

# Michigan Law Review

---

Volume 41 | Issue 1

---

1942

## CONSTITUTIONAL LAW - INVOLUNTARY SERVITUDE

John W. Potter

*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Constitutional Law Commons](#), [Contracts Commons](#), and the [Fourteenth Amendment Commons](#)

---

### Recommended Citation

John W. Potter, *CONSTITUTIONAL LAW - INVOLUNTARY SERVITUDE*, 41 MICH. L. REV. 164 (1942).

Available at: <https://repository.law.umich.edu/mlr/vol41/iss1/13>

This Note is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

CONSTITUTIONAL LAW — INVOLUNTARY SERVITUDE — Appellant was indicted under a Georgia statute<sup>1</sup> which provided that anyone who contracted to perform services of any kind with the intent not to perform such services

<sup>1</sup> Ga. Code (1936), tit. 26, § 7408.

was subject, upon conviction, to fine and /or imprisonment.<sup>2</sup> Proof of the contract, procurement of money or any other thing of value, and the failure to perform the service or to return the money advanced without good and sufficient cause were stated to be presumptive evidence of the requisite intent.<sup>3</sup> Appellant claimed that the statute violated the Thirteenth Amendment and the due process clause of the Fourteenth Amendment. The state court held the act was not illegal since it provided punishment only for fraud.<sup>4</sup> On appeal, the United States Supreme Court *held* that, since the presumptive evidence clause permitted the jury to convict on proof of the contract, breach, and failure to return the advancement, or to perform, without a good and sufficient cause, the threat of punishment resulted in involuntary servitude repugnant to the Thirteenth Amendment.<sup>5</sup> *Taylor v. Georgia*, 315 U. S. 25, 62 S. Ct. 415 (1942).

It was early decided that the term "involuntary servitude" as used in the Thirteenth Amendment applies not alone to slavery, but to any form of compulsory personal servitude,<sup>6</sup> and that Congress has the right to enforce the amendment by direct legislation prohibiting peonage.<sup>7</sup> The amendment does not prohibit those services which prior to its passage had always been treated as exceptional,<sup>8</sup> but it does prohibit involuntary servitude even though such may have originated pursuant to a voluntary contract.<sup>9</sup> In the principal case it was

<sup>2</sup> Ga. Code (1936), tit. 27, § 2506.

<sup>3</sup> Ga. Code (1936), tit. 26, § 7409.

<sup>4</sup> *Taylor v. State*, 191 Ga. 682, 13 S. E. (2d) 647 (1941).

<sup>5</sup> It was also held that the statutes violated the Act of 1867 prohibiting peonage, 8 U. S. C. (1940), § 56 and 18 U. S. C. (1940), § 444. The Fourteenth Amendment was not considered.

<sup>6</sup> *Slaughter-House Cases*, 16 Wall. (83 U. S.) 36 at 69 (1872); *Civil Rights Cases*, 109 U. S. 3, 3 S. Ct. 18 (1883). That "personal" service is necessary for involuntary servitude, see *Marcus Brown Holding Co. v. Feldman*, 256 U. S. 170, 41 S. Ct. 465 (1920).

<sup>7</sup> *Clyatt v. United States*, 197 U. S. 207, 25 S. Ct. 429 (1904). For background material on peonage, see *Peonage Cases*, (D. C. Ala. 1903) 123 F. 671; *Peonage Cases*, (D. C. Ark. 1905) 136 F. 707.

<sup>8</sup> Examples of exceptions include the following. *Service of sailors*: *Robertson v. Baldwin*, 165 U. S. 275, 17 S. Ct. 326 (1896); but see *Elman v. Moller*, (C. C. A. 4th, 1926) 11 F. (2d) 55, where it was held there is no exception when the ship is in port. *Work on public roads*: *Butler v. Perry*, 240 U. S. 328, 36 S. Ct. 258 (1915); *In re Dassler*, 35 Kan. 678, 12 P. 130 (1886); *Dennis v. Simon*, 51 Ohio St. 223, 36 N. E. 832 (1894). *Compulsory military service*: *Selective Draft Law Cases*, 245 U. S. 366, 38 S. Ct. 159 (1918); *United States v. Lambert*, (C. C. A. 3d, 1941) 123 F. (2d) 395. *Enforcement of labor for reasons of national defense*: *State v. McClure*, 7 Boyce (30 Del.) 265, 105 A. 712 (1919); *contra*, *Ex parte Hudgins*, 86 W. Va. 526, 103 S. E. 327 (1920); see *Keefer*, "Has a Person The Constitutional Right to Abstain From Work," 29 W. VA. L. Q. 20 (1922). *Training schools for minors*: *Bryant v. Brown*, 151 Miss. 398, 118 So. 184 (1928); *Garner v. Wood*, 188 Ga. 463, 4 S. E. (2d) 137 (1939). *Payment of alimony*: *Clark v. Clark*, 152 Tenn. 431, 278 S. W. 65 (1925).

<sup>9</sup> *Ex parte Lloyd*, (D. C. Ky. 1936) 13 F. Supp. 1005 (agreement to take a narcotic cure); *State ex rel. Hobbs v. Murrell*, 170 Tenn. 152, 93 S. W. (2d) 628 (1936) (agreement to work out costs if nolle prosequere entered).

argued that the Georgia statute merely provided punishment for the act of defrauding the employer and therefore it came within the constitutional exception allowing "punishment for crime whereof the party shall have been duly convicted."<sup>10</sup> The court, in reaching a contrary conclusion, relied on the reasoning of *Bailey v. Alabama*<sup>11</sup> in which a similar statute was invalidated.<sup>12</sup> In both cases the fundamental purpose was held to be an attempt to achieve by indirection through the use of the prima facie clause, permitting criminal conviction after proof of breach of the contract without cause and a refusal to return the advancements, what could not be achieved by direct means. The Court in each case was of the opinion that the laborers' fear of criminal conviction would result in coerced compliance with the terms of the contract, which in effect would be involuntary servitude. The state could not under the guise of the police power limit constitutional guarantees.<sup>13</sup> Justice Holmes in the *Bailey* case dissented on the ground that the statute only punished fraud, but he stated that even if the provisions went further, the constitution did not restrict the power of the state to make the breach of a fair and proper contract a criminal act. According to Holmes the threat of punishment would only intensify the desire to perform a legal obligation, and imprisonment would not make the laborer a slave. Subsequent cases have not accepted this view,<sup>14</sup> and Justice Holmes partially modified it in a later concurring opinion.<sup>15</sup> The principal case is in accord with previous decisions of the present Court protecting civil liberties.

*John W. Potter*

<sup>10</sup> U. S. Const., 13th amend., § 1.

<sup>11</sup> 219 U. S. 219, 31 S. Ct. 145 (1910), noted 24 HARV. L. REV. 391 (1911); 11 COL. L. REV. 363 (1911).

<sup>12</sup> Under the Alabama law the accused was not permitted to testify as to his intention, while under the Georgia statutes he could make an unsworn statement. The court held the distinction was not significant.

<sup>13</sup> For other decisions on the same subject holding that the use of the police power to enforce compulsory service by threat of punishment is a violation of organic law, see *Ex parte Drayton*, (D. C. S. C. 1907) 153 F. 986; *Ex parte Hollman*, 79 S. C. 9, 60 S. E. 19 (1908); *Fenner v. Boykin*, (D. C. Ga. 1925) 3 F. (2d) 674. See also Stevens, "Involuntary Servitude by Injunction," 6 CORN. L. Q. 235 (1921).

<sup>14</sup> *State v. Armstead*, 103 Miss. 790, 60 So. 778 (1913); *Goode v. Nelson*, 73 Fla. 29, 74 So. 17 (1917); *State v. Oliva*, 144 La. 51, 80 So. 195 (1918).

<sup>15</sup> *United States v. Reynolds*, 235 U. S. 133, 35 S. Ct. 86 (1914). Justice Holmes reiterated his contention there there was nothing in the Thirteenth Amendment that prevented a state from making a breach of contract a crime, but said the statute involved was designed to enforce compulsory service.