, "cannot originate in compact, because the transaction excludes the idea of an equivalent." For an answer to this specious fallacy, I shall content myself by referring you to the masterly essay of Professor Dew, who has so clearly exposed it as to leave me nothing to add.

But the commentator farther tells us, that "slavery cannot lawfully originate in conquest, as a commutation for the right to kill; because this right rests on necessity; and this necessity plainly does not exist, because the victor does not kill his adversary, but makes him captive." Is this a fair inference? Let us examine it.

There is a triple alternative in the case: to kill, to enslave, or to set at large. It may be practicable to do either of the two first; and yet dangerous in the extreme to do the last. With a savage and treacherous foe it is always so, unless his power of annoyance be completely annihilated. And how can this be between two tribes of nearly equal force? Among such is one victory an assured pledge of future and bloodless victory to the end of time? May it not, must it not, often be, that the victorious party can have no security against future and fatal mischief, but in the destruction, or something equivalent to the destruction, of the vanquished? This is obtained by deportation to distant lands, by which alone, or by incarceration, or something equivalent, or by extermination, or a near approach to extermination, the enmity of a savage neighbor ever

For the Southern Literary Messenger.

**NOTE TO BLACKSTONE'S COMMENTARIES,**  
VOL. I. PAGE 423.

*Being the Substance of Remarks on the Subject of Domestic Slavery, delivered to the Law Class of William and Mary College, December 2d, 1834.*

This subject is too interesting to be passed in silence. The time too is rife with proofs, that unless we mean tamely to surrender a most important interest, we must hold ourselves always on the alert to defend it with tongue and pen.

The short and compendious argument of the commentator, and his confident and peremptory judgment, seem to place us in the condition of convicted delinquents, and hardly to leave us the poor privilege of saying one word why sentence should not be passed upon us. And yet I hope to show, that this argument, so specious, is not less superficial, and that the conclusion, so promptly reached, has been attained by overlooking the most important considerations involved in the subject.

It was natural, and it was right, that Mr. Blackstone should manifest a zeal for the institutions of his own country, disposing him to excuse what might be amiss, to vindicate what might be questionable, and to place

can be rendered harmless. The necessity of the case, so long as it exists, justifies the choice of these alternatives. Among these, no argument is necessary to prove that foreign slavery is the mildest. But were this not so, the laws even of civilized war do not peremptorily dictate to the victor the choice he shall make among these remedies. He may kill; he may incarcerate; or he may enlarge on parol, clogged with such conditions as he may please to prescribe, according to the nature and measure of a necessity, of which he is the only judge.\*

When Col. Campbell, at the head of a few militia, stooped from the mountains of Virginia on Carolina, and bore off the corps of Col. Fergusson in his pounces, had he been pursued and overtaken by Tarleton, he must have killed his prisoners. He could not have held them, and to have enlarged them would have been to sacrifice the lives of thousands. He who doubts this, knows nothing of the horrors of the tory war that raged in that quarter. If he had had no place of refuge, he might have handed them over to any custody, civilized or savage, in which they might have been removed from the theatre of war. This is one example among ten thousand, to show that the captivity of an enemy by no means implies the security of the captor, should he allow his prisoner to go free. The snared tiger is in your power: you may kill him—you may cage him. "Therefore," says Mr. Blackstone, "you are under no necessity to do either, and the noble beast has a fair claim to his liberty."

But I have given too many words to the exposure of this grave sophistry. In self-defence it might have been pardoned; in crimination it is intolerable.

But, as I remarked in the outset, we have nothing to do with the origin of any particular mode of slavery. In some shape or other it exists, and has existed every where, since first the decree went forth, which cursed the earth, and denounced to man, "that in the sweat of his face he should eat the fruit thereof." Here is its origin; and, as might be expected of any thing so originating, the thing is evil in itself, and in all its modes. The problem is to choose among them. To the practical man it is a thing of small difficulty; left to itself, it assumes, in every country, the form and texture best suited to the physical peculiarities of that country, and the condition of society there. But we have grown so wise, that we leave nothing to itself. The world is full of associations and combinations of men, who make it the business of their lives to regulate every thing but what concerns themselves. We every where find a sort of moral treasuries of supererogatory virtue, made up by voluntary contribution, for the benefit of all who do not affect to be wiser and better than their fathers. Turn where we will, we have the

edifying spectacle of one half the world repenting for the sins of the other half.

While the discussion of this subject was confined to ourselves; while they who denounced the practice of domestic slavery were such as could not condemn others, without standing self-condemned, we heard them patiently, as we hear from the pulpit the meek expostulations of the humble and contrite. Their interest afforded a pledge that they would not rashly carry their doctrines into practice: their self-rebukes excused them from the charge of arrogance; and the sincerity of their enthusiasm commanded our respect and sympathy. But since we have seen one community rashly overturning the domestic institutions of another; and hear from our northern neighbors an avowal of the like benevolent design toward us, it is time to look into the subject more narrowly. Let us understand it well. If we are wrong, the discovery of our fault may prepare us to bear, with becoming meekness, the impending judgment. If we are right, an understanding conviction that we are so, may be necessary to man our hearts and brace our nerves for the impending struggle.

I have said that slavery exists every where—originating in the decree which makes labor the price of subsistence. The correlative of this proposition is that subsistence is the wages of labor. I shall pass by the hackneyed topic of the process by which it inevitably happens, in all societies, that some men rise to affluence, while others remain as they began. So it ever has been, is, and will be, whether we find out how it comes to pass or no. There will be rich and poor. The rich man will not dig the earth: the poor man must. He becomes the rich man's servant, and the wages of his abject toil are food and raiment. This, his condition, is compulsory and inevitable; and compulsory toil for food and raiment,—what is it but slavery? True, the compulsion is not that of his fellow-worm. But is it the less crushing, because it is enforced by one from whose power there is no escape?

But are food and raiment the wages to which labor is every where stinted? Yes. Circumstances may make occasional differences in the price of labor, as in the settlement of a new country; but the same law which governs the price of every thing else, governs also the price of labor. This is, in every case, the cost of production; and food and raiment are the cost of the production of labor.

A few remarks will show the modifications to which this rule is subject, and will prove, that strictly speaking, it admits of no exception, though its modifications may occasionally afford, to individuals, an escape from the class of laborers into that of employers.

In a society perfectly stationary, (if there be such a thing,) where the wants of the whole community, and the nature and amount of labor necessary to supply those wants, and the subjects of labor are the same from generation to generation, there will be a steady demand for a new laborer, to supply the place of each one that dies off. Hence the average wages will be such as to enable each pair to produce and bring forward another pair; or, in other words, they will enable a man and his wife to rear two children. If, on an average, they are more than this, then on an average, more than two children will be reared; the number of laborers will be increased; the supply will exceed the

\* It may be said that the laws of civilized war do not permit that prisoners be slain or incarcerated; for that if this be done, the other party may retaliate. This will prove, that he who is cruel to his prisoners, does a wrong to his own people who may happen to be in his enemy's hands; but that is all. The laws of civilized warfare acknowledge the right to retaliate, and therefore make a case, if there was no other; where slavery by conquest would be lawful. Even though he who first enslaves his prisoners be wrong; yet *ex concessis* he who retaliates is right. Can Mr. Blackstone tell us which of the savage African chiefs began the game?

demand; the competition will reduce wages below the standard of the cost of production, until the surplus laborers are starved off; and they will then return to that standard, and settle there.

In a society retrograde in its condition, the average of wages will be less than enough to support a laboring pair and two children. There will always be a stock of surplus labor to be starved off, and a ragged lazaroni will mark this condition of society.

In a society advancing in all things, there must be an increasing supply to keep up with the increasing demand. Competition among employers will enhance the price of labor, and this will enable the laboring class to reproduce itself in an increasing ratio. And this it will do, for he who said "increase and multiply, and replenish the earth," has commanded it.

It is thus perfectly true of labor, and the laboring class collectively, that the cost of production is the measure of price; and that food and raiment for the laborer of today, and for those future laborers who are rising up to supply the future demand, are all that enter into the cost of production. The seeming exceptions to the rule do but confirm it, and show how its author has rivetted it on the necks of men, *that they shall not escape from it*. It is the brazen collar which marks the laborer "THE BORN THRALL OF NECESSITY." His wages are never increased beyond the wants of his own individual nature, but for a purpose, to which the law of that nature makes it sure that he will apply them; the reproduction of *just so many* others (neither more nor less) as the exigencies of society may require, to follow in the same dull round of labor in which his life has been spent.

There will indeed be individuals who may seem to form exceptions to this rule, in every state of society. The laborer, whose superior strength or skill commands more than the average of wages, will have something to spare. So too, he who, from prudence or coldness, remains unmarried; because his wages are established according to an average of the necessities of the laboring class, from a part of which he keeps himself exempt. Such a man, if industrious, frugal, provident and thrifty, will improve in condition, and eventually emerge from the class of laborers into that of employers. But the condition of the class remains unchanged. As he rose from it, some one, unperceived, came into it, to supply his place; and others to meet the new demand occasioned by the addition of one more to the number of employers. Thus it is, and so it must be, that the proportional number of the laboring class never diminishes, while society advances; and, the more rapid the advancement of the whole, the greater the proportion of laborers to employers, and the greater the competition for employment. There is, of course, a progressive reduction in the price of labor, accompanying this progressive increase of the number condemned, by impeachable laws, to this low and hard condition.— There they are, forever toiling and sweating in the dark and cheerless abodes of poverty, aliens to the society in which they breathe, whose comforts are ever in an inverse ratio to the sum of general prosperity.

But "in this lowest depth there is yet a lower deep." While superior strength and skill, and exemption from family burdens, enable some to escape to the upper air, others, under the pressure of disease, infirmity and

numerous children, sink into that gulph from which there is no return. Of these we take no note. The few whom fortune favors, come with *eclat* upon the stage of higher life, and are pointed out as brilliant examples of the blessings of a system of free labor. The countless victims of her malice

"Drop from existence like the withered leaf  
That from the summer tree is swept away,  
Its loss unseen."

This compendious view of the condition of what is called "*free labor*," in the various stages of society, is verified by the observations and explained by the researches of the political economists. I take it as I receive it from them, confirmed in my conviction of its truth, by my own experience and reflections.

Let us place along side of this a view of the condition of slave labor, as ascertained by observation, and by the laws that determine that condition.

Of slave labor then, as of free labor, it may be said, that its wages are food and raiment for the laborer of today, and for those future laborers who are rising up to supply the future demand. Thus much they have in common. I shall not pretend to point out all the differences between the two, but shall remark on some of the most obvious and important.

To the slave these wages are paid in kind, and can therefore be always made precisely adequate, and no more. To the free man they are paid in money, and may become deficient or superfluous, from a state of scarcity or abundance. In the last case a slight advantage is afforded to those who need it least; in the first a ruinous loss is sustained by those least able to bear it.

To the slave, his due proportion of the common fund, paid to labor as a whole, is measured out with unerring accuracy. Among free laborers, some receive too much, and others, in a like degree, too little. For be it remembered, that the average wages of free labor are given, not merely as the price of the labor of the day, but also to indemnify the daily expense of producing that amount of future labor, which the future demand is to render necessary. He therefore who labors only, but rears no children, receives more than his just share. He defrauds the concern, by drawing from the common income a portion he has not earned; while others, whom nature has burdened with more than the due proportion of children, earn more than they receive, and suffer for want of the necessaries of life. This is historically as well as theoretically true.

The slave is said to labor, uncheered by hope. This may be so. To those who know him best, he certainly seems a stranger to despair. Metaphysicians, I think, tell us that *hope will not be without its objects*. But it must be confessed there are things which the slave cannot hope for, though the freeman may. On the other hand, he is free from many anxieties to which the freeman is exposed. In this sense of security he has something which may well be offset against the freeman's hopes, and which some (and they not the least wise) may deem a fair equivalent to men of sordid habits and untaught minds; and such are the great body of laborers, bond or free.

Among slaves, the *individual* is the slave of an *individual* master. Among free laborers, the *class* is held in vassalage by the *class* of employers. Collectively the one class may be said to be the slave of the other. I shall not go into a minute examination of this matter.

As our controversy is with Mr. Blackstone, I shall use *no authority against him but his own*. Hear what he says of the law of England, his boasted home of freedom. "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 in husbandry or certain specific trades." This is as much as to say, "they who can only live by labor shall be made to labor." What more do we? They compel him to choose a master. We appropriate his labor to a master to whom use and a common interest attach him, and who is generally the master of his choice. The wages of both are the same.

In sickness, the slave looks for support to a master who is interested to maintain and cherish him, and who, for the most part, knows and loves him. What is the freeman's equivalent? Hear Mr. Blackstone:—"There is no man so wretched or indigent, but he may demand a supply sufficient for all the necessities of life, from the more opulent part of the community, by means of the several statutes enacted for the relief of the poor. *A humane provision*; yet, though dictated by the principles of society, discountenanced by the Roman laws. For the edicts of the Emperor Constantine, commanding the public to maintain the children of those who were unable to provide for them, *in order to prevent the murder and exposure of infants*, were rejected in Justinian's collection." Who ever heard of infanticide by a slave?

It is here; on this very point, of the necessity of forcing those to labor who are unable to live honestly without labor, that we base the defence of our system. That such compulsion is often necessary, all reason and experience prove. But to a people jealous of freedom, it is a delicate question whether such a power over the citizen can be safely trusted to the municipal authority. To make it effectual it must be a power dangerous to liberty. It could never be carried into effect, but by a degree of rigor which must bow the spirit of the laborer and effectually disqualify him for the political functions of a sovereign citizen. It might be too much to say, that this consideration alone would warrant the introduction of domestic slavery. *Lycurgus thought so*. But we, finding it among us, think we follow the example of that wisdom which used to characterize our English ancestors, in turning it to use, as a safeguard of our political freedom. We have learned too, from a great master in political science, himself an enemy to slavery in all its forms, that in every country where domestic slavery exists, "those who are free, are by far the most proud and jealous of their freedom. Freedom is to them not only an enjoyment, but a kind of rank and privilege. Not seeing that freedom, as in countries where it is a common blessing, and as broad and general as the air, may be united with much abject toil, with great misery, with all the exterior of servitude, liberty looks, amongst them, like something that is more noble and liberal. \* \* \* Such were all the ancient Commonwealths; such were our Gothic ancestors; such, in our days, were the Poles; and such will be all masters of slaves who are not slaves themselves. In such a people, the haughtiness of domination combines with the spirit of freedom, fortifies it, and renders it invincible."

Such is the lesson read to us sixty years ago, by one who wished us well, and who thoroughly understood the character of our people, and the causes that had influenced in the formation of that character. It is of a piece with the general maxims of that school of practical wisdom, and sound political philosophy, in which our fathers learned the grand principles imbodyed in our institutions. In that school, every thing was conceded to liberty; nothing to licentiousness: every thing to religion; nothing to fanaticism: every allowance was made for the natural and untaught feelings of the human heart; none for sickly artificial sensibility. Its maxims were drawn from experience, observation and reflection on man as he is; not from fanciful speculations on man as he might have been, had it pleased God to have made him differently. But since that day great light has risen on the world, and the descendants of these statesmen now find, that the imperfect vision of their fathers did but "see men, as trees walking." The present generation see clearly, and renouncing all respect for those whom God commands to honor living, and to reverence in death, bless themselves, saying, "If we had been in the days of our fathers we would not have been partakers" in their sins. Even so let it be. Let them desecrate and demolish the tombs of their fathers, to build up a monument to their own praise. But what spell is upon us, that we should follow their example, and signalize our ingratitude to the men to whose teachings we owe all that is valuable in our institutions, by joining in a crusade against our own rights, and "fending an active compliance to our own ruin?"

We certainly have reason to believe that the existence of domestic slavery among us has been of singular advantage in preserving the free spirit of our people. Slave labor pre-occupies and fills the low and degrading stations in society. Menial offices are altogether discharged by it; and all the tasks of mere brute strength are left to it. To the freeman belong those services which imply trust and confidence, or require skill; which therefore command higher wages than mere animal labor, and give a sense of respectability and a feeling of self-respect. I know we are told that if we wish to see the perfection of free government, we must look elsewhere. We look; and we do indeed see the theory of democracy carried to its full extent, but we behold no practical results which we at all envy. We do not find that any good has come from elevating the whole class of laborers, in all its servile and degraded branches, to the sovereign privilege of voting. We believed *a priori* (and observation proves that we were right) that the first and only use the hireling would make of his political franchise, would be to sell it to the demagogue. *But though convinced of this, the experience of other states justifies a doubt, whether, if ALL OUR LABORERS WERE FREEMEN, it would be possible to withhold from them the privilege of voting*. We know that it has been elsewhere wrung from the reluctant grasp of the freeholders, who deeply, but silently, lament the forced concession. Our statesmen have been privately admonished by them to profit by the experience of their error, and hold fast by our institutions. Publicly indeed, we are taunted with what are called the aristocratic features of our government; but we know, and the enemies of freedom know it too, that when power has

marched unchecked and unchallenged over the prostrate democracy of free labor and universal suffrage, it has always found here the most formidable barriers to its progress.

I take the liberty of appending, by way of note, a quotation from the same statesman, whose words I have already used, which shows that this idea of the connexion between *DOMESTIC slavery* and *MUNICIPAL liberty*, is not new. Our *former oppressors* were aware of it sixty years ago, and seriously meditated the destruction of the latter by the abolition of the former. The following extract may show where our *present oppressors* got the first hint of that scheme of interested philanthropy which proposes to strip us of our property for the good of our souls.

Mr. Burke says, (in 1775) "With regard to the high aristocratic spirit of Virginia and the southern colonies, it has been proposed, I know, *to reduce it, by declaring a general enfranchisement of slaves.* This project has had its advocates and panegyrists; yet I never could argue myself into any opinion of it. Slaves are often much attached to their masters. A general wild offer of liberty would not always be accepted. History furnishes few instances of it. It is sometimes as hard to persuade slaves to be free, as it is to compel free men to be slaves; and, in this auspicious scheme, we should have both these pleasing tasks on our hands at once. But when we talk of enfranchisement, do we not perceive that the American master may enfranchise too, *and arm servile hands in defence of freedom?* A measure to which other people have had recourse more than once, and not without success, in a desperate situation of their affairs.

"Slaves as these unfortunate black people are, and dull as all men are from slavery, must they not a little suspect an offer of freedom from that very nation which has sold them to their present masters? From a nation, one of whose causes of quarrel with those masters, is their refusal to deal any more in that inhuman traffic? An offer of freedom from England would come rather oddly, shipped to them in an African vessel, which is refused an entry into the ports of Virginia or Carolina, with a cargo of three hundred Angola negroes. It would be curious to see the Guinea captain attempting at the same instant to publish his proclamation of liberty, and to advertise his sale of slaves."

This last absurdity, our northern *guardians, pastors, or masters*, (I am not particular about the designation,) have wisely avoided. As long as the slave trade was allowed, they were only anxious to secure to themselves a monopoly of the advantage of carrying it on. Having lost this, they seek an equivalent by putting a new face on the matter.

Let me not be understood as bringing this charge against all who are engaged in this crusade against our rights. Like all other crusades, it is the work of a few knaves and many dupes. The latter are, proverbially, the tools of the former. Without them, the knave cannot carry on his trade. There are things to be done which he cannot do in person, and which are best accomplished by the clumsy zeal of bungling philanthropy. The fate of the West Indies is a case in point. The case of the tame bear, set by a mischievous wag to keep the flies off of the face of the sleeping hermit, is another.