

ECONOMIC DEMOCRACY PROJECT LECTURE SERIES PRESENTS

FOR RENT

On the Renting of Persons
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CUNY Brooklyn College

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*On the Renting of Persons:
The Neo-Abolitionist Case Against the
Employment System*

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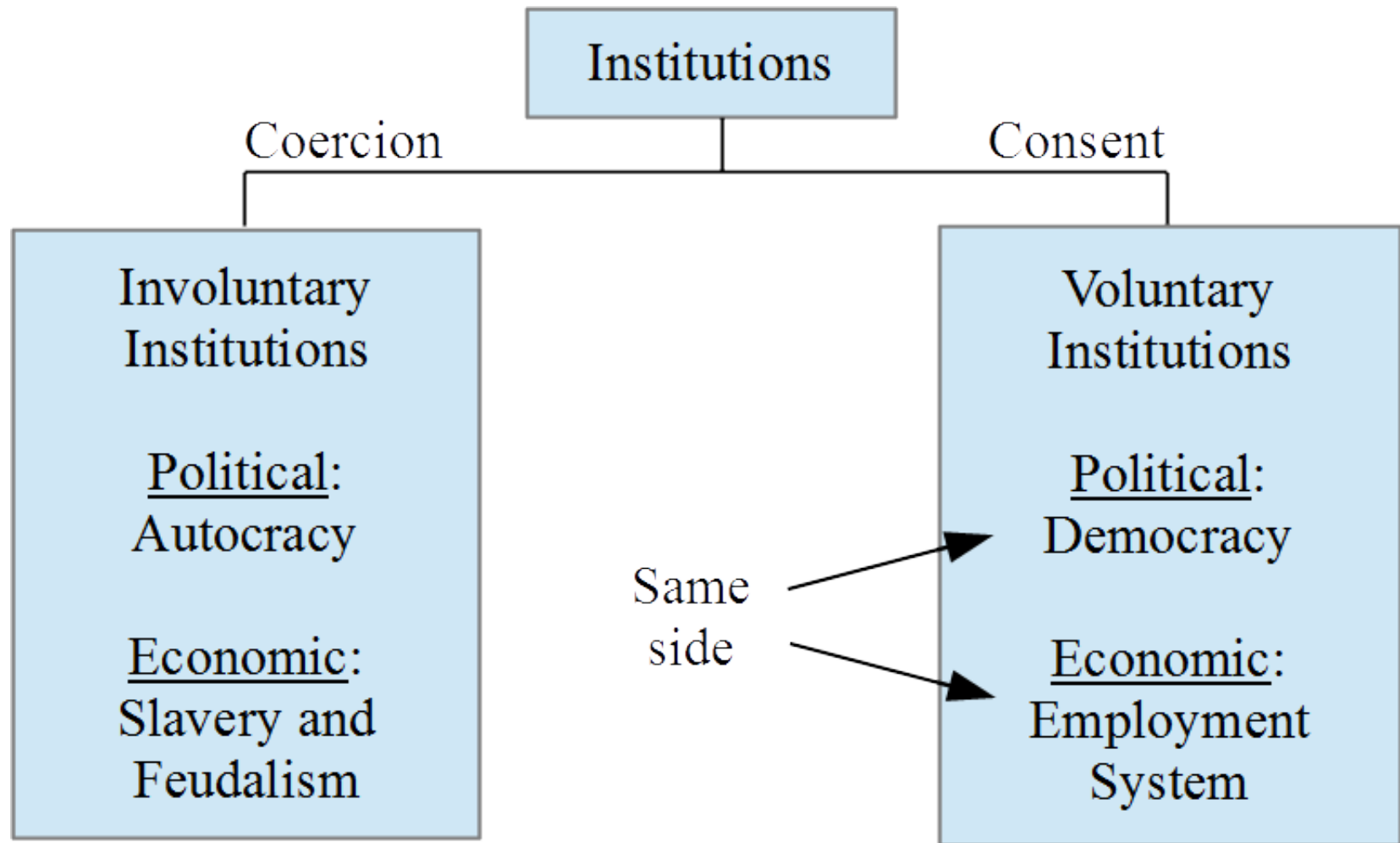
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Arguments for Workplace Democracy



- Pragmatic arguments:
 - * Development of human potential.
 - * Greater quality and productivity.
 - * Spillover effects for political democracy.
- Theoretical arguments:
 - * Human rental contract violates inalienable rights.
 - * Property should be based on getting fruits of one's labor.
- My purpose is to outline the theoretical case against the renting of persons.

Coercion-versus-consent misframing



Sophisticated defense of slavery & autocracy = voluntary contractual relationship



- But sophisticated (e.g., not “divine right”) defenses of autocracy from Roman and medieval times onward were based on an explicit or implicit contract of alienation, *pactum subjectionis* (= old name for a non-democratic constitution).
- And sophisticated defenses of slavery (not to mention feudalism) from Roman law onward were based on explicit or implicit self-sale contracts.

Modern Defense in Liberal/Libertarian Thought



- Robert Nozick: free society should allow people to alienate right of self-government to a “dominant protective association.” “The comparable question about an individual is whether a free system will allow him to sell himself into slavery. I believe that it would.” (*Anarchy, State and Utopia*)
- Modern Economic Theory: “Now it is time to state the conditions under which private property and free contract will lead to an optimal allocation of resources.... The institution of private property and free contract as we know it is modified to permit individuals to sell or mortgage their persons in return for present and/or future benefits.” (Economist Carl Christ in Congressional testimony)
- Basic classical liberal point: Why outlaw a mutually voluntary act between consenting adults?

Employment System = Renting of Persons



- Abolitionism was successful in abolishing *owning* other persons; current system is *renting* other persons.
 - * “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.” [Paul Samuelson, *Economics*]
 - * "We do not have asset prices in the labor market because workers cannot be bought or sold in modern societies; they can only be rented. (In a society with slavery, the asset price would be the price of a slave.)" [Fischer, Dornbusch, and Schmalensee 1988, *Economics*]
- Brits say "car hire"; Yanks say "car rental". Same thing. ⁶

History of Voluntary Slavery Contracts

- Roman Law: *Institutes* of Justinian:
 - * Explicit self-sale contract;
 - * Plea-bargain death sentence (e.g., prisoner of war) into lifetime of servitude; or
 - * Born of slave mother so years of food, clothing, and shelter need to be worked off over lifetime (a type of debt peonage).



John Locke: Father of Liberalism



- Locke only condemned slavery where master had right to kill slave. Civilized slavery contract was OK.
 - * “For, if once *Compact* enter between them, and make an agreement for a limited Power on the one side, and Obedience on the other, the State of War and *Slavery* ceases, as long as the Compact endures.... I confess, we find among the *Jews*, as well as other Nations, that Men did sell themselves; but, 'tis plain, this was only to *Drudgery*, not to *Slavery*. For, it is evident, the Person sold was not under an Absolute, Arbitrary, Despotical Power.” (2nd Treatise, §24)
- Locke used the plea-bargain argument, e.g., for prisoners of war.
 - * “Indeed having, by his fault, forfeited his own Life, by some Act that deserves Death; he, to whom he has forfeited it, may (when he has him in his Power) delay to take it, and make use of him to his own Service, and he does him no injury by it. For, whenever he finds the hardship of his Slavery out-weigh the value of his Life, 'tis in his Power, by resisting the Will of his Master, to draw on himself the Death he desires.” (2nd Treatise, §23)
- Locke also justified slavery in the Carolinas by seeing slaves as captives in wars in Africa who chose servitude over death, and bought & sold thereafter.

History of Political Contracts of Subjection

- Roman law: Institutes of Justinian: “Whatever has pleased the prince has the force of law, since the Roman people by the *lex regia* enacted concerning his *imperium*, have yielded up to him all their power and authority.”
- Medieval law: “Aquinas had laid it down in his *Summary of Theology* that, although the consent of the people is essential in order to establish a legitimate political society, the act of instituting a ruler always involves the citizens in alienating—rather than merely delegating—their original sovereign authority.” (Quentin Skinner, *Foundations of Modern Political Thought*)
- Thomas Hobbes: Theorist of the *Pactum subjectionis*. (*Leviathan*, 1651)
- John Locke dodged Hobbes' consent-based non-democratic theory and took Filmer as his foil (divine right & patriarchy) to establish the beloved framing:
 - democracy = government based on consent of governed.
- Harvard's Robert Nozick: A free society would authorize voluntary alienation of one's right of self-determination to a “dominant protective⁹ association.”

Charter Cities = Modern Non-democratic Government by "consent of the governed"

- "Charter cities" (Paul Romer, NYU) or "Free startup cities" newly built cities in developing country governed by a (benevolent liberal) foreign agency or a corporation.
- "Seastead cities" = Waterworld version (Patri Friedman, grandson of Milton).
- All residents consent to this by voluntarily moving to new city, and they are free to exit.
- Non-democratic govt. based on consent of the governed = "*pactum subjectionis*" at municipal level.
- Full acceptance of idea by right-libertarians or Austrian economists. i.e., most modern classical liberals.

Coverture Marriage Contract



- William Blackstone on Common Law:
 - * "By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs everything; and is therefore called in our law-French, a *feme covert*, and is said to be under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her *coverture*."
[Blackstone, 1765]
- Now outlawed in advanced democracies but with vestiges of woman passing from coverture of father to husband:
 - * Father "giving away the bride" in wedding ceremony, and
 - * Wife taking family name of husband rather than father.

History of Inalienable Rights Theory I



- Stoics: Body can be enslaved but soul is “*sui juris*”—the “inner part cannot be delivered into bondage”.
- Martin Luther: In the Reformation, the inner part that cannot enslaved becomes the inalienable *liberty of conscience*:
 - * “Besides, the blind, wretched folk do not see how utterly hopeless and impossible a thing they are attempting. For no matter how much they fret and fume, they cannot do more than make people obey them by word or deed; the heart they cannot constrain, though they wear themselves out trying. For the proverb is true, 'Thoughts are free.' Why then would they constrain people to believe from the heart, when they see that it is impossible?” (*Concerning Secular Authority*, 1523)

History of Inalienable Rights Theory II



- From liberty of conscience to inalienable rights:
 - * Baruch Spinoza (Father of Radical Enlightenment): "no man's mind can possibly lie wholly at the disposition of another, for no one can willingly transfer his natural right of free reason and judgment, or be compelled so to do. ... All these questions fall within a man's natural right, which he cannot abdicate even with consent." (*Theologico-Political Treatise*, 1670)
 - * Francis Hutcheson (Father of Scottish Enlightenment): "Thus no man can really change his sentiments, judgments, and inward affections, at the pleasure of another; nor can it tend to any good to make him profess what is contrary to his heart. The right of private judgment is therefore unalienable." (*System of Moral Philosophy*, 1755)

History of Inalienable Rights Theory III

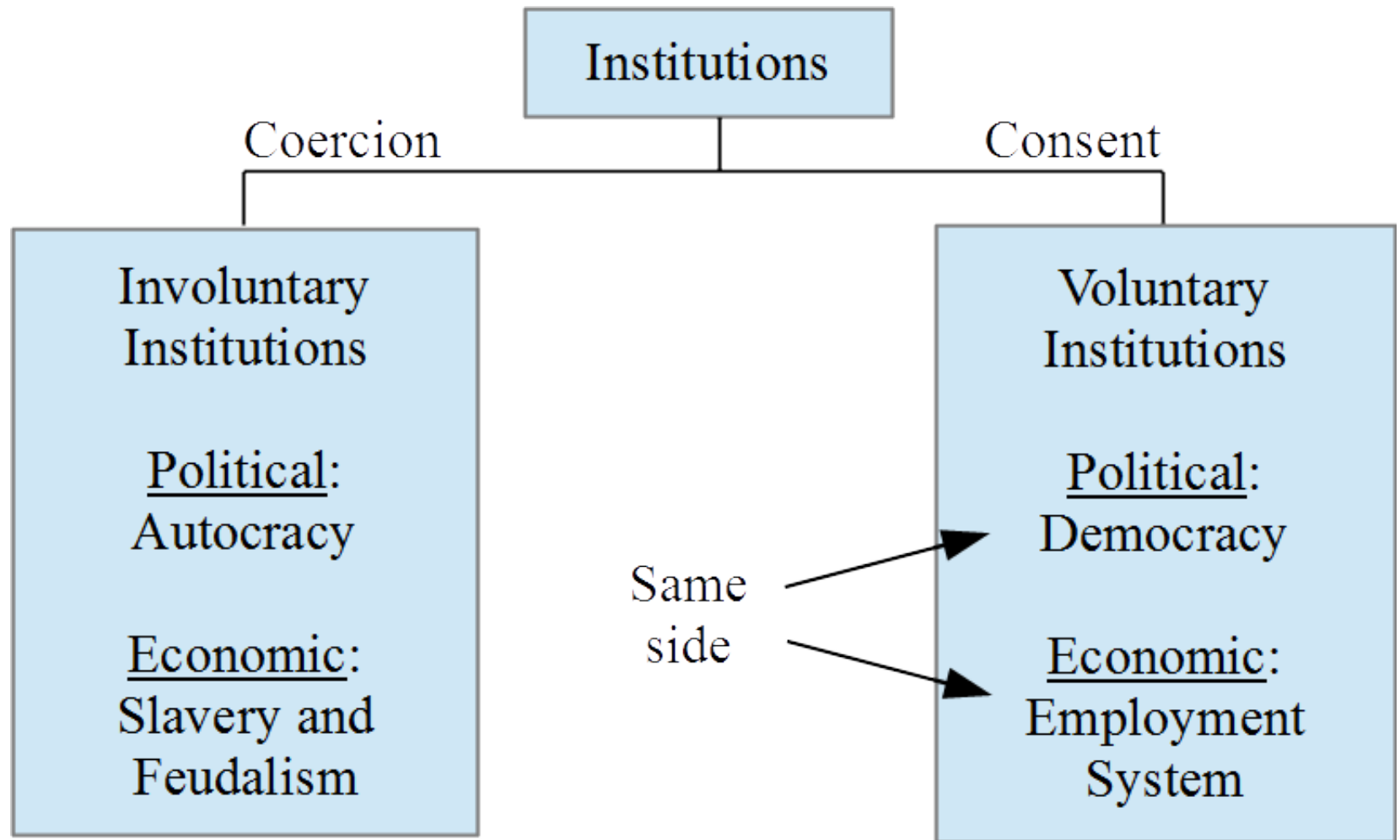


- Thomas Jefferson: “Jefferson took his division of rights into alienable and unalienable from Hutcheson, who made the distinction popular and important.” [Garry Wills, *Inventing America*, 1979].
 - * “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, ...”
- “Like the mind's quest for religious truth from which it was derived, self-determination was not a claim to ownership which might be both acquired and surrendered, but an inextricable aspect of the activity of being human.” [Staughton Lynd, *Intellectual Origins of American Radicalism*, 1969].

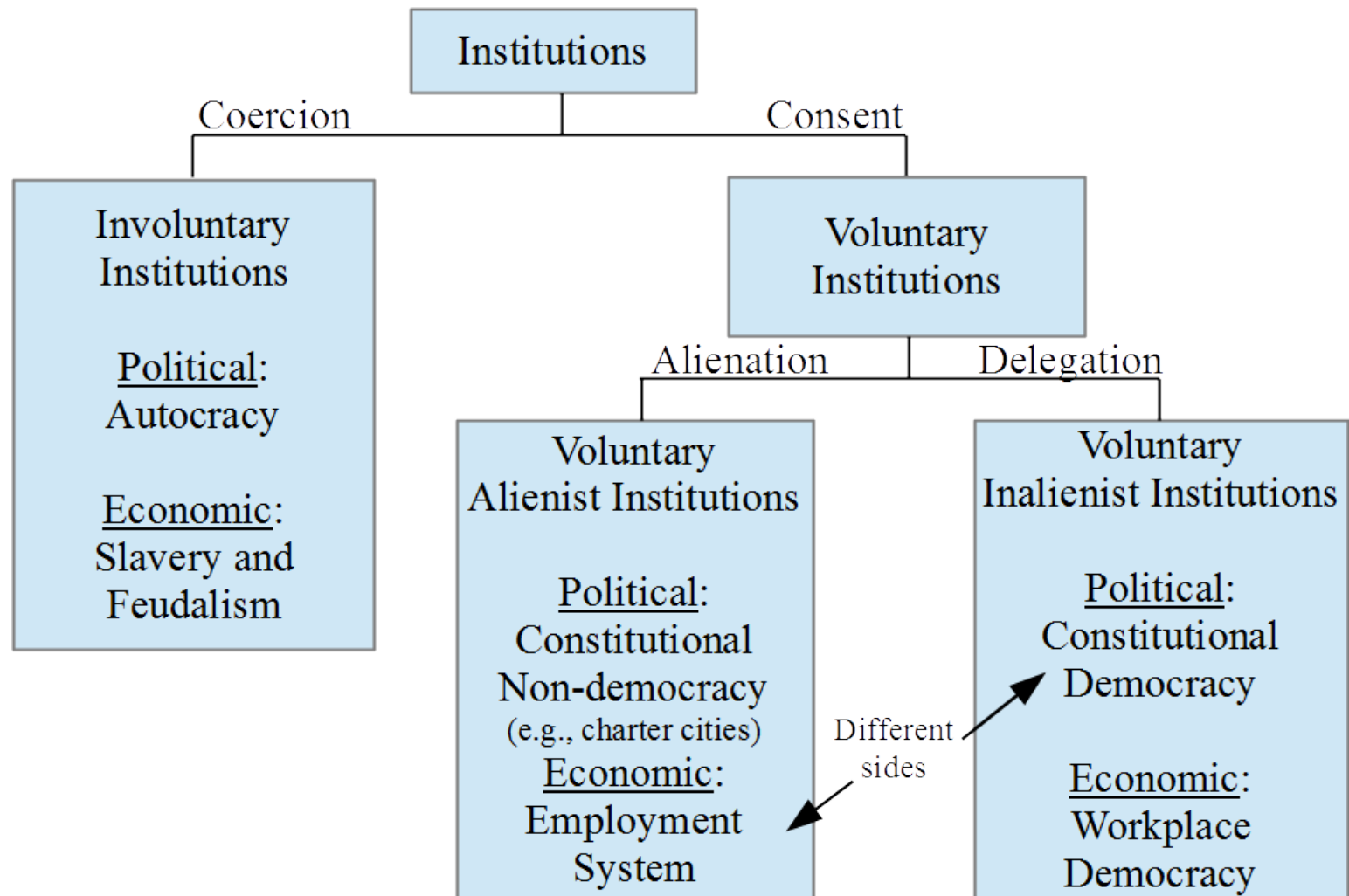
Political version: Alienation vs. Delegation

- Started with late Medieval and Renaissance distinction between contracts of alienation (*translatio*) and delegation (*concessio*).
 - * "This dispute also reaches far back into the Middle Ages. It first took a strictly juristic form in the dispute ... as to the legal nature of the ancient '*translatio imperii*' from the Roman people to the Princeps. One school explained this as a definitive and irrevocable alienation of power, the other as a mere concession of its use and exercise. ... On the one hand from the people's abdication the most absolute sovereignty of the prince might be deduced, On the other hand the assumption of a mere '*concessio imperii*' led to the doctrine of popular sovereignty." [Gierke, *Dev. Pol. Theory*, 1966]
 - * "The theory of popular sovereignty developed by Marsiglio [Marsilius, 1275-1342] and Bartolus [1313-1357] was destined to play a major role in shaping the most radical version of early modern constitutionalism. Already they are prepared to argue that sovereignty lies with the people, that they only delegate and never alienate it, and thus that no legitimate ruler can ever enjoy a higher status than that of an official appointed by, and capable of being dismissed by, his own subjects." [Quentin Skinner, *Foundations*, 1978]

Coercion-versus-consent misframing



Reframing issue as: Alienation vs. Delegation



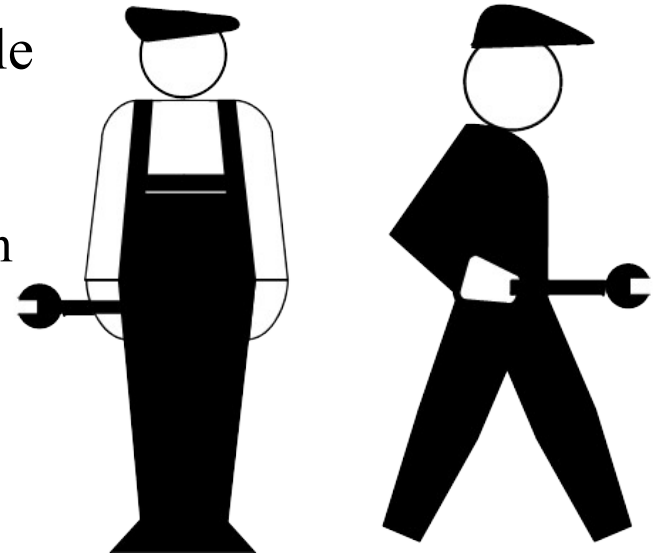
Contractual Analysis of Employment Contract



- Basic issue is Not "consent vs. coercion" but consent to alienation vs. consent to delegation contract.
- Not even controversial that the employment contract is an alienation, not a delegation contract.
- The employer is not the delegate, representative, or trustee of the employees.
- Marxist analysis is just superficial in accepting liberal "consent vs. coercion" framing and then making a special plea that wage labor is not "really" voluntary.

Inalienability of responsible agency

- I can use a tool like a **wrench** and be responsible for the results of that use.
 - * I can factually transfer the use of the wrench to another person, e.g., rent it to them, and they can use it and be solely responsible for the results.
 - * Thus the contract to rent a wrench is a valid contract that can be fulfilled.

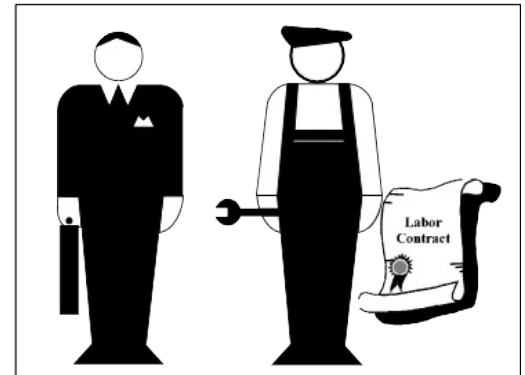
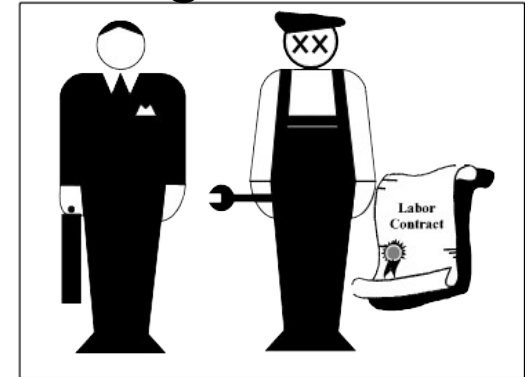


- I can “use” **my self** to do something and be responsible for it.
 - * But I *cannot* factually transfer my “use” of my self to an employer so that he can “employ” me and be solely responsible for the results.
- But there is nevertheless the legal contract for an employer to rent, hire, or employ an employee, and the *legal* responsibility for the results of that employment (e.g., costs & revenues) is imputed *solely* to the employer. 19

How a truly voluntary contract can be inherently invalid

- Alienation contract is one that puts person in *legal* position of a non-person or a person of diminished capacity.
- But genuine consent of adult person with full capacity to an alienation contract cannot create a *de facto* non-person or *de facto* diminished capacity.
- Hence the Law accepts a surrogate performance as ‘fulfilling’ the contract: “Obey the master.”
- But then the **legal** rights of the person are legally reduced to those of a non-person or diminished person as long as the contract is ‘fulfilled’ by obeying the master.
- Thus alienation contract is legalized fraud on institutional scale.

Legal Picture



Factual Picture

Intuition Pump for Inalienability: The Case of the Hired Criminal

- Moment of Truth: Legal system admits the legal fiction behind alienative relation when legal ‘non-person’ commits a crime.
- Same for modern alienation relation where persons are rented:

* “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, *Law of Master and Servant*, 1967)

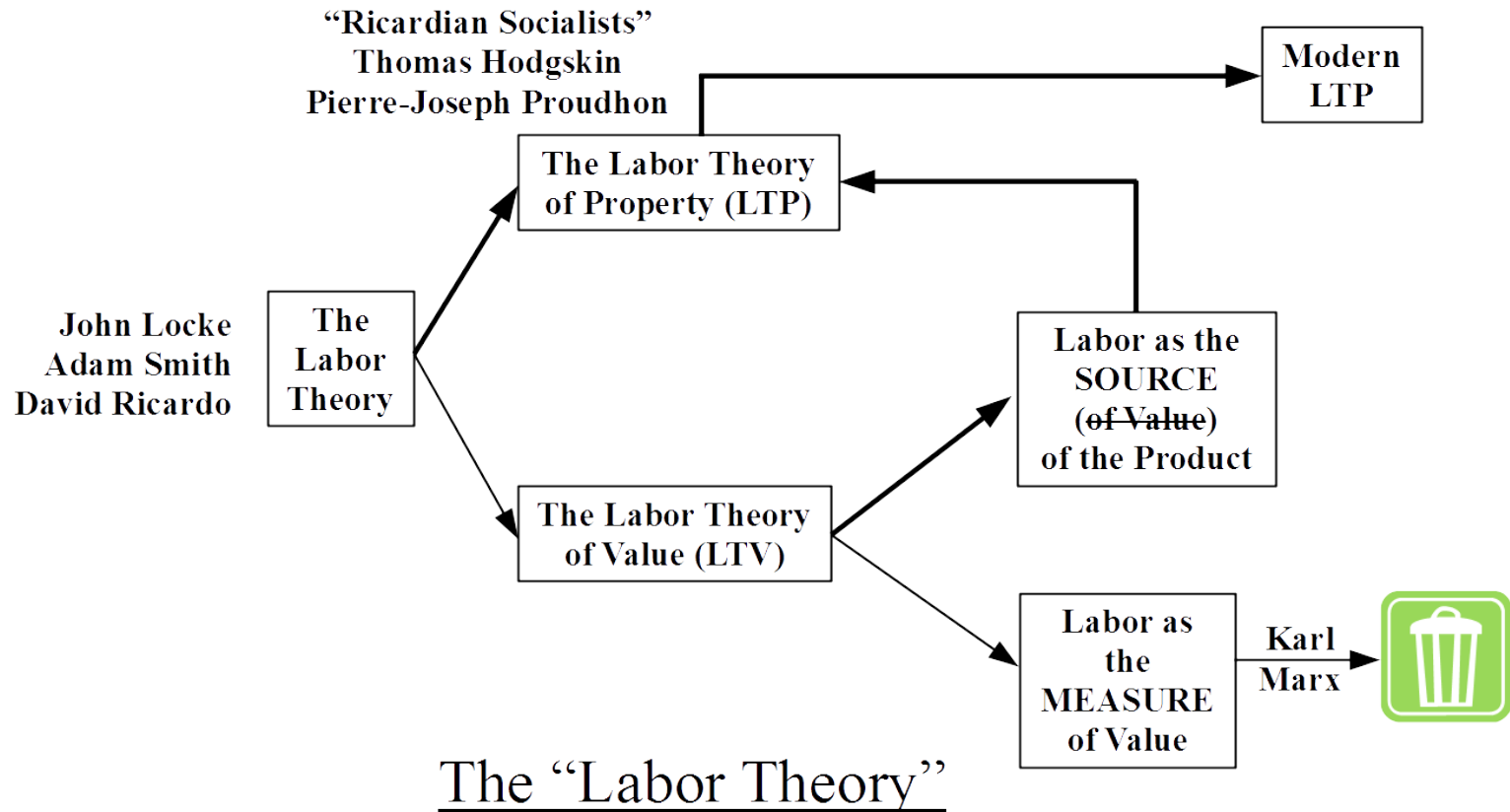


Where Marx went wrong on inalienability

- Hegel got inalienability right in his critique of the self-sale contract In *Philosophy of Right* [§66]. But he realized, the critique was too strong and would apply to the self-rental contract as well, so he did a little walking-back [§67] to at least get it by the censors; responsible agency can supposedly be alienated on a *part-time* basis (good news for hired criminals).
- Marx mistakenly interprets the Hegel's walking-back as if it were a serious description of alienability and quotes it.

"I may make over to another the use for a limited time, of my particular bodily and mental aptitudes and capabilities; because, in consequence of this restriction, they are impressed with a character of alienation with regard to me as a whole." [Hegel. Quoted in Marx, *Capital Vol. I*, Chap. VI, footnote]

Evolution of the “Labor Theory”



"And it is this fairly obvious truth which, I contend, lies at the heart of the Marxist charge of exploitation. The real basis of that charge is not that workers produce value, but that they produce what has it." [Cohen, G. A. 1981. "The Labour Theory of Value and the Concept of Exploitation." In *The Value Controversy*, 202–23. London: Verso, 219]

Property Analysis of Employment System



- As the self-rental contract, it is legal alienation of responsible human actions. Surrogate performance is “obey the employer” and resulting legal rights are same as for a rented instrument:
 - * zero legal ownership of produced products and
 - * zero legal liability for used-up inputs.
 - * But owner of rented instrument gets the rental payments (wages or salaries).

Responsibility Principle Violation under employment relation

- Wages w and other prices were never used in property analysis.
- Not a Marxian "Wages-are-too-damn-low" exploitation theory.

Labor responsible for	$(Q, -K, 0)$	= Labor's product
Labor legally appropriates	$(0, 0, L)$	= labor as a commodity
Labor responsible for but does not appropriate	$(Q, -K, 0)$ $- (0, 0, L)$ $(Q, -K, -L)$	= whole product.

- "It will be seen later that the labour expended during the so-called normal day is paid below its value, so that the overtime is simply a capitalist trick to extort more surplus labour. In any case, this would remain true of overtime even if the labour-power expended during the normal working day **were paid for at its full value.**" [*Capital Vol. I*, Chap. 10, sec. 3, fn. (DE bold)]₂₅
- So Marxian theory not even a critique of wage labor *per se*.

Overview: Neo-Abolitionist Case Against the Renting of People

- Contractual Case: Responsible agency & decision-making factually inalienable between persons so contract to alienate human action inherently fraudulent and invalid.
- Property Case: Juridical Principle of Responsibility (modern version of LTP) implies assigning positive and negative fruits of people working in an enterprise to those people—so people working in a firm are the legal members of the firm as in *workers cooperative*.
- Inalienable rights theory & property theory both imply the abolition of employment (self-rental) contract in addition to the *already abolished*:
 - * self-sale contracts,
 - * political constitutions of subjection, and
 - * coverture marriage contracts.

The End

PROPERTY
& CONTRACT
in
ECONOMICS

*The Case for
Economic Democracy*

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