

Property, Contract, and Democratic Firms

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Basis for current system?

- ❑ Both Left and Right typically accept that current economic system is *based* on private property.
- ❑ Thus to attack the system, attack private property.
- ❑ But this is a mistaken framing of the issue.
- ❑ Slaveowners in Antebellum America claimed slavery was “based on sacred institution of private property.”
- ❑ But abolitionists did not ‘take the bait’ and attack private property and markets; they attacked:
 - slavery as an *abuse* of private property and
 - slave trade as an *abuse* of markets.
- ❑ Similarly current system is based on a violation of the private property principle of *people getting the fruits of their labor*, and a violation of market contracts with the human rental contract (which legally “alienates” inalienable agency).

Refounding system on fruits-of-labor principle

- If private property is refounded on the principle of people getting the fruits of their labor, then:
 - All firms would be worker cooperatives/democratic firms, and
 - Natural resources (not the fruits of anyone's labor) would naturally be treated under some common property arrangement.

How did the property issue get misframed?

- ❑ Middle Ages: the owner of land was the political Ruler of people living on and using land.
 - ❑ The landlord was the Lord of the Land.
 - ❑ Both Left and Right carried over this idea, by analogy, with "means of production" replacing land.
 - ❑ Owner of means of production (capital) supposedly "owned" any productive enterprise using those means.
 - ❑ Thus capital owner supposedly was the Captain of Industry.
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Marx made this mistaken analogy

"It is not because he is a leader of industry that a man is a capitalist; on the contrary, he is a leader of industry because he is a capitalist. The leadership of industry is an attribute of capital, just as in feudal times the functions of general and judge were attributes of landed property." [*Capital*, Vol. I]

But this is false in the current system!

- ❑ If there were real estate markets in Middle Ages, then land owner \neq manager of land use when land rented out. And capital is already rentable under capitalism.
- ❑ It is thus a *fundamental myth* that owner of capital (could be a company) is "owner of enterprise" or "owner of the firm."
- ❑ Easy refutation: suppose capital goods rented to another party who undertakes production.
- ❑ Capital owner still owns capital but is not manager and not residual (profit) claimant of the enterprise.
- ❑ Hence management + profit rights (= the "firm") were *not* part of "ownership" of capital.

Being a firm = contractual role

- ❑ Thus, in the current system, question of who gets management + profit rights is determined by contracts of who hires what or whom, not "ownership of means of production."
- ❑ The fundamental myth pretends capital cannot be rented.
- ❑ The characteristic feature of the current system is not that capital is unrentable but that *people are rentable*.
- ❑ Name of "capitalism" is a marxist misnomer; it is the *human rental system*.

Employment = human rental

□ Paul Samuelson textbook quote:

"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."

□ Standard textbook (Fischer, Dornbusch, Schmalensee, 1988):

"The commodity that is traded in the labor market is labor services, or hours of labor. The corresponding price is the wage per hour. We can think of the wage per hour as the price at which the firm rents the services of a worker, or the rental rate for labor. We do not have asset prices in the labor market because workers cannot be bought or sold in modern societies; they can only be rented. (In a society with slavery, the asset price would be the price of a slave.)"

Misframed capitalism-socialism debate

- ❑ When both Left and Right accept fundamental myth, then Left thinks non-capitalist firms, like Yugoslav self-managed firm or communist firms, requires social or state "ownership of means of production."
- ❑ Right argues "capitalist" firm (i.e., human rental firm) is based on "private ownership of means of production."
- ❑ Hence old debate of "social versus private ownership of means of production"—seen that movie and know the ending.
- ❑ Marxist revolution = "Athens (private slaves) → Sparta (public slaves)"

“The Labor Theory” of *What?*

- Early to Mid-1800s: Radical development of “The Labor Theory” from Smith & Ricardo.
- Fateful Fork in the Road:
 - Labor theory **of value**: *Labor is the sole source of the value of the product.* Marx & Co.
 - Labor theory **of property**: *Labor is the sole source ~~of the value~~ of the product.* Proudhon, Thomas Hodgskin, William Thompson, School of “Labor’s Right to the Whole Product” (Anton Menger book 1899)
- “source of the product” = *de facto* responsible for the product.
- “...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.”
[Friedrich von Wieser, *Natural Value*. 1889]

Labor Theory **of Property**

= Responsibility principle (applied to property)

- ❑ Normative basis is ordinary ('bourgeois') juridical principle: assign legal responsibility according to factual (*de facto*) responsibility.
- ❑ In any enterprise, people working in it are *de facto* responsible for using all the inputs to produce the outputs.
- ❑ Thus they *should* get (jointly) legal liability for inputs and legal ownership of products.
- ❑ But then firm is a worker cooperative or, generally, democratic firm.

Violation of responsibility principle

- ❑ But in usual human rental firm, employee's labor is treated as an "input."
- ❑ Employer pays rentals to employees and pays for other inputs, and owns all products.
- ❑ But all who work in the enterprise are *de facto* responsible for using up inputs or producing products—but have *zero* input liabilities against them and *zero* ownership of products.
- ❑ Violation of responsibility principle in ordinary employment firm.

Inalienability of responsible agency

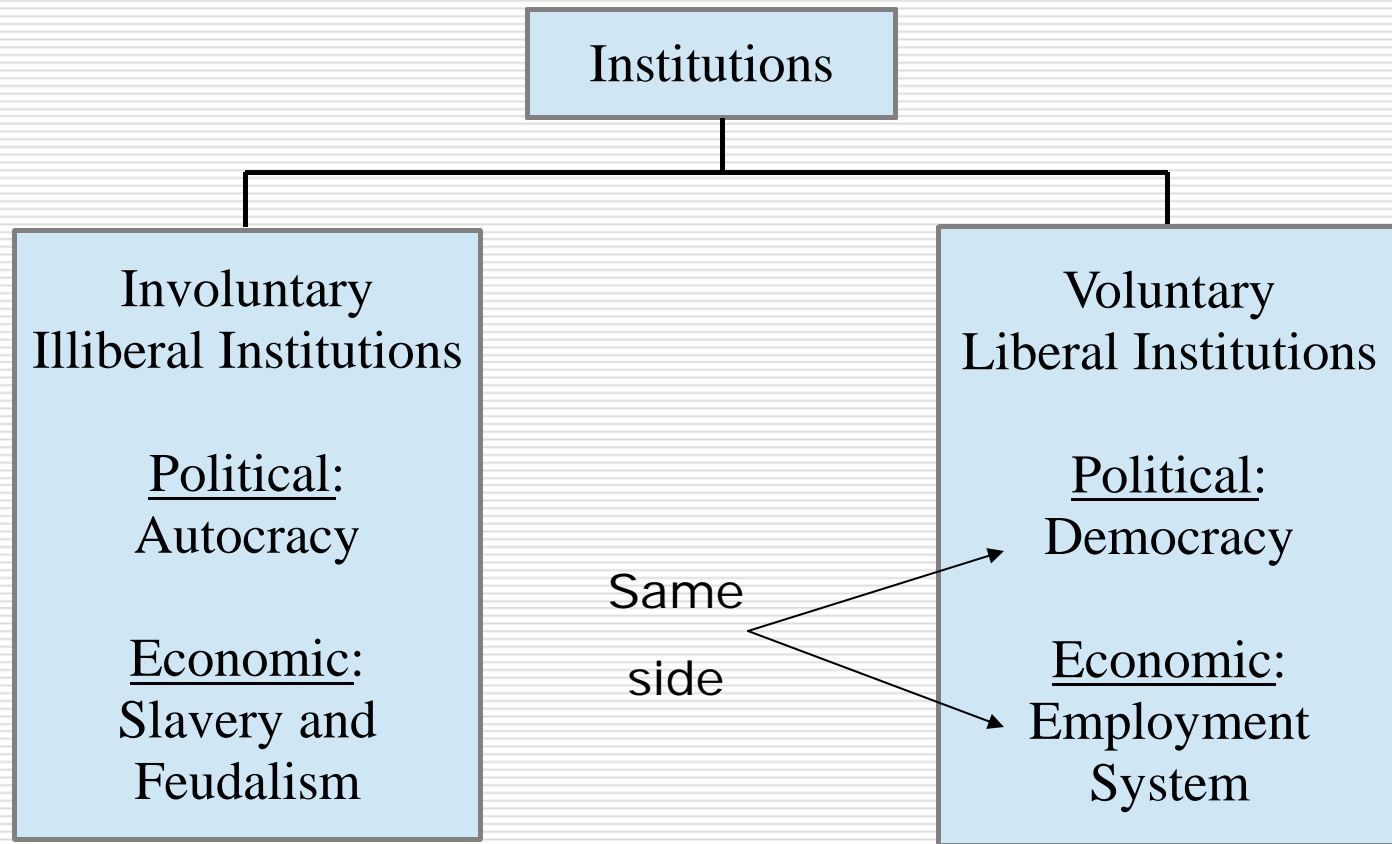
- ❑ In spite of legalized human rental contract, *de facto* responsibility cannot be transferred.
- ❑ Hired criminal example:

"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."
- ❑ Same joint (*de facto*) co-responsibility of (working) employer and employees when venture "jointly carried out" is not criminous.
- ❑ Human rental contract pretends to alienate that which is inalienable and is thus inherently invalid.

Abolition of human rental contract

- ❑ Hence human rental contract should join self-sale or voluntary slavery contract in dust-bin of history.
- ❑ Then a private property market economy could only have labor hiring (or already owning) capital; never capital hiring labor. People rent things; not the owners of things renting people.
- ❑ All firms would be worker co-ops or democratic firms in some form.
- ❑ Then private property is refounded on people getting the fruits of their labor, i.e., responsibility principle applied to property.

Pons Asinorum of Political Economy: Coercion-versus-consent misframing



Coercion (no contract) versus Consent (contract) Framing

- Marx accepted this framing and argued wage labor was not “really” voluntary to put “capitalism” on other side of framing.

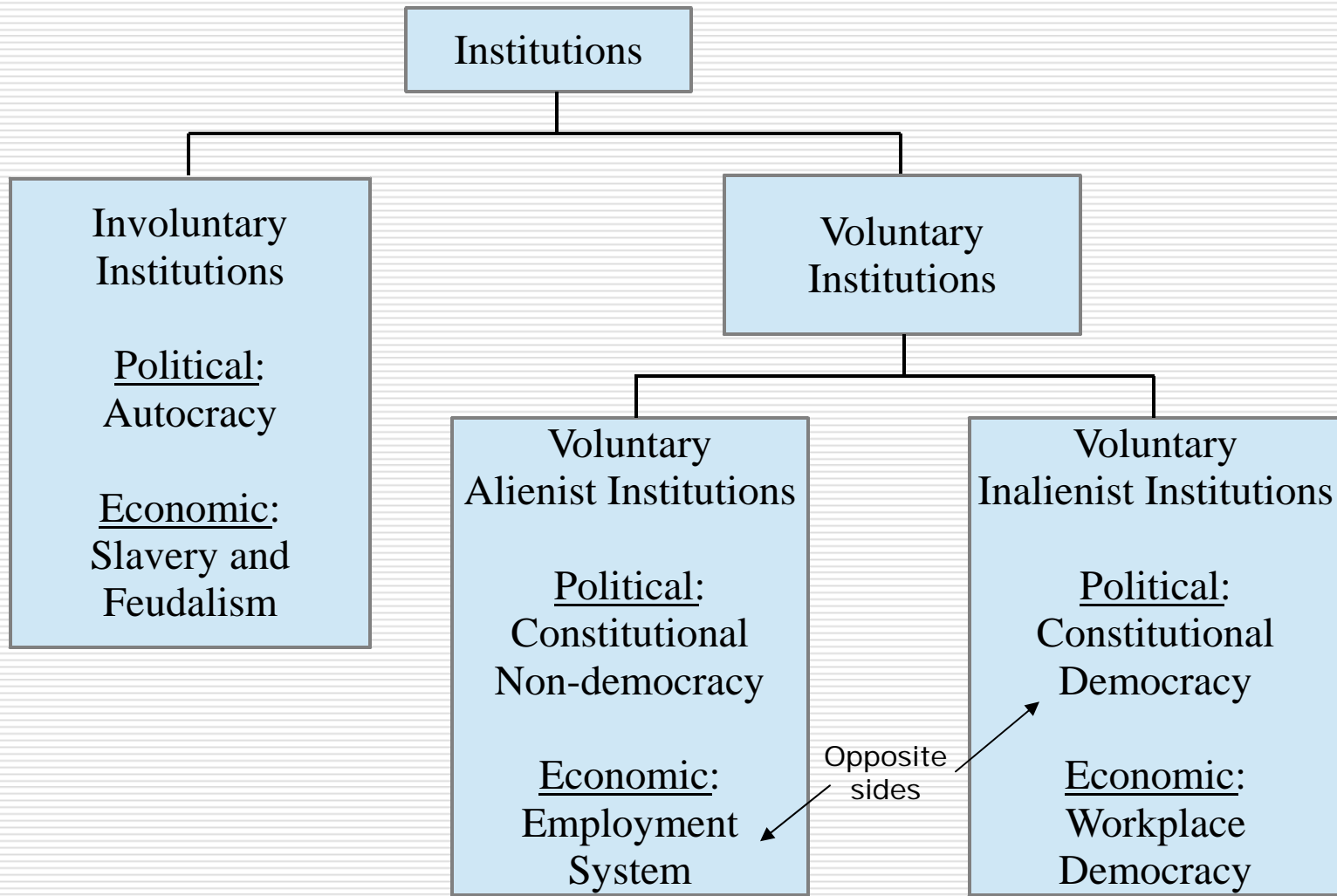
Contractual defense of slavery & autocracy

- Roman law: 3 ways to become a slave:
 - Explicit self-sale contract:
 - Plea bargain capital offense into slavery;
 - Born of slave mother: debt peonage to work off debt of food, clothing, shelter.
- Roman law: "Whatever has pleased the prince has the force of law, since the Roman people by the *lex regia* enacted concerning his *imperium*, have yielded up to him all their power and authority."
- Alienation of governance rights to ruler was *pactum subjectionis*, e.g., Hobbes.
- Harvard libertarian philosopher, Robert Nozick, accepted both voluntary self-sale contract and political *pactum subjectionis*.

Inalienable rights intellectual history

- Stoics: slavery is only external condition; the soul is *sui generis*.
- Reformation: freedom of conscience is inalienable.
- Spinoza and Hutcheson develop liberty of conscience as inalienable rights doctrine. Jefferson popularized idea.
- Marsilius and Bartolus: Reinterpret contract between people and ruler as delegation (*concessio*), not alienation (not *translatio*).
- Basic idea: any right one has *qua* person one still has regardless of a contract to “alienate” the right since one is still *qualifies* as a person. Hence right is inalienable.

Alienable versus inalienable rights framing



Real debate: alienable vs. inalienable rights

The Left as *defenders* of market contracts!

- ❑ "Capitalist" firm is really human rental firm.
- ❑ Human rental contract violates inalienability of responsible agency and is invalid—just like voluntary self-sale (slavery) contract and coverture marriage contract.
- ❑ The voluntary slavery contract and the coverture marriage contract are *already* outlawed as invalid voluntary contracts.
- ❑ Thus the Left should call for the abolition of the market for renting people *in the name of the contractual system*—refounded so that it does not legalize the alienation of inalienable agency!

The Left as *defenders* of private property!!

- ❑ By pretending that “obeying the employer” is “fulfilling” the employment contract (remember the hired criminal example), the Law legalizes the employer’s theft of the “whole product” (the produced products and the input liabilities).
- ❑ As Proudhon said: “Property is theft.”
- ❑ Thus human rental system legalizes abuse of the basic principle of private property: getting the fruits of your labor.
- ❑ Hence the Left should call for the abolition of human rentals *in the name of private property*, i.e., private property refounded on its just foundation.

Firm = democratic organization

- ❑ Part of fundamental myth was the idea that a firm as a human organization was "owned"—and then debate over whether it should be socially or privately owned.
- ❑ Setting aside the myth shows human organization is not "owned"—products of labor are owned.
- ❑ Worker co-ops, where products of labor owned jointly by people who produce them, are not "owned" at all, neither socially nor privately.
- ❑ Workers are members, not "owners" even though we often say "worker-owned" or worse yet "employee-owned."
- ❑ Membership rights are *personal rights* attached to role of working in enterprise, like political voting rights are personal rights attached to residing in town or city.

Democratic Firms

- ❑ Best examples today are the Mondragon worker cooperatives in the Basque country of Spain.
- ❑ See also the LEGA cooperatives in Italy.
- ❑ In America, we have many diverse small worker cooperatives (~3000).
- ❑ Employee Stock Ownership Plans (ESOPs, ~11,000 for about 10% of workforce) are a form sponsored by the Right in America but can be 'hacked' to be democratic ESOPs.

Conclusion: A Copernican Revolution on the Left

- ❑ The Left needs a Copernican Revolution in its thinking about private property and market contracts in the 21st century.
- ❑ The current human rental system is founded on the inherent abuse of market contracts (human rental contract) and inherent abuse of private property (employer's appropriation of the whole product).
- ❑ The Left should not 'take the bait' that the current system is "based on private property and market contracts."
- ❑ The Left should attack the human rental system:
 - *in the name of private property* (refounded on its just foundation) and
 - *in the name of market contracts* (abolishing the renting of humans along with the selling of humans.)
- ❑ That changes everything on the Left.

The End

**PROPERTY
& CONTRACT**
in
ECONOMICS

*The Case for
Economic Democracy*

DAVID P. ELLERMAN



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