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Selling Slave Families Down the River

Property Rights and the Public Auction

— ◆ —

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Historians, sociologists, and economists have long emphasized the detrimental effects of slave owners' power to sell their slaves and in the process separate husband from wife, parent from child, and relatives and friends from one another. This power to break up slave families was certainly a destructive and disruptive force in the antebellum slave society. In the interregional slave trade, hundreds of thousands of slaves were moved long distances from their original home and birthplace as the slave economy migrated from the eastern seaboard to Louisiana, Texas, and Arkansas.¹

Researchers have long been concerned with the extent and effects of the interregional slave trade. In the late 1980s, Robert Fogel reviewed this debate and used it to support his claim that quantitative measurement would resolve this issue and many more puzzles regarding antebellum slavery (1989, 167). These issues remain matters

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1. See Ewing et al. 2002, which shows that the interregional movement of slaves responded efficiently to interregional price signals.

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of quantitative dispute, but the general consensus is that the slave trade was extensive and had significant negative cultural effects on the black family.

Researchers have been less concerned, however, with the rationale behind the destruction of families in the slave trade. Slave owners might have sold their slaves simply because other people valued those slaves more highly than they did, and profitable sales were therefore possible. However, this motivation is far from a clear-cut explanation for the extent of family breakup in the slave trade, especially considering that some historians have argued that slave owners generally acted paternalistically to preserve family units and expended great effort and resources to protect the slaves they owned.

We argue that neither the profitability of slave breeding nor paternalism is the most important determinant of the breakup of slave families. Slave owners had an economic interest in maintaining stability in slave families and plantation societies in order to minimize the number of runaways. Security was the most important consideration of slave ownership because slaves represented a highly valuable but risky asset. Maintaining extended families with young children and elders suppressed the likelihood of runaways. Breaking up families, in contrast, encouraged runaways.

If owners had a powerful incentive to maintain slave families intact, what caused the slave family breakups? Specifically, why were slave owners willing to break up slave families in certain circumstances, but unwilling in other circumstances? Researchers have until recently generally ignored this aspect of the problem, but we think it is the major consideration for understanding the breakup of slave families. The answer lies in the different legal and property-rights environments at public and commercial auctions. Our research leads us to conclude that government-generated slave sales—for example, probate and bankruptcy-related sales at public auctions—led to the breakup of the bulk of family units, whereas purely private exchanges, including commercial auctions, tended to maintain family units.

Selling Slave Families “down the River”

The simple economic logic of selling slaves may be usefully examined in relation to free labor-market practices.² If a firm finds itself with a relative abundance of a specific type of labor, it may be able to profit by returning that labor to the market. In the case of free labor, the worker is fired, but in the case of slave labor, the worker is sold to a new owner, who places greater market value on the slave than did the original owner. Likewise, a firm experiencing a relative shortage of a specific type of labor will turn to the market to alleviate that shortage. In the case of free labor, the firm hires an additional worker of that occupation, whereas in the case of slave labor

2. Gregory Titelman's *Random House Dictionary of Popular Proverbs and Sayings* (1996) indicates that this phrase originated after the closing of the international slave trade in 1808 and referred to the selling of slaves for shipment to Mississippi and Louisiana.

the firm buys a specific type of labor, such as a field hand or a cook. The simple logic of labor economics and firm management therefore can explain the necessity of viewing labor in individual units, each with its own productive characteristics, and the resulting need to trade these units in pursuit of maximum profit. The plantation owners' specific labor needs would seem to require that specific units of labor, not families, be bought and sold.

However, the economic logic of free labor-market practices does not necessarily or completely apply to the organization of slave labor because of fundamental differences between the free and slave labor systems. For the slave owner, slaves represent not only labor, but also a type of capital asset. Slave owners have to consider such issues as slave maintenance and the valuation of the slave's output throughout the slave's entire life. In contrast, the buyer of free labor need be concerned only with the laborer's productivity during a specific labor contract. But the most important difference between free labor and slave labor is that managers of slave labor must prevent slaves from running away. Managers of both slave and free labor must monitor their workers' "on the job" productivity, but slave labor managers must also provide for security because slave labor represents a capital investment that may decide to flee from the firm at any time. The plantation had characteristics of a socialist firm because managerial decisions had to be enforced, and therefore security costs associated with runaways and their recapture were a critical consideration in slave-plantation agriculture.³

The desire to minimize security costs and the losses resulting from runaways gave owners an incentive to encourage strong family ties and to avoid breaking up the family units under their ownership and control. A strong family unit not facing the threat of family members' being sold would be more content and less likely to run away. Indeed, compared to an individual slave, a large family with young children and elders would have much greater difficulty in successfully escaping and avoiding recapture, a notion that is supported by the composition of those who escaped on the Underground Railroad. E. Franklin Frazier found evidence that slave owners not only permitted ceremonial marriage, but encouraged it and in some instances insisted on it in an attempt to deter runaways (1930, 218–20).

Slaves who were sold away from their families exhibited a pronounced propensity to run away from their new owners. Finding themselves on a new plantation with no friends and relatives, they naturally thought about running away to reunite themselves with their friends and family. According to Steven Doyle, "All across the South, thousands of men and women fled their owners due to sale, the threat of sale, or the sale of a loved one. In fact, it was one of the most prevalent reasons for running away. Slaves frequently escaped after being told that they were going to be sold, and some left at just the possibility of such an event" (1995, 218). Judith Schafer (1981) shows

3. See Yanochik, Ewing, and Thornton 2001, which demonstrates that legislation mandating police patrols reduced the cost of slave ownership and increased the price of slaves.

that advertisements placed in newspapers seeking the return of runaway slaves sometimes contained notices of the location of the runaway's former residence because of the likelihood that the slave sought to be reunited with family members. Escape attempts were more frequent when plantations routinely broke up families and less frequent when they kept families together as a unit. Therefore, slave owners had a powerful incentive to keep families together.

One feature of the antebellum slave market that would further minimize the breakup of the slave family was the process of hiring out. Slaves were hired out or leased on a temporary basis to other plantations, industries, railroads, and governments to do work on a specified time basis, such as public-works projects during winter. Depending on the nature of the assignment, hired slaves might move off the plantation, but would return to their families later. So when a need arose to micromanage the mix of slave labor, it could be accomplished easily through the process of hiring out. As many observers have noted (see, e.g., Evans 1959), a well-developed market for hiring out slave labor existed in the antebellum South, complete with insurance against the loss or injury of slaves and manuals on how hired slave labor should be managed. Hiring out did not significantly increase the likelihood of running away because slaves knew that their owner retained ownership rights and that they would return home after their assignment was completed.

If slave owners had an incentive to foster family ties and develop loyalties within the slave family and between those families and themselves, as well as a mechanism to micromanage their supply of and demand for labor, how and why did the breakup of slave families occur on such a large scale? Our answer is that it was *not* caused in the main by plantation owners' decisions or their management of everyday affairs. When a slave owner sold, traded, or bartered a slave in the local market, the transaction did not necessarily increase the likelihood that slaves would run away because he could sell them as a family unit; even if an individual, such as a father, were sold away to a local planter, he might be permitted to return to his original plantation to visit his family on Sundays, holidays, and the off season if the plantation owner provided him with a written pass that explained his presence on public roads. Such transfers were often made on the condition that the individual slave not be moved out of the county or state. Plantation migration would also not increase the likelihood of runaways because the entire plantation population would move en masse, thus leaving family, society, and culture intact.

In contrast to these forms of slave transfer, transactions that resulted from government actions—including slave sales related to estate sales, tax delinquencies, bad debts, and bankruptcies—did increase the likelihood of family breakup. In tax delinquency sales, the government would call for the forced sale of slaves at public auction because slaves were one of the most liquid forms of capital.⁴ Likewise, the

4. In tax delinquency cases involving small amounts of money, the slave might be leased for the time necessary to pay the taxes.

estates of slave owners who died intestate would often be partially or fully liquidated in court, with the estate's slaves sent to the public auction block. Bankruptcy and bad debts would also necessitate a liquidation of assets, with slaves often the first assets to be utilized in the court's attempts to satisfy creditors.

Many economists, if not the majority, believe that government actions and policies significantly influence the business cycle through various channels. Such a relationship can be seen in the panics of 1819, 1837, and 1857.⁵ Slave transactions increased during both boom and bust phases of the business cycle brought about by government intervention. Slave traders and breeders were especially active during the boom phase, when slave prices were high. Outlandishly high prices would have been very tempting for some slave owners, given that a young unmarried man might be worth more than an entire year's income for some farmers. Single slave men, for example, were in high demand during the 1850s by railroad companies and in the New Orleans market for work on sugar plantations—a demand caused directly by government action: the railroad boom was fostered by the state backing of railroad bonds, and the sugar industry enjoyed tariff protection.⁶

Because slave transactions during the boom phase of the economy increased, the breakup of families increased as slaves were sold and literally shipped down the river to the New Orleans slave market. Even during the bust phase of the business cycle, the number of slave transactions at public auctions also increased significantly, as bad debts and bankruptcies soared. One need not believe that government causes all variations in the business cycle to see that governmental influence on cyclical activity would have greatly increased the number of slave transactions and thus the number of broken families.

Table 1 lists some of the major ways in which slaves changed hands and the estimated likelihood that slave families would be broken up as a result. The estimated likelihood is based on deductive reasoning and anecdotal evidence from the literature on slavery.⁷ The first five forms of slave transfer (local sale, trade, barter, hiring out, and plantation migration) probably represented the bulk of the transfers, and each represents a relatively low or nonexistent probability of a permanent breakup of slave families. The next four forms of slave transfer, via public auction and slave traders, probably represented a significant minority of slave transfers. State laws often required that public auctions obtain the best available price, which meant that slaves

5. See Rothbard [1962] 2007 on the Panic of 1819 and North 1961 on the Panics of 1837 and 1857. In all three cases, the preceding boom was caused by government's expansion of credit, encouragement of land speculation, and massive increases in public works, such as canals and railroads. See also Balleisen 2001 on bankruptcies during the business busts.

6. See Yanochik, Thornton, and Ewing 2003a and 2003b on the railroad boom; see Taussig 1931 on the effect of the sugar tariff.

7. For example, see Collins 1904, Bancroft 1931, Franklin 1967, Tushnet 1981, Phillips [1918] 1990, Franklin and Schwening 1999, and Johnson 1999.

Table 1
Types of Slave Transfers and Likelihood of Family Breakup

Type of Transfer	Likelihood of Slave Family Breakup
Local sale	Low
Trade	Low
Barter	Low
Hire out	None
Plantation migration	Low
Estate sale (public auction)	High
Bankruptcy sale (public auction)	High
Tax delinquency (public auction)	High
Slave trader	High
Commercial auction (with warranty)	Low
Commercial auction (caveat emptor)	High*

*Slaves sold caveat emptor had a high probability of having already come from a broken family.

would be sold individually whenever possible. Husbands were separated from wives, and younger children and mothers were separated from older children as a result of public-auction sales. Public auctions represented the greatest likelihood that transactions would result in the breakup of slave families and probably caused the bulk of broken families.

The final two means of slave transfer listed in table 1 are commercial auctions involving sales with warranty and those involving caveat emptor. Though similar to the public auctions, commercial auctions operated in a different environment with regard to incentives, property rights, and legal constraints. These differences had the surprising result that commercial auctions were more likely to keep slave families together than public auctions and hence resulted in few broken families.

Commercial auctions of slaves raised a problem that did not exist in the auction or sale of products such as cotton, tobacco, rice, and sugar, which are simple commodities that are either homogeneous or readily gradable. The attributes of slaves varied a great deal more. The slave's sex, size, and approximate age could be determined by visual inspection, but other important attributes were difficult or impossible to ascertain. What was the slave's health and health history? Was the slave a good worker or lazy? Would the slave undermine or enhance the cohesiveness of the slave labor force on the plantation? Most important, was the slave likely to run away? The potential buyer even had to consider whether the slave being auctioned might be in fact a free person or the collateral for a mortgage in another state.

As a consequence of all this uncertainty, commercial dealers could auction slaves either with implied warranties that allowed buyers to recoup their losses or under caveat emptor wherein the buyer was liable for all losses. Southern business law

imposed an implied warranty for slaves sold at commercial auctions. Of course, the offering of a warranty would also bring higher prices, as it does with other goods on the free market. Andrew Fede (1987) demonstrates that slave buyers in slave states were well protected by the legal system even in some cases of *caveat emptor*. Schafer (1987) shows that this protection applied explicitly in Louisiana's Napoleonic Code, and Jenny Wahl (1996) demonstrates how slave buyers were especially well protected by antebellum law.

By selling slaves in large groups consisting of extended families, the commercial auction reduced the risk of the implied warranty being exercised because such extended kin groups would be more content and less likely to run away than individual slaves from broken families. Moreover, small defects in individual slaves would be less likely to generate a claim on the warranty if the slaves were sold in a large group rather than as individuals. Although commercial dealers did everything economical to get the best price for slaves in order to improve their margins or commissions, the implied warranty provided an incentive to keep families and kin groups together for purposes of auction sale. The value of the implied warranty on individual slaves would have been greater than that for similar family groups.

In contrast, court-ordered public sales were all under true *caveat emptor*, which meant that buyers had no warranty for their purchases. Court-ordered sales made up about half of all slave auction sales in antebellum South Carolina, where various county-level officers ordered sales for the settlement of estates, tax delinquency, and failure to pay debts. The sales would take place on "sale day," or the first Monday of every month, when the community gathered at the county courthouse for the public auction of slaves, property, capital goods, and commodities. Except for mothers with young children, slaves were auctioned off individually at public auctions because the law required public servants to obtain the best possible price at auction. It is generally acknowledged that individual sales generated higher prices than group sales. In addition, public officials and auctioneers derived income from commissions on sales, so the greater the price, the greater their own returns.

A sample of slave transactions in antebellum South Carolina supports the claim that the legal structure of slave transactions—requiring individual sales, but imposing no warranty—was an important determinant of the breakup of slave families at public auctions. Thomas Russell (1993) reports that slaves were four times more likely to be sold individually at court-ordered public auctions than at commercial auctions. Only 13 percent of commercially sold slaves were sold individually, and this number might easily be accounted for by derelicts, highly specialized slaves, and young male and female unmarried adults sold for special positions such as butler, valet, or nursemaid in urban areas. In contrast, public auctions sold more than 50 percent of slaves individually, and their group sales contained on average less than half the number of slaves sold in commercial group sales. Prices of similar slaves were noticeably lower at public auction than at commercial auction, and this difference is consistent with the idea that warranties provided tangible value to buyers at commercial auctions. In summary, commercial

auctions entailed a powerful incentive to sell slave families and gangs as a group, whereas public auctions entailed a powerful incentive to sell slave family members individually.

Conclusions

Social scientists have expended much effort in trying to determine the extent and effects of the slave trade, especially in breaking up the black family. We focus attention on the question of *why* slave families were broken up. Going beyond the naive market approach and considerations of paternalism, we recognize that slave owners had a powerful economic interest in keeping families together because they were concerned about runaway slaves. Thus, slave owners generally did not want to sell their slaves in a manner that would encourage runaways. They preferred to trade slaves locally, to sell or move entire families, and to resort to hiring out and other methods that did not break up families and encourage runaways.

At commercial slave auctions, business law required sellers to provide buyers with an implied warranty, and this requirement led auction houses to keep families and gangs together. In contrast, public auctions did not provide such warranties and were required to obtain the best possible prices for slaves. These conditions caused the public auctioneers to sell slaves individually. This situation implies that a disproportionate number of slave families were most likely broken up at public auctions necessitated by government actions such as bankruptcy and tax delinquency. The same type of “public-private partnership” that brought the Africans to the Americas (that is, the Royal Africa Company) was also at work in the county courthouses, combining the power of government with the profit motive for public officials. The former type of partnership took their liberty, the latter destroyed their families.

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