By Justin Farishon

Conversion Does Not Create Indentured Servitude or Peonage

Why Eeyore Would Be Disappointed

The Thirteenth Amendment to the U.S. Constitution, ratified in 1865, prohibits involuntary servitude in the U.S. and "any place subject to [U.S.] jurisdiction."[1] The Anti-Peonage Act, passed in 1867, prohibits "the voluntary or involuntary service or labor of any persons ... in liquidation of any debt or obligation."[2] The Bankruptcy Code cannot abrogate other provisions of the U.S. Constitution,[3] so clearly it cannot allow involuntary servitude, and allowing peonage would be in conflict with existing federal law. Have the levers of conversion in the Code nonetheless been used by the bankruptcy courts to force an unwitting individual chapter 7 debtor into bondage? Hardly. It is a novel argument, but it falls flat in the face of logic.

Before we dive into the substance of the issue, there is one overarching and fundamental truth to note at the outset: Any person who "resides or has a domicile, a place of business, or property" in the U.S. can file for bankruptcy,[4] but there is no constitutional right to a discharge.[5] This will be important to remember for later.

Defining the Scope of the Battlefield

Let's start with the basics. While "slavery" and "involuntary servitude" appear as distinct terms in the Thirteenth Amendment, the U.S. Supreme Court has found the terms to be birds of a similar feather:

> Slavery implies involuntary servitude — a state of bondage; the ownership of mankind as a chattel, or, at least, the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property, and services. This [Thirteenth] Amendment was said in the *Slaughter-House Cases* [83 U.S. 36] to have been intended primarily to abolish slavery, as it had been previously known in this country, and that it equally forbade Mexican peonage or the Chinese coolie trade, when they amounted to slavery or involuntary servitude, and that the use of the word "servitude" was intended to prohibit the use of all forms of involuntary slavery of whatever class or name.[6]

The distinction might be that slavery is complete ownership of an individual as property, whereas involuntary servitude is the use of an individual's labor without recompense — but not complete ownership of the person. Regardless, neither is permitted under the Constitution.

While it is clear that the Bankruptcy Code cannot require involuntary servitude, the question of what constitutes the same is not as straightforward. Case law has developed around the idea of choice — that is, when an individual can decide whether to engage in labor, the walls incident to involuntary servitude begin to fall:

> [C]ourts have consistently found the involuntary servitude standard is not so rigorous as to prohibit all forms of labor that one person is compelled to perform for the benefit of another. The Thirteenth Amendment does not bar labor that an individual may, at least in some sense, choose not to perform, even when the consequences of that choice are "exceedingly bad."[7]

Put another way, there must be evidence of "compulsion" for a showing of involuntary servitude: "When the employee has a choice, even though it is a painful one, there is no involuntary servitude.... A showing of compulsion is thus a prerequisite to proof of involuntary servitude."[8]

Peonage carries a meaning similar to involuntary servitude. *Merriam-Webster* defines it as "the use of laborers bound in servitude because of debt."[9] Where involuntary servitude might be compelled for

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1 U.S. Const. amend. XIII, § 1.
2 42 U.S.C. § 1994.
3 *See, e.g., Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 589 (1935) ("The bankruptcy power, like the other great substantive powers of Congress, is subject to the Fifth Amendment"); *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 72-73 (1982) (when requirements of Article III of Constitution are applicable, Congress's Article I powers, including Bankruptcy Clause, are controlled by Article III); *Ashton v. Cameron Cnty. Water Improvement Dist.*, 298 U.S. 513, 532 (1936) (bankruptcy power cannot override state power under Tenth Amendment).
4 11 U.S.C. § 109(a).
5 *U.S. v. Kras*, 409 U.S. 434 (1973).
6 *Clyatt v. U.S.*, 197 U.S. 207, 218 (1905) (quoting *Plessy v. Ferguson*, 163 U.S. 537, 542 (1896)).
7 *Immediato v. Rye Neck School Dist.*, 73 F.3d 454, 459 (2d Cir. 1996) (quoting *United States v. Shackney*, 333 F.2d 475 at 486 (2d Cir. 1964). Practitioners reading this should also note that the requirement of certain *pro bono* hours by a state or federal bar does not violate the Thirteenth Amendment, as we all have a choice whether to practice law.
8 *Watson v. Graves*, 909 F.2d 1549, 1552 (5th Cir. 1990).
9 "Peonage," *Merriam-Webster*, merriam-webster.com/dictionary/peonage (last visited Feb. 18, 2026).

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a reason other than repayment of a debt,[10] peonage is a kind of involuntary servitude where the labor is forced specifically to pay off a debt. Still, compulsion is a necessary element: "A clear distinction exists between peonage and the voluntary performance of labor or rendering of services in payment of a debt.... [N]o law or force compels performance or a continuance of service."[11]

Application in Bankruptcy

What does any of this have to do with bankruptcy? Your client may just find himself or herself in chapter 7 facing a motion from a creditor to convert the case to chapter 11. In this case, you might believe that an order converting your case to chapter 11 would force your client from the cozy confines of chapter 7, where nonexempt assets, if any, are liquidated and distributed to creditors on a one-time basis but no "income" is paid on a going-forward basis, into a chapter where your client might have to execute a plan — a plan that might <*gasp!*> force you to commit future earnings for repayment of certain debts.

If your client finds himself or herself in this position, they might not like it. They might feel like they are being forced to work to repay their debts. You might even argue that such a conversion violates the Thirteenth Amendment and the Anti-Peonage Act, as the debtor will effectively be forced into bondage. Fear not, however; no constitutional violation is afoot.

Disbanding the "Parade of Horribles": *In re Gordon*

This scenario has played out directly in at least one prominent instance resulting in a written opinion. The case comes from the U.S. Bankruptcy Court for the Northern District of Georgia. In *In re Gordon*, the debtor was a consultant who signed a written employment agreement with his then-employer that contained restrictive covenants.[12] Shortly after leaving that employment, the debtor began working for a different consulting agency, in violation of his restrictive covenants.[13] The former employer received a judgment against the debtor and garnished his wages.[14] The debtor then filed a chapter 7 petition to stay the garnishment.[15]

The debtor's former employer moved under 11 U.S.C. § 706(b) to convert the case to chapter 11, believing that he had sufficient disposable income to repay his debts.[16] The debtor objected to conversion, arguing that doing so would force him into involuntary servitude and/or peonage.[17]

To support his argument, the debtor offered what might be called the "Eeyore" defense. He listed a litany of potential problems should the case be converted, to wit:

- His post-petition earnings become property of the estate;
- He must pay all of his disposable income over five years if a creditor objects to his proposed plan;
- He has no absolute right to dismiss or convert since he did not voluntarily select the chapter;
- A creditor may propose a plan;
- He might be required to surrender his house or other possessions under the absolute-priority rule; and
- He might be held in contempt for failure to comply with a confirmed plan, which contempt might be punished by fine or jail.[18]

The court decried this defense as a "parade of horribles."[19] True, post-petition earnings become property of the estate, but the debtor can still use those earnings for normal purposes freely and for atypical purposes with approval from the court.[20] This aside, none of the other "horribles" were ripe for consideration because they had not occurred.[21]

On top of that, there are ample opportunities for the debtor to avoid the "horribles" about which he complains. The debtor might propose a plan before creditors and has a long exclusivity period to do so that might be further extended; he might propose a plan that will be acceptable to creditors, thus avoiding an objection and the necessity of paying all disposable income over five years plus any application of the absolute-priority rule, which application is not a certainty in an individual chapter 11 case; the court retains discretion to dismiss the case or convert it back to a chapter 7; and the likely result of failing to comply with a plan is not jail or a fine but dismissal.[22]

Moreover, the debtor lacked standing to challenge the constitutionality of conversion because he had suffered no imminent or actual harm.[23] He cited only potential for harm but nothing that had actually occurred or that was certain to occur. The court determined that conversion was "not a type of physical or legal coercion constituting involuntary servitude.... Conversion does not require the Debtor to work for a particular employer, or in a particular job, or to work at all, nor does it require the Debtor to pay his creditors."[24]

The same logic applied to the question of peonage: The only issue that was ripe for consideration was the actual

10 *See, e.g.*, U.S. Const. amend. XIII, § 1, where involuntary servitude is accepted "as a punishment for crime whereof the party shall have been duly convicted." Numerous state constitutions also allow for involuntary servitude as a criminal punishment.
11 *Clyatt*, 197 U.S. 207, 215-16 (1905).
12 *In re Gordon*, 465 B.R. 683, 686 (Bankr. N.D. Ga. 2012).
13 *Id.*
14 *Id.*
15 *Id.*
16 *Id.* Prior to the opinion's discussion of the issues of involuntary servitude and peonage raised by the debtor, the court exercised its discretion under 11 U.S.C. § 706(b) and found that conversion was in the best interests of creditors based on the debtor's ability to pay. Incidentally, the court also found that conversion was in the debtor's best interest to reduce the scope and likelihood of further litigation.
17 *Id.* It is also important to note that the debtor strongly opposed his former employer's motion to dismiss the petition under 11 U.S.C. § 707(a). "In short ... [the debtor] wants to be in bankruptcy and receive a discharge, but only in a Chapter 7 proceeding." *Id.* at 690.
18 *Gordon*, 465 B.R. 683, 697 (Bankr. N.D. Ga. 2012).
19 *Id.*
20 *Id.*
21 *Id.*
22 *Id.* at 698.
23 *Id.* at 699.
24 *Id.*

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effect of conversion. The only actual effect was that post-petition earnings (if any) become property of the estate. The debtor could cease working and face consequences, but there was no compulsion of employment: "Where a debtor can cease working, peonage does not exist because the debtor can breach the obligation to work and be subject to damages but is not under legal or physical coercion to work."[25]

It is important to go back to the beginning where we noted that while the debtor had a right to petition for protection under the Bankruptcy Code, no party has a constitutional right to a discharge.[26] If a debtor does not comply with the requirements of the Code, he or she might not get a discharge: "Refusing a debtor a discharge may have the practical effect of making a debtor address the debts *he incurred*.... The consequences he faces are those of his own creation — he will continue to owe his creditors."[27]

Conclusion

Bankruptcy is a two-way street. Debtors in chapter 13 must make plan payments, address secured debts without modification (for the most part) and pay disposable income to achieve a discharge.[28] Debtors who file for chapter 7 protection lose much control over their estate and must abide by whatever liquidation is deemed worthwhile by a third-party trustee to achieve a discharge. All debtors in bankruptcy must disclose all of their assets, regardless of their exempt nature or any lack of equity in them.

Debtors must earn a discharge by laying all of their cards on the table. For some, this means that they will be required to earn income over several years to repay what is required under the Bankruptcy Code for the chapter under which they filed. Discharge is an exceptional remedy. It can — and does — change the lives of thousands of individuals every year. To achieve this does not require involuntary servitude or peonage; it is simply the price one must pay for the exemplary reward of a discharge — no matter how distasteful Eeyore or anyone else might believe it will be. The message to debtors, particularly high-income earners trying to avoid large debts, is clear: Choose your chapter wisely at the outset. abi

25 *Clyatt*, 197 U.S. 207, 215 (1905).
26 *Kras*, 409 U.S. 434 (1973).
27 *Gordon*, 465 B.R. 683, 700 (Bankr. N.D. Ga. 2012) (emphasis in original).

28 To be eligible for chapter 13, one must have "regular income." 11 U.S.C. § 109(e). There is no involuntary chapter 13 case available to creditors, *see* 11 U.S.C. § 303(a), as this presents the possibility of a clear violation of the Thirteenth Amendment. There is no similar eligibility requirement that a chapter 11 debtor have "regular income."