

WHAT EXACTLY IS ETHICALLY WRONG WITH SELLING LIFE INSURANCE ON SLAVES?

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1. The Background

The stable strong government of the Roman Empire made it possible to tabulate mortality information, and this enabled the construction of an actuarial life table in about 200 A.D. The table appears in Dublin, Lotka, and Spiegelman (1949), and commentary about its use is in Trenerry (1926). The modern life table was derived by the astronomer Edmund Halley in 1693 by working with records in Silesia; see Clark (1999). The format of Halley's table is still in use.

Life insurance, by its very nature, creates ethical speculation, in that it commercializes an event that should be the domain of God. Zelizer (1979, p 33) notes European legal edicts from 1570 to 1681 banning life insurance, and Trenerry (1926, pp 154-156) provides other details. Life insurance was not widely used until about 1840 in the United States, and Zelizer (1979) has noted the expansion as a consequence of using sales agents.

The year 1840 is also the approximate start of the practice of insuring slaves in the United States.

Life insurance has a long and tortured ethical history, but this article will focus of the issues related to life insurance policies written on slaves in the United States.

The following account appears in Hooker (1956), pp 11-12.

The year 1853, in which the Aetna life Insurance Company was founded, was the year after "Uncle Tom's Cabin" was published. The shadow of the slavery issue already darkened the land with the threat of impending tragedy, as the illusion that the Compromise of 1850 had settled everything gradually faded. Slavery had an even more direct consequence in Hartford's world of insurance. In 1849, a year before the establishment of the Aetna Insurance Company's Annuity Fund, and four years before the founding of the Aetna Life insurance Company as a separate institution, there had been founded the Hartford Life and Health Insurance Company with a capital of \$100,000. Its specialty was to pay weekly indemnities for sickness. In the unperfected stage of the actuarial side of insurance as it then

was, such insurance had no adequate basis of calculated risk. Then that department of its business proved a thorough failure, the company dropped “Health” from its title and became the Hartford life Insurance Company. For a time it prospered notably. Then, in an unwise moment, it undertook to insure the lives of slaves.

It is not clear whether the “unwise moment” expresses financial regret or ethical regret.

2. Activist concern with the history of slave insurance

In 2000, activist groups raised the possibility of suing for reparations from firms that profited from the business of slavery. Details can be found the web site <http://www.usatoday.com/money/general/2002/02/21/slave-insurance-policies.htm>. The prime motivator appears to be Deadria Farmer-Paellmann. Related articles can be found in New York Times accounts (2000a, 2000b, 2000c, 2001).

Fragmentary evidence of slave life insurance policies written by Aetna of Hartford made Aetna one of the targets. In year 2000, the legislature of California required in bill SB 2199 that all firms selling life insurance in that state provide copies of all archived material related to slave insurance. Only three companies (Aetna, American International Group, and New York Life) were able to provide information. The facts have been made available to the public at several locations in California, and their dissemination has further heightened the concerns. The web site <http://www.insurance.ca.gov/SEIR/main.htm> contains an outline of the information available.

There maybe lawsuits related to reparations, and it is important for me to state two disclaimers. First, I am not involved in the legal actions, nor have I been consulted to date by any of the parties. Secondly, my mother was a refugee from Nazi Germany and received post-war reparations. It is impossible to determine now the amount of those reparations, but the figure is likely to be between \$2,000 and \$10,000.

3. Ethical arguments against the insurers.

Consider these negatives:

- (Anti-1) The insurance companies were complicit in the activity of slavery.
- (Anti-2) The insurance companies profited from their involvement with slavery.
- (Anti-3) The insurance companies enabled slaveowners to practice risk management.
- (Anti-4) The insurance companies facilitated the use of slaves at off-plantation professions, and some of these professions were dangerous.

We'll note each of these, and counter-arguments will be presented below.

(Anti-1) The principal ethical argument against the insurers is simple complicity in the activity of slavery. Some of the insurers were based in the South; Savitt (1978) provided many of the financial details of North Carolina Mutual Life. The 1849 North Carolina Mutual Life report has been posted by University of North Carolina Libraries on the web site <http://docsouth.unc.edu/nc/ncmutual>. This company expired after the Civil War. (The company currently operating as North Carolina Mutual Life dates its origin as 1898.) The California effort has however uncovered evidence that at least three companies based in the North also offered insurance on slaves.

(Anti-2) Not only were the insurers involved with slavery, but they also may have profited from their involvement.

(Anti-3) Life insurance on slaves is something of a misnomer. After all, the beneficiary was always the slaveowner and never the slave's relatives. The majority of policies of which we have evidence had one-year terms, and the transactions look like simple property insurance. Indeed, these instruments were brutal evidence of the property status of the slaves. If we regard these policies as property insurance, then clearly their role is risk management for the slaveowners.

(Anti-4) A great many of the policies in the California data base insured slaves for occupations in mines and on river boats. The slaveowners were thus able to extract more value from their slaves and put them in risky situations. Cahn (1970), p 70, noted this:

Usually planters only insured slaves who were engaged in very hazardous occupations such as loading cotton on steamers. Deaths from being knocked overboard and drowned, or crushed by falling bales were, tragically, all too common. Policies on slaves were usually not for life but were for short terms such as a year or so, where a special risk was involved.

These arguments invite counter-arguments. With regard to (Anti-1), it's far from clear whether one should regard mere complicity as evil. Slavery was legal in the antebellum South, and many people and many institutions interacted with it. Should also those interactions be deemed as evil? The physician who treated slaves was certainly complicit, and indeed medical attention facilitated better performance for the slavery system. Merchants who provided clothing, shoes, home utensils, and various amenities certainly contributed to the workings of the system. The system worked better because the slaves had access to clothing, shoes, and utensils.

We might want to distinguish the doctors and merchants of the South from the insurance companies of the North on these issues. The doctors and merchants of the South were surrounded with the trappings of the slavery system, while the insurers of the North went out of their way to sell their policies.

This line of inquiry would still leave open the level of blame that should be placed on the insurance companies of the South. This question might be ethically moot; the North Carolina Mutual studied by Savitt (1978) simply went out of business.

Point (Anti-2) takes a step beyond involvement to making a profit. Savitt (1978) found that North Carolina Mutual made a razor-thin profit on its slave insurance policies. Chen and Simon (2003) explored the California data base and noted that the three companies in that data base almost certainly *lost* money on slave insurance. An insurer that loses money on any particular type of policy would certainly be suspected of actuarial failure. If it is simply wrong to sell slave insurance, then the failure to make money should not mitigate the wrong. On the other hand, murder and attempted murder are different crimes and receive different punishments.

Point (Anti-3) suggests that the ability to practice risk management would work against the welfare of the slaves. Large plantation owners might reasonably self-insure, but one could argue that insurance would enable the small farmer or small factory owner to become a slave owner. The California data base examined by Chen and Simon (2003) provided information on three companies: Aetna, American International Group (AIG), and New York Life.

The Aetna data base was too small to permit serious analysis.

The AIG data base contained information on 173 slaves. Of these, 75 were insured by owners buying five or more policies. The remaining 98 were insured as small groups, mostly of size one. These are difficult classification decisions, as ownership of slaves was sometimes shared by relatives. (The joint ownership may have prompted the desire for insurance.) The value 75 may be an underestimate, as there may be ownership linkages that we cannot extract. It's possible too that slave owners purchased policies from multiple companies. The information suggests that (Anti-3) may have some merit, as it is certainly plausible that insurance facilitated slave ownership by small operators.

The New York Life records showed 610 policies on 480 different slaves. Among these 480, there were 153 insured by owners in groups of five or more. There were then $480 - 153 = 327$ insured as small groups.

On balance, it would seem that (Anti-3) is supported; these policies might have facilitated the entry of smaller players into slave-owning opportunities. One can however reject (Anti-3) on pure utilitarian logic. The life insurance policies did not come into existence until the transatlantic slave trade had been closed; thus, the desire of small operators for slaves would not have increased the supply of imported slaves but merely rearranged the list of slave owners. The existence of insurance might have caused an added emphasis on slave breeding; however the ethical entanglements might be too deep to sort out.

Argument (Anti-4) proposes that slaves were placed in risky occupations because they could be insured. Chen and Simon (2003) noted that for the 480 slaves detailed in the New York Life data set, there were 83 miners and 104 workers on boats. The proportion $\frac{83+104}{480} \approx 39\%$ is almost certainly larger than in the non-insured slave population. The Aetna data base was small, and the AIG data base did not list occupations. I would argue that the existence of insurance may indeed have placed slaves into riskier situations, although it is difficult to make quantitative assessments.

4. Ethical arguments favoring the insurers.

There are arguments that suggest that the existence of slave life insurance improved the lives of the slaves. Consider these:

- (Pro-1) Policies included non-payment clauses for cases in which the slave was mistreated or malnourished. The insured slaves were, by contractual necessity, more likely to be well fed and to receive proper medical care.
- (Pro-2) Slaves who were insured were elevated to a special valued status, reflected in added concern for their welfare.

Argument (Pro-1) is supported by the policies themselves. The Aetna policies contain this disclaimer (boldface and italics in original):

And it is hereby understood and expressly declared to be the true intent and meaning of this Policy, and the same is accepted by the Assured, that if the Application subscribed by the said [space for name of slaveowner] shall be in any respect untrue or incorrectly stated — or if the said Slave or Slaves, or any of them shall die by his, her or their own hands — or by the hands of a job — or by a foreign invasion — or by an insurrection — or by the neglect, abuse, or maltreatment of the owner, or any one to whom he, she or they shall be entrusted — or shall be laboring under any chronic disease at the time of issuing this Policy

— or shall be forced, permitted or entreated by his, her or their owner, or by the agent of the owner, to engage in any combat causing his, her or their death — or shall abscond or be kidnapped — or shall *without* the consent of this Company previously obtained and endorsed on or attached to the Policy, be taken or permitted to be taken to more Southern localities (if South of the 35th degree North latitude) than that in which insured, between the fifteenth day of July and the fifteenth day of November, or engage the said Slave or Slaves in any more hazardous occupations than those enumerated and set opposite his, her or their name or names — or in the event of any previous Insurance, (or subsequent, without the consent of this Company previously obtained and endorsed on or attached to this Policy,) on the life or lives of the within-named Slave or Slaves — than, and in all such cases, the said Company shall not be liable for the payment of the sum insured and set opposite the name or names of the said Slave or Slaves deceased, or any part thereof; and this Policy, so far as relates to said payment, shall be utterly void.

The neglect, abuse, and maltreatment provisions seem clearly to demand the insured slave be treated with some diligence.

The following is a policy rider, put on Aetna's Charles Meyer policy for slaves Henry, Martha, Ann, Amanda. This was handwritten, and there are problems in reading it.

St. Louis January 25, 1860

The assumed Charles Meyer and Co. (*and Co.* hard to decipher) have the privilege of removing the above mentioned Slaves, and or all of them to the South, say any of the Southern States, during the (*illegible*) of this policy, by the usual mode of traveling except on deck of Steam Boats and provided they are not subject to more exposed positions than first class Passengers on the same mode of conveyance. This company will not be liable for any consequences arising from Smallpox or exposure to the same, assuring (*illegible*) to any of the above mentioned slaves who have not been vaccinated.

David H. Bishop, agent

This asks that the slave transit be roughly equivalent to that of first class passengers, and it also causes the owner to avoid their exposure to smallpox.

Statement (Pro-2) is speculative, and its truth cannot be checked in any orderly way. We do however have this interesting example. This is detailed by Stone (1957), p 41, regarding slave Jacob, covered by policy 5,213. Jacob was the property of a South Carolina woman under the care of her brother, Mr. Brown.

Jacob complained to him on Friday afternoon the 10th of November 1848 of soreness and unpleasant feeling about the throat and neck and that more on account of the negro's being insured than of any apprehension of Jacob's being dangerously sick, sent Jacob immediately to Dr. Bellinger from whom Jacob

returned in less than thirty minutes with medicine and directions for nursing. That Dr. Bellinger on Saturday morning (at which time the doctor pronounced Jacob very ill) and also on the succeeding day, Sunday, visited the negro. That every exertion was made to preserve Jacob's life and that every possible attention was bestowed. That on Monday morning, the thirteenth of November at 7 o'clock Jacob died. That two or three hours after Jacob's death, Edward Candler, the agent of the Mutual Benefit Life Insurance Company in Charleston was informed of his death and was requested (after the circumstances were stated to him) to make any investigation which the Company might require. That he, C. P. Brown, was ignorant of Jacob's ever having met with a puncture of a nail's running into his foot until the manifestation of disease (spasm) induced Dr. Bellinger to put questions which recalled to the negro's mind the circumstances of his having met with such puncture some eight or ten days before. That Jacob stated to him, C. P. Brown, that in removing some boxes in the capacity of drayman from the store of Messrs. Carter and Allen, a nail ran through his shoe into his foot and that he took it out immediately and had some turpentine put on the wound and continued at his business without apprehension until Dr. Bellinger told him that the accident was the cause of his sickness. That the above named negro man, Jacob, is the same whom he (C. P. Brown) insured in M. B. L. I. Co. in February 1848.

Stone notes that the \$500 claim was paid in February 1849.

5. Complexities related to the profit claim.

The ethics of insuring slaves should be debated without reference to the insurer's profit and loss statement. Nonetheless, the position of the insurers would be more damnable if they made large profits. Savitt (1978) found that North Carolina Mutual made a very thin profit. Chen and Simon (2003) found, barring prejudicial data-censoring, that American International Group and New York Life both lost money on insuring slaves. (The information base on Aetna was insufficient to make a profit conjecture.) The companies may have sought great profits in underwriting slave insurance, but they failed to produce these profits.

The profit issue might also be intellectually irrelevant. If the companies had made large profits, would that have altered the lives of the slaves in any material way? Profits would have come directly from the pockets of the slave owners. Any deleterious consequences to the slaves would have to be debated as the result of the greater use of insurance because of its profitability.

6. Difficulties in making retrospective judgment.

The recurring argument in discussions about slavery is simply this: *It was legal at the time*. Ex-post decrees related to legal issues or to ethics make us uncomfortable.

Woozley (1968) proposed the question provocatively as “What is Wrong with Retrospective Law?” His simple answers, pp 42-43, are that (1) it is not fair and (2) it is inconsistent with one of the basic purposes of law. With regard to (2), we want society to be predictable, and retroactive law frustrates planning. We live with the belief that we will not be in trouble with the law as long as we do not break it.

Woozley, p 46, gives this insightful commentary on the relationship between law and planning:

First it should be acknowledged that most of us most of the time are not even halfway to being Kantians in our attitude towards the law. Not only do we not perform the actions or take the decisions which we do out of reverence for the law, we do not even ask ourselves whether they will be in accordance with the law. ... Most of the time we conduct our lives, not even on the positive assumption that what we are doing is legal, but rather without it ever occurring to us to wonder whether it is or not. The idea that we plan our lives and form our expectations on a positive assumption as to what the law says about this or that is simply false. The objection therefore to retroactive law as such that it frustrates actual expectations is liable to be weak ...

The creation of ex-post facto laws by legislatures is expressly forbidden in the United States Constitution, Article 1, Section 9. Although we have general antipathy toward retrospective laws, there are situations in which we allow it. A legal issue brought before a court can have retrospective consequences; this certainly happens when a court rules on a previously-unconsidered aspect of a law or even overrules a previous interpretation. The decision applies not only going forward, but also retrospectively to the case being litigated and possibly to other cases as well. Rulings on tax liabilities are clearly of this character. Woozley, p 41, notes the *James* case of 1961 in which the United States Supreme Court overruled the decision that one does not have to pay income taxes on embezzled funds; even though the tax documents of the time made no mention of taxation of embezzled money, the defendant was required to pay taxes on these gains.

Woozley, pp 44-46, enumerates situations in which we can violate a law because we have no knowledge of a law:

- (1) We are ignorant of the law because we are simply uninformed.
- (2) We are ignorant of the law because it is buried deep in remote legal documents.
- (3) We are ignorant of relevant facts.
- (4) We are insane.
- (5) We are ignorant of the law because the law does not exist (yet).

(The enumeration scheme is mine, not Wozzley's.) I would presume that most American adults know that "ignorance of the law is no excuse." Thus (1) is not permissible as a legal defense. The claim, as in point (2), that the law could not be obeyed because it was obscure is not likely to be legally successful; nonetheless one can imagine the pain of a defendant who attempted due diligence but just did not quite get it right. Arguments (3) and (4) can be used as a legal defense. Item (5) is the retrospective law issue, and it certainly begs for a comparison with the previous points. What indeed is the difference between a law buried in obscurity and a law that has not yet been enacted?

Though Wozzley is making a case for the permissibility of retroactive law, he's still quite aware (p 49) that frequent use of retroactive law-making will lower public confidence in the law.

With regard to the prosecution of Nazis, Wozzley (p 51) poses the question "Is the new regime justified in prosecuting and convicting wicked men for their conduct under the old regime which was not under that regime illegal?" He requires that the legislation must make the past behavior criminal and that there must be a justification for making it criminal. He reaches this point of view:

Unless the principle that retroactive law is not justified is placed above all other moral principles – and I can see no reason why it should be – then the principle that retroactive law is never justified need not be accepted; ...

We can agree that retroactive law is a bad idea, but it should certainly not be our highest moral principle. This is precisely the perspective from which I would like to view participation in the details of slavery.

The insertion at this spot will be a discussion as to whether businesses based in the North should have seen all this coming.

We can ask also whether the insurers operated in a sense in which we can attribute any responsibility to them. Wolf's essay (1987) set up the criterion that responsibility lies at the "deep-self" level, the emotional center which determines what it is that a person really wants to do. Moreover, she asks that the deep-self level be endowed with sufficient sanity to recognize the world as it really is. People without the sane deep-self view can, in some sense, be excused from responsibility. Wolf uses, as a very helpful example, the case of Jojo, the son of a small-country cruel dictator. This son learned the methods of his father and eventually replaced him as the next cruel dictator. In Wolf's parlance, Jojo does not have a sane deep-self view because the environment in which he was raised did not give him a correct view of the world. She then adds "It would unduly distort ordinary linguistic practice to call the slaveowner, the Nazi, or the male chauvinist even partially or locally insane. Nonetheless, the reason for withholding blame from them is at bottom the same as the reason for withholding from Jojo. Like Jojo, they are,

at the deepest level, unable cognitively and normatively to recognize and appreciate the world for what it is.” (p 57)

Would it be reasonable to extent Wolf’s blanket of non-responsibility to the insurers? Can it be argued that they lived in a world in which all formative influences suggested that slavery was a well-practiced part of human life? Can we say that they just didn’t know any better?

Can one forgive the opinions and actions of those who lived in a society with a bad morality? The question was posed by Vogel (1973) as a rejoinder to Wolf’s (1987) notion that certain circumstances create a variant on the insanity defense. Vogel claimed (p 138), italics in original:

They may have chosen a self-serving interpretation of the principles implicit in Christianity and the Declaration [of Independence], but this does not mean that a more judicious interpretation was *unavailable* to them. They lived in a culture in crisis precisely over the issue of slavery; it presents a too closed picture of Southern society to suppose that plantation owners could cop a Wolfian insanity plea on the grounds that they could not have known better.

If Vogel is to claim that slave owners should have known better, then he would certainly advance the idea that Northern insurance companies should have known better.

Slavery existed in classical Athens, but Vogel would not claim that those slave owners should have known better. He would describe them neither as insane nor as trapped by a bad morality. For such a slave owner, “It is that he is a sane, responsible agent, but not a member of *our* moral community.” (p 140)

Finally, it is my belief that we must hold these insurers ethically accountable on several grounds.

First of all, those insurers in the North cannot simply assert that slavery was legal at the time. The claim would be totally fatuous.

Secondly, the insurers could not possibly claim that they had access to no other points of view. Abolitionist sentiment was very strong in the North, and even Southerners were aware of it. It would also require a shocking indifference to historical trends to expect that the world’s attitude toward slavery was not moving vigorously, albeit not quickly, to total opposition. The international slave trade had been proscribed by the United States in 1807, and slavery was abolished by many countries in the first half of the 19th century.

Finally, I would like to invoke Wozzley’s analysis on retrospective judgments. The avoidance of retrospective judgment is not my highest moral principle.

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