SELFMANAGEMENT IN NORTH AMERICA: THOUGHT, RESEARCH AND PRACTICE

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ON THE FOUNDATIONS OF SELF-MANAGEMENT: THE LABOR THEORY OF PROPERTY AND THE RESPONSIBILITY THEORY OF IMPUTATION

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The Distributive Shares Metaphor

The property theoretic case for self-management must begin with the exposé and critique of the structure of property rights in capitalist production. Capitalist economic theory analyzes production in terms of the distributive shares paradigm, which pictures certain shares in the value of the product of a production process as being distributed to the owners of the various inputs (principally, the capital owners, herein called "Capital", and the workers, herein called "Labor"). Capital and Labor are pictured as having basically symmetrical roles in that each gets a certain "share of the pie", and then the debate focuses on the determination of share size.

A basic difficulty in that analysis of capitalist production is that the distributive shares paradigm is simply false as a description of property rights. It is only a metaphor. The simple fact is that one party, such as the capitalist-employer in a capitalist firm, owns all the product, i.e., all of the produced outputs. For example, Ford Motor Co. doesn't just own Capital's "share" of the Fords produced; it owns all of them. Capitalist economists are presumably aware of this elementary fact, but they feel called upon to metaphorically reinterprete the product as being "shared" or "distributed" in order to account for the income received by the input suppliers.

The Concept of the "Whole Product"

The simple facts (sans metaphor) will again suffice. Bookkeeping is double-entry because property can take either a positive or negative form, i.e., assets or liabilities (property rights or property obligations). When economists speak of the "product", they refer only to the positive product - the assets produced in the production process (i.e., the outputs). But there is also a negative product. In order to produce the output assets, it is necessary to incur the liabilities for using up the inputs. And one can 'own' or hold liabilities just as one can own assets. The fact which accounts for the input supplier's income (without the shared pie metaphor) is the fact that the one party who owns all the positive product (i.e., owns all the produced outputs), also owns all the negative product (i.e., also holds all the liabilities for the used up inputs). For example,

the Ford Motor Co. owns not only all the Fords produced but also holds all the liabilities for the inputs used up in the production process (e.g., the steel, rubber, labor, etc.). The input suppliers, instead of being co-claimants of the product, are only creditors of that one party who owns all of the (positive and negative) product, i.e., are only the 'outsiders' to whom the product owner is liable for the inputs.

We have seen that in order to accurately describe production property relations, it is necessary to expand the customary concept of "product" to include the negative product (i.e., the input liabilities) as well as the usual positive product (i.e., the output assets). We will call this bundle of property rights and obligations, the <u>whole product</u>, so the "whole product" = "positive product" + "negative product" = "output assets" + "input liabilities". In any productive firm, one legal party (e.g., the employer in a capitalist firm) owns the whole product of production. Moreover, since the outputs were not created before and the inputs were not used up before, the whole product owner is the <u>initial</u> or <u>first</u> holder of that bundle of property rights and obligations. The legal phraseology for the "initial acquisition" of property (as opposed to 'second-hand' acquisition by transfer from a prior owner) is the "<u>appropriation</u>" of property. Hence we have the following basic structural characteristic of production property relations;

<u>Whole Product Theorem</u>: One party appropriates the whole product of a production process.

Each input owner has the veto or negative control right to refrain from selling their input, but the whole product appropriator exclusively holds the legal right of discretionary managerial control over the production process (within the constraints of the law and of the input contracts). That is, the party who will be legally liable for using up the inputs must (sooner or later) satisfy those liabilities by purchasing all the inputs (that the party doesn't already own). This is (almost) always done prior to the actual productive activity, and thus that party owns all the property services being used up in the production process (i.e., holds at least the use rights over all the property being used in the process). Hence, the whole product appropriator also holds the production management rights.

Who is to be the Firm?

In a capitalist firm, the whole product is appropriated by (and the management rights are held by) the employer, typically the party (herein called "Capital") consisting of the owners of the capital used in the production process (e.g., the corporate shareholders). In the type of firm, which is called self-managed, worker-managed, labor-managed, or laborist, it is the party (herein called "Labor") consisting of all those who work in the enterprise that would appropriate the whole product (and thereby manage the production process). Hence, the basic question which differentiates the system of capitalist production from the system of workers' self-management is the question: "Who is to appropriate the whole product of production?". If we use the word "firm" as an abbreviation for "whole product appropriator", then the question could be paraphrased: "Who is to be the firm?". Capital or Labor?

Capitalist economists make no attempt to justify Capital's appropriation of the whole product. They evade the matter entirely by using the distributive shares metaphor to misrepresent Capital and Labor as each getting a "share of the product". Since the size of the "pie shares" (i.e., the size of the input supplier's income) is largely a function of input prices, capitalist economists base their 'defense' on a (marginal productivity) theory of input prices. But the neoclassical theory of prices or value is irrelevant to the debate over capitalism. Capitalism is not a particular type of price system. Capitalism is a particular type of property system; the system where the owners of the capital being used in an enterprise may appropriate the whole product of the production process. The best of price theories would only determine the market value of the assets and liabilities in the whole product, but would not determine who is to acquire that bundle of property rights and obligations in the first place.

The Labor Theory of Property

The theoretical attack on capitalist production has usually been in the name of that group of theories collectively known as "the labor theory of value". But that broad heading includes two quite distinct types of "labor theories"; (1) the labor theory of prices (or labor values), and (2) the labor theory of property. We have already indicated the failure of <u>any</u> theory of prices or value (e.g., the productivity theory or the labor theory) to come to grips with the basic structure of production property relations. It is only the property

theoretic version of the "labor theory of value" - i.e., the labor theory of property, - which addresses the fundamental structural question which separates capitalist and laborist production. The labor theory of property asserts that people should have the right to the (positive and negative) fruits of their labor, i.e., that people have the natural right to own the positive fruits of their labor and the natural obligation to bear the negative fruits of their labor. In any given productive enterprise, the production of the outputs and the 'using up' or 'consumption' of the inputs are, respectively, the positive and negative fruits of the joint labor of the working community of the enterprise. Hence, the labor theory of property implies that the working community of the enterprise (i.e., Labor in the inclusive sense of all who work in the enterprise) has the natural right to the outputs and the natural liability for the inputs, i.e., that Labor should appropriate the whole product of the productive activity. Thus, if labor is the just and legitimate basis for private property appropriation, then capitalist production (i.e., the appropriation of the whole product by the capital owners) - far from being allegedly "founded on private property" - stands in direct contradiction with the institution of private property. It is the system of production called workers' self-management, labor-management, or laborism which is implied by the basic labor principle of private property appropriation.

Within political economy, the labor theory of property was developed by such classical theorists as P.-J. Proudhon in France, and William Thompson and Thomas Hodgskin in England.[1] However, the full development of the labor theory has been impaired by two important deficiencies in the classical treatment; (1) the neglect of the negative part of the whole product, and (2) the failure to interprete the labor theory in terms of the juridical norm of legal imputation in accordance with (de facto) responsibility. With regard to the neglect of liabilities, the labor theory has often been expressed in the claim of "Labor's right to the whole product" when the expression "whole product" was taken as referring to only the positive product (i.e., all the outputs). But the claim hardly makes sense without the inclusion of the negative product. Suppose that, in a self-managed economy, firm A produces capital goods such as drill presses which are

then used by firm B to produce consumer goods. How can the firm A workers appropriate the positive fruits of their labor unless the firm B workers appropriate the negative fruits of their labor (i.e., bear the liability for using up the machine services)? Unless the firm A workers are willing to give away their positive product for free (and live on air), the firm B workers must bear the negative fruits of their labor and satisfy those liabilities by purchasing (or leasing) the capital goods.

The Responsibility Theory of Imputation

The failure of the classical labor theorists to interprete the labor theory in terms of responsibility has greatly impeded the understanding and development of the theory. For example, the older labor theories have notoriously failed to give a relevant and definitive differentiation of labor services from the services of capital and land, e.g., the many attempts to show that only labor is productive. However, the differentiation is immediate on the responsibility interpretation since the non-human factors of production (capital and land) lack the capacity for responsibility. All the factors are productive, but only labor is responsible.

We are not concerned here with "responsibility" in the ex ante sense of one's duty or task in an organizational role. We are only concerned with "responsibility" in the ex post sense of the question; "Who did it?". That is, a person or group of people are de facto responsible for a certain result Y if Y was the purposeful result of their voluntary and intentional (joint) actions. The fundamental juridical theory or principle of imputation (i.e., principle of assigning legal or de jure responsibility) is simply to assign the legal responsibility for Y to the party (person or persons) who was de facto responsible for Y, e.g., to assign the legal responsibility for a civil or criminal wrong to the party (if any) who voluntarily and intentionally committed the act. If people intentionally consume, destroy, or otherwise use up property, then the imputation principle implies that they should hold the legal liability for that property. The principle is used explicitly in a civil damage suit when the defendent, who has been found factually guilty of (i.e., de facto responsible for) damaging the property in question, is thereby made legally liable (i.e., de jure responsible) for the damages. Hence,

the negative application of the imputation principle is equivalent to the negative part of the labor theory of property (i.e., people should appropriate the negative fruits of their labor). Similarly, the positive application of the imputation principle (i.e., people should have the legal responsibility for, and thus the legal entitlement to, the positive results of their actions) is equivalent to the positive side of the labor theory of property. The labor theory is the property theoretic formulation of the basic juridical norm of imputing legal responsibility in accordance with de facto responsibility. We summarize this result as the;

Equivalence Proposition: The property theoretic principle that; "People should legally appropriate the positive and negative fruits of their labor" is equivalent to the juridical imputation principle that; "People should have the legal responsibility for the positive and negative results of their actions".

This equivalence was not evident in the classical treatment of the labor theory of property because that treatment ignored the negative product, and yet it is the negative side of the imputation principle that is applied explicitly by the law in civil and criminal trials.

The Employee as a Human Tool

By the equivalence proposition, the labor theory of property emerges in the center of modern jurisprudence. Accordingly, standard juridical concepts, such as the distinction between persons and things, can now be used to further analyze capitalist production. In particular, the old accusation that the employees in a capitalist firm are treated as machines or tools, i.e., as things, can now be demonstrated as true (in the juridical sense of "things").

Some capitalist economists have pictured; (a) the input suppliers as having a 'property claim' on a 'share of the product' (e.g., John Bates Clark[2]), or equivalently, (b) a 'share of the product' as being 'imputed' to the input suppliers (e.g., Friedrich Von Wieser[3]). But these are only obfuscatory metaphors. In a capitalist firm, the employer legally appropriates the whole product, i.e., the employer has the legal claim on all the assets produced as outputs, and all the liabilities for the used up inputs are legal claims against the employer. The employees have no legal claim on the produced outputs

and they have no legal claim against them for the used up inputs. In terms of responsibility, the employer bears all the legal responsibility (liability) for the used up inputs and is credited with all the legal responsibility for the produced outputs. But those negative and positive products are the results of the actions of all the people who work in the firm (i.e., the employees and any working - as opposed to absentee - employers). Therefore no share of the working community's positive or negative product is legally imputed to the employees. The employees have no legal responsibility for the positive or the negative results of the actions they perform within the scope of their employment (quite contrary to the economists' picture of a share of the product being 'imputed' to Labor). When a person rents a thing to use for a certain period of time, then the person solely bears the responsibility for the positive and negative results of that usage since the thing is itself devoid of responsible capacity and the owner of the thing is not involved. We have seen that the employee has exactly this legal role of a rented thing, i.e., a hired tool or instrument devoid of responsible capacity, and that the employer has exactly the legal role of the person who hires and employs the thing. Thus we have demonstrated the following;

Human Tool Theorem: The employees in a capitalist firm have the legal role of human tools within the scope of their employment.[4]

The employee and the slave thus both have the legal position of a human tool, with the primary differences being that the slave did not acquire the legal role voluntarily and did not have it for only eight or so hours a day. It should be noted that the hired worker (unlike the slave) also has the legal role of the owner of the instrument. And as the owner and seller of that peculiar commodity, human labor, the worker enjoys the full complement of legal rights and obligations held by any person who owns and sells a commodity, but who is not otherwise legally involved in the buyer's use of the commodity.

Capitalist Production as an Institutionalized Form of Theft

The fundamental liberal defense of capitalist production is that it cannot be an inherently unjust institution because (unlike chattel slavery) it is based on a voluntary contract, the employer-employee

contract. Many critics have advanced the superficial argument that the workers do not sell their commodity in a manner that is "really voluntary" (in some sense of that rather elastic phrase). But we are now in a position to understand the basic error in the liberal defense of capitalist production - even on the assumption that the employer-employee contract is always made in a fully free and voluntary manner.

The problem is simply that employees are not in fact human tools, i.e., they do not in fact fit their legal role.[5] The employees in a capitalist firm are not incapacitated by reason of infancy, insanity, drugs, or by any other reason. The labor services performed by employees, usually directly or indirectly under the direction of their employer, are voluntary, deliberate, and intentional human actions, i.e., they satisfy the usual juridical criteria of responsible human actions. Therefore, the members of the working community of the enterprise (i.e., the employees and any working employers) have the joint de facto responsibility for the total results of their cooperative activities, i.e., for the productive-consumption of the inputs and the production of the outputs. But the employer takes all the legal responsibility for the used up inputs and the produced outputs, i.e., the employer legally appropriates the whole product as if the employees had in fact been mere instruments of production. Since one party (the employer) legally appropriates the property (the whole product) which another party (the working community of the enterprise) is de facto responsible for creating, capitalist production is an institutionalized form of misappropriation and mistaken imputation - or, in plain terms, theft.

Capitalist production is not a theft in the simple sense of a wrongful transfer of owned property, i.e., in the sense that already owned property is taken from its owner without the owner's consent. It is a theft in the sense of a wrongful appropriation of new property, i.e., in the sense that the new property is taken ab initio by a party other than the party de facto responsible for creating the property. When one party is de facto responsible for committing a certain act (say, a civil or criminal wrong) and yet the legal responsibility for the act is imputed to another party, then that is a miscarriage of justice (i.e., a violation of the principle of imputing legal responsibility in accordance with de facto responsibility). Capitalist

production is a legalized form of precisely that type of misimputation (where it is, however, a bundle of both property rights and obligations which are misimputed). And the employer will, in general, choose to engage in this form of legalized robbery only when the market value of the stolen rights (the revenues) outweighs the market value of the stolen obligations (the costs), i.e., only when it is profitable.

How do the legal institutions of capitalism function in direct violation of the basic juridical principle of imputation? Do the legal authorities try to justify the employers' appropriation of the whole product by claiming that the employers (e.g., the stockholders) are de facto responsible for the whole product? In short, what is the modus operandi of capitalist appropriation?

The "Laissez Faire" Mechanism of Imputation

It would clearly be impossible for the legal authorities to render an explicit legal imputation (e.g., by having a judgment or trial) everytime that some commodities were consumed or produced. Therefore the legal system relies on the following pragmatic mechanism of 'laissez faire' imputation: Unless some law has been broken, let the costs of an activity lay where they have fallen ("Laissez faire le coût"), and then let the party, who bore the costs, claim any appropriable positive results of the activity. By depending on this jurisprudential "invisible hand" or "invisible judge" mechanism of imputation to govern lawful activities, the legal system can restrict explicit legal imputations (e.g., trials) to illegalities. The rationale for this 'invisible judge' mechanism is that if any costs or benefits should fall into the wrong hands, then that presumably would involve an illegality (e.g., a crime, tort, or breach of contract) which, in turn, would prompt legal intervention (by the 'visible hand' of the law) to impute the liabilities or assets in question to the de facto responsible party.

In a capitalist firm, the employer's appropriation of the whole product is a 'laissez faire' appropriation. Within the confines of the 'laissez faire' imputation mechanism (i.e., when no law has been broken), a legal party (e.g., the stockholders in their corporate embodiment) only needs to legally bear the costs of production in order to have the legally defensible claim on the positive product of production (the outputs). Thus the cost-bearer legally appropriates the positive product unless the legal authorities intervene to reassign

the costs as well as the benefits of the activity (but that occasion does not arise if no law has been broken). Since no explicit legal imputation is involved in the employer's appropriation of the whole product, the law does not explicitly affirm or deny the employer's responsibility, and the law also does not explicitly deny or affirm the employees' responsibility. Within the confines of the 'laissez faire' imputation mechanism, the question of responsibility simply does not overtly arise at all. It is only a question of who has borne the costs, and the employer has indeed borne the costs of production, including the costs of that peculiar 'input', human labor.

The Employer-Employee Contract as a Legalized Fraud

The key to the implicit denial of the employees' responsibility is the employer-employee contract which puts the employees in the legal position of hired instruments of production. If a person owns an instrument or machine (e.g., a car), then the person can use the instrument himself (and thus be responsible for the results) or the person can turn the instrument over to be used independently by another person (who would thereby be solely responsible for the results). If a person could similarly alienate and transfer the 'use' of his own person, then the hired labor contract would be a bona fide contract (like the contract to hire out a genuine instrument). That is, if the employees could alienate and transfer their labor services to the employers so that the employers could somehow use these services without the employees being inextricably co-responsible for the results of their joint actions, - then the employers would indeed be solely (de facto) responsible for the whole product and then the employers' laissez faire appropriation of the whole product would be jurisprudentially correct. But such a performance on the part of employees is not factually possible. All the employees can do is to voluntarily cooperate, as responsible human agents, with their working employers, but then the employees are inextricably de facto co-responsible for the results of their joint actions.

The inescapable joint responsibility of all the persons who participate in an activity is a matter of fact, and the law is well aware of that fact. In order to verify this, simply consider a case where an explicit legal imputation must be rendered, i.e., where an employee (or, in legal jargon, servant) commits a civil or criminal wrong at the direction of the employer.

> 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.[6]

When the "venture" being "jointly carried out" is non-criminal, then the employees do not suddenly become human tools (in fact). "All who participate in" the productive activity of a normal capitalist enterprise are similarly de facto responsible for the positive and negative results of the activity (i.e., for the whole product), and thus capitalist production inherently violates the basic principle of imputative justice. But the legal system does not 'announce' the violation by solemnly decreeing that, as long as the employees' actions are lawful, the employees will be legally 'considered' only as hired instruments being employed by the employer. The law achieves exactly the same result simply by now accepting the same inextricably co-responsible cooperation on the part of the employees as if <u>that</u> fulfilled the contract for the legal alienation and transfer, from the employees to the employer, of that peculiar commodity, human labor. No further explicit legal decree, judgment, or imputation is necessary (as long as no law has been broken). The employer has borne all the costs of production (including the 'labor costs') so the employer has the legally defensible claim on all the outputs, and thus the employer laissez faire appropriates the whole product of the working community. That is the modus operandi of capitalist appropriation.

We have seen that in order to vouchsafe capitalist appropriation the legal system must legalize a fraud - must legally misrepresent the responsible actions of persons as being the services of things, i.e., must accept a person as 'fulfilling' and 'fitting' the legal role of a thing. A person cannot voluntarily turn himself into a part-time human tool anymore than a full-time human tool, i.e., a chattel. Accordingly, in all modern legal systems, the contract to voluntarily sell oneself is legally recognized as being invalid.

> 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 <u>rent</u> himself at a wage.[7]

Instead of recognizing that the contract to rent oneself out is similarly invalid, the legal system of capitalism 'validates' the employer-employee contract and 'interpretes' the employees' responsible cooperation as

being the employers' employment of hired instruments. When the employees and the employer break the law, then the legal authorities earnestly desire that the legal responsibility be imputed to the de facto responsible party so the fraud is set aside in favor of the facts.

We noted before that the basic liberal defense of capitalist production is that it cannot be inherently unjust because it is based on a voluntary contract, the hired labor contract. We now see what can be wrong with a voluntary contract: it can be a fraud. And the voluntary contract to hire oneself out, like the voluntary contract to sell oneself, is indeed an inherently fraudulent and invalid contract. The fraudulent mismatch - between the employees' contractual role as hired instruments and their de facto responsible performance - induces the malfunction in the 'laissez faire' mechanism of imputation, i.e., induces the mismatch between the de facto and the de jure responsibility of the working community in a capitalist firm. The fraudulent employer-employee contract thereby sets up and allows the employer's misappropriation of the whole product. As usual, a fraud allows a theft to parade in the disguise of a voluntary contract. And capitalism not only robs working people of the (positive and negative) fruits of their labor; it also thereby defrauds them of their right to democratic self-determination in their working lives.

Conclusion

Most modern western societies now postulate an inalienable right to democratic self-government in the public sphere - and yet suffer from the contradiction of allowing the right to self-determination to be legally alienated in the private sphere. The march of democracy has been temporarily halted at the factory gates by the alleged rights of property and the supposedly valid hired labor contract. But we have seen that far from being "founded" on private property and standard (i.e., "bourgeois") jurisprudence, capitalist production stands in direct contradiction with the natural labor principle of private property appropriation as well as with the (equivalent) juridical principle of legal imputation in accordance with de facto responsibility. Therefore it is not only the principles of democracy but also the very principles of private property and jurisprudence that demand, in the name of justice, the abolition of capitalist production in favor of self-management.

FOOTNOTES

1. Anton Menger, The Right to the Whole Produce of Labour: The Origin and Development of the Theory of Labour's Claim to the Whole Product of Industry, (London: Macmillan and Co., 1899).

2. John Bates Clark, The Distribution of Wealth, (New York: Macmillan and Co., 1899).

3. Friedrich Von Wieser, Natural Value, tr. C.A. Malloch (New York: G.E. Stechert and Co., 1930), orig. published in 1889.

4. This theorem follows from the fact that in a capitalist firm, the people who actually produce the outputs by using up the inputs (instead of being the legal members of the firm) are from the legal viewpoint only the outside sellers of the commodity labor. And that basic employer-employee relation is unaltered by changes in managerial techniques and by employee consultation and participation programs in a capitalist firm.

5. If a person was literally forced to do something, then indeed the person would have been used as a human tool. But that is coercion. If, as in some science fiction stories, a person could be 'wired' to a computer and involuntarily controlled by someone else, then the person could, in that manner, voluntarily turn himself over to be employed as a human instrument for a period of time. Such a part-time human tool would genuinely fit the legal role of an employee.

6. Francis Batt, The Law of Master and Servant, 5th ed. by G. Webber (London: Pitman, 1967), p. 612. In this example, it is not necessary that criminal intent be explicit in the original contract. The criminal deed might have occurred within an on-going and otherwise normal employment relation. A common first reaction to this example is to assert that the employee is legally liable because an employment contract, which involves the commission of a crime, is null and void. But that mistakes the ground of the imputation and it puts "the cart before the horse". The employee is legally liable for the crime, not because of the legal status of his contract, but because he committed the crime. And it has only been legally determined that the employment relation did involve a crime after the employer and employee have been found guilty. Their guilt is the reason for the nullification (not vice-versa).

It is also helpful to consider a case where a person W hires out himself and a person C hires out his car - both to a person R. The contracts are for general services and do not involve criminal intent. Then R subsequently decides to employ his hired instruments to rob a bank. The hired worker W would be inescapably co-responsible whereas the car owner C would not be if he was not otherwise involved than as owner of the rented car. The basic fact is that a person can voluntarily give up and transfer the use of a machine like a car, but a person cannot do the same with his own person. The hired worker can only voluntarily cooperate with his employer and thereby be jointly responsible, or withdraw the hired instrument from the employment relation altogether. When the hired entity is a person instead of a thing, then it is not possible for the owner to voluntarily alienate the entity in such a manner that the employer can use it without the owner being automatically co-responsible.

7. Paul Samuelson, Economics, 9th ed. (New York: McGraw Hill, 1973), p. 52 (Samuelson's italics).