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THE RIGHT TO-DAY NOT TO WORK

By ALBERT BUSHNELL HART.

EFFORTS are making nowadays to introduce, or rather to revive, a study of the text of the Constitution of the United States—an effort highly laudable in so far as it recognizes that much of the Federal Government is not described in that text, and also that much of the Government of the people of the United States is not Federal. Certainly it would have been to the advantage of the State and nation if Gov. Allen and the Kansas Legislature in 1920 had turned to the Thirteenth Amendment of the Constitution of the United States and read its clear statement that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

That has been the law of the land only since December, 1865, and both North and South paid a heavy penalty for a state of things in which about a seventh of our population was up to that time deprived of personal freedom. Even after this priceless principle was established and recorded in the Constitution it is painful to notice how often rights of personal liberty are ignored at the present day.

Principles of Personal Liberty.

"Involuntary servitude" is a hard thing to prevent because it is older than government, older than history, older than civilization, especially in the various forms of slavery. Captives in war, soldiers, stockmen, peasants, personal attendants have for ages been put under the control of a class of masters, often a small part of the community. Chattel slaves, men, women and children, have been a staple article of commerce on one part of the globe or another from the dawn of time until a few decades ago; and there are still some millions of chattel slaves in Turkey and China and Africa, to say nothing of the immense population of Russia, which seems at present to be in the position of bondmen.

The counter principle of freedom has striven hard against this debasing influence. One of the most extraordinary things in human experience is the way in which ancient and modern republics have insisted on freedom and equality and equal rights before the law—for the ruling classes—while savagely denying the rights of other human beings who happened to be slaves.

In this country the rights of personal freedom—particularly freedom from the personal control of other persons, from imprisonment or punishment without the forms of law, the right to move about freely and to engage in any calling for which one is fitted, to find and accept work anywhere and from anybody—are protected by ancient tradition, by principles of the common law, by bills of rights in the national and State constitutions and by specific statutes carrying out the Thirteenth Amendment. The United States is really the freest country in the world because its legal principles of freedom are backed up by the national belief in equality of political rights and of opportunity to make a living. This country has long since realized the truth of Emerson's famous saying:

"If you put a chain around a slave you put the other end around your own neck."

Perhaps the greatest triumph of American free government is the extent to which the individual makes his own decisions.

Necessary Restrictions on Liberty.

Nevertheless American law, custom and society all allow and enforce many restraints upon human freedom. Prisoners, of course, come within the exception stated in the amendment, but we do not always realize that prisoners are practically slaves of the State, for the term of their sentence or for life. In some of the State prisons convicts receive the treatment of slaves,

subject to the lash and other fierce and terrible punishments.

The insane are likewise deprived of their liberty on terms so easy that a Boston attorney recently carried a young lady to an insane asylum (though he later testified that he knew she was not insane) and there deposited her without any legal warrant whatever. Cases of illegal imprisonment occur all the time.

Imprisonment for debt is a regular legal system in various States, and particularly in New York, where at the present moment a considerable number of persons are in jail, not technically for debt, but for buying things and then not paying for them. Paupers are deprived of their freedom of movement and in many States of their votes. People afflicted with contagious diseases are not allowed to move about freely. By the immigration laws certain persons from abroad are not allowed to pass into the United States or may be arrested and deported after admission. White slaves are punished for travel under forbidden conditions.

In addition, large numbers of persons are every day deprived of their rights of freedom under laws of the State and nation by prosecuting and police authorities who have the assurance to confine people without a charge; they put them, absolutely contrary to law, through the third degree, which is a kind of mental torture, and very often through severe physical torture in order to compel them to testify. The writ of habeas corpus is the great remedy for illegal imprisonment of this and other kinds, and has the great merit of requiring the body of the person concerned to be produced in court.

Soldiers and Sailors.

The most important exception from the general law of freedom is that of soldiers and sailors. Under the Constitution and laws men who enlist for the military and naval service thereby place themselves for the term of their enlistment under the control of military superiors. They are subject to a special military punishment for military offenses; they go where they are sent; they obey orders or they suffer. They may be sentenced for considerable terms to a military penitentiary. Everybody recognizes the necessity for military discipline for keeping the army together and defending the country. The police force in most cities has a semi-military organization, and a strike of the police is looked upon as extra-legal if not illegal.

In time of war the restrictions on per-

sonal liberty have been extended to civilians, both near the scene of hostilities and thousands of miles away at their own homes. Special espionage and sedition acts during the world war were recognized as a disagreeable necessity.

The merchant sailor was also subject to severe discipline, without adequate protection against personal violence, until the Furuseth or La Follette act was passed in 1915. Here again there must be some power to enforce orders or else the ship will never arrive at port. The literature of the sea is full of instances of slave-driving mates and brutal captains; but since the use of the lash was abolished the legal punishment for a sailor who refuses duty is to put him in irons on bread and water till a port is reached where his case can be legally examined. Sea service, however, offers the most striking example of requiring specific performance of a labor contract, though even there, the coercion extends no further than to treat the man as a prisoner for the time being. Whipping or any other form of bodily torture is no longer legal upon sailors.

Restrictions on Laborers.

The work of the world still has to be done by human hands. Steam, electricity and motors may do the lifting and hauling, and wonderful automatic machines may perform a lot of processes that used to require the labor of many separate persons, but every machine has to be supervised by a human intellect. There is no reason to suppose that mankind will ever get rid of tasks which require the application of human muscles as well as of human brains.

Now it has been found convenient by many nations to make a part of the population muscle workers subject to the direction and decisions of brain workers. That is the origin of slavery; the master could lie under an awning on the boat and issue orders to slave labor to carry jars from the waters of the Nile to irrigate his garden. The moment you abolish slavery you substitute a principle of inherent right to choose one's tasks.

Still, for many millions of boys and girls who arrive at the labor age, that choice is really non-existent. The ordinary boy in a mining town goes into the mines, and the ordinary girl in a mill town goes into the mills because that is the easy and obvious thing to do.

Till the public vocational schools get rooted in the educational system of the country, the greater part of the American

young people will take the jobs nearest them and very likely never get out of that line.

That is where President Harry Garfield's bad break on the "living wage" comes in. He seems to suppose that any unskilled laborer, man or woman, who so desires, can educate himself for a skilled job. That is not the way of the labor world. The skilled laborers themselves are dead against allowing anybody to enter their trades by a side door.

One right is certainly retained by almost all the people who work in the United States: even the Kansas Industrial Court admits that the individual workman or workwoman may leave his job when he feels like it.

Specific Performance of Labor Contracts.

Right here comes in the doctrine of specific performance of labor contracts. As most mills and shops and households are run, labor is hired at a stated rate per hour, day, week, month or year, which the employer contracts to pay, while the employee contracts in return to render a specified service. Commonly there is no express statement as to the manner in which the employee may leave his service. Probably in most cases he makes himself liable to civil suit for damages if he fails to finish the contracted period of service, just as he has a cause of action against an employer who, having employed him for a week or month, discharges him without cause.

The cases are, however not equal. In general the employer has property which can be attached for a breach of contract, while it is next to impossible to get anything in the way of a money payment from an employee, once he has severed his connection.

One way to meet this difficulty has been carried out both against negroes and white workmen. It began in the conditions of the Southern cotton industry, which requires almost continuous labor from the putting in of the seed to the picking of the cotton—practically twelve months. Several Southern States passed laws to enforce the usual yearly contracts to work on a plantation, for it might be a great loss to the owner if he was short of help at picking time.

These laws made it an offense punishable by imprisonment to sign such a contract without the intention to fulfill it, and then made the later quitting of employment a legal proof that the hand intended from the first to quit in the midst of the year. He could then be tried for the criminal offense of fraud in making the contract, sentenced to a fine which could be worked off by so many months in jail, and then in some cases was reassigned to the original master under a State system for letting out prisoners.

The United States jumped on this illegal method and drove it out by relentless prosecutions. It is not very different from a scheme which has been practised in some of the Northwestern States for arresting hoboes, sentencing them to terms of imprisonment, and then suspending the sentences so long as they will work for a neighboring farmer.

Such methods were ruled out under an act of Congress of 1867 against "peonage"; but the same end has recently been reached by the State of Kansas in the act of March 5, 1920, establishing a so-called "Court of Industrial Relations." The result is reached by declaring any strike to be a conspiracy, so that a man employed in mines or mills or on railroads, while legally free to leave his job by himself, makes himself liable for the criminal offense of conspiracy if he fixes it up with another man that they shall both strike at the same time. Here, as in the peonage

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