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property rights in prisoners of war

property rights in prisoners of war. There is a deep-rooted aversion to establishing property rights in human beings, evaluating them in terms of money, and exchanging them for a price. This is reflected in the constitutions and laws of many countries which prohibit the buying or selling of human life even if the people concerned are in agreement.

Yet, over an extended period of history, the existence of property rights in prisoners established a market with beneficial consequences for society. In Europe during the Middle Ages, the market for the redemption of prisoners of war saved many human lives, diminished their suffering, and generally decreased the brutality of war.

On the battlefield, a medieval soldier had to decide whether to kill a defeated enemy, or to take him prisoner in order to release him for a ransom. This decision was taken rationally in the sense that the benefits and costs of the two alternatives were taken into account and affected the soldiers' behaviour in war. If the net value of sparing a beaten adversary was positive, he was taken prisoner and offered on the ransoming market.

That soldiers are rational on the battlefield stands in stark contrast to prevailing views. It is commonly assumed that, in the heat of the struggle, soldiers lose control of themselves and that they certainly would not undertake even an implicit, not to speak of an explicit, benefit-cost evaluation of their actions. However, historic evidence shows that soldiers were well aware of the economic advantages of sparing the enemy, and behaved accordingly.

The rational behaviour of the soldiers also contrasts strongly with the view that the treatment of the enemy is a matter of morality and religious values. Unfortunately, there is little evidence to that effect in history. On the contrary, there are many examples of cultured and religious soldiers slaughtering their adversaries without mercy. For example, when the Christian knights conquered Jerusalem in the First Crusade (1099), they killed everybody – men, women and children. In contrast, even an utterly criminal organization such as the Nazi SS (Schutzstaffel), which treated the inmates of concentration camps (KZ) in a barbaric way so long as manpower was abundant, began to improve the living conditions and treatment of the prisoners when they became more 'valuable' due to increasing labour scarcity.

Rationality does not mean that soldiers are able to correctly predict all the consequences of their actions. Human behaviour is always accompanied by uncertainty. What rationality means in the context of war is that soldiers are able to perceive what is advantageous for them and react systematically to changes in the constraints they face. Accordingly, it makes sense to speak of a market for prisoners on which their value is determined by demand and supply.

THE VALUE OF A PRISONER. The following factors determine demand, supply and transaction costs on the market for prisoners.

Demand. The release of a person captured in a war was demanded by the prisoner himself (on the basis of his material property), his family, and the organizations he belonged to (guilds, orders, etc.). The higher the income

and wealth of a prisoner, the higher the price offered for his release, and the more readily he (or in the case of Joan of Arc, she) was spared in battle, treated well and ransomed. Poor soldiers were treated worse and had a smaller chance of survival than rich soldiers who could raise their own ransom, or soldiers for whom the ransom was paid by someone else (in particular the family, sometimes professional organizations or the government). Thus, for example, aristocrats killed up to 30,000 peasants in the German Peasants' War (1524–5), while the peasants shed less blood. Prisoners with higher human capital and better health, and who were younger, had a better chance of being treated well and surviving than the uneducated, ill and old.

Supply. The higher the cost to the prospective captor of sparing an enemy, the more were killed or badly treated. The relevant cost comprised the risk of being attacked by the prisoners, the cost of guarding, feeding and medically treating them, and the risk of not getting a ransom after all. Straightforward cost factors were also relevant in later times. In the American War of Independence, 'Much of the ill-treatment was due to the unpreparedness of the Americans to receive so large a number of prisoners. An explanation which recurs with depressing frequency in all wars' (Glover 1982: 178).

The better established the property rights of the captor over his prisoners, the more lenient he tended to be. In the Middle Ages, the individual soldier taking a prisoner acquired a well-defined property in his booty and 'it was usual to go to court for the settlement of economic disputes between the prisoner and his family and the captor' (Rosas 1976: 48). Their property and the corresponding ransom could be inherited. The importance of strictly defining the property right over a prisoner was well understood by the medieval soldiers. Thus, 'Any mercenary would insist on a clear statement of the division of the bounty (including ransoms) being written in his contract' (Glover 1982: 159). When ransoming a prisoner was expected to be particularly profitable, the soldiers even went as far as forming a limited company to exploit their rights. In the old custom, prominent prisoners had to be put at the disposal of the commander-in-chief, but the captor maintained his property rights in so far as he had to be adequately compensated.

The incentive problems connected with ransoming were well understood and taken into account. It was not required by law to ransom anybody, not even a family member, because it was clear that this would put the captor into a monopolistic position and drive up prices. High prices for prisoners were considered to be noxious because they constituted an incentive to engage in bellicose action for the single purpose of taking prisoners for ransom.

One of the main problems in the market for prisoners was to establish contact between the two market sides in order to arrive at a mutually agreeable price. The more efficient this mediation was, the more defeated soldiers were spared and released from captivity. Two conditions determine the transaction costs involved.

Firstly, there had to be mutually accepted rules and procedures to determine the price and the way the ransom was to be paid. In the late Middle Ages, it was customary to ask the prisoner to evaluate his own worth, which was an intel-

ligent move. It induced the prisoners not to indicate too low nor too high a price. In the former case, the captor might not find it worthwhile to make the deal. In the latter case, the ransom might not be raised and this would put the prisoner's life at risk. Noblemen and officers who gave their word of honour were usually free to move (and sometimes even to return home), a rule which reduced the cost of captivity for both sides of the market. Breaking one's word of honour had serious consequences; the loss of reputation drastically reduced the possibility of undertaking beneficial contracts in the future. There was thus comparatively little breach of the word of honour. A good example is the French king John II, who was taken prisoner by the English in the battle of Poitiers in 1356. Having promised to pay three million *écus d'or* as ransom, he was allowed to return to France but had to furnish hostages. When one of them, his own son, fled, the king returned to England and died in captivity in 1364.

Secondly, specialized neutral intermediaries with good information often helped to strike a deal. They were individuals (a role often taken by Jews), or 'private' organizations such as religious orders specifically founded for this purpose. Two Catholic orders were praised for their efficiency: the Ordo Beatae Mariae Virginis de Mercede Redemptionis Captivorum (founded in 1218 as a knightly order, and transformed in 1318 to a purely religious one to stress its neutrality) is reputed to have saved 70,000 prisoners over 500 years, mainly from the Saracens. The Ordo Trinitatis Redemptionis Captivorum (founded 1198) is said to have saved 900,000 prisoners from captivity over a similar period. In Spain, the state established a monopoly for buying prisoners from the North African Arabs, but nothing is known about its efficiency.

The emergence of property rights in prisoners and a corresponding market was considered progress towards civilization and humanity by eminent scholars such as Hugo Grotius in his *De jure belli ac pacis* (1625): it significantly reduced the brutality of war and the arrangement was beneficial for both sides of the conflict. Nevertheless, the market started to lose its efficiency when collectives like the regiment, the division, the army and finally the nation-state started to claim the property rights over captives for themselves. This undermined the incentives of the soldiers in the battlefield to spare the defeated enemy. In 1792 and 1793, the French revolutionary state with its nationalist zeal forbade any trade with the enemy. At the same time, conscription reduced the 'value' of a soldier to his own country. Changes in weapon technology and in military doctrines also contributed strongly to the downfall of ransoming. Firearms required a concentration of firepower which was achieved by forcing the soldiers to fight in line under strict discipline. The use of cannon in the field also made it difficult or impossible to fight in such a way that the enemy was made prisoner instead of being killed. As a consequence of the breakdown of the market for prisoners, the Revolutionary and Napoleonic wars were characterized by enormous fatalities, and there was little interest in caring for the wounded (in particular those of the enemy). The terrible experience of the battle of Solferino led Henry Dunant to found the Red Cross (1863). This, like other humanitarian organizations and

international treaties (especially the Geneva and Hague Conventions), was of limited effectiveness (see Rosas 1976).

Though the use of the words 'property rights', 'market' and 'price' are carefully evaded today in connection with persons, a market for prisoners has to some extent emerged again. People kidnapped by terrorists or criminals (such as the Mafia) are often ransomed. The market is, however, characterized by high transaction costs because there are strong forces trying to suppress it. Thus, national governments prohibit any trade with the enemy in times of war, and therefore also prevent families from offering money for the release of one of its captured members. The US government, for instance, made it impossible for American parents to offer ransom for their sons captured by the North Vietnamese. Mutually accepted rules and procedures are largely missing today, and it is difficult to find trusted intermediaries. There is also a (more or less clandestine) market for prisoners in which the state acts as a demander. According to Meyer (1977), the West German Government 'bought' a large number of persons imprisoned in the German Democratic Republic, with the prices paid varying between approximately DM 30,000 for a mother to almost DM 200,000 for a medical doctor.

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See also EMINENT DOMAIN AND JUST COMPENSATION; GANGS AND THE STATE OF NATURE; INALIENABILITY; MARKETS AND INCOMMENSURABILITY; ORGANIZED CRIME; PROPERTY RIGHTS.

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