Stoicism, slavery, and law

GROTIAN JURISPRUDENCE AND ITS RECEIPTION

Introduction: the problem of slavery

The late Sir Moses Finley, in his well-known work, *Ancient Slavery and Modern Ideology*, asserted that:

The one sphere in which the ancients could, and did, provide assistance [i.e. to early modern defenders of slavery] was the practical one of law. Roman law offered unbroken continuity, first through the Germanic codes, then through the revival of Roman law in the later Middle Ages. The basic texts survived in more than sufficient quantity and there were learned commentaries. Hence the Europeans who peopled the New World with imported African slaves had a ready-made legal system at their disposal, which they adopted almost in toto, modifying it slowly to meet certain conditions, for example, in the eventual restriction of manumission to a minimum.¹

The extent to which the colonisers of the New World did in fact import Roman rules on slavery is an interesting one that will not be dealt with here, other than to remark that it was not really the straightforward adoption Finley implies.² Finley in fact comments that ‘the defenders of slavery’ had difficulty in finding acceptable evidence or argument from the ancient world with which to support the institution:

Aristotle offered no more than learned embroidery to the main argument, which rested on Scripture. To justify the enslavement of God’s creatures, the support of God was needed, not of history or of pagan philosophy, which knew neither sin nor baptism.³

¹ The author gratefully acknowledges the permission of Mr Angus Stewart, Q.C., Keeper of the Advocates’ Library, of the Librarians of the Signet Library and Edinburgh University Library and of the Keeper of the Records of Scotland to use and cite manuscript and other material under their care.
⁴ Finley, *Ancient Slavery and Modern Ideology*, p. 18.


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Finley is much concerned to explore the attitude of thinkers of the Enlightenment (whom he sees as varied and somewhat ambiguous) and nineteenth-century and more modern historians to the phenomenon of ancient slavery. The one important group of writers whom he ignores are the secular natural lawyers of the seventeenth century, whose works strongly influenced the *philosophes* whose attitudes he finds so intriguing. In this paper, I shall argue that the advocates of slavery in the eighteenth and nineteenth centuries could find in their works an apology for slavery and arguments in its favour that legitimated it in the New World and elsewhere.

Here the work of Hugo Grotius (1583–1645), specifically his *De iure belli ac pacis libri tres* of 1625, is of particular importance. Since his own era, Grotius has been seen as the founder of the new school of modern secular natural law. While both the originality of his doctrines and the reality of this history of the school of natural law can be and have been extensively and rightly questioned, that does not matter here. What is important is the resounding power of Grotius’ thought through the seventeenth and eighteenth centuries. Grotius is now considered of great importance in the history of a development of a theory of subjective rights. Here he is seen as having drawn much from the Spanish scholastics and their revival of a Thomist natural law ultimately derived from Aristotle. So much is uncontroversial. This is indeed the general understanding of the background to Grotius’ thinking. On the other hand, Gerhard Oestreich has challenged this traditional view by tantalisingly asserting that ‘[t]he ideological founda-

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1 It is worth noting that these arguments were not explicitly racist, unlike the racist version of natural law deployed, for example, in T. R. R. Cobb, *An Inquiry into the Law of Negro Slavery in the United States of America*. Philadelphia and Savannah: 1858; repr. Athens: University of Georgia Press 1999.


7 See the remarks in Knud Haakonssen, ‘Hugo Grotius and the history of political thought’, *Political Theory* 13 (1985) p. 239–265 at p. 239.