Chapter 1
Trespassing Against the Happy Consciousness of Orthodox Economics

Introduction

All stable societies are basically happy with themselves. Any stable, self-reproducing society must educate its people to the consciousness that "all is essentially well" with the society. There are no structural flaws, only the problems of implementing the sound principles at the foundation of the society. This self-reproducing and self-congratulatory state of mind might be called the "Happy Consciousness."

Any attempt to develop a critique of the basic structures and principles of a society involves of necessity transgressing and trespassing against the Happy Consciousness. There are not only glass ceilings but glass walls that define the accepted corridors of thought. Young, aggressive professors in economics and the other social sciences are usually equipped with uncanny radar so they can roar down the corridors of orthodox thought without ever getting close to breaking through the walls—all the while seeing themselves as brash free thinkers exploring the vast unknown. This radar-like instinct, inbred by the ambient society as a part of the Happy Consciousness, constantly and almost unconsciously warns them away from the glass walls—away from irresponsible speculations (except perhaps in the pink of youth) and down the avenues of sound and serious research.

Breaking through the invisible walls of orthodoxy and trespassing against the Happy Consciousness has little to do with intellectual insight. It took no great brain power to "see" that slaves were persons and not things, but where were the abolitionists among the intellectual elites of ancient Greece or the antebellum South? Trespassing against orthodoxy requires a willingness to follow lines of thought wherever they might lead, a willingness to ignore the warning signals sent by one's inbred monitor of orthodoxy ("Is it serious, responsible work?", "Is

it publishable?", "Is it scientific?", "Will it adversely affect my job prospects?", and so forth). Those who choose to develop unorthodox theories must develop their own strategies for bearing the adverse consequences. For instance, Charles Darwin trespassed against the religious orthodoxy of his day, so he tried to postpone the publication of his theory but was forced to publish by the challenge of Alfred Wallace's work.

When one breaks through the glass walls of orthodoxy, then one may enter a topsy-turvy world where the customary guideposts of normality are missing. What was previously "normal" now appears as surreal and absurd. How can this be communicated to those who are still in the embrace of the Happy Consciousness?

This essay is an introduction to the intellectual trespassing involved in the essays of the collection about certain fundamental normative and positive questions of political economy. These essays boil down to an attack on one and only one institution of our society, the institution of hiring or renting people (i.e., the employer-employee contract). The employment relation lies at the foundation of our present form of a market economy, just as the master-slave relationship lay at the foundation of the society of the antebellum South. The alternative is a market economy without the employment relation, an economy where all people are self-employed (perhaps individually but usually jointly) in the firms known variously as worker-owned firms, labor-managed firms, industrial partnerships, or democratic firms. Self-employment is the economic version of political self-government, so the alternative system is sometimes called "economic democracy" [Ellerman 1992].

A number of expository devices and intuition pumps will be used to try to break through the walls of conventional thought. For instance, we have already used one. We have called the employment relationship the "renting" of people. This is an intentionally jarring use of words. One rents, hires, or leases a car or an apartment, but one only "hires" a person. Yet the relationship is basically the same. In each case, one buys a certain type of services provided by the entity (measured in car-days, apartment-months, or man-hours) for a specified time period.

While the characterization of the employment relationship as the "renting" of people may sound at first like a contentious accusation, it is actually not a bone of contention. Orthodox economists fully accept the characterization although they would prefer to use other language.

> One can even say that wages are the rentals paid for the use of a man's personal services for a day or a week or a year. This may seem a strange use of terms, but on second thought, one recognizes that every agreement to hire labor is really for some limited period of time. By outright purchase, you might avoid ever renting any kind of land. But in our society, labor is one of the few productive factors that cannot legally be bought outright. Labor can only be rented, and the wage rate is really a rental. [Samuelson 1976, 569]

The "renting people" characterization of the employer-employee relationship is perhaps the simplest example of the invisible boundaries of orthodox language and thought. That characterization is a "surprise" to most people. How is it that people can live their whole lives in a society based on the renting of people and yet when it is pointed out to them, they confess that they "never thought of it that way." If a person lived their whole life in the antebellum South and then said he or she "never thought of it" as being based on owning people, then we would conclude that he or she was firmly in the grip of false consciousness. Yet today most people who never considered employment as the renting of people would not see themselves as being in the grip of social thought control or false consciousness. They just "never considered it in that way."

And that is just the simple matter of changing one word to a synonym. It is much more difficult to trespass over the other boundaries that demarcate the Happy Consciousness.

Surreality and the Happy Consciousness

Political-economic research can be an alienating experience. From being "at home" and "seeing the obvious" like everyone else, one can end up feeling like a visitor from Mars wondering why everyone else cannot or will not see the obvious.

Suppose that a person of modern moral sensitivities could be taken back by a time machine and dropped in the middle of a slave society such as the American antebellum South at the beginning of the nineteenth century. One might think that surely the distinguished professors, the celebrated thinkers, and the religious leaders of the society would be leading a struggle against slavery. But one would be quite disappointed. For centuries slavery had hardly been a topic of debate. Slavery was a "given" part of the social universe. Morally sensitive educated thinkers would go through their entire careers with hardly a word about slavery except for a few thoughtful criticisms of the various abuses of the system by unscrupulous and brutish individuals.

Our time traveler might well feel a stranger, a visitor from another planet. He or she might ask: "Why don't the intellectual and moral leaders raise their voice in protest? Why do the people of this slave society seem to have this strange "moral blind spot"? Aren't they aware that the slaves are human beings like you and me? Don't they believe in basic inalienable human rights?" And so forth.

The truth of the matter is quite simple; it does not call for some complicated and convoluted theory. The slave society might seem surreal to our modern time traveler, but it was quite normal to its inhabitants. Societies do not promote to positions of status and influence those individuals who are likely to attack the foundations of the society. And any individuals who aspire to positions of status and influence are unlikely to harbor "unsound" opinions. There is no need for any "conspiracy." It is based on simple, self-regarding common sense. The moral and intellectual leaders of a slavery society did not secretly develop what we would take as a modern critique of slavery and keep it hidden in the back of their minds. Instead they "grew up" with a

"moral sense" endowed by their ambient society as to what opinions were sound and unsound. Any line of inquiry that looked like it would lead in the wrong direction was quickly abandoned as "unfruitful." There is no need for a conspiracy to hide or repress such thoughts. Substantive men and women have neither the time nor inclination to pursue "irresponsible" speculations.

Let us now change the example. Instead of being deposited in a society based on owning other human beings, let us suppose that our time traveler has landed in a society based on the renting of other human beings. Instead of buying a lifetime of services (as when buying a car), one could buy services for specified limited time period (as when one rents or leases a car).

That journey needs no time machine because that society is our society. The renting of people is the employment relationship. We prefer to use the word "hired" or "employed" or various other expressions when a person is rented.

> Since slavery was abolished, human earning power is forbidden by law to be capitalized. A man is not even free to sell himself; he must **rent** himself at a wage. [Samuelson, 1976, 52 (emphasis in the original)]

Again one might think that surely the distinguished professors, the celebrated moral philosophers, and the religious leaders of our present society would at least *discuss* the appropriateness of a whole society based on the renting of human beings. But it is not even a topic of debate. It is a "given" part of the social universe.

One standard argument is that the employment relation cannot be considered merely a limited version of slavery because slavery was involuntary. But that is not the comparison being made. I am considering the voluntary rental relationship as the limited version of the *voluntary* sale of oneself (i.e., as part-time *voluntary* slavery). When slavery was abolished, voluntary contractual slavery was abolished along with involuntary servitude. As Samuelson noted, "A man is not even free to sell himself." It does seem a bit surreal that voluntarily selling all of one's labor should be seen as fundamentally against our jurisprudence while selling only part of one's labor is so taken for granted that social and moral thinkers do not even bother to discuss it. One might

wonder about the borderline between perfectly normal rentals and fundamental violation of inalienable rights. Does it occur after 5 year contracts? After contracts of 8.5 years, 15 years, 25 years, ...?

There is no conspiracy to avoid or hide these questions. There is no need. Conventional intellectuals see no promise or payoff in thinking along such lines so there are no secret thoughts to be hidden behind a cloak of conspiracy. Instead of estrangement, there is the Happy Consciousness that all is fundamentally well in our institutions—the consciousness that one is "at home" in this society. There are only the difficult and seemingly intractable problems of implementing the sound principles embodied in our institutions. But on the question of there being something *structurally* wrong with a socioeconomic system based on renting people, no shadow of doubt darkens the brow of our intellectual and moral leaders—although there is much hand-wringing and anguished distress concerning those in the bottom layers of society who have to rent themselves out for such a low wage or who cannot find anyone to rent them at all.

The Schizophrenic Nature of Modern Democracy

Suppose that our modern time traveler was transported back to a "predemocratic" time such as the Middle Ages. Religious and secular autocrats vied for political sovereignty; democracy was not one of the options. The people were hardly aware of any such notions as democratic self-government; they sought a wise, strong, and good master.

Our traveler from modern society might find this situation rather perplexing. Democracy was known at least from ancient Greece. Why weren't courageous intellectuals and spiritual leaders of the Middle Ages raising the issue? If there was too much oppression, then the moral leaders might at least write about democratic rights in secret for posthumous publication. But there is little evidence that such thoughts were harbored by the elites. They were formed by a society that inculcated views as to what was sound and unsound. Responsible thinkers who shaped the

opinions that carried weight saw no reason to veer off into iconoclastic speculations about inalienable democratic rights.

Someone from the distant or perhaps not so distant future who traveled back to our time might be similarly perplexed. Today we are steeped in the language of inalienable rights such as the inalienable right of self-government or self-determination. The right to self-determination is not seen as an ownership right like the property right to a car that we may have today and sell tomorrow. It is inalienable in the sense that we may not give up the right even with consent. A *pactum subjectionis*, a social contract to give up and transfer the right of self-government to some sovereign person or body, is considered inherently invalid. This is part of the conventional wisdom reinforced in serious political speeches about our basic rights and reiterated in the philosophical tomes that record the fundamental inalienable rights that undergird our morally advanced civilization.

Or so it seems at first. But then our time traveler from the future asks about "what people do all day long," namely about their work. The time traveler finds that almost all people work as employees under the legal contract known as the employment contract. In that contract, the employee gives up and transfers to the employer the right of self-determination within the scope of the contract (i.e., concerning the work). It is not a contract of representation or delegation as is contemplated in democratic theory. The employer is not the representative or delegate of the employees. The employment contract transfers and alienates the right to control the employee's actions within the scope of the contract to the employer who then exercises that right in his or her own name, not in the name of the employees.

This may seem strange indeed to our time traveler who might come from a world where people are recognized as having an inalienable right of self-determination in *all* spheres of life—political, economic, and private family life.

How is it that human beings are seen to be neatly partitioned so that in a person's life as a citizen the right to self-determination is sacred, inviolate, and inalienable, but in a person's life as a

worker the right to self-determination is routinely bought and sold as a matter of ordinary commerce? Are people perhaps seen as moral minotaurs, half-human and half-beast, so that the human half enjoys inalienable rights while the beastly half can be rented out in the employment contract? Or perhaps people are amphibious creatures alternating between a "public world" that enjoys inalienable rights and a "private world" where such rights fall into eclipse?

Our time traveler from the future might have some difficulty understanding today's mindset. We now find it strange that people in the past could have been denied fundamental rights to self-determination simply due to the color of their skin or their sex. Yet even stranger is today's view that the self-same person can have an inalienable natural right to self-determination in one sphere of life (the "public sphere" or life as a citizen) but have no trace of this inalienability survive in another sphere (the "private sphere" or life as a worker).

Our time traveler might search the political, economic, and philosophical texts and treatises of today to find some recognition, discussion, and explanation of this curious split personality of modern man. But the traveler would be largely disappointed. In the orthodox texts that express the conventional wisdom, one will find no discussion of the matter. The legal alienation of the right of self-determination in "what people do all day long" is not deemed a worthy topic of debate by responsible intellectual and moral leaders. Since the (political) democratic revolutions of the eighteenth and nineteenth centuries, the rather contrived public/private distinction has functioned to "explain" the failure to recognize democratic rights in the economic sphere. The public/private distinction serves as an intellectual prophylactic to guard the economic sphere against being "infected" with the democratic germ. The Happy Consciousness is trained to be placated with "It is private" as a sufficient explanation for the alleged inapplicability of democratic principles to what people do all day long.

Deep Metaphors versus Superficial Facts in the Scientific Search for Symmetry

Symmetry in the Rights of the Factors

Science wants to be "deep," not superficial. In the social sciences where the Happy Consciousness is the customary guide, the facts often "get in the way." But unwelcome facts can often be avoided through metaphorical reinterpretation. This is viewed as an advance in the social sciences. The serious and responsible researcher must delve beneath the superficial facts to probe the deep metaphors that will finally bring "science" in line with the pre-analytical vision of the Happy Consciousness.

This process of "scientific" explanation and reconciliation is nowhere more evident than in the treatment of the firm, particularly in the structure of property rights within the firm. Let us consider an ultra-simple description of a production opportunity. The managerial and non-managerial labor symbolized by L uses the services of capital and the other inputs symbolized by K to produce the outputs Q during a certain time period. No conceptual clarity would be added to our discussion by using a more complicated and realistic description. Who will be the "firm" that undertakes this production process:

- the suppliers of the capital services K as in the capitalist firm (Capital hires labor),
- the people who carry out the labor services L as in the democratic firm (Labor hires capital), or
- the state as in the socialist firm (the state hires or owns both)?

In each case, what are the property rights enjoyed by the firm? The facts can be easily stated. In each case, the legal party that is the firm owns all (100 percent) of the produced outputs Q and holds all (100 percent) of the liabilities for the used-up services of capital and labor. If the liabilities for the used-up capital and labor services were indicated by negative signs, then we could say that the firm has the bundle of property rights and obligations (Q,–K,–L), that can be

called the "whole product" to distinguish it from the simple product Q. The other parties hold none of these assets and liabilities.

For instance, in the capitalist firm, Labor (the suppliers of the labor services L) owns none (0 percent) of the outputs Q, and none (0 percent) of the liabilities for the used-up capital and labor services are charged against Labor. Similarly, in the democratic firm, Capital (the suppliers of the capital services K) owns none (0 percent) of the outputs Q and has none (0 percent) of the input liabilities charged against it. Of course the same individuals might both supply capital and labor, but we are considering the functional roles separately.

The facts are that the property rights held by the various parties are totally asymmetrical (100 percent versus 0 percent). The Happy Consciousness is unhappy with these facts. The capitalist firm needs to be presented as a picture of symmetry and harmony so the facts need to be reinterpreted. The first step is to change the topic from property flows (assets and liabilities per time period) to income flows. Let p, r, and w respectively stand for the unit prices of the outputs, capital services, and labor services. In view of the above-mentioned property flows, it follows that the legal party that operates as the firm gets all (100 percent) of the revenues pQ and is liable to pay all (100 percent) of the capital and labor expenses rK and wL. The other parties do not own the revenues and are not liable for the expenses. But these facts are again "superficial" because they are still completely asymmetrical. Science, under the guidance of the Happy Consciousness, must probe for deeper symmetries.

The move from property flows to income flows does represent some progress since the income flows are stated in the commensurate monetary units. The firm is liable to the factor supplier for the expense of that factor. One can "jump over" the firm and "picture" this right of the factor supplier "as if" it were a direct right on that share of the revenue. Of course, as long as the firm exists (i.e., is not bankrupt), the factor supplier does not actually own that share of the revenue (since the firm owns all the revenue). But the Happy Consciousness is not satisfied with such superficial legalistic facts; it prefers the deep metaphor of picturing the factor suppliers as getting

their "distributive share of the product." Since the size of the distributive share is determined by the price and equilibrium demand of the factor, the touchy question of "what each factor gets" is now reduced to price theory. The original questions about property rights and "who is to be the firm" have been marginalized if not eliminated. The Happy Consciousness is happier.

Since the factor suppliers are pictured as "sharing" the (income stream of the) product, the firm is left out of the picture unless there is some "residual" left over after each factor takes its distributive share. The firm (which has 100 percent of the whole product from the "superficial" factual viewpoint) is thus reduced to the cameo role of the "residual claimant" in the new metaphorical drama, and even that role is squeezed out in the long-run competitive equilibrium with zero residual profits.

The symmetrical "distributive shares" picture of production has passed into popular consciousness. In the context of broader social discussions, it serves to derail any discussion of property rights to the whole product and to shunt the discussion over to the topic of "income distribution."

One key to the distributive shares picture is that the firm is excluded from the main picture as holder of asset and liability flows. The factor suppliers are pictured as having direct claims on the revenue. In one recent variant on this set of metaphors, the factor suppliers are pictured as "contracting" for a share of the revenue and the "firm" itself is pictured as just this "nexus of contracts." The "residual claimant" is just another party that contracts for the "residual share" of the income.

> This is the set of contracts theory of the firm. The firm is viewed as nothing more than a set of contracts. One of the contract claims is a residual claim (equity) on the firm's assets and cash flows. [Ross and Westerfield 1988, 14]

Thus even the residual claim—ordinarily pictured as getting what is left after contractual claims are satisfied—is depicted as "one of the contract claims." Thus the newfangled "nexus of contracts" metaphor improves on the old-fashioned distributive shares metaphor by treating the

residual claim or equity as another contractual relationship. All trace of the complete asymmetry in the actual property rights is eliminated in this picture. The army of metaphors marches on. The Happy Consciousness is even happier.

The high priests of neoclassical economics often challenge those who have alternative views to express them in a precise mathematical form. How can the actual structure of property rights and income flows in a firm be put into a mathematical form and be brought to the attention of sophisticated economists? Perhaps this could be "revealed" in a new application of game theory, control theory, or catastrophe theory, and thus get published in some serious scientific journal. But, alas, a mathematical theory already exists that describes the actual stocks and flows of property and income in a firm. This theory is not chaos theory or nonlinear analysis. Unfortunately, this theory is called "accounting." Ordinary accounting deals with the stocks and flows of value. Accounting can be mathematically formulated and generalized also to deal directly with the multidimensional stocks and flows of property in a firm [see Ellerman 1982, 1986, or the essay on double-entry accounting in this volume]. It would be difficult to imagine any subject matter more boring and uninteresting to the refined mathematical sensibilities of modern economists than accounting. Thus there seems to be little immediate hope of weaning sophisticated economists away from their deep metaphors and exposing them to the superficial facts—even when the superficial facts are expressed in precise mathematical form.

Symmetry in the Activities of the Factors

Jurisprudence does not recognize "symmetry" between the actions of persons and the services of things. The services rendered by things have a causal effect, but things cannot be "responsible" for their services. Only persons can be responsible. Thus jurisprudence recognizes a deep and fundamental asymmetry between L and K, between the actions of human beings and the services of capital.

The basic juridical principle of imputation is to assign legal or de jure responsibility in accordance with factual or de facto responsibility. Since only persons can be de facto

responsible for anything, the imputation of legal responsibility goes back through any tools or other things used by people to the people themselves as the responsible agents. In the production opportunity considered above, the managerial and nonmanagerial people by performing the labor services L use up the capital services K and produce the outputs Q. Thus the juridical principal of imputation implies that those people should have those legal responsibilities (i.e., should be legally liable for the capital services K and have the legal ownership of the outputs Q). Since we are following the practice of conceptualizing this productive activity as also producing and using up the "labor" L, it also follows that those people should be liable (to themselves) for the labor services. Thus elementary jurisprudence implies that Labor ought to legally appropriate the whole product; the firm should be a democratic firm. Thus democratic theory and elementary jurisprudence arrive at the same result.

The simple jurisprudential fact that "only labor can be responsible" is obviously rather inconvenient for the Happy Consciousness in general and for orthodox economic theory in particular. It also "requires" metaphorical reinterpretation. There are two ways metaphorically to restore the much-wanted symmetry between the actions of persons and the services of things; (1) promote things to the level of responsible agents, or (2) demote persons down to the level of non-responsible things. The first metaphor will be called the "active poetic view" of production while the second metaphor will be called the "passive technological view" of production.

The older economic literature favored the active poetic view. The non-human factors are personified with responsible agency so that they can rise up and cooperate with labor to jointly produce the product. For example, "Together, the man and shovel can dig my cellar" or "land and labor together produce the corn harvest" [Samuelson, 1976, 536-37]. While this view has great poetic charm, economists generally think that it is more "scientific" (in the sense of "physics envy") to demote persons down to the level of things. Production becomes a "technological process," not a human activity. Given the inputs K and L, the outputs Q are produced (but not produced "by anyone").

With either the active or passive metaphors the crucial symmetry between labor and the other factors is restored. The unique and fundamental jurisprudence role of the actions of persons (as opposed to the services of things) is hidden from the penetrating scrutiny of orthodox social scientists.

Symmetry and the R-word

"Responsibility" is the R-word that economics cannot utter. The reader is invited to find a single economics text that mentions that only human actions, not the services of things, can be de facto responsible. Apparently, economics exists in simply a different world than jurisprudence.

The basic juridical principle of imputation ("Impute de jure responsibility according to de facto responsibility") can also be restated in the language of property theory ("Assign to people the positive and negative fruits of their labor") and then it is usually called the "labor theory of property." The labor theory of property (which has nothing to do with prices) is often confused with the various "labor theories of value." The confused treatment of the two theories might be called the "labor theory."

The studied incapacity of orthodox economics to recognize the unique de facto responsibility of labor is nowhere more evident than in the conventional discussion of the "labor theory." Orthodox economics depicts adherents of the so-called "labor theory" as not understanding that land (and capital) is "productive" in the sense of being causally efficacious. They "seemed to deny that scarce land and time-intensive processes can also contribute to competitive costs and to true social costs…" [Samuelson 1976, 545]. Happily, neoclassical economists have taken a tip from farmers and have discovered that scarce land is useful in producing the harvest—so economics can finally moved beyond the "labor theory." In the Happy Consciousness of neoclassical theory, there is no inkling that some other unmentionable attribute might be involved in addition to causal productivity.

In their defense, neoclassical economists might reply that it not *their* job to provide a "non-silly" interpretation to "the labor theory." That should be the job of the economists officially

designated as the heretics, namely the Marxists. Why have the Marxists also been completely unable to utter the R-word and thus unable to provide a non-silly interpretation to "the labor theory"? One needs to understand the different social roles of Marxist economists in the West and in the East. In the West, Marxist economists are maintained in the universities essentially as nonthreatening but occasionally annoying gadflies to prove the liberalism and open-mindedness of the economics profession. In the East, Marxist economists were priests who had to adhere to their own orthodoxy. Marx could not find the R-word, and after Marx, the genetic code of Marxism was fixed. Mutations in the direction of interpreting "the labor theory" in terms of "bourgeois jurisprudence" had no survival value in the Marxist environment of the East or West. One seemingly has to go back to the roots of marginal productivity to find any recognition in the economics of the usual juridical principle of imputation. Friedrich von Wieser, the economist who introduced the word "imputation" (*Zurechnung*) into the economics vocabulary, understood that ordinary jurisprudence operates on the assumption that only people, not things, can be responsible for anything.

> The judge ... who, in his narrowly-defined task, is only concerned with the *legal imputation*, confines himself to the discovery of the legally responsible factor,—that person, in fact, who is threatened with the legal punishment. On him will rightly be laid the whole burden of the consequences, although he could never by himself alone—without instruments and all the other conditions—have committed the crime. The imputation takes for granted physical causality.... If it is the moral imputation that is in question, then certainly no one but the labourer could be named. Land and capital have no merit that they bring forth fruit; they are dead tools in the hand of man; and the man is responsible for the use he makes of them. [Wieser 1930, 76-79]

Wieser was clearly aware that "only labor can be responsible" even though all the factors are causally efficacious. At least he could not claim that he "just never thought about" ordinary

jurisprudence. But Wieser was not in the business of determining whether production based on renting people was consistent with jurisprudence. As any serious and substantive economist could see, normal production was obviously correct. If some principle was not in accord with ordinary production, then clearly the principle begged to be reinterpreted.

Therefore there must be some metaphorical reinterpretation to render ordinary jurisprudence "inapplicable" to the world of economics. Jurisprudence deals with legalistic matters such as property rights and ownership. Economics must probe for deeper realities. Thus the notion of responsibility used in ordinary jurisprudence would have to be replaced by an appropriate notion of "economic responsibility."

> In the division of the return from production, we have to deal similarly ... with an imputation—save that it is from the economic, not the judicial point of view. [Wieser 1930, p. 76]

Thus deep metaphors make ordinary jurisprudence inapplicable to the world that economists live in. By defining "economic responsibility" in terms of marginal productivity, Wieser could finally draw the desired conclusion that capitalist production "economically" imputes the product in accordance with "economic responsibility."

In addition to metaphorically reinterpreting "responsibility," Wieser and later neoclassical economists also misunderstood the logical structure of the imputation question. The usual notions of responsibility and imputation are not relevant to the question about the division of shares of the product since the ownership of the product is not "shared" in the first place—except metaphorically. But if we set aside the deep metaphors and consider for a moment the superficial facts, then we will see that one legal party gets the de jure responsibility for the whole product (i.e., gets the legal ownership for 100 percent of the produced outputs and is legally liable for 100 percent of the used-up inputs). The question of imputation is whether or not that imputation of legal or de jure responsibility is in accordance with factual or de facto responsibility.

The facts about de facto responsibility are that all the people working in the enterprise, management and labor, are de facto responsible for producing the outputs by using up the inputs—so by the ordinary principle of imputation, they should receive the imputation of that legal responsibility for the whole product. That is the ordinary jurisprudential argument for the type of firm known as a worker-owned firm, labor-managed firm, or a democratic firm.

The tactics of Wieser and innumerable other economists illustrate one of the basic methodological principles of the economic sciences. Economics must not be left vulnerable to being invaded or "blind-sided" from some other field. Important questions about economics cannot be left to the domain of noneconomists. One defensive tactic is to try to immunize any invading concept by developing an "economic" version of the concept. If the ordinary notion of responsibility seems threatening, then invent a new notion of "economic responsibility" that will be the sole domain of economics. If legal notions of ownership seem inconvenient in economics (e.g., one legal party's 100 percent ownership of the whole product of a firm), then economists can retaliate by developing notions of "economic ownership." Since economic ownership and economic responsibility are defined to deal with the deeper questions facing economics, economists do not have to worry about their theories being inconsistent with jurisprudence, which, after all, deals "only" with the legal version of those notions.

Symmetry and Asymmetry in Marginal Productivity Theory

The symmetrical picture of all the factors being in the same sense "productive" is nowhere more prominent than in marginal productivity (MP) theory. The basic paradigm is that the marginal unit of a factor produces its marginal product and each unit can be taken as the marginal unit. Hence each unit produces its marginal product. MP theory is particularly weighty in the annals of the social sciences because it is mathematically formulated.

The orthodox view of marginal products is flawed on several counts. We have already noted the fallacy of personification involved in imputing responsible agency to the nonhuman actors. Tools and machines do not "produce" their marginal product or anything else. Tools and

machines are used by people to produce the outputs. We have also noted that shares in the product are not actually imputed or assigned to the various factor suppliers. One legal party appropriates the whole product of a firm, 100 percent of the output assets and 100 percent of the input liabilities.

There is another flaw in the orthodox treatment of MP theory that is of interest. The ideological baggage being carried by MP theory forces it to be presented in a factually implausible way. An entirely plausible and mathematically equivalent way of presenting the theory is ignored because it does not lend itself to the same ideologically inspired interpretation.

The factually implausible part of the orthodox view is the picture of a unit of a factor as producing its marginal product *ex nihilo* (even assuming we personify the factors with responsible agency). Other factors must be used, and when the value of these used-up factors is subtracted from the value of the marginal product, then the result will no longer equal the value of the unit of the factor.

Suppose that the marginal product of a man-year in a tractor factory is two tractors. The usual treatment of MP theory would show that in competitive equilibrium, the value of the man-year was equal to the value of its marginal product so that each worker could be said to "get what he produces." That equation would hold if the annual wage was $20,000 and each of the two tractors sold for $10,000. But steel and a variety of other inputs are usually required to produce tractors. When the cost of those other inputs is subtracted, the equation no longer holds. Something has to give.

The matter can be resolved by reformulating MP theory into a mathematically equivalent vectorial form that does not picture the marginal unit of labor as producing its marginal product [see Chapter 5]. Instead, the marginal unit is pictured as producing a list or vector of positive and negative quantities. The positive quantities are the extra outputs produced and the negative quantities are the extra inputs used up when an extra unit of labor is employed (and output is

produced at minimum cost). The net value of that vector is equal to the value of a unit of labor when profits are maximized in the competitive firm.

Since this mathematically equivalent vectorial reformulation of MP theory uses the empirically plausible picture that outputs require inputs, why do all the conventional texts use the rather implausible picture of each factor as producing its marginal product *ex nihilo*? The answer seems to lie in the symmetry of the implausible picture. The vector picture breaks the symmetry. Once one has told the story of the marginal worker as using up so much steel to produce so many tractors, then one cannot turn around and present the opposite picture of the marginal ton of steel as using up so much labor and producing so many tractors (leaving aside the fallacy of personification). But one can symmetrically picture both the marginal worker as producing so many tractors and the marginal ton of steel as producing so many other tractors (which then "add up" to yield the product). The vector picture leads one to break the symmetry by picking an "active" factor that is viewed as using up the passive factors to produce the output. In the orthodox view, each factor can be symmetrically viewed as being "active" and producing its own marginal product (out of nothing).

Understanding the Nontransferability of Labor

One can buy a long-lived asset or rent the asset (i.e., buy a car or rent a car). When one rents an asset, one buys the services provided by the asset within the scope of the rental contract. But what counts as fulfilling the rental contract on the part of the asset owner? To fulfill the rental contract, the services provided by the asset are transferred from the owner to the leasee by turning over the use and control of the asset to the leasee. For instance, the use and possession of a rented apartment or a rented car is turned over by the owner to the leasee or renter for the duration of the rental contract.

The employment contract is the contract for the renting or hiring of human beings—for buying the services of human beings (labor services). For human beings, one does not today have the

buy-or-rent option since the voluntary sale of labor by the lifetime was forbidden along with involuntary slavery. Self-ownership is legally mandatory. We have commented previously on the oddity of the usual view that the long-term renting of humans is a fundamental violation of human rights while short-term rentals are the foundation of our economic system.

We now seek to make a different point concerning what counts as fulfilling a rental contract for human beings (i.e., as fulfilling a contract for the purchase of labor services). What in fact fulfills the contract?

If the owner of a car or an apartment rented out the asset but then refused to deliver it even though the rent was paid (e.g., refused to give the keys to the leasee), then the owner would have violated the contract. The owner would not have fulfilled his or her half of the contract. Notice that it is a factual question whether or not the owner turned over the possession and use of the rented asset to the leasee. When the use of the asset is factually transferred to the leasee in fulfillment of the contract, then the leasee can use the asset on his or her own and be responsible for the results.

This whole legal framework of the rental, leasing, or hiring contract is carried over and applied to persons in the employment contract. But the problem is that the factual question of fulfilling the contract by turning over the possession and use of the rented asset from the owner to the renter (employer) is entirely different when the rented entity is a person. Labor is not in fact interpersonally transferable. A person can at most agree to co-operate with another person (e.g., by following the latter's instructions) but then they are in fact jointly responsible for the results of their joint activity.

The nontransferability of labor is easy to "see" using the intuition pump of the hired criminal. An entrepreneur hires a person to work in his business and he also hires a van. In addition to normal business activities, the entrepreneur "employs" his employee and the van to rob a bank. When caught, the employer and the employee are both charged with the crime. But the van owner, who was not involved other than as owner of the rented asset, was not charged in the

crime. The employee might argue in court that he is as innocent as the van owner. He too rented an asset to the entrepreneur and he turned over the employment of the rented entity to the employer in fulfillment of the contract. What the entrepreneur did with his hired entities was his business.

But this defense would not be accepted in court. The judge would point out that the van owner could indeed turn over the use and possession of the van to the entrepreneur and not be personally involved in the use of the van. But a person cannot as a matter of fact do the same with his own self. He is inextricably involved in the "employment" of his labor and thus he is inherently jointly responsible for the results of the joint activity.

This is a point of fact, not a point of law. Of course, the legal doctrine is that when the employer and employee turned to illicit activities then the employment relation ceased and they became de facto partners. But that is only a question of legal doctrine. The point is the facts, and the facts are not changed by the legal doctrine. If the worker is de facto co-responsible when he or she obeys the employer in the commission of a crime, then the worker is also de facto co-responsible in the commission of ordinary work. The worker does not suddenly become an machine or automaton in fact when the work is legally permitted and when the employment contract is legally accepted. Alternatively, if the employee was really an instrument devoid of responsible capacity, then it is hard to see how he or she could suddenly burst into responsible agency when the labor stepped over the boundaries of the law.

When the law is broken, then the law rejects the contractual superstructure, the law looks at the facts, and the law sees responsible co-operation. The servant in work suddenly becomes the partner in crime.

> All who participate in a crime with a guilty intent are liable to punishment. A master and servant who so participate in a crime are liable criminally, not because they are master and servant, but because they jointly carried out a criminal venture and are both criminous. [Batt 1967, 612]

When the "venture" being "jointly carried out" is noncriminal, then the servant or employee is just as de facto co-responsible for the results of the venture. It is the reaction of the law that changes. When no illegality is involved the same de facto responsible cooperation of the employee is then "accepted" by the law as "fulfilling" the contract for the transfer and alienation of the labor services from the employee to the employer—as if the employee had been "employed" as an instrument.

None of this is new. The law, of course, exhibited the same inconsistency when the workers were owned instead of merely being rented. The slaves, who normally had the legal role of beasts of burden, suddenly burst into responsible agency when they committed crimes.

> The slave, who is but "a chattel" on all other occasions, with not one solitary attribute of personality accorded to him, becomes "a person" whenever he is to be punished! [Goodell 1853, 309]

The "talking instrument" in work becomes the responsible person in crime.

Did the law of the antebellum South ever recognize this inconsistency? Sometimes. One antebellum court in Alabama held that slaves

> are rational beings, they are capable of committing crimes; and in reference to acts which are crimes, are regarded as persons. Because they are slaves, they are … incapable of performing civil acts, and, in reference to all such, they are things, not persons. [Catterall 1926, 247]

It is an interesting question whether or not the legal authorities of today have achieved this level of consciousness about the similar problem involved in the renting of human beings—the problem that was illustrated by the example of criminous employee.

From the precedent of slavery we can draw lessons about today's peculiar institution of renting human beings. Since the antebellum law recognized that the slaves were in fact persons, the whole legal superstructure that treated them as things (when they did not break the law) was

really a "fiction." In less kind terms, it was a massive fraud on an institutional scale. And that is the lesson that can be applied, *mutatus mutandis*, to the renting of people.

We have seen that the law is perfectly aware that the employee co-operates with the employer in a venture they jointly carry out and they are de facto co-responsible for the results of the venture—at least when the venture is criminous. And we have seen no inkling of an argument that the facts change when the venture is noncriminous. But the law then "pretends" that the responsible co-operation of the employee constitutes the alienation and transfer of the labor services from the employee to the employer in "fulfillment" of the labor contract. With the labor contract legally accepted as both valid and fulfilled, the employer has borne the costs of all the inputs including labor, so the employer has the legally defensible claim on the outputs. Thus it is that the employees have 0 percent legal ownership of the produced outputs and 0 percent liability for the used-up inputs in spite of their de facto co-responsibility for using up the inputs and for producing the outputs. And thus it is that by pretending the employees' responsible cooperation "fulfilled" the labor contract (when no crime is committed), the law sets up and allows the violation of the basic juridical principle of assigning legal responsibility in accordance with de facto responsibility.

When the law pretends that responsible human actions ("labor") can be transferred from one person to another (when no crime is committed), that is a legal fiction. It is a fiction that is set aside in favor of the uncontested facts when the law is broken. Since the employment contract is based on the fictional transferability of responsible human action, it is what would commonly be called a "fraud"—a fraud executed on an institutional scale. And, as usual, a fraud allows a theft or injustice (the misimputation of legal responsibility) to take place behind the guise of a voluntary contract.

It might well be asked: "If the responsible co-operation of the employees does not fulfill the employment contract, then what does?" Nothing does. Labor is de facto nontransferable (as was seen in the case of the criminous employee). To change that would be to change human nature.

We can, in the spirit of science fiction, consider how human nature might be changed to allow the resulting "persons" to fulfill the employment contract. Suppose that some sort of computer chip could be implanted in a person's brain so that the person would become a part-time robot. When the control chip was turned on, the "person" would temporarily lose the capacity for responsible action and self-control and would be controlled as a robot through a computer. The "actions" or rather behaviors of such an individual would indeed be transferred from the original owner of the entity to the employer. Then the worker would be on a par with the owner of the rented van. "Labor" would then be de facto transferable, and the employment contract would no longer be based on a fiction or fraud.

This example can also be viewed the other way around. The contract for renting people treats people *as if* they already were such part-time robots—*as if* they were part-time things. Thus we again have the unsurprising result that renting people is treating people as things (on a part-time basis within the scope of the employment). But the reasoning and analysis that leads to these unsurprising results are unavailable to the Happy Consciousness. There is no point, no profit, and no payoff in asking such questions, pursuing such lines of thought, and indulging such speculations. It is "obvious" that the cooperation of the employee with the employer "fulfills" the employment contract.

Conclusion

Someday, the Happy Consciousness of today may not seem so "normal." Someday it will seem strange that there could be a whole society based on the renting of human beings—a society with an "advanced" social consciousness—in which that was not even considered a topic worthy of discussion by the moral and intellectual leaders of the day.

It might seem strange that a "democratic society" could be so schizophrenic and bifurcated in its vision of democratic rights that a person could be seen as having an inalienable right to self-

determination as a citizen but could at the same time be routinely alienating the right to self-determination in the workplace.

We have a whole system of jurisprudence based on the fundamental distinction between persons and things—where only persons can be responsible and where responsibility can only be imputed through things back to the responsible person (regardless of the causal efficacy of the tools or things). Thus it might seem odd that we also have a "science" of economics where this distinction is unheard of, where the R-word cannot be spoken (except metaphorically), and where textbook upon textbook, for decades upon decades, present "the labor theory" as a patently implausible theory denying the causal efficacy of things without ever broaching the thought that the distinction between labor and the services of things might have something to do with the R-word.

Today, we perhaps understand the irony that the law of slavery only treated the slaves with the respect and dignity that was their due as persons when the law punished the slaves for crimes. Someday the analogous irony of today's legal system might be understood. The law only recognizes the inherent de facto responsibility of the employees for the fruits of their labor when the employees break the law. Then the law—with unintended irony—correctly recognizes that the employment contract was fictional, correctly recognizes that all who carried out the venture are jointly de facto responsible for the results, and correctly reconstructs the venture as a partnership of all who worked in the venture. Thus just as the antebellum law ironically recognized the case for the abolition of slavery in favor of self-ownership, so today's law, when it sets aside the fictions in favor of the facts, inadvertently trespasses against the Happy Consciousness and sets forth the case for the abolition of the employment contract in favor of people being universally self-employed in the types of firms called industrial partnerships, labor-managed firms, and democratic firms [see Ellerman 1990, 1992].

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