

Ottobah Cugoano on natural rights and penal slavery

Born in present-day Ghana, Quobna Ottobah Cugoano (c.1757-c.1791) was enslaved at the age of 13 and shipped to Grenada, before being taken onwards to England, where the 1772 *Somerset* court ruling in effect freed him. His *Thoughts and Sentiments on the Evil of Slavery* [1787/1791] has been called “radical even by abolitionist standards” (Gunn 2010: 630; also Shanafelt 2021: 25-26). Amidst the growing literature exploring Cugoano’s abolitionism (Ward 1998; Peters 2017; Dahl 2020), his stunning justification of penal slavery has been all but ignored (but see Bogues 2003: 41). Cugoano claims that “every free community might keep slaves, or criminal prisoners in bondage”, provided such “criminal slavery and bondage [is] according to the nature of their crimes” (1999: 58-59). Those held in penal bondage may under some conditions even be bought and sold (*ibid.*).

This paper reconstructs the nature and grounds of Cugoano’s justification of penal enslavement – advanced, paradoxically, in a work dedicated to the “total abolition of slavery” (1999: 98). His account, I argue, is philosophically innovative. Breaking with the standard line of justification in the period, Cugoano does *not* advance a rights-forfeiture theory of punishment. That rupture, I show, allowed him to portray penal enslavement as essentially corrective in orientation and time-bound in character. Redemption is built into it.

Punishment for crime was the most widely accepted apologetic ground for enslavement among early modern philosophers. Even supposedly ‘liberal’ thinkers endorsed it: witness Locke (1988: 283-285), Beccaria (1995: 68-69), Kant (1996: 471-472), and Olaudah Equiano (2018: 22). Penal slavery signified not so much a different kind of slavery as a distinct apologetic ground. Indeed, according to Francis Hutcheson (2007: 3.3.2), people publicly enslaved for crime can be bought and sold. Early modern philosophers generally reconciled universal natural rights with penal enslavement by conceptualizing the former as fully forfeitable through grave wrongdoing. Locke (1988: 382-383) notoriously permitted enslaving those who have forfeited their lives through unjust aggression. Lockean slavery is the rightful condition of those who, having lost all rights, are liable to be killed at will (1988: 323). For Kant, dignity (*Würde*) is that exalted status humans have in virtue of their capacity to abide by the moral law (Sensen 2011). Proclaiming dignity forfeitable, Kant condoned reducing criminals “to the state of a slave [*Sklavenstand*] for a certain time, or permanently” (1996: 474). In that condition wrongdoers are rightfully “the *property* of another, who is accordingly not merely his *master* but also his *owner* and can therefore alienate him as a thing [and] use him as he pleases” (1996: 471).

Unlike those better-known philosophers, Cugoano develops no forfeiture theory of just punishment (of either natural rights or human dignity). His theory of punishment is retaliatory, based on an eye-for-an-eye, tooth-for-tooth rationale: “*He who leadeth into captivity, shall be carried captive*” (1999: 82, citing Rev. 13:10). Enslavement robs the innocent of their “natural and common rights” (1999: 21). Those guilty of such heinous theft deserve to be enslaved, as required per “the laws of God and man” (1999: 51). Notwithstanding national complicity for structural injustice (1999: 76-84), slaveholders and slave-traders “are the only species of men that others have a right to enslave” (1999: 58).

Mercy, however, must temper justice. “The just law of God requires an equal retaliation and restoration for every injury.... But the law of forgiveness, forbids the retaliation to be sought after, when it would be... without any reparation or benefit to ourselves” (1999: 52). Penal enslavement is justified only if it serves deterrence of crime, moral correction of the offender, or compensation to victims (1999: 52-56). Once the ‘debts’ incurred through wrongdoing are paid off, those enslaved in punishment should be freed (1999: 156). Structurally similar normative conditions apply to the debt slavery of bond-servants (1999: 36). Justified penal slavery, Cugoano concludes, therefore will be qualitatively different from modern racialized colonial slavery (1999: 57).

Ideas of slavery remain understudied in early modern philosophy (cf. Franke 2009; Nyquist 2013). Through a pioneering philosophical analysis of Cugoano’s abolitionist theories of slavery, natural rights, and punishment, this paper enriches our understanding of Enlightenment moral theories of human bondage: complicating simple abolitionist narratives, while denouncing the rights-forfeiture theories of canonical thinkers.

Word count: 700 (incl. works cited: 1000)

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