Ethics & Global Politics

co-action PUBLISHING

CRITICAL DEBATE ARTICLE

Does classical liberalism imply democracy?

David Ellerman*
Department of Philosophy, University of California, Riverside, CA, USA

Abstract
There is a fault line running through classical liberalism as to whether or not democratic self-governance is a necessary part of a liberal social order. The democratic and non-democratic strains of classical liberalism are both present today—particularly in the United States. Many contemporary libertarians and neo-Austrian economists represent the non-democratic strain in their promotion of non-democratic sovereign city-states (start-up cities or charter cities). We will take the late James M. Buchanan as a representative of the democratic strain of classical liberalism. Since the fundamental norm of classical liberalism is consent, we must start with the intellectual history of the voluntary slavery contract, the coverture marriage contract, and the voluntary non-democratic constitution (or *pactum subjectionis*). Next we recover the theory of inalienable rights that descends from the Reformation doctrine of the inalienability of conscience through the Enlightenment (e.g. Spinoza and Hutcheson) in the abolitionist and democratic movements. Consent-based governments divide into those based on the subjects' *alienation* of power to a sovereign and those based on the citizens' *delegation* of power to representatives. Inalienable rights theory rules out that alienation in favor of delegation, so the citizens remain the ultimate principals and the form of government is democratic. Thus the argument concludes in agreement with Buchanan that the classical liberal endorsement of sovereign individuals acting in the marketplace generalizes to the joint action of individuals as the *principals* in their own organizations.

Keywords: *libertarianism; Rawls; James Buchanan; inalienable rights; democratic theory*

By *liberalism* we mean classical liberalism, which in the United States is also referred to as (*right*) *libertarianism* as opposed to *modern liberalism*. The fundamental norm of classical liberalism for social-institutional structures is consent. However that leaves open the possibility of a voluntary constitutional form of non-democratic government

*Correspondence to: David Ellerman, University of California, Riverside, CA, USA. Email: david@ellerman.org

Citation: Ethics & Global Politics, Vol. 8, 2015, http://dx.doi.org/10.3402/egp.v8.29310

in which the people have voluntarily agreed to alienate and transfer the rights of self-government to some sovereign.

Our topic is this question of whether or not classical liberalism also rules out such a consent-based form of non-democratic government. Classical liberalism seems to be of two minds on this question. There are certainly forms of classical liberalism or libertarianism, particularly in the United States, that explicitly allow voluntary non-democratic government—whereas other forms would rule it out.

One example of liberal non-democratic governance is the current idea of charter cities, 'free cities' or 'start-up cities', which in theory are sovereign greenfield cities chartered to be governed by a private corporation or even a development agency of a foreign government. The idea is for the new city to implement the best system of laws for market-based economic development (old Hong Kong and new Dubai are used as examples). The laws would be immune from being changed by the subjects living under them (who can only 'vote' with their feet), and the start-up cities would be carved out of the sovereignty of the host country as separate entities so the cities would have the stability desired by foreign investors. By voluntarily deciding to move there and remain there, people would give their consent to that system of non-democratic governance and thus voluntarily alienate their rights of self-governance. The support for these ideas in some, if not most, libertarian and neo-Austrian circles indicates that the idea of consent-based non-democratic governance is alive and well in some versions of classical liberalism.

However there are other versions of classical liberalism that would rule out consent-based non-democratic governance. One prominent example is the classical liberal normative framework as stated by James M. Buchanan (1919–2013):

> The justificatory foundation for a liberal social order lies, in my understanding, in the normative premise that individuals are the ultimate *sovereigns* in matters of social organization, that individuals are the beings who are entitled to choose the organizational-institutional structures under which they will live. In accordance with this premise, the legitimacy of social-organizational structures is to be judged against the voluntary agreement of those who are to live or are living under the arrangements that are judged. The central premise of *individuals as sovereigns* does allow for delegation of decision-making authority to agents, so long as it remains understood that individuals remain as *principals*. The premise denies legitimacy to all social-organizational arrangements that negate the role of individuals as either sovereigns or as principals. (Buchanan 1999, p. 288)

It should be particularly noted that Buchanan goes beyond the common image of the sovereign individual acting in the marketplace to the individual acting in an organization, which allows 'for delegation of decision-making authority' instead of the alienation of that authority. Then the legitimacy of the 'social-organizational arrangements' depends on the individuals being principals in the organizations, not just subjects.

Our topic is to review the intellectual history of the arguments for consent-based alienation of basic self-governing rights and to review, and present in a modern form, the inalienable rights counter-arguments developed in the anti-slavery and democratic movements.

INDIVIDUAL ALIENATION CONTRACTS

The voluntary slavery contract

Today 'slavery' is usually discussed as if it were intrinsically involuntary, so that '"voluntary slavery" is impossible, much as a spherical cube or a living corpse is impossible' (Palmer 2009, p. 457), which relieves one of studying the long intellectual history of the idea. However in fact from antiquity onward, the sophisticated defenses of slavery have always been based on implicit or explicit voluntary contracts. For Western jurisprudence, the story starts with Roman law as codified in the Institutes of Justinian:

> Slaves either are born or become so. They are born so when their mother is a slave; they become so either by the law of nations, that is, by captivity, or by the civil law, as when a free person, above the age of twenty, suffers himself to be sold, that he may share the price given for him. (Institutes Lib. I, Tit. III, sec. 4)

In addition to the third means of outright contractual slavery, the other two means were also seen as having aspects of contract. A person born of a slave mother and raised using the master's food, clothing, and shelter was considered as being in a perpetual servitude contract to trade a lifetime of labor for these and future provisions. In the alienable natural rights tradition, Samuel Pufendorf (1632–94) gave that contractual interpretation.

> Whereas, therefore, the Master afforded such Infant Nourishment, long before his Service could be of any Use to him; and whereas all the following Services of his Life could not much exceed the Value of his Maintenance, he is not to leave his Master's Service without his Consent. But 'tis manifest, That since these Bondmen came into a State of Servitude not by any Fault of their own, there can be no Pretence that they should be otherwise dealt withal, than as if they were in the Condition of perpetual hired Servants. (Pufendorf 2003 [1673], 186–7)

Manumission was an early repayment or cancellation of that debt. And Thomas Hobbes (1588–1679), for example, clearly saw a 'covenant' in this ancient practice of enslaving prisoners of war.

> And this dominion is then acquired to the victor when the vanquished, to avoid the present stroke of death, covenants either in express words or by other sufficient signs of the will that, so long as his life and the liberty of his body is allowed him, the victor shall have the use thereof at his pleasure. ... It is not, therefore, the victory that gives the right of dominion over the vanquished but his own covenant. (Hobbes 1958 [1651], Bk. II, chap. 20)

Thus far from being considered 'impossible', *all* of the three legal means of becoming a slave in Roman law had explicit or implicit contractual interpretations.

John Locke's (1632–1704) *Two Treatises of Government* (1690) is a foundation stone of classical liberal thought. Locke would not condone a contract that gave the master the power of life or 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. (Second Treatise, sec. 23)

This is the fount and source of what is sometimes taken as a 'liberal doctrine of inalienable rights' (Tomasi 2012, p. 51). However, after taking this edifying stand, Locke pirouettes in the next section and accepts a slavery contract that has some rights on both sides. Locke is only ruling out a voluntary version of the old Roman slavery where the master could take the life of the slave with impunity. However, once the contract was put on a more civilized footing, Locke accepted the contract and renamed it 'drudgery'.

> 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. (Second Treatise, sec. 24)

Locke is here setting an intellectual template or pattern, repeated many times later, of taking a high moral stand against an extreme form of contractual slavery, but then turning around and accepting a civilized form of contractual slavery (e.g. rights on both sides at least in the law books), usually with some more palatable alternative linguistic designation such as drudgery or perpetual servitude.

Moreover, Locke agreed with Hobbes on the practice of enslaving war captives as a *quid pro quo* plea-bargained exchange of slavery instead of death and based on the ongoing consent of the captive.

> Indeed having, by his fault, forfeited his own Life, by some Act that deserves Death; he, to whom he has forfeited it, may (when he has him in his Power) delay to take it, and make use of him to his own Service, and he does him no injury by it. For, whenever he finds the hardship of his Slavery out-weigh the value of his Life, 'tis in his Power, by resisting the Will of his Master, to draw on himself the Death he desires. (Second Treatise, sec. 23)

In Locke's constitution for the Carolinas, he seemed to have justified slavery by interpreting the slaves purchased by the slave traders on the African coast as captives from internal wars who had accepted that plea bargain.[1] Thereafter, the title was transferred by commercial contracts. If the slave later decides to renege on the plea-bargain contract and to take the other option, then 'by resisting the Will of his Master, (he may) draw on himself the Death he desires'.

Another foundation stone in liberal jurisprudence is English common law. William Blackstone (1723–1780), in his codification of English common law, stuck to Locke's template. Blackstone rules out a slavery where 'an absolute and unlimited power is given to the master over the life and fortune of the slave'. Such a slave would be free 'the instant he lands in England'. After such an edifying stand on high moral ground, Blackstone pirouettes and adds:

> 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 every apprentice submits to for the space of seven years, or sometimes for a longer term. (Blackstone 1959, section on 'Master and Servant')

Another source of classical liberal thought is Montesquieu (1689–1755). On the question of voluntary slavery, he employed the same Lockean choreography in his treatment of inalienability, and that treatment was paraphrased in modern times by the dean of high liberalism, John Rawls (1921–2002). Montesquieu begins with the usual repudiation of the extreme self-sale contract:

> To sell one's freedom is so repugnant to all reason as can scarcely be supposed in any man. If liberty may be rated with respect to the buyer, it is beyond all price to the seller. (Montesquieu 1912 [1748], vol. I, Bk. XV, chap. II)

Rawls paraphrases this argument from Montesquieu to argue that, in the original position, the grounds upon which the parties are moved to guarantee these liberties, together with the constraints of the reasonable, explain why the basic liberties are, so to speak, beyond all price to persons so conceived (Rawls 1996, p. 366).

After the 'beyond all price' passage paraphrased by Rawls, Montesquieu goes on to note: 'I mean slavery in a strict sense, as it formerly existed among the Romans, and exists at present in our colonies' (Montesquieu 1912 [1748], vol. I, Bk. XV, chap. II). Then Montesquieu performs his *volte-face* by noting that this would not exclude a civilized or 'mild' form of the contract.

> This is the true and rational origin of that mild law of slavery which obtains in some countries; and mild it ought to be, as founded on the free choice a man makes of a master, for his own benefit; which forms a mutual convention between two parties. (Montesquieu 1912 [1748], vol. I, Bk. XV, chap. V)

And then Rawls goes on to follow the same choreography in his treatment of inalienability.

> This explanation of why the basic liberties are inalienable does not exclude the possibility that even in a well-ordered society some citizens may want to circumscribe or alienate one or more of their basic liberties. . . .
> Unless these possibilities affect the agreement of the parties in the original position (and I hold that they do not), they are irrelevant to the inalienability of the basic liberties. (Rawls 1996, pp. 366–7 and fn. 82)

Of course, no one thinks that John Rawls would personally endorse a voluntary slavery contract, but the question is his theories, not his personal views. Moreover, in his treatment of inalienability, he repeated the pattern and even some of the language ('beyond all price') of a 'liberal doctrine of inalienable rights' descending from Locke, Blackstone, and Montesquieu that *did* endorse a civilized form of voluntary contractual slavery, drudgery, or perpetual servitude.

Below we outline the (genuine) theory of inalienable rights that descends from the Reformation inalienability of conscience through the Scottish and German Enlightenments and English Dissenters, which was transferred 'from a religious on to a juridical plane' (Lincoln 1971, p. 2) by the abolitionist and democratic movements.[2]

Rawls' Harvard colleague, Robert Nozick (1938–2002), was notoriously explicit in accepting the (re)validation of the voluntary slavery contract.[3] He accepted that a free society should allow people to jointly alienate their political sovereignty to a 'dominant protective association' (Nozick 1974, p. 15).

> The comparable question about an individual is whether a free system will allow him to sell himself into slavery. I believe that it would. (Nozick 1974, p. 331)

Nozick is reported to have had second thoughts in his later life precisely on the question of inalienability (Boaz 2011), but Nozick never developed a *theory* of inalienability that would overturn his earlier position.

The contractual defense of slavery was also used in the debate over slavery in antebellum America. In liberal intellectual history, the proslavery position is usually presented as being based on illiberal racist or paternalistic arguments. Considerable attention is lavished on illiberal paternalistic writers such as George Fitzhugh,[4] while consent-based contractarian defenders of slavery are passed over in silence. For example, Rev. Samuel Seabury (1801–1872) gave a sophisticated liberal-contractarian defense of antebellum slavery in the tradition of alienable natural rights theory.

> From all which it appears that, wherever slavery exists as a settled condition or institution of society, the bond which unites master and servant is of a moral nature; founded in right, not in might; .... Let the origin of the relation have been what it may, yet when once it can plead such prescription of time as to have received a fixed and determinate character, it must be assumed to be founded in the consent of the parties, and to be, to all intents and purposes, a compact or covenant, of the same kind with that which lies at the foundation of all human society. (Seabury 1969 [1861], p. 144)
>
> "Contract!" methinks I hear them exclaim; "look at the poor fugitive from his master's service! He bound by contract! A good joke, truly." But ask these same men what binds them to society? Are they slaves to their rulers? O no! They are bound together by the *compact* on which society is founded. Very good; but did you ever sign this compact? Did your fathers every sign it? "No; it is a tacit and implied contract." (Seabury 1969 [1861], p. 153)

Yet this voluntary contractual defense of slavery has largely gone down the memory hole in the intellectual history of the antebellum debates. For instance, Eric McKitrick (1963) collects essays of 15 proslavery writers; Drew Gilpin Faust (1981) collects essays from seven proslavery writers; Paul Finkelman (2003) collects 17 excerpts from proslavery writings, but *none* of these collections include a single writer who argues to allow slavery on a contractual basis such as Seabury—not to mention Grotius, Pufendorf, Hobbes, Locke, Blackstone, Molina, Suarez, Montesquieu, and a host of others.[5]

The intellectual history of civilized voluntary slavery contracts concludes with modern economic theory. Often the discussion of slavery is colored with excesses and attributes that were unnecessary to slavery as an economic institution. The economic essence of the contract is the lifetime ownership of labor services by the master, not the ownership of persons or souls or the like. Even the Stoic philosopher Chrysippus noted that 'a slave should be treated as a "laborer hired for life"' (Sabine 1958, p. 150). James Mill explained:

> 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. (Mill 1826, chap. I, sec. II)

And antebellum slavery apologists made a similar point:

> 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. (Bryan 1858, p. 10; quoted in Philmore 1982, p. 43)

One of the most elementary points in conventional economics is that the prohibition of a voluntary exchange between a willing buyer and willing seller (in the absence of externalities) precludes allocative efficiency. For instance, efficiency requires full futures markets in all goods and services—which includes human labor. Any attempt to truncate future labor contracts at, say, T years could violate market efficiency, since there might today be willing buyers and sellers of labor $T+1$ years in the future. Hence market efficiency requires full future markets in labor—which allows the perpetual servitude contract. One will not find this point in the economics textbooks, but the Johns Hopkins University economist, Carl Christ, made the point quite explicit in no less a forum than congressional testimony.

> 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. Christ (1975, p. 334)

In spite of the efficiency losses, the voluntary contract to capitalize all of one's labor is now abolished.

> 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. (Samuelson 1976, p. 52)[6]

The coverture marriage contract

Another historical example of an individual alienation contract is the *coverture marriage contract*, which 'identified' the legal personality of the wife with that of the husband.

> By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs everything; and is therefore called in our law-French, a *feme covert*, and is said to be under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her *coverture*. (Blackstone 1959 [1765], section on husband and wife)

The baron-femme relationship established by the coverture marriage contract exemplified the identity fiction in past domestic law. A female was to pass from the cover of her father to the cover of her husband (the origin of today's vestiges, where the bride's father 'gives away' the bride to the groom and the bride takes the groom's family name)—always a 'femme covert' instead of the anomalous 'femme sole'. The identity fiction for the baron-femme relation was that 'the husband and wife are one person in law', with the implicit or explicit rider, 'and that one person is the husband'. A wife could own property and make contracts, but only in the name of her husband. Obedience counted as 'fulfilling' the contract to have the wife's legal personality subsumed under and identified with that of the husband.[7]

POLITICAL ALIENATION CONTRACTS: THE HOBBESIAN *PACTUM SUBJECTIONIS*

Democracy is not merely 'government based on the consent of the governed', since that consent might be to a pact of subjection, or *pactum subjectionis*, wherein people alienate (not delegate) their decision-making sovereignty to a ruler. The political constitution of subjection (which turns a citizen into a subject) finds its classical expression in Hobbes, but the idea of an implicit or explicit non-democratic constitution again goes back to antiquity.

Again we may begin the intellectual history with Roman law. The sovereignty of the Roman emperor was usually seen as being founded on a contract of rulership enacted by the Roman people. The Roman jurist Ulpian gave the classic and oft-quoted statement of this view in the Institutes of (Justinian):

> Whatever has pleased the prince has the force of law, since the Roman people by the *lex regia* enacted concerning his *imperium*, have yielded up to him all their power and authority.[8]

The US constitutional scholar Edward S. Corwin noted the questions that arose in the Middle Ages about the nature of this pact.

> During the Middle Ages the question was much debated whether the *lex regia* effected an absolute alienation (*translatio*) of the legislative power to the Emperor, or was a revocable delegation (*cessio*). The champions of popular sovereignty at the end of this period, like Marsiglio of Padua in his *Defensor Pacis*, took the latter view. (Corwin 1955, p. 4, fn. 8)

It is precisely this question of *translatio* or *concessio*—alienation or delegation of the right of government in the contract—that is the key question, not consent versus coercion. Consent is on both sides of that alienation (*translatio*) versus delegation (*concessio*) framing of the question. In his lifetime, Buchanan moved beyond the calculus of consent (1962) to the additional requirement that people remain the principals with only the 'delegation of decision-making authority'.

The German legal thinker, Otto von Gierke (1841–1921), was quite clear about the alienation-versus-delegation question.

> This dispute also reaches far back into the Middle Ages. It first took a strictly juristic form in the dispute ... as to the legal nature of the ancient '*translatio imperii*' from the Roman people to the Princeps. One school explained this as a definitive and irrevocable alienation of power, the other as a mere concession of its use and exercise. ... On the one hand from the people's abdication the most absolute sovereignty of the prince might be deduced .... On the other hand the assumption of a mere '*concessio imperii*' led to the doctrine of popular sovereignty. (Gierke 1966, pp. 93–4)

A state of government that had been settled for many years was seen as being legitimated by the tacit consent of the people. Thomas Aquinas (1225–74) expressed the canonical medieval view.

> Aquinas had laid it down in his *Summary of Theology* that, although the consent of the people is essential in order to establish a legitimate political society, the act of instituting a ruler always involves the citizens in alienating—rather than merely delegating—their original sovereign authority. (Skinner 1978, vol. I, p. 62)

In about 1310, according to Gierke, 'Engelbert of Volkersdorf is the first to declare in a general way that all *regna et principatus* originated in a *pactum subjectionis* which satisfied a natural want and instinct' (1958, p. 146).

That idea passed over into the alienable natural law tradition. After noting that an individual could sell himself into slavery under Hebrew and Roman law, Hugo Grotius (1583–1645) extends the possibility to the political level.

> Now if an individual may do so, why may not a whole people, for the benefit of better government and more certain protection, completely transfer their sovereign rights to one or more persons, without reserving any portion to themselves? (Grotius 1901 [1625], p. 63)

Thomas Hobbes made the best-known attempt to found non-democratic government on the consent of the governed. Without an overarching power to hold people in awe, life would be a constant war of all against all. To prevent this state of chaos and strife, men should join together and voluntarily alienate and transfer the right of self-government to a person or body of persons as the sovereign. This *pactum subjectionis* would be a

> covenant of every man with every man, in such manner as if every man should say to every man, I authorize and give up my right of governing myself to this man,

> or to this assembly of men, on this condition, that you give up your right to him and authorize all his actions in like manner. (Hobbes 1958 [1651], p. 142)

The consent-based contractarian tradition is brought fully up to date in Robert Nozick's contemporary libertarian defense of the contract to alienate one's right of self-determination to a 'dominant protective association'.

In view of this history of apologetics for autocracy based on consent, the conventional contrast of coercive versus consent-based government was *not* the key to democratic theory. The real debate was within the sphere of consent and was between the alienation (*translatio*) and delegation (*concessio*) versions of the basic social or political constitution.

Late medieval thinkers such as Marsilius of Padua (1275–1342) and Bartolus of Saxoferrato (1314–57) laid some of the foundations for democratic theory in the distinction between consent that establishes a relation of delegation versus consent to an alienation of authority.

> The theory of popular sovereignty developed by Marsiglio (Marsilius) and Bartolus was destined to play a major role in shaping the most radical version of early modern constitutionalism. Already they are prepared to argue that sovereignty lies with the people, that they only delegate and never alienate it, and thus that no legitimate ruler can ever enjoy a higher status than that of an official appointed by, and capable of being dismissed by, his own subjects. (Skinner 1978, vol. I, p. 65)

Quentin Skinner, writing in the civic republican tradition, continually emphasized the alienation-versus-delegation theme in his two-volume work *The Foundations of Modern Political Thought*. Yet other modern intellectual historians, such as Jonathan Israel (e.g. 2010), writing more in the conventional liberal tradition have covered the same history of democratic thought and yet ignore the alienation-versus-delegation theme[9] in favor of emphasis on the consent of the governed, as if that were sufficient to entail democratic government.[10] Thus it is not only the idea of contractual slavery that escapes the conventional liberal consciousness but also the idea of a voluntary social contract of subjection—in spite of Gierke pointing out that at least by the late Middle Ages, it was 'propounded as a philosophic axiom' that 'the legal title to all Rulership lies in the voluntary and contractual submission of the Ruled'.

This highlights the importance of Buchanan, in his mature work, of seeing classical liberalism as requiring social-organizational arrangements that are not only voluntary but have people remaining as sovereigns or as principals only delegating their decision-making authority. That establishes a theoretical bond between classical liberalism and democracy.

> To Plato there are natural slaves and natural masters, with the consequences that follow for social organization, be it economic or political. To Adam Smith, by contrast, who is in this as in other aspects the archetype classical liberal, the philosopher and the porter are natural equals with observed differences readily explainable by culture and choice. (Buchanan 2005, p. 67)

This natural equality means the sovereigns-or-principals principle would apply to all and thus would rule out governance arrangements based on a voluntary contract of alienation of governance rights.

> The postulate of natural equality carries with it the requirement that genuine classical liberals adhere to democratic principles of governance; political equality as a necessary norm makes us all small 'd' democrats. (Buchanan 2005, p. 69)

This implication of Buchanan's version of democratic classical liberalism exposes the fault line that runs through today's classical liberal and libertarian thinkers. For instance, it would rule out the non-democratic governance contract to be agreed to 'for the benefit of better government and more certain protection' (Grotius) by voluntarily moving to a charter city or a start-up city—all of which are widely supported by free-market thinkers along classical liberal, libertarian, or Austrian lines.

> [I]f one starts a private town, on land whose acquisition did not and does not violate the Lockean proviso [of non-aggression], persons who chose to move there or later remain there would have no right to a say in how the town was run, unless it was granted to them by the decision procedures for the town which the owner had established. (Nozick 1974, p. 270)

The libertarian bottom line is that government must be based on consent, which includes the possibility of exit when consent is withdrawn. Libertarianism is, of course, not against democratic government; the point is that democracy is only one choice among other consent-based rule-of-law governments. 'The choice between autocracy and democracy should be decided according to the standard of best results' (Arneson 2004, p. 41). The libertarian point is that there should be a 'democratizing choice of law, governance, and regulation',[11] which includes well-regulated pro-business non-democratic enclaves like old Hong Kong and new Dubai. Libertarian models of consent-based non-democratic municipal or state governments include the notion of 'free cities' or 'start-up cities', proprietary cities, Patri Friedman's floating seastead cities, Paul Romer's charter cities, or 'shareholder states' (Tyler Cowen's phrase), all of which see the resident-subjects as having agreed to a *pactum subjectionis* as evidenced by their voluntary decision to move to and remain in the city or state (assuming free exit).

The philosophical defense of charter/start-up cities (e.g. Freiman 2013) also applies to the piecemeal voluntary alienation of decision-making in the selling of votes:

> Under normal conditions voluntary economic exchange is *ex ante* mutually beneficial. A trade is not consummated unless both parties expect to benefit. I will exchange a quarter for an apple only if I value the apple more than the quarter and an apple seller will exchange an apple for my quarter only if she values the quarter more than the apple. The same analysis applies to votes. I'll sell my vote for n dollars only if I value n dollars more than my vote and the buyer will buy my vote for n dollars only if she values my vote more than n dollars. All things equal, vote markets leave both buyers and sellers better off. (Freiman 2014, p. 3)[12]

INALIENABLE RIGHTS: THE MINIMUM CONSTRAINTS ON CONTRACTS

The *pons asinorum* of libertarianism

In contrast to the faux 'liberal doctrine of inalienable rights' developed by Locke, Blackstone, and Montesquieu, the abolitionist and democratic movements developed arguments that there was something inherently invalid in the voluntary alienation contracts—even though there might be mutual benefits, and thus that the rights these contracts pretended to alienate were in fact inalienable. The theory of inalienable rights gives constraints on the usual free-market arguments applied to personal alienation contracts such as the voluntary self-sale contract and the collective pact of subjection (and, one might add, the coverture marriage contract), which are all already invalidated in the industrialized democracies.

The key argument is that in consenting to such an alienation contract, a person is agreeing to, in effect, take on the legal role of a non-adult, indeed, a non-person or thing. Yet all the consent in the world would not in fact turn an adult into a minor or person of diminished capacity, not to mention a thing.

The *pons asinorum* of libertarian thought is the understanding of how a genuinely voluntary contract could be inherently invalid. For whatever reason, a person might genuinely want to become like, say, a donkey and could genuinely consent to such a contract in return for whatever consideration. However, becoming a donkey is not within the realm of voluntary actions that one can perform to fulfill the contract. The same holds for any contract to take on the role of a non-person or person of diminished capacity.

The legal authorities could nevertheless 'validate' the contract and count 'obeying your master' as 'fulfilling' the contract. Then all the *legal* rights and obligations would be assigned according to the 'contract' (as if the person were in fact a donkey or had diminished or no capacity). However, since the person remained a *de facto* fully capacitated adult person with only the legal-contractual role of a non-person, the contract was impossible and invalid. A system of positive law that accepted such contracts is only a legalized fraud on an institutional scale.

Applying this argument requires prior analysis to tell when a contract puts a person in the legal role of a non-person. Unlike the donkey example, the role of a non-person is not necessarily explicit in the contract and it has nothing to do with the payment in the contract, the incompleteness of the contract, or the like.

Persons and things can be distinguished on the basis of decision-making and responsibility. For instance, a genuine thing such as a shovel can be alienated or transferred from person A to B. Person A, the owner of the tool, can indeed give up making decisions about the use of the tool and person B can take over making those decisions. Person A does not have the responsibility for the consequences of the employment of the tool by person B. Person B makes the decisions about using the tool and has the *de facto* responsibility for the results of that use. Thus a contract to sell or rent a tool such as a shovel from A to B can actually be fulfilled. The decision-making and responsibility for employing the tool can *in fact* be transferred or alienated from A to B.

However, now replace the tool by person A himself or herself. Suppose that the contract was for person A to sell (or rent) himself or herself to person B—as if a person were a transferable or alienable instrument that could be 'employed' by another person like a shovel. The *pactum subjectionis* is a collective version of such a contract but it is easier to understand the individual version. The contract could be perfectly voluntary. For whatever reason and compensation, person A is willing to take on the legal role of a non-person or a person of diminished capacity. However, person A cannot in fact transfer decision-making or responsibility over his or her own actions to B. The point is not that a person should not or ought not do it or that the person is not paid enough; the point is that a person *cannot* in fact make such a voluntary transfer. At most, person A can agree to cooperate with B by doing what B says—even if B's instructions are quite complete. However, that is no alienation or transference of decision-making or responsibility. Person A is still inexorably involved in ratifying B's decisions and person A inextricably shares the *de facto* responsibility for the results of A and B's joint activity—as everyone recognizes in the case of a hired criminal.

Yet a legal system could 'validate' such a (non-criminous) contract and could 'count' obedience to the master or sovereign as 'fulfilling' the contract, and then rights are structured *as if* it were actually fulfilled, that is as if the person were actually of diminished or no capacity. However, such an institutionalized fraud always has one revealing moment when anyone can see the legal fiction behind the system. That is when the legalized 'thing' would commit a crime. Then the 'thing' would be suddenly metamorphosed—in the eyes of the law—back into being a person to be held legally responsible for the crime. For instance, an antebellum Alabama court asserted that slaves

> are rational beings, they are capable of committing crimes; and in reference to acts which are crimes, are regarded as persons. Because they are slaves, they are . . . incapable of performing civil acts, and, in reference to all such, they are things, not persons. (Catterall 1926, p. 247)

Since there was no legal theory that slaves *physically* became things in their 'civil acts', the fiction involved in treating the slaves as 'things' was clear. Moreover, this is a question of the facts about human nature, facts that are unchanged by consent or contract. If the slave had acquired that legal role in a voluntary contract, it would not change the fact that the contractual slave remained a *de facto* person, with the law only 'counting' the contractual slave's non-criminous obedience as 'fulfilling' the contract to play the legal role of a non-responsible entity, a non-person or thing.

Application to the employment contract

The key insight is the difference in the factual transferability of a thing's services and our own actions—the *de facto* inalienability of responsible agency. The surprising and controversial thing is that the inalienability argument applies as well to the self-rental contract—that is, today's employment contract—as to the self-sale contract, the coverture marriage contract, or pact of subjection. I can certainly voluntarily agree to a contract to be 'employed' by an 'employer' on a long or short term basis, but I

cannot in fact 'transfer' my own actions for the long or short term. The factual inalienability of responsible human action and decision-making is independent of the duration of the contract. That factual inalienability is also independent of the compensation paid in the contract—which is why this inalienability analysis has *nothing* to do with exploitation theories of either the Marxian variety (extracting more labor time than is embodied in the wages) or neoclassical variety (paying wages less than the value of the marginal productivity of labor).

Where the legal system 'validates' such contracts, it must fictitiously 'count' one's inextricably co-responsible co-operation with the 'employer' as fulfilling the employment contract—unless, of course, the employer and employee commit a crime together. The servant in work then morphs into the co-responsible partner in crime.

> All who participate in a crime with a guilty intent are liable to punishment. A master and servant who so participate in a crime are liable criminally, not because they are master and servant, but because they jointly carried out a criminal venture and are both criminous. (Batt 1967, p. 612)

When the 'venture' being 'jointly carried out' by the employer and employee is not criminous, then the *facts* about human responsibility are unchanged. However, then the legal fiction takes over. The joint venture or partnership is legally transformed into the employer's sole venture. The employee is legally transformed from being a co-responsible partner in the venture to being only an input supplier sharing no legal responsibility for either the input liabilities or the produced outputs of the employer's business.

SOME INTELLECTUAL HISTORY OF INALIENABLE RIGHTS THEORY

Where has this key insight—that a person cannot voluntarily fit the legal role of a non-person (e.g. the *de facto* inalienability of responsible agency)—emerged in the history of thought? The ancients did not see this matter clearly. For Aristotle, slavery was based on 'fact'; some adults were seen as being inherently of diminished capacity, if not as 'talking instruments' marked for slavery 'from the hour of their birth'. Treating them as slaves was no more inappropriate for Aristotle than treating a donkey as a non-person. The Stoics held the radically different view that no one was a slave by their nature; slavery was an *external* condition juxtaposed to the internal freedom of the soul.

After being essentially lost during the Middle Ages, the Stoic doctrine that the 'inner part cannot be delivered into bondage' (Davis 1966, p. 77) reemerged in the Reformation doctrine of the inalienability of conscience. Secular authorities who try to compel belief can only secure external conformity.

> Besides, the blind, wretched folk do not see how utterly hopeless and impossible a thing they are attempting. For no matter how much they fret and fume, they cannot do more than make people obey them by word or deed; the heart they cannot constrain, though they wear themselves out trying. For the proverb is true, 'Thoughts are free'. Why then would they constrain people to believe from the heart, when they see that it is impossible? (Luther 1942 [1523], p. 316)

Martin Luther was explicit about the *de facto* element; it was 'impossible' to 'constrain people to believe from the heart'.

> Furthermore, every man is responsible for his own faith, and he must see it for himself that he believes rightly. As little as another can go to hell or heaven for me, so little can he believe or disbelieve for me; and as little as he can open or shut heaven or hell for me, so little can he drive me to faith or unbelief. Since, then, belief or unbelief is a matter of every one's conscience, and since this is no lessening of the secular power, the latter should be content and attend to its own affairs and permit men to believe one thing or another, as they are able and willing, and constrain no one by force. (Luther 1942, p. 316)

Perhaps it was the atheist Jew Benedict de Spinoza who first translated the Protestant doctrine of the inalienability of conscience into the political notion of a right that could not be ceded 'even with consent'. In Spinoza's 1670 *Theologico-Political Treatise*, he spelled out the essentials of the inalienable rights argument:

> However, we have shown already (Chapter XVII) that no man's mind can possibly lie wholly at the disposition of another, for no one can willingly transfer his natural right of free reason and judgment, or be compelled so to do. For this reason government which attempts to control minds is accounted tyrannical, and it is considered an abuse of sovereignty and a usurpation of the rights of subjects, to seek to prescribe what shall be accepted as true, or rejected as false, or what opinions should actuate men in their worship of God. All these questions fall within a man's natural right, which he cannot abdicate even with consent. (Spinoza 1951, p. 257)

However, it was Francis Hutcheson, the predecessor of Adam Smith in the chair in moral philosophy in Glasgow and one of the leading moral philosophers of the Scottish Enlightenment, who arrived (independently?) at the same idea in the form that was to later enter the political lexicon through the US Declaration of Independence. Although intimated in earlier works (1725), the inalienability argument is best developed in Hutcheson's influential *A System of Moral Philosophy*:

> Our rights are either *alienable*, or *unalienable*. The former are known by these two characters jointly, that the translation of them to others can be made effectually, and that some interest of society, or individuals consistently with it, may frequently require such translations. Thus our right to our goods and labours is naturally alienable. But where either the translation cannot be made with any effect, or where no good in human life requires it, the right is unalienable, and cannot be justly claimed by any other but the person originally possessing it. (Hutcheson 1755, p. 261)

Hutcheson appeals to the inalienability argument in addition to utility. He contrasts *de facto* alienable goods where 'the translation of them to others can be made effectually' (like the aforementioned shovel) with factually inalienable faculties where 'the translation cannot be made with any effect'. This was not just some outpouring of moral emotions that one should not alienate this or that basic right. Hutcheson actually set forth a *theory* that could have legs of its own far beyond Hutcheson's (not to mention Luther's) intent. He based the theory on what in fact could or could not be transferred or alienated from one person to another.

Hutcheson goes on to show how the 'right of private judgment' is inalienable.

> Thus no man can really change his sentiments, judgments, and inward affections, at the pleasure of another; nor can it tend to any good to make him profess what is contrary to his heart. The right of private judgment is therefore unalienable. (Hutcheson 1755, pp. 261–2)

Democratic theory carried over this theory from the inalienability of conscience to a critique of the Hobbesian *pactum subjectionis*, the contract to alienate and transfer the right of self-determination as if it were a property right that could be transferred from a people to a sovereign.

> There is, at least, one right that cannot be ceded or abandoned: the right to personality. Arguing upon this principle the most influential writers on politics in the seventeenth century rejected the conclusions drawn by Hobbes. They charged the great logician with a contradiction in terms. If a man could give up his personality he would cease being a moral being. . . . This fundamental right, the right to personality, includes in a sense all the others. To maintain and to develop his personality is a universal right. It . . . cannot, therefore, be transferred from one individual to another. . . . There is no *pactum subjectionis*, no act of submission by which man can give up the state of a free agent and enslave himself. (Cassirer 1963, p. 175)

Few have seen these connections as clearly as Staughton Lynd in his *Intellectual Origins of American Radicalism*. When commenting on Hutcheson's theory, Lynd noted that when 'rights were termed "unalienable" in this sense, it did not mean that they could not be transferred without consent, but that their nature made them untransferrable' (Lynd 1969, p. 45).[13] The crucial link was to go from the *de facto* inalienable liberty of conscience to a *theory* of inalienable rights based on the same idea.

> Like the mind's quest for religious truth from which it was derived, self-determination was not a claim to ownership which might be both acquired and surrendered, but an inextricable aspect of the activity of being human. (Lynd 1969, pp. 56–7)

In the US Declaration of Independence, 'Jefferson took his division of rights into alienable and unalienable from Hutcheson, who made the distinction popular and important' (Wills 1979, p. 213). However, the theory behind the notion of inalienable rights was lost in the transition from the Scottish Enlightenment to the slave-holding society of antebellum America. The rhetoric of 'inalienable rights' is a staple in US political culture, but the original theory of inalienability has been largely ignored or forgotten.

THE IMPLICATIONS FOR TODAY'S SOCIAL-ORGANIZATIONAL STRUCTURES

After this long 'detour' through intellectual history, we must return to the main theme of how the virtues of individual self-regarding activity in the marketplace might generalize to the virtues of collective activity by people in their own organizations.

We have taken James M. Buchanan's description of the normative basis for classical liberalism as the framework to apply to the theme. We have also noted that Buchanan's mature thought moved beyond the mere calculus of consent in the solely economic way of thinking to the stronger requirement that people always remain sovereign or principals who only *delegate* decision-making authority. Moreover, we have noted how Buchanan's strictures implied democratic self-governance in contrast to the currents of right-libertarianism and Austrian thought that accept the consent of the governed to non-democratic governance, for example start-up cities.

Almost all workplaces are organized on the basis of the employment contract—the renting of persons. Indeed, Ronald Coase (1910–2013) identifies the nature of the firm with the 'legal relationship normally called that of "master and servant" or "employer and employee"' (1937, p. 403). In the usual presentation of classical liberalism, both political democracy and the employment relation are on the side of the division between coercive versus consent-based institutions (Fig. 1).

In the employment contract, the employees are not Buchanan's principals; they do not delegate decision-making authority to the employer. The employer is not the representative or delegate of the employees; the employer does not manage the organization in the name of those who are managed. The employees are not directly or indirectly a legal part of the decision-making group; the employees have legally alienated and transferred to the employer the discretionary decision-making rights over their activities within the scope of the employment contract. In short, the employment contract is the limited *pactum subjectionis* of the workplace (Fig. 2).

The form of workplace organization that would satisfy the strictures of Buchanan's classical liberalism is one where all the people working in a firm are the members or workplace citizens. That requires reconstituting the corporation as a democratic organization; the workplace citizens are the principals who only delegate decision-making authority to the board and managers.

> Here is the most urgent challenge to political invention ever offered to the jurist and the statesman. The human association which in fact produces and distributes wealth, the association of workmen, managers, technicians and directors, is not an

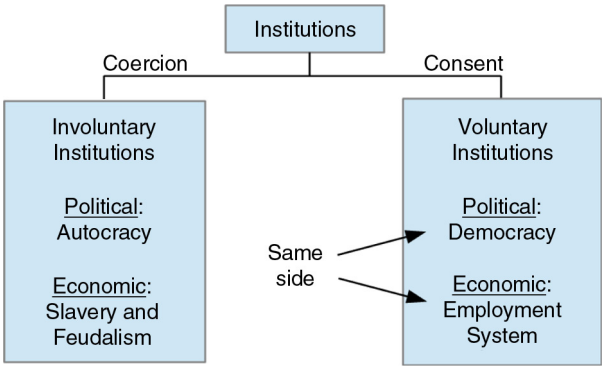

Figure 1. The usual classical liberal framing of coercion versus consent.

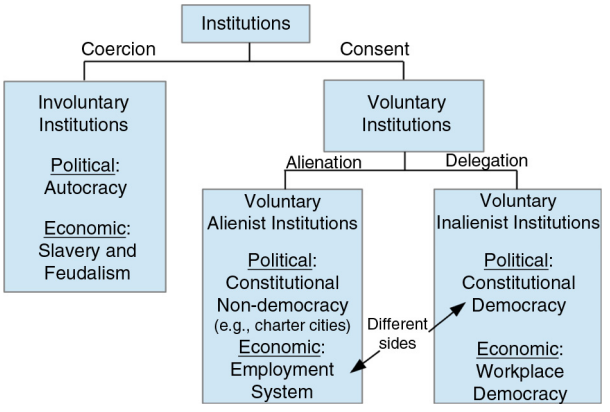

Figure 2. Reframing separating non-democratic and democratic classical liberalism.

> association recognised by the law. The association which the law does recognise—the association of shareholders, creditors and directors—is incapable of production and is not expected by the law to perform these functions. (Percy 1944, p. 38; quoted in Goyder 1961, p. 57)

This modest proposal reconstitutionalizes the corporation so that the 'human association which in fact produces and distributes wealth' is recognized in law as the legal corporation where the ownership/membership in the company would be assigned to the 'workmen, managers, technicians and directors' who work in the company. If the modest proposal were accepted that the contract for the renting of human beings be recognized as invalid and be abolished, then production could only be organized on the basis of the people working in production (jointly) hiring or already owning the capital and other inputs they use in production. The legal members of the firm as a legal party would be the people working in the firm. Such a firm is a *workplace democracy* and the private property market economy of such firms is an *economic democracy.*[14]

When firms are organized as workplace democracies, then *that* is the natural generalization of sovereign individuals acting in the marketplace—so ably described in the classical liberal free-market vision—to associated individuals acting *as the principals only delegating decision-making authority in their own organizations*.

NOTES

1. See Laslett 1960, notes on sec. 24, pp. 325–26.
2. For more of this development, see Ellerman 1992 or 2010.
3. It is revalidation since in the decade prior to the Civil War, there was explicit legislation in six states 'to permit a free Negro to become a slave voluntarily' (Gray 1958, p. 527; quoted in Philmore 1982, p. 47). 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' (Sterkx 1972, p. 149).
4. See, for example, Genovese 1971, Wish 1960, or Fitzhugh 1960.

5. For a more complete story, see Philmore 1982 or Ellerman 2010.
6. This may seem an unusual use of 'rent' but 'hiring a car' in the United Kingdom and 'renting a car' in the United States are the same thing. As Paul Samuelson (1915–2009) goes on to explain:

> One can even say that wages are the rentals paid for the use of a man's personal services for a day or a week or a year. This may seem a strange use of terms, but on second thought, one recognizes that every agreement to hire labor is really for some limited period of time. 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. (1976, p. 569)

7. For a modern generalized treatment of the coverture contract, see Pateman 1988.
8. Institutes, Lib. I, Tit. II, 6; Quoted in: Corwin 1955, p. 4.
9. Often the liberal literature just fudges or ignores the alienation-versus-delegation distinction by describing either type of contract as 'giving up rights' to the government or as establishing 'hierarchy'.
10. Again this follows the intellectual pattern set by Locke, who had no genuine inalienable rights theory to counter Hobbes. As a result, he ignored Hobbes and took Robert Filmer (1588–1653) as his foil, since Filmer's patriarchal theory (1680) did not require the consent of the governed just as the father's governance over his children does not require their consent.
11. See the free or start-up cities website: http://www.startupcities.org/. This phrase was used without apparent irony in an earlier version of the free cities website. Another phrase is 'democratizing access to law and governance'. Even though the citizens subjects have no vote, the start-up cities nevertheless have 'democratic accountability by giving people the ability to raise their voice through the power of exit'.
12. See also http://bleedingheartlibertarians.com/2014/03/vote-markets/. As James Tobin grudgingly noted: 'Any good second year graduate student in economics could write a short examination paper proving that voluntary transactions in votes would increase the welfare of the sellers as well as the buyers' (Tobin 1970, p. 269; quoted in: Ellerman 1992, p. 100).
13. The fact that the inalienability of conscience was rooted in the aspects of personhood that do not change with consent or contract was expressed with great clarity by the New Light minister Elisha Williams in 1744:

> No action is a religious action without understanding and choice in the agent. Whence it follows, the rights of conscience are sacred and equal in all, and strictly speaking unalienable. This *right of judging every one for himself in matters of religion* result from the nature of man, and is so inseperably connected therewith, that a man can no more part with it than he can with his power of thinking: and it is equally reasonable for him to attempt to strip himself of the power of reasoning, as to attempt the vesting of another with this right. And whoever invades this right of another, be he pope or Caesar, may with equal reason assume the other's power of thinking, and so level him with the brutal creation. A man may alienate some branches of his property and give up his right in them to others; but he cannot transfer the right of conscience, unless he could destroy his rational and moral powers, …. (Williams 1998, p. 62) See also Smith 2013, pp. 88–94 on inalienability.

14. See, for example, Dahl 1985.

References

Arneson, Richard J. 'Democracy Is Not Intrinsically Just'. In *Justice and Democracy: Essays for Brian Barry*, ed. Keith Dowding, Robert E Goodin, and Carole Pateman, 40–58. New York: Cambridge University Press, 2004.
Batt, Francis. *The Law of Master and Servant*. London: Pitman; 1967.
Blackstone, William. *Ehrlich's Blackstone*. New York: Capricorn Books, 1959 [1765].
Boaz, David. 'Misunderstanding Nozick, Again'. *Cato at Liberty* (June 20, 2011). 2011. http://www.cato.org/blog/misunderstanding-nozick-again
Bryan, Edward B. *Letters to the Southern People*. Charleston, SC: Walker, Evans & Co., 1858.
Buchanan, James, M. *The Logical Foundations of Constitutional Liberty: The Collected Works of James M. Buchanan Vol. 1*. Indianapolis, IN: Liberty Fund, 1999.
Buchanan, James M. *Why I, Too, Am Not a Conservative: The Normative Vision of Classical Liberalism*. Cheltenham, UK: Edward Elgar, 2005.
Buchanan, James M., and Gordon Tullock. *The Calculus of Consent: Logical Foundations of Constitutional Democracy*. Ann Arbor, MI: University of Michigan Press, 1962.
Cassirer, Ernst. *The Myth of the State*. New Haven, CT: Yale University Press, 1963.
Catterall, Helen T. *Judicial Cases Concerning Slavery and the Negro*. Washington, DC: Carnegie Institute, 1926.
Christ, Carl F. 'The Competitive Market and Optimal Allocative Efficiency'. In *Competing Philosophies in American Political Economics*, ed. John Elliott and John Cownie, 332–8. Pacific Palisades, CA: Goodyear, 1975.
Coase, Ronald H. 'The Nature of the Firm'. *Economica*. IV (November 1937): 386–405.
Corwin, Edward S. *The 'Higher Law' Background of American Constitutional Law*. Ithaca, NY: Cornell University Press, 1955.
Dahl, Robert. *Preface to Economic Democracy*. Berkeley, CA: University of California Press; 1985.
Davis, David Brion. *The Problem of Slavery in Western Culture*. Ithaca, NY: Cornell University Press; 1966.
Ellerman, David. *Property & Contract in Economics: The Case for Economic Democracy*. Cambridge, MA: Blackwell; 1992.
Ellerman, David. 'Inalienable Rights: A Litmus Test for Liberal Theories of Justice'. *Law and Philosophy* 29 (September 2010): 571–99.
Faust, Drew Gilpin, ed. 1981. *The Ideology of Slavery: Proslavery Thought in the Antebellum South, 1830–1860*. Baton Rouge, LA: Louisiana State University Press.
Filmer, Robert. *Patriarcha; of the Natural Power of Kings*. London: Richard Chiswell, 1680.
Finkelman, Paul. *Defending Slavery: Proslavery Thought in the Old South: A Brief History with Documents*. Boston: Bedford/St. Martin's, 2003.
Fitzhugh, George. *Cannibals All! or, Slaves Without Masters*. Cambridge, MA: Harvard University Press, 1960 [1857].
Freiman, Christopher. 'Cosmopolitanism within Borders: On Behalf of Charter Cities'. *Journal of Applied Philosophy* 2014; 30(1): 40–52.
Freiman, Christopher. 'Vote Markets'. *Australasian Journal of Philosophy* 2014; 92(4): 759–74.
Genovese, Eugene. *The World the Slaveholders Made*. New York: Vintage Books, 1971.
Gierke, Otto von. *Political Theories of the Middle Age*. Trans. ed. Frederic W. Maitland. Boston: Beacon Press, 1958.
Gierke, Otto von. *The Development of Political Theory*. Trans. ed. Bernard Freyd. New York: Howard Fertig, 1966.
Goyder, George. *The Responsible Company*. Oxford: Basil Blackwell, 1961.
Gray, Lewis Cecil. *History of Agriculture in the Southern United States to 1860*. Gloucester: Peter Smith, 1958.
Grotius, Hugo. *The Rights of War and Peace*. Trans. A. C. Campbell. Washington: M. Walter Dunne, 1901 [1625].
Hobbes, Thomas. *Leviathan*. Indianapolis, IN: Bobbs-Merrill, 1958 [1651].
Hutcheson, Francis. *An Inquiry into the Original of Our Ideas of Beauty and Virtue*. London: J. Darby, 1725.
Hutcheson, Francis. *A System of Moral Philosophy*. London: A. Millar and T. Longman, 1755.
Israel, Jonathan. *A Revolution of the Mind: Radical Enlightenment and the Intellectual Origins of Modern Democracy*. Princeton: Princeton University Press, 2010.
Justinian. *The Institutes of Justinian*. Trans. Thomas C. Sandars. London: Longmans, Green & Co, 1948.
Laslett, Peter. 'Introduction with Notes'. In *John Locke: Two Treatises of Government*, ed. Peter Laslett, 15–161. New York: New American Library, 1960.

Lincoln, Anthony. *Some Political & Social Ideas of English Dissent 1763–1800*. New York: Octagon Books, 1971.
Locke, John. *Two Treatises of Government*. New York: New American Library, 1960 [1690].
Luther, Martin. 'Concerning Secular Authority'. In *Readings in Political Philosophy*, ed. Francis W. Coker, 306–29. New York: Macmillan, 1942 (orig. 1523).
Lynd, Staughton. *Intellectual Origins of American Radicalism*. New York: Vintage Books, 1969.
McKitrick, Eric, ed. *Slavery Defended: the views of the Old South*. Englewood Cliffs, NJ: Prentice-Hall, 1963.
Mill, James. *Elements of Political Economy*. London: Baldwin, Cradock, and Joy, 1826.
Montesquieu. *The Spirit of the Laws*. Trans. Thomas Nugent. New York: Appleton, 1912 [1748].
Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books; 1974.
Palmer, Tom G. *Realizing Freedom: Libertarian Theory, History, and Practice*. Washington, DC: Cato Institute, 2009.
Pateman, Carole. *The Sexual Contract*. Stanford: Stanford University Press; 1988.
Percy, Eustace. *The Unknown State: 16th Riddell Memorial Lectures*. London: OUP; 1944.
Philmore, J. 'The Libertarian Case for Slavery: A Note on Nozick'. *Philosophical Forum* XIV (Fall 1982): 43–58.
Pufendorf, Samuel. *The Whole Duty of Man, According to the Law of Nature*. Indianapolis, IN: Liberty Fund, 2003 [1673].
Rawls, John. *Political Liberalism*. New York: Columbia University Press; 1996.
Sabine, George H. *A History of Political Theory*. New York: Henry Holt, 1958.
Samuelson, Paul A. *Economics*. 10th ed. New York: McGraw-Hill, 1976.
Seabury, Samuel. *American Slavery Justified by the Law of Nature*. Miami: Mnemosyne Publishing Company, 1969 [1861].
Skinner, Quentin. *The Foundations of Modern Political Thought*. Vols. I and II. Cambridge: Cambridge University Press, 1978.
Smith, George H. *The System of Liberty: Themes in the History of Classical Liberalism*. New York: Cato Institute, Cambridge University Press, 2013.
Spinoza, Benedict de. *Theologico-Political Treatise*. Trans. Robert H. M. Elwes. New York: Dover Publications, 1951 (Orig. 1670).
Sterkx, Henry E. *The Free Negro in Ante-Bellum Louisiana*. Cranbury, NJ: Associated University Presses, 1972.
Tobin, James. 'On Limiting the Domain of Inequality'. *Journal of Law and Economics* 13 (October 1970): 263–77.
Tomasi, John. *Free Market Fairness*. Princeton: Princeton University Press, 2012.
Williams, Elisha. 'The Essential Rights and Liberties of Protestants'. In *Political Sermons of the American Founding Era, 1730–1805, Vol. I*, ed. Ellis Sandoz, 55–118. Indianapolis, IN: Liberty Fund, 1998 [1744].
Wills, Garry. *Inventing America*. New York: Vintage Books; 1979.
Wish, Harvey, ed. *Ante-Bellum*. New York: Capricorn Books, 1960.