by T.M. Knox, Oxford, 1967, pp. 257-8. In his translation, the will in its second aspect is termed "substantial."

48 After all, inflation is at least in part caused by attempts to distribute by monetary means more than there is in real terms. And if consumers are to be free to choose the goods they want to consume, some income distributions will necessarily cause disequilibria in consumer goods markets even in planned economies. See, for instance Nicolas Kaldor, "Inflation and Recession in the World Economy," *The Economic Journal*, 86, December 1976, pp. 703-14. Michio Morishima, *The Economic Theory of Modern Society*, Cambridge, 1976, chapter 8.

49 This is the fundamental limitation of the kind of overly positivistic interpretation of Marx in Ian Steedman's *Marx after Sraffa* (London, 1977) and even of some statements to be found in John Roemer's *Analytical Foundations of Marxian Economic Theory* (Cambridge, 1981), pp. 158-9.

50 This is one of the main reasons why "we must dispense with any purely objectivist interpretation of Marx." Jean Hyppolite, *Studies in Marx and Hegel*, New York, 1969, p. 136.

51 *Ibid.*, p. 135.

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ON THE LABOR THEORY OF PROPERTY

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LOCKE'S THEORY OF PROPERTY

The purpose of this paper is primarily to outline the modern treatment of the principal normative theory of property, the *labor theory of property*[1] and secondarily to relate it to Locke's theory of property. Descriptive property theory has elsewhere[2] been introduced and developed in the context of both economic theory and mathematical accounting. In this paper, Locke's theory will be sketched, a fairly self-contained presentation of the modern labor theory of property will be outlined, and then Locke's theory will be analyzed and interpreted. Finally, the institutional implications of the labor theory of property will be outlined.[3]

The core of Locke's theory of property is presented in Chapter V, "Of Property," in the Second Treatise of *Two Treatises of Government.*

> Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a *Property* in his own *Person.* This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property.* It being by him removed from the common state Nature placed it in, hath by this *labour* something annexed to it, that excludes the common right of other Men. For this *Labour* being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joyned to, at least where there is enough, and as good left in common for others. [Section 27]

This is Locke's classic statement of the labor theory of property, the theory that people have the right to the fruits of their labor. The argument is set in a hypothetical original state of society prior to the accumulation of capital when nature is a common resource to all. The "right" Locke postulates is a *natural right* that is not dependent on the particular laws in a society. Indeed, the labor theory of property is sometimes referred to as the "natural rights theory of property."[4] The theory is intended as a normative or prescriptive theory, not a positive or descriptive theory. A given legal system might or might not in fact recognize this natural right, but the theory holds that society should recognize and codify the natural right to the fruits of one's labor in the system of positive laws.

The labor theory of property has throughout its history been entwined with and often totally confused with the *labor theory of value.* The labor theory of value essentially holds that labor is the sole source of economic value. The admixture of the two labor theories was present even in Locke who had a somewhat rudimentary form of the labor theory of value.

> For 'tis *Labour* indeed that *puts the difference of value* on every thing; and let any one consider, what the difference is between an Acre of Land planted with Tobacco, or Sugar, sown with Wheat or Barley; and an Acre of the same Land lying in common, without any Husbandry upon it, and he will find, that the improvement of *labour makes* the far greater part of *the value.* I think it will be but a modest Computation to say, that of the *Products* of the Earth useful to the Life of Man 9/10 are the *effects of labour*: nay, if we will rightly estimate things as they come to our use, and cast up the several Expenses about them, what in them is purely owing to *Nature,* and what to *labour,* we shall find, that in most of them 99/100 are wholly to be put on the account of *labour.* [Section 40]

The subsequent history of the labor theory of property has been largely a history of clarifying and elucidating the theory by disentwining it from the labor theory of value. But the mixture of the two labor theories was present from Locke onward. In the following representative quotation from a modern commentator, both theories are mentioned in the same sentence.

> The citizens of his [Locke's] ideal commonwealth own property, whose possession is defined as a natural right; but the title to property is secured by labor, which is the source of value.[5]

Indeed, the two theories are sometimes almost identified when it is held that labor is the sole source of the value of produced property and that *therefore* labor should get the title to the property.

Various versions of the labor theory of value were used in the classical economic theories of Adam Smith and David Ricardo, without recognizing any property-theoretic implications. Smith used labor as a "measure of value" in the sense that price could be viewed in terms of the labor it commanded. Ricardo interpreted the price of a commodity, for the most part, in terms of the labor directly or indirectly embodied in the commodity. The property-theoretic implications of Ricardo's labor theory of value were developed by the small band of radical economic thinkers known as the "Ricardian socialists" or classical "laborists."[6] Ricardo's labor theory of value was developed into a value theoretic critique of capitalist production by Karl Marx, the "greatest of the Ricardian socialists."[7]

In England, the principal Ricardian socialists or classical laborists were Thomas Hodgskin, William Thompson, and John Francis Bray.[8] Historians of economic thought have viewed the Ricardian socialists less as thinkers in their own right than as precursors of Marx. This has affected the parts in the Ricardian socialists' thought which are emphasized, namely the parts that were later developed by Marx. Indeed, many aspects of the Marxian labor theory of surplus value and exploitation can be found in the Ricardian socialists. But the Ricardian socialists or classical laborists also explicitly developed the labor theory of property, and this property theoretic theme did not survive in the exclusively value-theoretic focus of Marx's thought. The classical laborists, such as Hodgskin, looked back not to Ricardo but to Locke for the labor basis to property.

> I heartily and cordially concur with Mr. Locke, in his view of the origin and foundation of a right of property. . . . [Hodgskin then quotes the basic passages from Locke.]
>
> Thus the principle Mr. Locke lays down is, that nature gives to each individual his body and his labour; and what he can make or obtain by his labour naturally belongs to him.[9]

Hodgskin goes on to note the inconsistency of orthodox social theorists who pay lip service to Locke's theory and then defend the usual arrangements of property.

> It is not a little extraordinary that every writer of any authority, since the days of Mr. Locke, has theoretically adopted this view of the origin of the right of property, and has, at the same time, in defending the present right of property in practice, continually denied it. This is the logical consistence of literary logicians![10]

Locke's labor theory of property has what seems to be a paradoxical position in the history of thought. On the one hand, Locke is seen as the father of orthodox liberal democratic theory and Locke's property theory usually receives theoretical support from orthodox theorists. Indeed, Robert Nozick's entitlement theory is a modern restatement of Locke's theory used in a spirited defense of capitalist production.[11] On the other hand, the labor theory of property, with or without the labor theory of value, has been used as the basis for radical critiques of capitalism. It is part of our purpose here to address this seeming paradox.

NEO-CLASSICAL VALUE THEORY: THE RESPONSE TO THE LABOR THEORY OF VALUE

Marx explicitly developed the labor theory of value. The labor theory of property was thereafter put in a background role as debate focused on the labor theory of value. As the Ricardian socialists and Marx extracted radical conclusions from the Ricardian labor theory of value, orthodox economists became less and less satisfied with that approach to price theory. The full orthodox answer came with the marginalist revolution in the latter part of the nineteenth century. According to the neo-classical value theory that emerged from the marginalist revolution, price or market value was determined by considerations of marginal utility and marginal productivity that stand behind the supply and demand for commodities in the marketplace.

The labor theory of value was often represented by the slogan "Only labor is productive." But neo-classical theorists quite correctly pointed out that other factors of production are also productive in the sense that the product will be reduced if these factors are removed. Even if one could in some meaningful sense reduce capital goods to labor, land, and time, that still left land, including all natural resources, and time as other factors necessary for production in addition to labor.

The Ricardian socialists often expressed the labor theory of property with the slogan "Labor's right to the whole product." But neo-classical theorists quite correctly pointed out that labor cannot receive the value of all the outputs if there are other scarce productive inputs. The value of the outputs must be shared between all the productive factors. If labor is not the only productive factor, then how could labor expect to receive the "whole product"?

The neo-classical value theory aims not only to refute the labor theory of value but to appropriate to itself some of the moral force of Locke's theory. That is, the *marginal productivity theory of distribution* attempts to show that, under certain conditions, each factor gets what it produces in capitalist production. Each factor or input has a certain marginal productivity which

can be considered as the increase or decrease in the amount of the product as one unit of the input is respectively added or subtracted from production. For instance, a profit-maximizing firm would not buy an extra man-hour of labor for a wage that exceeded the value of labor's marginal product – since that is the value of the extra product resulting from an extra man-hour. And, if the value of the marginal product exceeded the wage, more labor would be purchased until diminishing returns brought the marginal product down to the competitive wage level. Hence in competitive equilibrium, labor would be paid the value of its marginal productivity.

There is nothing in the marginal productivity theory that is unique to labor. The same reasoning applies to any productive input. Capital and land also have marginal productivities, and in competitive equilibrium each would be paid according to the value of its marginal productivity.

The marginal productivity theory of distribution is used not only as a descriptive theory to predict behavior in the competitive model, but as a normative theory to "answer" the labor theory of value. The idea is to interpret the marginal productivity of each factor as the amount of the product "produced" by that factor. For instance, since the product increases by the marginal productivity of, say, a shovel when an extra shovel is added as an input, it seems natural to view that extra product as being "produced" by the shovel. Since, in competitive equilibrium, the shovel or its owner would be paid the value of the shovel's marginal productivity, the shovel would "get what it produced." The same would hold for every other productive factor. Hence instead of imputing the whole product to labor as suggested by the classical laborists, the neo-classical theorists, such as John Bates Clark, argued that the marginal productivity theory would impute to each factor what it produced; to labor the fruits of labor, to land the fruits of land, and to capital the fruits of capital. In this manner, the neo-classical economic theorists attempted not only to refute the labor theory of value but to appropriate the moral force of Locke's theory of property in support of competitive capitalism.

The modern treatment of the labor theory of property[12] totally jettisons the labor theory of value.[13] The analysis and critique of capitalist production is constructed in a non-Marxist form and is strengthened by being based on the structure of property rights in production, not on value relations. The labor theory of property, being a property theory, is not intended to displace any value theory including the neo-classical theory of value. Any imagined moral force of the marginal productivity theory of distribution is defeated by refocusing on the structure of property rights in production – which is not even the subject matter of marginal productivity theory. The modern labor theory of property and its relation to neo-classical value theory will be considered in more detail below.

THE WHOLE PRODUCT

When marginal productivity theory attempts, in some sense, to "impute" shares of the product to the various factors, it is using the *distributive shares metaphor*: each factor is viewed as "producing" and then "getting" a share of the product. The normative use of marginal productivity theory then attempts to show that each factor "gets what it produces." But as a description of *property rights,* the distributive shares picture is quite misleading and false. The simple fact is that one legal party, such as the employer in a capitalist firm, *owns all the product.* For example, General Motors doesn't just own "capital's share" of the GM cars produced; it owns all of them. Orthodox economists are, of course, aware of this "legalistic" fact, but they feel "called upon" to metaphorically reinterpret the product as being "shared" or "distributed" in order to account for the income received by the input suppliers. How else can one account for the other factor incomes if one factor is pictured as owning all the product?

The facts suffice; they do not need to be "improved upon" by the distributive shares metaphor. Property can take either a positive or negative form as assets or liabilities, i.e., as property rights or obligations. By "product," economists mean only the positive product, the output assets produced. But there is also a negative product. 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 simple fact which accounts for the other factor incomes without the shared pie metaphor is the fact that the one party who owns all the positive product also owns all the negative product, i.e., also holds all the liabilities for the used up inputs. General Motors not only owns all the GM cars produced but also holds all the liabilities for the factors such as steel, rubber, glass, and labor used up in production. The money paid out to satisfy these liabilities represents the costs of production. The suppliers of the steel, labor, and other factors, instead of being joint claimants on the product, are only creditors of that one party who owns all the positive and negative product.

We have seen that in order accurately to describe the structure of property rights in production without the "benefit" of the shared pie metaphor, it is necessary to expand the usual concept of "product" to include the negative product (input liabilities) in addition to the usual positive product (output assets). This bundle of property rights and obligations will be called the *whole product,* i.e.,

WHOLE PRODUCT = OUTPUT ASSETS + INPUT LIABILITIES.

One legal party owns the whole product of production. We can already see the flaw in the neo-classical argument that one factor cannot "get" the whole product when there are several scarce factors. When the "whole product" is properly defined in terms of property rights and obligations, then it is seen that one party not only can but does own the whole product. GM owns all the assets produced and holds all the liabilities incurred in the production of GM cars, and a similar fact holds for any other firm. All that remains valid in that neo-classical argument is about value relations, not property relations, i.e., the truism that the party owning the whole product will not get the value of the outputs in *net* terms since the party must also pay off its liabilities for the inputs.

There are two ways that a party can acquire the legal title to an asset: (1) by acquiring the legal right by transfer from a prior owner as in a market exchange, and (2) by being the first or initial owner of the asset. The first or initial acquisition of the legal right to an asset is called the *appropriation* of the asset. There are similarly two ways that a party can disacquire or give up the legal title to an asset: (1) by transferring the legal right to another party as in a market exchange, and (2) by being the last or terminal owner of the asset. In this second case, the owner would give up and surrender the legal right and claim to the asset but not by transferring it to another party (e.g., when the asset is consumed). This termination of the legal title to an asset is what was originally called the *expropriation* of the asset.

> This word [expropriation] primarily denotes a voluntary surrender of rights or claims; the act of divesting oneself of that which was previously claimed as one's own, or renouncing it. In this sense, it is the opposite of "appropriation."
>
> A meaning has been attached to the term, imported from foreign jurisprudence, which makes it synonymous with the exercise of the power of eminent domain. . . .[14]

Today the phrase "expropriation of assets" is commonly used to mean the confiscation of assets by the government. We will use the phrase only in its original sense as the opposite of appropriation, as the termination of title, and not in the other sense meaning the compulsory transfer to the government. The phrase "expropriation of assets" can also be sometimes avoided by substituting the phrase "appropriation of liabilities" (i.e., the liabilities for the assets used up, consumed, or destroyed).

In production, the outputs are produced and the inputs are used up. Hence two questions arise. Who is to expropriate the inputs and who is to appropriate

the outputs? If we speak of "appropriating the input-liabilities" instead of "expropriating the input-assets," then the questions can be reformulated. Who is to appropriate the output-assets and the input-liabilities? The output-assets and the input-liabilities are precisely the whole product. Hence the basic question about the structure of property rights and obligations in production is: "*Who is to appropriate the whole product*?"

This fundamental question has both a normative and a descriptive interpretation. Who ought to appropriate the whole product and who in fact appropriates the whole product? We will first consider the *descriptive question.*

THE *LAISSEZ-FAIRE* MECHANISM OF APPROPRIATION

The question of who appropriates a liability (or expropriates an asset) arises whenever an asset is used up, consumed, or otherwise destroyed. An example of an overt or explicit legal assignment of a liability is a civil trial for the legal imputation of the liability for destroyed property. If the accused party is found guilty, then a damage payment for at least the value of the destroyed property is made to the previous owner. That payment in effect transfers the legal title to the guilty party, where the title is terminated. But these trials are infrequent, while commodities are being constantly consumed, used up, or destroyed in production and consumption activities.

When no law is broken so that the legal authorities do not intervene to hold a trial, then there is a *laissez-faire* or invisible hand mechanism that automatically takes over. That is, when the Law does not intervene to reassign the liability for a used up asset, then that liability is automatically left in the hands of the last legal owner of the asset. If that party does not voluntarily appropriate the liability (expropriate the asset) then the party can seek redress by trying to get the legal system to intervene and reassign the liability.

If appropriable new assets are produced as a result when certain commodities or assets are used up, then the legal party that voluntarily appropriated the liabilities for the used up assets would naturally lay claim on the produced assets. In the absence of any reassignment of the liabilities, the legal authorities would consider that claim as being defensible. Hence we have the normal legal mechanism governing how assets and liabilities are in fact appropriated in normal day-to-day activities of production and consumption.

> THE *LAISSEZ-FAIRE* MECHANISM OF APPROPRIATION: When no law is broken, let the liabilities generated by an activity lie where they have fallen, and then let the party which assumed the liabilities claim any appropriable new assets resulting from the activity.

It is this *laissez-faire* mechanism which determines who in fact appropriates the whole product in normal production activities. One party purchases all the requisite inputs to production, including labor, and then that party bears those costs as the inputs are consumed in production. Hence that party has the legally defensible claim on the produced outputs. In this simple manner, one party legally appropriates the whole product of production (input-liabilities and output-assets).

It is always the "firm" as a legal entity which legally appropriates the whole product. Hence the question of who is to appropriate the whole product is really the question of who is to be the firm. There are three basic types of firms. In a *capitalist* firm, the whole product is appropriated by "Capital," the suppliers of equity capital. In a *socialist* firm, it is "Society" organized as the government which appropriates the whole product. In the type of firm called a *worker cooperative* or a *self-managed firm*, it is the party herein called "Labor," consisting of all those who work in the enterprise, who would appropriate the whole product.[15] Hence the basic question which differentiates capitalist production, socialist production, and self-managed production is the question: "Who is to be the firm? Capital, the State, or Labor?"

The descriptive question of who is to be the firm is answered by the *laissez faire* mechanism. The whole product appropriator is the party which hired (or already owned) the inputs and assumed those costs as the inputs were used up in production and thus could lay claim to the produced outputs. Hence the determination of who is the firm, i.e., who appropriates the whole product, is based on how the input hiring contracts are made. If Capital hires Labor, then Capital is the firm. If Labor hires the capital, then Labor is the firm. If some third party (such as an entrepreneur or even the State) hires both the capital and workers, then that third party is the firm. Hence the determination of who is to be the firm is decided in factor markets by *who hires what or whom.*

The determination of who is to be the firm is thus not decided by the ownership of the means of production or by any so-called "ownership of the firm." The ownership of capital does not legally determine who is to be the whole product appropriator since capital can be hired out just as labor can be hired in. It is the direction of the hiring contracts, whether Capital hires Labor or vice-versa, which decides the matter. There is no property right called "the ownership of the firm" which decides the matter.

There is, of course, the legal form of the capitalist corporation which is owned by its shareholders. But prior to the hiring contracts, a corporation is only a capital owner. Capital meets Labor in the market. But there is no legal necessity for that to be the labor market instead of the capital market. Labor could hire the capital just as Capital can hire Labor. It is the direction

of that hiring contract which determines whether the capital-owning corporation hires in Labor and is thus the firm (whole product appropriator) or whether the corporation is only a capital supplier hiring out its capital to another party which uses it in production and which thus is the firm. There is no necessity for the other party such as Labor to "buy the firm"; hiring the capital will suffice. The ownership of the means of production (capital in the form of capital goods or even a corporation itself) thus embodies no legal obligation for Capital (the owners of the capital) to be the firm. The ownership of capital is "only" relevant to the question of marketplace power, the question of which party has the power to make the hiring contracts in its favor.

THE LABOR THEORY OF PROPERTY

The labor theory of property addresses the *normative question* of who ought to appropriate the whole product of production. The labor theory of property holds that people have a natural right to the positive fruits of their labor and a natural obligation to bear the negative fruits of their labor. In any given productive enterprise, the production of the outputs and the using-up of the inputs are, respectively, the positive and negative fruits of the joint labor performed by all the people working in the enterprise. The output-assets are the positive fruits and the input-liabilities are the negative fruits of the working community of the enterprise, i.e., of Labor in the inclusive sense of the blue and white collar workers of the firm. Hence the labor theory of property implies that Labor has the natural right to the outputs and the natural liability for the used up inputs, i.e., that Labor should appropriate the whole product.

The labor theory of property is totally independent of the labor theory of value. In the statement "Labor produces *the value of* the outputs and therefore Labor should appropriate the outputs," the words "the value of" can be deleted entirely—as can the labor theory of value itself. Labor produces commodities with certain characteristics. If those characteristics have a certain economic value, it is not because labor produced them but because they are useful elsewhere in production or are desirable to consumers.

Orthodox economists make no attempt to justify Capital's appropriation of the whole product. Instead, they evade the matter entirely by looking at distributive shares. They use the distributive shares metaphor to "picture" Capital and Labor as each getting a "share of the product." Since the size of the pie shares in the functional distribution of income is partly a function of prices, orthodox economists base their "story" on a value theory, the neo-

classical theory of prices. But the main point about the neo-classical value theory or even the Marxist labor theory of value is not whether it is true or false, but that it is quite irrelevant to the debate over capitalist production. Capitalism is not a particular type of price system or a particular set of value relations. Capitalism is a particular type of property system, the system which allows Capital, by means of the employer-employee contract and the other input purchase contracts, to appropriate the whole product of production. The best of value theories would only determine the value of the assets and liabilities in the whole product, but would not determine who ought to appropriate that bundle of property rights and obligations in the first place.

The labor theory of property cuts beneath the value theories of the contending schools and directly addresses the structure of property rights in production. Production is a human activity carried out by the people involved in the production process. This human activity is called "labor" and, abstractly considered, it consists of using up various inputs in the process of producing certain outputs. The production of the outputs and the using-up of the inputs are the positive and negative fruits of that human activity, the whole product of labor. According to the labor theory of property, the people carrying out this productive activity should appropriate the fruits of that human activity. This is only the case when the people who work in a firm are the legal members of the firm, i.e., when the enterprise is a worker cooperative or self-managed firm. Then the people working in the firm *are* the firm from the legal viewpoint so they jointly appropriate the positive fruits of their labor and are jointly liable for the negative fruits of their labor.

The development of the labor theory of property by the classical laborists such as Hodgskin, Thompson, and Bray suffered from several major deficiencies. While the use of the phrase "whole product" is borrowed from them, they failed to include the all-important negative product in their concept of the whole product. They just referred to the positive product, the produced outputs, as the "whole product." But the classical laborists' claim of "Labor's right to the whole product" is incoherent without the inclusion of the negative product.

Consider, for example, an economy of self-managed firms where firm A produces capital goods such as machine lathes which are used by firm B to produce consumer goods. The firm A workers' appropriation of the positive fruits of their labor is meaningless unless the firm B workers appropriate the negative fruits of their labor (i.e., bear the liabilities for using up the machine services). Unless the firm A workers will give away their positive product for free, the firm B workers must bear the negative fruits of their labor and satisfy those liabilities by leasing or buying the capital goods. The classical laborists'

failure to explicitly include the negative product in their notion of the whole product left them open to the orthodox banality that Labor cannot expect to get all the outputs without taking due account of the other scarce factors.

THE JURIDICAL PRINCIPLE OF IMPUTATION

Another major deficiency in the classical laborists' development of the labor theory of property was their failure to interpret the theory in terms of the juridical norm of legal imputation in accordance with *de facto* responsibility. We are concerned with responsibility in the *ex post* sense of the question "Who did it?", not with "responsibilities" in the *ex ante* sense of one's duties or tasks in an organizational role. A person or group of people are said to be *de facto or factually responsible* for a certain result if it was the purposeful result of their intentional (joint) actions. The assignment of *de jure or legal responsibility* is called *imputation.* The basic *juridical principle of imputation* is that *de jure* or legal responsibility is to be imputed in accordance with *de facto* or factual responsibility. For example, the legal responsibility for a civil or criminal wrong should be assigned to the person or persons who intentionally committed the act, i.e., to the *de facto* responsible party.

Since, in the economic context, intentional human actions are called "labor," we have the following equivalence.

> *The Juridical Principle of Imputation*: People should have the legal responsibility for the positive and negative results of their intentional actions.
>
> *The Labor Theory of Property*: People should legally appropriate the positive and negative fruits of their labor.

In other words, the juridical principle of imputation is the labor theory of property applied in the context of civil and criminal trials, and the labor theory of property is the juridical principle applied in the context of property appropriation. This equivalence was perhaps 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 in civil and criminal trials.

The lack of this juridical interpretation in the classical treatment led to the classical laborists' notorious failure to ever justify the slogans such as "Only labor is creative" or "Only labor is productive." Orthodox economists could correctly observe that all the factors of production, including land and capital, were "productive" in the sense that to add to or subtract from the employment

of these factors would accordingly add to or subtract from the product. It is indeed true that land (including natural resources) and capital are "productive" in this sense of being causally efficacious in production. Otherwise there would be no occasion to use them. The reason that machine tools are used in metalworking and that good luck charms and magical incantations are not used is that the tools are much more efficacious.

The point is that while all the factors are "productive" in the sense of being efficacious, *only labor is responsible.* Capital goods and natural resources, no matter how useful they may be, cannot ever be responsible for anything. Guns and burglary tools, no matter how efficacious and "productive" they may be in the commission of a crime, will never be hauled into court and charged with the crime. Only human beings can be responsible for anything and thus only the humans involved in production can be responsible for the positive and negative results of production. In particular, the people working in an enterprise are factually responsible for using up the inputs and for producing the outputs. Hence the juridical principle of imputation (i.e., the labor theory of property) implies that the workers (in the inclusive sense) should have the legal liability for the used-up inputs and the legal ownership of the produced outputs.

THE PATHETIC FALLACY

The equivalence between the labor theory of property and the juridical principle of imputation pushes the roots of the labor theory back in history, far beyond Locke, to the time when Humanity emerged from the world view of primitive animism. Animism attributed the capacity for responsibility not just to persons but also to non-human entities and forces. Accordingly, in order to escape the grasp of the imputation principle that imputes responsibility only to persons, orthodox economists have had to resurrect a metaphorical form of animism. This sophisticated animism views productivity in the sense of causal efficacy as if it were responsible agency. All the inputs to production, both human and non-human, are viewed as "agents of production cooperating together to produce the product."

The attribution of responsible agency to natural entities and forces is a common literary and artistic metaphor that Ruskin called the *pathetic fallacy.* Examples are: "The wind angrily banged the shutters" and "The waves pounded furiously on the rocks." Examples in the "literature" of economics are: "Together, the man and shovel can dig my cellar" and "land and labor *together* produce the corn harvest."[16] In spite of the romantic allure of the pathetic fallacy, it is still a fallacy. It confounds the distinction, well-grounded in jurisprudence (but virtually unheard of in economics), between the

responsible actions of persons and the *behavior* of things. A shovel does not act together or cooperate together with a man to dig a cellar, because a shovel does not act at all. It is a thing. A person uses a shovel to dig a cellar, and the person is responsible both for using-up the services of the shovel (the negative product) and for digging the cellar (the positive product).

To emphasize how the "agents" of production "cooperate together," Professor Samuelson says: "Factors usually do not work alone."[17] The point is that, artistic metaphors aside, the non-human factors do not *work* at all. They are worked. The land is worked by the laborers to produce the corn harvest. Machines do not "co-operate" with workers; machines are operated by workers.

MARGINAL PRODUCTIVITY THEORY

Orthodox economics is fond of two metaphors: (1) the pathetic fallacy wherein each factor is pictured as "producing" a share of the product, and (2) the distributive shares metaphor wherein each factor is pictured as "getting" a share of the product. Naturally, economists could not resist the temptation to put the two metaphors together and to co-opt the labor theory of property in defense of competitive capitalism by trying to show that each factor "gets" what it "produces" in competitive capitalism. The result is the ideological interpretation of marginal productivity (MP) theory.

Mimicry is the sincerest form of flattery. Since the labor theory of property can be expressed in two vocabularies, that of property appropriation and that of responsibility imputation, one would expect MP theory to imitate it by using the two vocabularies. And so it did. John Bates Clark developed MP theory using the vocabulary of property appropriation and Friedrich von Wieser developed MP theory using the vocabulary of responsibility imputation![18]

The basic idea is to picture each factor as "producing" its marginal product. Is that what each factor "gets"?

> When a workman leaves the mill, carrying his pay in his pocket, the civil law guarantees to him what he thus takes away; but before he leaves the mill he is the rightful owner of a part of the wealth that the day's industry has brought forth. Does the economic law which, in some way that he does not understand, determines what his pay shall be, make it to correspond with the amount of his portion of the day's product, or does it force him to leave some of his rightful share behind him? A plan of living that should force men to leave in their employer's hands anything that by right of creation is theirs, would be an institutional robbery—a

> legally established violation of the principle on which property is supposed to rest![19]

In competitive equilibrium, each factor price is the value of its marginal productivity. Hence, Clark concludes that each factor "gets" the share of the product it "produces" in competitive equilibrium; to labor the fruits of labor, to capital the fruits of capital, and to land the fruits of land. In this manner, Clark and later MP theorists have brilliantly attempted to co-opt the labor theory of property and to harness it in the defense of competitive capitalism.

Most orthodox economists, even those who loudly "disagree" with MP theory, fully accept all the essentials of the ideological interpretation of MP theory. The essentials of the theory are that each factor "produces" its marginal product, and that each factor "gets" its marginal product in competitive equilibrium. Economists of both Left and Right persuasions, who "criticize and refute" the theory, in fact accept these essentials. The so-called "criticism" consists in pointing out that the real world economy is hardly perfectly competitive, that marginal products are usually very difficult to measure, and that there is nothing sacred about the original distribution of ownership of the factors. None of these points touch the essentials of the theory.

Orthodox economists tend to accept as simple objective fact that each factor "produces" its marginal product, and that each factor "gets" its marginal product in competitive equilibrium. For example, Professor Milton Friedman takes it as fact that competitive capitalism or a "free market society" operates according to the "capitalist ethic"; "To each according to what he and the instruments he owns produces."[20] Most orthodox economists, like Professor Friedman, prefer to strike a posture of scientific objectivity and to refrain from any normative judgment as to the ethical status of the "objective fact" that a free market society allocates to "each according to what he and the instruments he owns produces." They are perfectly willing to let the reader supply the missing ethical postulate.

It is this widely accepted "objective" interpretation of MP theory that is incorrect. A non-human factor does not "produce" its marginal product because, metaphors aside, it does not produce at all. Each factor does not "get" any property right to a share in the product since, metaphors aside, the whole product is appropriated by one party.

The concept of marginal productivity is a very useful analytical notion that needs to be "rescued" from the "objective" animistic interpretation and understood in a manner consistent with the fact that persons act and things don't. Consider, for example, the "marginal product of a shovel" in a simple production process wherein three workers use two shovels and a wheelbarrow to dig out a cellar. Two of the workers use two shovels to fill the wheelbarrow

which the third worker pushes a certain distance to dump the dirt. The marginal productivity of a shovel is defined as the extra product produced when an extra shovel is added and the other factors, such as labor, are held constant. The labor is the human activity of carrying out this production process. If labor was held "constant" in the sense of carrying out the same human activity, then any third shovel would just lie unused and the extra product would be identically zero.

"Holding labor constant" really means reorganizing the human activity in a more capital intensive way so that the extra shovel will be optimally utilized. For instance, all three workers could use the three shovels to fill the wheelbarrow and then they could take turns emptying the wheelbarrow. In this manner, the workers would use the extra shovel and by so doing they would produce some extra product (additional earth moved during the same time period). This extra product would be called the "marginal product of the shovel," but in fact it is produced by the workers who are also using the additional shovel. In the workers' new whole product, the positive product is expanded by the extra output and the negative product is expanded by the utilization of the services of an extra shovel. The ratio of the *workers'* extra positive product to the *workers'* extra negative product is called the "marginal productivity of a shovel." In this manner, the concept of marginal productivity can be understood in an analytically useful but non-animistic fashion.

The development of the ideological interpretation of MP theory using the vocabulary of responsibility and imputation was due to Friedrich von Wieser. Wieser's contribution is remarkable because he is one of the few capitalist economists who admitted in print that of all the factors of production, only labor is responsible.

> 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.[21]

These are remarkable admissions. Wieser at last has in his hands the correct explanation of the old radical slogans "Only labor is creative" or "Only labor is productive," which even the classical laborists and Marxists could not explain clearly. Does Wieser resist his capitalist inclinations and develop a laborist critique of capitalist production?

Wieser's response to his insights exemplifies what passes for moral reasoning among many economists and social theorists in general. Any stable socio-economic system will provide the conditions for its own reproduction. The bulk of the people born and raised under the system will be appropriately educated so that the superiority of the system will be "intuitively obvious" to them. They will not use some purported abstract moral principle to evaluate the system; the system is "obviously" correct. Instead the moral principle itself is judged according to whether or not it supports the system. If the principle does not agree with the system, then "obviously" the principle is incorrect, irrelevant, or inapplicable.

The fact that only labor could be legally or morally responsible did not lead Wieser to question capitalist appropriation. It only told him that the usual notions of responsibility and imputation were not "relevant." They applied to legal questions, whereas economists are concerned with economic questions. Capitalist apologetics would require a new notion of "economic imputation" in accordance with another new 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.[22]

By defining "economic responsibility" in terms of the animistic version of marginal productivity, Wieser could finally draw his desired conclusion that competitive capitalism "economically" imputes the product in accordance with "economic" responsibility.

Metaphors are like lies; one requires others to round out the picture. The Clark-Wieser theory uses one metaphor to justify another metaphor. Each factor's metaphorical responsibility for producing a share of the product is used to justify each factor's metaphorical property share in the product. By justifying one metaphor with another metaphor, capitalist apologetics can make a clean break with reality, the real property relations of capitalist production and the juridical principle of imputation actually used in the legal system. It is the *actual* property relations of capitalist production, i.e., the employer's appropriation of the whole product, that need to be justified or

condemned, and the notion of responsibility relevant to the structure of legal property rights is the normal non-metaphorical *juridical notion of responsibility* that is used every day from "the judicial point of view."

THE EMPLOYEE AS AN INSTRUMENT; LABOR AS A COMMODITY

Symmetry is a powerful engine of human thought. But the implications are not always progressive. For example, the slavery system exhibited a certain symmetry between the slaves and beasts of burden. Capitalist economists exhibit an absolute passion for the symmetrical treatment of the human element in production, labor, and the non-human factors of production. There are two ways that labor can be treated as symmetrical with the inputs to production. One way, which we have already seen, is to animistically elevate the non-human inputs to the status of responsible agents of production co-operating with the workers. The other way is to demote the human element to the level of the non-human factors as just another "input" to production. Thus the human activity of converting the inputs into the outputs is conceptualized as just another passive input to production.

Capitalist economists usually use one symmetrical picture or the other; either the *active picture* where all the factors are symmetrical active agents of production or the *passive picture* where all the factors are symmetrical passive inputs to production. The actual picture which recognizes the asymmetry between persons and things, which recognizes that persons act and things don't, is avoided at all costs. Since language itself deeply reflects the asymmetry between persons and things, economists use a variety of amusing linguistic contortions to describe the active picture or the passive picture of production. We have already described the use of the pathetic fallacy involved in the active picture which elevates the instruments of production into "agents of production co-operating" with the workers.

To describe the passive picture, economists have had to become masters in using the passive voice. The subjects who carry out the human activity of production have been reconceptualized as passive inputs to production, so the production process has no subject and can only be described in the passive voice. The outputs "get produced" and the inputs "get used up," but not by anyone. The production process is not an activity carried out by human beings, it is a "technological" process that just "takes place." A popular linguistic variation on the passive picture is to use some abstract noun, such as "technology," the "industry," or the "firm," as the putative subject or agent of the production process. Then the active voice can be used even though the human element is still treated as a passive input. "Technology" produces the outputs by using up the inputs. The "industry" or the "firm" produces

such and such a product. Intellectual archeologists of the future will perhaps derive some amusement by reading the economic textbooks of our day to see the various "pictures" of the production process devised by economists to avoid the asymmetrical fact that production is a human activity wherein people use up the inputs in order to produce the outputs.

People are not, in fact, symmetrical with things. But just as the legal system of chattel slavery legally treated certain people as being symmetrical with beasts of burden, the present legal system of capitalism (particularly the employer-employee contract) legally treats the *actions* of human beings symmetrically with the *services* of machines and the other non-human inputs as commodities that may be bought and sold. From the legal viewpoint, "labor is a commodity." In the employment contract, labor services are bought and sold. When the services of a car or an apartment are bought and sold, the car or apartment is rented. When the labor of a person is bought and sold, the person is rented or hired. The employment contract is the rental contract applied to the rental of a person. It is no longer permitted to buy and sell workers; they may only be 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.[23]

Thus the wage or salary payment is really the rental paid to "employ" a person, the "employee."

> 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.[24]

It is one of the magnificent conceits of our time that the institutionalized treatment of persons as things was eradicated with the abolition of slavery. Liberals and conservatives alike have so clouded their perception of social reality with a facade of metaphors that they cannot imagine how a civilization founded upon the voluntary renting of human beings could possibly be treating people as things. The property-theoretic analysis of—not the metaphors—but the actual structure of rights in production reveals a different picture.

When a person rents himself or herself out in the employer-employee contract, the person takes on the legal role of an instrument. This can be verified by directly analyzing the structure of legal rights in the capitalist firm. Things lack the capacity for responsibility so they can bear no legal responsibility for the results of their services. As Wieser put it, "imputation takes for granted physical causality," so the legal responsibility is imputed through the instrument, as a conduit, back to the human user. That is the legal treatment of an instrument, and that is precisely the legal treatment of the employees in a capitalist firm. The employees have *none* of the legal responsibility for the produced outputs (i.e., no legal ownership of the outputs) and *none* of the legal responsibility for the used up inputs (i.e., no legal claims against them for the used up inputs). Instead, that legal responsibility for the positive and negative results of the employees' actions is imputed back through them to the person or persons who "use" or "employ" them, the employer. The employer legally appropriates the whole product. Hence the employees in a capitalist firm have, within the scope of their employment, precisely the legal role of tools or instruments.

The employee in a capitalist firm and the slave both have the legal position of an instrument in their respective roles, but there are two major differences. The slave was owned on a "full-time" basis, whereas the employee is only hired or rented and thus only has the role of an instrument within the scope of the employment. Moreover the slave generally acquired the legal role of a chattel involuntarily whereas the employment contract is voluntary.

The employees in fact are, as the slaves were, responsible persons, not instruments. That is only their legal role. The employee is legally treated as an instrumentality only so long as the activities are lawful. When the employer and employees cooperate together to break the law, then the legal authorities step in, strip away the artificiality of the employees' role, and hold the employees co-responsible together with the employer for the results of the activities. The slaves, of course, enjoyed the same metamorphosis whenever they committed crimes. The "talking instrument" in work became the responsible person in crime. As one abolitionist observed in 1853:

> 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.*[25]

A professional philosopher would quickly note the "naivete" of the simple one-line definition of "*de facto* responsibility" used in a previous section. It does not address all the grey-area borderline cases. Thus legal philosophers and jurisprudents write volumes upon volumes which dissect human actions

to establish degrees of *de facto* responsibility under conditions of impaired mental competence, mistaken information, duress, and so forth in order that the appropriate degree of legal responsibility can be assigned in accordance with the juridical imputation principle. Now employees are fully capacitated; they are not children, they are not senile, they are not insane, and so forth. Yet one would scan the entire legal and philosophical literature in vain to find the simple observation that the actions of the employees in a normal capitalist firm are fully deliberate, intentional, voluntary, and responsible (no borderline case here)—*but* that the employees are assigned *zero* legal responsibility for the positive and negative results of these actions. Zero. It is the staggering power of social indoctrination which structures the perception of social reality so that certain aspects are seen very clearly while other aspects are quite invisible. Thus it is that lawyers and philosophers can spend a lifetime splitting hairs to properly apply the imputation principle to borderline cases and yet never even notice a direct one-hundred-percent violation of the principle right under their noses.

CAPITALIST PRODUCTION AS AN INSTITUTIONAL ROBBERY

All the people who work in a capitalist enterprise, the employees and any working employers, have joint *de facto* responsibility for the total results of their activities, i.e., for using up the inputs in the process of producing the outputs. But the employer takes all the *legal* responsibility for the used up inputs and the produced outputs (assuming the activities are lawful). The employer legally appropriates the whole product *as if* the employees had *in fact* been mere instruments of production. Since the employer legally appropriates the property, the whole product, which all who work in the enterprise are *de facto* responsible for creating, capitalist production (the employer-employee relation) is "an institutional robbery—a legally established violation of the principle on which property is supposed to rest."

Capitalist production is not a theft in the simple sense of a transfer of already owned property without the owner's consent. It is a theft in the sense of a wrongful appropriation of new property which is taken in the first place by a party other than the party *de facto* responsible for creating the property. The consent of the rightful owner is not even legally relevant since that party never owns the property at all. When legal responsibility is imputed to a party other than the responsible party, that is a miscarriage of justice, a violation of the juridical principle of imputation. The employment relation is an institutionalized form of that type of misimputation, where it is a bundle of both property rights and obligations that is misimputed.

The employer-employee relation inherently violates the basic norm of imputation. But how could this happen? Do the legal authorities deny the employees' *de facto* responsibility? Do the legal authorities claim that the employers (e.g., the absentee shareholders) are solely *de facto* responsible for the whole product? How does the legal system justify this imputation of the whole product to the employer?

It is a *laissez-faire* imputation. In a capitalist firm, the employer's appropriation of the whole product is a *laissez-faire* appropriation. Within the confines of the *laissez-faire* mechanism, i.e., when no law is broken, a party only needs to bear the costs of production (voluntarily appropriate the negative product) in order to have the legally defensible claim on the positive product. Since no *explicit* legal imputation is involved in the employer's appropriation of the whole product, the legal authorities do not explicitly affirm or deny the de facto responsibility of the employees or the employer. The whole question of responsibility does not overtly arise at all—since it is a *laissez-faire* imputation.

THE EMPLOYMENT CONTRACT AS A VOLUNTARY BUT INVALID CONTRACT

The standard defense of capitalist production (the employment relation) is that it cannot be inherently unjust because it (unlike chattel slavery) is based on a voluntary contract, the employer-employee contract. The Marxist analysis of the wage labor contract is as superficial as the Marxist labor theory of value. Marxists enter a special plea that the contract is "really" involuntary. Firstly, this special plea is quite unconvincing. According to any workable juridical definition of voluntariness, the labor contract is quite voluntary, especially in these days of unions and collective bargaining. Indeed, the unionized worker's bargaining position compares quite favorably with the bargaining position of consumers (who usually must take prices as given). Secondly, the argument, that wage labor is exploitative because it is "forced" labor based on an "involuntary" contract, is superficial because it does not challenge the liberal premise that wage labor would be permissible if it were "really voluntary." It is that premise which is incorrect.

The employment contract is the key to the entire legal structure of capitalist production. It is the employment contract which legally packages the whole human activity of production as just another input commodity. By purchasing this peculiar commodity in the employment contract and by purchasing the other inputs, any legal party, no matter how absentee, can legally appropriate the whole product of production. Let us compare this contract for the renting of human beings with the normal input contracts.

Consider the contract for the renting of a machine or tool. The owner of an instrument or machine can use the instrument personally and be responsible for the results *or* the owner can turn the instrument over to be used independently by another person who would then be responsible for the results. If a person could similarly alienate and transfer the "use" of his or her own person, then the employment contract would be a bona fide contract—like the contract to hire out a genuine instrument. *If* the employees could alienate and transfer their labor services to the employer so that the employer could somehow use these services without the employees being inextricably co-responsible, *then* the employer would be solely *de facto* responsible for the whole product and *then* the employer's *laissez-faire* appropriation of the whole product would be jurisprudentially correct. But such a contractual performance on the part of the employees is not factually possible. Human labor is factually non-transferable. All the employees can do is to voluntarily co-operate, as responsible human agents, with their working employer, but then the employees are inextricably *de facto* co-responsible for the results of the joint activity.

The inexorable joint responsibility of all the people who participate in an activity is a matter of fact. Judicial decrees, legislative enactments, and philosophical pronouncements will not change those facts. For lawful activities, the Law neither affirms nor denies those facts since the *laissez-faire* mechanism reigns. But when employees or, in legal jargon, servants commit civil or criminal wrongs at the direction of the employer, then the Law sets aside the invisible hand mechanism of imputation and steps in to render an explicit legal imputation based on the facts insofar as they are ascertained. Just as in an earlier age, the "talking instruments" in work became responsible persons in crime, so today the servants in work become the partners 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.[26]

It should be particularly noted that the employee is not guilty because an employment contract which involves a crime is null and void. Quite the opposite. The employee is guilty because the employee, together with the employer, committed a crime. It is their responsibility for the crime that invalidates the contract, not vice-versa.

When the "venture" being "jointly carried out" is non-criminal, the employees do not suddenly become instruments (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. The employer's sole legal appropriation of the whole product thus violates the basic norm of justice. The Law 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. But the Law achieves the *exact same results* by now accepting the employment contract as "valid" and by accepting the same inextricably co-responsible cooperation on the part of the employees as fulfilling the employment contract. No explicit decree, judgment, or imputation is necessary since the *laissez-faire* mechanism has taken over again. 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. That is the *modus operandi* of capitalist appropriation.

The defense that the employment contract is voluntary is inadequate. Voluntariness is a necessary but not a sufficient condition for the validity of a contract. The hired criminal would certainly agree to voluntarily "transfer" his labor services and to voluntarily "transfer" the responsibility for the results of his actions. But this is not factually possible, as the Law fully recognizes. It is as if one voluntarily agreed to be a beast of burden such as a horse. Why wouldn't such a contract be valid? It would be juridically invalid because it is impossible to voluntarily fulfill the contract to be a chattel. But the legal authorities could nevertheless accept such a contract to be a chattel as being "valid." If the person behaved appropriately like a "chattel" by doing as he or she is told, then the legal authorities would count that as "fulfilling" the contract to be a chattel—at least until a crime is committed. Then the legalized fraud would be set aside. Such a contract is not a concocted example. In the decade preceding the U.S. Civil War, general legislation was passed in six slave states to validate voluntary self-enslavement contracts "to permit a free Negro to become a slave voluntarily."[27]

Today, the voluntary contract of self-enslavement, the contract to voluntarily sell oneself, is recognized as being invalid, but the contract to voluntarily rent oneself out is still recognized as "valid." Indeed, it is the basis for the capitalist system of production. However a person cannot voluntarily fulfill the contract to be an instrument or chattel for eight hours a day any more than the contract to be a permanent chattel. We have seen that the employee has the legal role of an instrument. Thus the employer-employee contract is a contract to be an instrument—for eight or so hours a day. The worker cannot voluntarily fulfill that role any more than he or she can fulfill a contract to be a horse. But the legal authorities nevertheless can and do say that if the person does as he or she is told within the scope of the contract, then that

will count as "fulfilling" the contract—at least so long as no crime is committed. If a crime is committed, then the "contract" becomes a non-contract, the "transferred" labor becomes untransferred, and the "instrument" becomes a person, i.e., the whole fraud is set aside, so that the juridical principle of imputation (i.e., the labor theory of property) can be applied.

The voluntary contract to "transfer" labor, to play the role of a part-time "instrument," is *juridically invalid* because it is impossible to fulfill. The fault lies not in the *laissez-faire* mechanism of imputation—which is necessary in any system of private property. The fault lies in the invalid employment contract which causes the mechanism to misfire and misimpute the whole product. The capitalist legal system's acceptance of the workers' inescapably co-responsible actions as "fulfilling" the employment contract (outside of a crime) is only a legalized fraud, a massive fraud on an institutional scale. As always, a fraud allows a theft to parade about in the disguise of a voluntary contract.

INALIENABLE RIGHTS

The view, that the institutional treatment of persons as things was abolished with chattel slavery, is usually associated with the view that slavery was morally wrong because the slave relation was involuntary (whereas people are voluntarily rented under capitalism). The consistent application of this view entails that slavery would be morally permissible if it were based on a voluntary contract. The ultra-capitalist philosopher, Robert Nozick, has argued that a "free system" should allow a person "to sell himself into slavery.[28] Following Nozick, the argument for the permissibility of voluntary contractual slavery or "warranteeism" has been spelled out in great detail by J. Philmore.[29]

We are now in a position to see the flaw in Nozick's and Philmore's arguments. Voluntariness is necessary but not sufficient for the natural law validity of a contract. The voluntary self-enslavement contract to sell oneself is the full-time version of the employment contract to rent oneself out for eight or so hours a day. In either case, it is a contract to take the legal role of an instrument on either a full or part-time basis. Yet the warrantee or employee would remain a person. Any legal system which accepted such contracts as legally valid under positive law would thus be pretending that the warrantee or employee fit the role embodied by the contract—or at least as long as "instrument" did not break the law. Such "pretending" would be, in the case of the warrantee contract, and is, in the case of the employment contract, a legalized fraud conducted on an institutional scale. A factually impossible contract, which a legal system can only pretend is fulfilled, is invalid on natural law grounds.

This argument leads inevitably to the following definition: an *inalienable right* is a right such that the contract to voluntarily alienate the right is invalid on natural grounds. An inalienable right is not a right which may not be alienated without consent; it is a right which may not be alienated *even with consent.* From Nozick's acceptance of enslaving acts between consenting adults, it is clear that Nozick has no non-trivial concept of inalienable rights. Nozick argues that individuals have rights which the State or any other party may not take from them without their consent. But that is not an inalienable right; that is only a right as opposed to a privilege. Nozick and Philmore have no concept of a right that is inalienable even with consent.

Moreover, as Philmore has convincingly demonstrated, the pro-capitalist liberal tradition has no serious arguments against genuinely voluntary slavery. Nor does that tradition have any serious theory of inalienability; the word "inalienable" is used mostly for rhetorical effect to denote a right considered important or basic. Nozick is not "out of line." He carries that capitalist tradition to its logical conclusion, the ultra-capitalist "libertarianism" which accepts voluntary contractual slavery, the full-time version of the employment contract. It is not difficult to see the reason for this "blind spot" in the pro-capitalist liberal tradition. As pointed out by Philmore:

> Any thorough and decisive critique of voluntary slavery. . .would carry over to the employment contract—which is the voluntary contractual basis for the free market free enterprise system.[30]

Hence Philmore considers such a critique as a *reductio ad absurdum*, but we have seen this "absurdity" realized. The factual inalienability critique of the voluntary contract to buy another person carries over to the voluntary contract to rent another person.

Most anyone can understand the factual inalienability argument in the context of the hired criminal example. How absurd for the criminous employees to think that by signing a contract, they could "sell" their own actions and somehow transfer their responsibility for their actions to someone else. But when the employees' actions are lawful, the absurdity becomes the legal reality as the employment contract is "validated" and all the legal responsibility for the employees' actions is taken over by the employer.

A RE-EXAMINATION OF LOCKE'S THEORY

Was Locke a "closet critic" of capitalist production? Is the critique of capitalist production based on the labor theory of property the descendant of Locke's theory? In the standard passages quoted from Locke, the person

reaping the "fruits of his labor" is working as a self-employed proprietor. The crucial test is Locke's attitude towards wage labor. This attitude and Locke's theory as a whole is illuminated by the famous Turfs passage.

> Thus the Grass my Horse has bit; the Turfs my Servant has cut; and the Ore I have digg'd in any place where I have a right to them in common with others, become my *Property,* without the assignation or consent of any body. The *labour* that was mine, removing them out of that common state they were in, hath *fixed* my *Property* in them. [Locke, Second Treatise, section 28]

In the stock phrase "fruits of one's labor," it has almost always been assumed that Locke would take "one's labor" to mean the labor that a person performs. On the contrary, we now see that Locke interprets "one's labor" to mean the labor that one *owns,* not the labor that one *performs.* The servant performs the labor of cutting the turfs from the common, but the master owns the labor. Hence the master can say; "The *labour* that was mine, removing them out of that common state they were in, hath *fixed* my *Property* in them."

Thus Locke's theory is based less on a principle than on a pun, the pun of always interpreting the phrases such as "one's labour," "his labour," "the labour that was mine" to mean the labor owned rather than the labor performed. Locke's theory of property was not the labor theory of property at all. For centuries, commentators have misread Locke, always interpreting "one's labor" to mean the labor one performed. One modern commentator, C.B. Macpherson, has clearly understood the nature of Locke's theory.

> To Locke a man's labour is so unquestionably his own property that he may freely sell it for wages. A freeman may sell to another "for a certain time, the Service he undertakes to do, in exchange for Wages he is to receive" [Locke, section 85]. The labour thus sold becomes the property of the buyer, who is then entitled to appropriate the produce of that labour.[31]

If one rereads the classical passages with an eye to the distinction between owned labor and performed labor, then one can see that Locke's emphasis all along was on the ownership of the labor.

> The Labour of his Body, and the Work of his Hands, we may say, *are properly his.* Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned to it *something that is his own,* and thereby makes it his Property. . . For

> this *Labour being the unquestionable Property of the Labourer,* no Man but he can have a right to what that is once joyned to. . . . [emphasis added, section 27]

Since the labor theory of property has always been read into Locke, even by the classical laborists such as Hodgskin, Locke has looked like the ally, unwitting perhaps, of the radical critics of capitalism. But the implied radical critique was only in the eye of the beholder, not in Locke.

> When Locke's assumptions are understood as presented here, his doctrine of property appears in a new light, or, rather, is restored to the meaning it must have had for Locke and his contemporaries. For on this view his insistence that a man's labour was his own. . . has almost the opposite significance from that more generally attributed to it in recent years; it provides a moral foundation for bourgeois appropriation.[32]

Further textual exegesis by Locke scholars has not, in our opinion, significantly shaken Macpherson's conclusion.[33] Hence Locke's good name can be fully restored in the annals of capitalist apologetics.

Using the tools of the modern treatment of property theory to interpret Locke, we can see that he was simply describing *laissez-faire* appropriation where labor is the only exclusively owned factor. When labor is applied to commonly owned land and natural resources, then, as usual, the positive product is legally appropriated by the party which assumed the negative product, the costs of the used-up inputs. But if labor is the only exclusively owned input, then the owner of the labor *laissez-faire* appropriates the product. That is exactly what Locke was describing. A comparable situation exists today when labor is applied to commonly owned resources such as fish or minerals in the ocean. When employees catch fish from the ocean (or cut turfs from the common), the employer *laissez-faire* appropriates the fruits of "his labor."

Locke imported into his so-called "state of nature" not only the whole employment relation (one of the great artificialities of history) but the *laissez-faire* mechanism of appropriation used by positive law. Locke's theory, being a description of this positive law mechanism, is without moral force. The *laissez-faire* mechanism states that since the last legal owner of the input-assets has borne (appropriated) the input-liabilities or negative product, that party should also have the legally defensible claim on the positive product. But from the normative viewpoint, there is no reason why the owner of the input-assets ought to appropriate the input-liabilities in the first place. The labor theory of property (juridical imputation principle) imputes the negative product to

the party *de facto* responsible for using up the inputs. The ownership of the input-assets only determines *to whom* the rightful appropriator of the input-liabilities should be liable for using up the inputs.

When privately owned capital is introduced, then the party that bears the costs of the services of the labor *and capital* will *laissez-faire* appropriate the fruits of "his labor and capital." In the following remarkable passage, James Mill describes, without the benefit of the usual shared pie metaphor, the employer's *laissez-faire* appropriation of all the produce by bearing all the costs.

> The great capitalist, the owner of a manufactory, if he operated with slaves instead of free labourers, like the West India planter, would be regarded as owner both of the capital, and of the labour. He would be owner, in short, of both instruments of production: and the whole of the produce, without participation, would be his own.
>
> What is the difference, in the case of the man, who operates by means of labourers receiving wages? The labourer, who receives wages sells his labour for a day, a week, a month, or a year, as the case may be. The manufacturer, who pays these wages, buys the labour, for the day, the year, or whatever period it may be. He is equally therefore the owner of the labour, with the manufacturer who operates with slaves. The only difference is, in the mode of purchasing. The owner of the slave purchases, at once, the whole of the labour, which the man can ever perform: he, who pays wages, purchases only so much of a man's labour as he can perform in a day, or any other stipulated time. Being equally, however, the owner of the labour, so purchased, as the owner of the slave is of that of the slave, the produce, which is the result of this labour, combined with his capital, is all equally his own. In the state of society, in which we at present exist, it is in these circumstances that almost all production is effected: the capitalist is the owner of both instruments of production: and the whole of the produce is his.[34]

This is the application of Locke's theory in the general case when both capital and labor are privately owned inputs to production. The elder Mill's argument, that the capitalist's claim on the product is as good as the slave owner's claim, is ironically correct. The capitalist, like the slave owner, has used a legalized fraud, which pretends that the worker is an instrument, to arrive at the position of being the "owner of both instruments of production" so that he can then make a legally defensible claim on the positive product. Moreover, from Mill's factual and non-metaphorical description of capitalist appropriation

("the whole of the produce is his"), it is clear why modern orthodox economists prefer to hide behind a facade of metaphors rather than address the actual structure of property rights in capitalist production.

Robert Nozick's entitlement theory is a modern descendant of Locke's theory of property. Little comment is required beyond what has been said above about capitalist appropriation. It might be noted that Nozick's treatment and the discussion surrounding it[35] has been at a typically "philosophical" level and has not assimilated the technical developments in modern descriptive or normative property theory such as the algebraically symmetrical treatment of appropriation (the appropriation of liabilities as well as assets) or the observation that this appropriation takes place in normal day-to-day production, not just in some Lockean original state.[36] Moreover, Nozick's restatement of Locke's theory (i.e., capitalist *laissez-faire* appropriation presented as a normative model) is of limited worth as it does not answer the critique of capitalist production provided by the modern labor theory of property (i.e., the property-theoretic version of the juridical principle of imputation) nor the critique of the voluntary contracts for the renting or selling of human beings (based on the non-transferability of *de facto* responsibility)—as indicated by Nozick's ultra-capitalist endorsement of voluntary contractual slavery.[37]

SELF-MANAGEMENT: THE ABOLITION OF THE EMPLOYMENT RELATION

The employer-employee contract, being an inherently fraudulent and invalid contract, should be recognized as such by the legal system and abolished. Then it would no longer be permitted to rent people, so industry would be reorganized on the basis of people renting capital rather than vice-versa. Such firms are called *self-managed firms* or *worker cooperatives,* and a market economy of such firms is referred to as the system of *self-management, worker cooperation, workplace democracy,* or *industrial democracy.* In the words of John Stuart Mill:

> The form of association. . .which if mankind continue to improve, must be expected in the end to predominate, is not that which can exist between a capitalist as chief, and workpeople without a voice in the management, but the association of the labourers themselves on terms of equality, collectively owning the capital with which they carry on their operations, and working under managers elected and removable by themselves.[38]

In any type of corporation, be it a conventional capitalist corporation or a worker cooperative corporation, there are the basic *membership rights*

consisting of (1) the rights to the net income of the corporation, and (2) the voting rights to elect the board of directors to govern the affairs of the corporation. In a capitalist corporation, these membership rights are property rights which may be bought and sold. These membership rights are evidenced by shares of stock, and the members are the shareowners. Since these membership rights are property rights which are bought and sold on stock markets, the members/owners of the corporation can be completely absentee owners. The people who actually do the work of the corporation are all hired as employees of the corporation. If the employer-employee relation was abolished, then a conventional capitalist corporation would be reduced to an empty shell which just owns capital. The only way the capital could be remuneratively employed would be to hire it out – since labor couldn't be hired in.

The alternative to a property right is a personal right, a right assigned to a person because the person has some functional role. An example of personal rights are the citizenship and voting rights that exist in, say, a democratic township or municipality. The voting rights to elect the government of a democratic township are assigned to the functional role of residing within the township. This legal structure guarantees that the township will be democratically self-governing since those who fall within the jurisdiction of the government, i.e., those who live there, are automatically those who have the vote to elect that government. Another important example of personal rights are the basic human rights which are simply assigned to the functional role of being human.

A personal right assigned to a functional role is quite different from a property right which may be bought and sold. Such a personal right may not be bought and sold because if the right was "sold," the "buyer" might not have the appropriate functional role. And if the would-be buyer did have the qualifying functional role, then the person would qualify for the right on those grounds and would not need to "buy" it. Thus such personal rights as basic human rights and voting rights in a democracy are nontransferable and inalienable.

In a worker cooperative corporation, the membership rights are personal rights assigned to the functional role of working in the company. Hence all the people and only the people working in a worker cooperative hold the membership rights. This legal structure implements two basic normative principles: (1) the labor theory of property, people's right to the fruits of the labor they perform, and (2) the democratic principle of self-government, people's right to self-govern their activities.

In legal terms, the corporation is legally liable for the used up inputs and legally owns the produced outputs, i.e., the corporation appropriates the whole

product. Hence when the people working in the company are the members of the corporation, then they, through their corporate embodiment, appropriate the positive and negative fruits of their labor – in accordance with the labor theory of property. The net value of those fruits is the net income of the corporation, which is part of their membership rights. Hence the legal structure of a worker cooperative legally implements the labor theory of property in production.

The democratic principle of self-government holds that the people who are governed by a government should be the ones who elect that government. The people who are governed by, who fall under the authority of, and who are given orders by the management of a corporation are the people who work in the corporation, labor in the inclusive sense of all the blue and white collar personnel. The absentee suppliers of equity or debt capital, the other input suppliers, the consumers, and the local residents do not fall under the authority of, and do not take orders from, the corporate management. The voting rights are part of the membership rights assigned to the workers in a worker cooperative. Hence the legal structure which assigns the vote to elect the management to those who are managed, i.e., the legal structure of a worker cooperative (or self-managed firm), implements the democratic principle in the workplace.

It is now known, in concrete terms, how to structure legally a corporation as a worker cooperative or self-managed firm which realizes the labor theory of property and the democratic principle of self-government in the workplace. Such a legal structure is realized in the worker cooperatives of Mondragon, Spain.[39] In the American context, such a legal structure was built into a bill (codrafted by Peter Pitegoff and the author) to create a corporate statute for worker cooperative corporations in Massachusetts. In May 1982, the bill was passed into law as Chapter 157A of the Massachusetts General Laws.[40] Hence it is legally possible to have a corporation which does not necessitate the legal alienation of the natural-law inalienable rights to the fruits of one's labor and to democratic self-determination.

The eventual complete abolition of the employer-employee relation, like the abolition of the master-slave relation, should be accompanied by positive legal guarantees of people's rights. This could be accomplished by a constitutional amendment which (1) legally recognized the employer-employee contract as being invalid, and (2) legally guaranteed people's membership rights in the firms where they work. Capitalist corporations could be directly converted into democratically self-managed cooperative corporations by internally reversing the contract between capital and labor. This is done by converting the equity capital into debt capital (e.g., convert shares into

annuities or consols) and by reassigning the membership rights to the people who work in the firm.[41]

The economic system of self-managed worker cooperatives would bring the principle of democracy into the workplace where it can govern "what people do all day long." Instead of having people's daily work treated as a marketable commodity sold to a corporation, people would have an inalienable human right to the fruits of their labor by being guaranteed membership in the firm where they work. □

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FOOTNOTES

1 See David Ellerman, "On Property Theory and Value Theory," *Economic Analysis and Workers' Management*, No. 1, Vol. XIV (1980a), 105-126, and David Ellerman, "Property Theory and Orthodox Economics," in E.J. Nell, ed., *Growth, Profits and Property: Essays in the Revival of Political Economy* (Cambridge: Cambridge University Press, 1980b). For earlier treatments, see David Ellerman, "Introduction to Normative Property Theory," *The Review of Radical Political Economics,* Vol. IV, No. 2 (Summer 1972), 49-67, and "Capitalism and Workers' Self-Management," Foreword to *Workers' Control: A Reader on Labor and Social Change,* Hunnius, Garson, and Case, eds. (New York: Random House, 1973), pp. 3-21.

2 See David Ellerman, *Economics, Accounting, and Property Theory* (Lexington, Ma: D.C. Heath, 1982a), "An Introduction to Mathematical Accounting," Unpublished paper (1982b), 48 pages, "Double Entry Bookkeeping and Lattice-Ordered Groups," Unpublished paper (1983b), 44 pages, and "Property Appropriation: A Major Logical Gap in Price Theory," Unpublished paper draft, (1983c).

3 For more detail, see David Ellerman, "Workers' Cooperatives: The Question of Legal Structure" (Somerville, Mass.: Industrial Cooperative Association, 1981), 23 pages, "Theory of Legal Structure: Worker Cooperatives" (Somerville, Mass.: Industrial Cooperative Association, 1982c), 46 pages, or "A Model Structure for Cooperatives," *Review of Social Economy*, XLI, No. 1 (April 1983), 52-67. Or see David Ellerman and Peter Pitegoff, "The Democratic Corporation," *Review of Law and Social Change,* XI, No. 3 (1982-1983), 441-472.

4 For example, in Richard Schlatter, *Private Property: The History of an Idea* (New Brunswick: Rutgers University Press, 1951).

5 George Lichtheim, *The Origins of Socialism* (New York: Praeger, 1969), p. 108.

6 Lichtheim, p. 135.

7 Lichtheim, p. 139.

8 See 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* (1899; reprinted Clifton: Augustus Kelley)

9 Thomas Hodgskin, *The Natural and Artificial Right of Property Contrasted* (1832; rpt. Clifton: Augustus Kelley, 1973), pp. 25-26.

10 Hodgskin, p. 26.

11 See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

12 See Ellerman, 1980.
13 See David Ellerman, "Marxian Exploitation Theory: A Brief Exposition, Analysis, and Critique," *The Philosophical Forum,* Vol. XIV, Nos. 3-4 (1983), 315-333.
14 See H.C. Black, *Black's Law Dictionary* (St. Paul: West, 1968, 4th rev. ed.), p. 692, entry under "Expropriation."
15 See the literature of the Industrial Cooperative Association such as Ellerman, 1981 or 1982c.
16 Paul Samuelson, *Economics* (New York: McGraw-Hill, 1976, Tenth edition), pp. 536-537.
17 Samuelson, p. 536.
18 See John Bates Clark, *The Distribution of Wealth* (New York: MacMillan, 1899), and Friedrich von Wieser, *Natural Value,* Trans. by C.A. Malloch (New York: G.E. Stechert and Company, 1930).
19 Clark, pp. 8-9.
20 Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962), pp. 161-162.
21 Wieser, pp. 76-79.
22 Wieser, p. 76.
23 Samuelson, p. 52. Emphasis in the original.
24 Samuelson, p. 569.
25 William Goodell, *The American Slave Code in Theory and Practice* (New York: New American Library, 1969), p. 309.
26 Francis Batt, *The Law of Master and Servant,* Fifth edition by G. Webber (London: Pitman, 1967), p. 612.
27 Lewis Cecil Gray, *History of Agriculture in the Southern United States to 1860* Vol. I (Gloucester: Peter Smith, 1958), p. 527, quoted by J. Philmore, "The Libertarian Case for Slavery: A Note on Nozick," *The Philosophical Forum,* Vol. XIV, No. 1 (1982), p. 47.
28 Nozick, p. 331.
29 Philmore, "The Libertarian Case for Slavery: A Note on Nozick."
30 Philmore, p. 55.
31 C.B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962), p. 215.
32 Macpherson, p. 221.
33 For example, James Tully, *A Discourse on Property: John Locke and his Adversaries* (Cambridge: Cambridge University Press, 1980), and the references cited therein.
34 James Mill, *Elements of Political Economy,* Third edition (London, 1826), Chapter I, section II.
35 See Nozick. Also, see Jeffrey Paul, ed., *Reading Nozick: Essays on Anarchy, State, and Utopia* (Totowa, N.J.: Roman and Littlefield, 1981).
36 For example, see Ellerman, 1972, 1973, 1980, 1982a.
37 See Nozick, p. 331, and Philmore's elaboration.
38 John Stuart Mill, *Principles of Political Economy,* Donald Winch, ed. (Harmondsworth: Penguin Books, 1970), Book IV, Chapter VII, section 61.
39 See David Ellerman, "The Socialization of Entrepreneurship: The Empresarial Division of the Caja Laboral Popular" (Somerville, Mass.: Industrial Cooperative Association, 1982d), 54 pages.
40 For the legislative history, see Peter Pitegoff, "The New Massachusetts Law for Worker Cooperatives: MGL Chapter 157A" (Somerville, Mass.: Industrial Cooperative Association, 1982), 11 pages. For some of the background legal theory, see Ellerman and Pitegoff, 1983.
41 For more details, see the literature of the Industrial Cooperative Association, such as Ellerman 1981 or 1982c or Ellerman and Pitegoff, 1983.

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"IDEOLOGY" IN MARX AND ENGELS

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Although the word "ideology" is one of the terms most closely associated with Marxism, there has long been controversy about how Marx and Engels themselves actually intended it to be used. In particular, both Marxists and non-Marxists alike have been divided on the question of the number of senses in which the term is employed, the issue of whether or not any of these senses is pejorative, and the problem of exactly what its reference (or references) is. The fact that importance is attached to clarifying these questions need not imply that one's attitude towards the texts is reverential. Whatever Marx's and Engels' own usage turns out to have been, it is possible that more felicitous applications of the term can be found. However in so far as it *is* in fact their authority which is continually being invoked to justify various senses of "ideology," the effort of resolving what they actually said seems worthwhile. In this paper, then, I want to canvass some of the answers that have recently been given on this subject, and also to examine the textual support that is offered for them. It should be noted that no attempt is being made to reconstruct a *general* Marxist theory of ideology. Rather, our task is the much more modest and limited one of elucidating what precisely Marx and Engels had in mind when they used the term.

I

Twenty books and articles have been reviewed for this paper.[1] While this selection was not, of course, arrived at by any statistically scientific producedure, an effort was made to include opinions from a broad cross-section of views. Thus the list encompasses "Western Marxists," Anglo-American expositors of Marxism, a Soviet theorist, and liberal critics. On