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The Kantian Person/Thing Principle in Political Economy

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Normative ethical theories are usually divided into two broad categories: (A) *utilitarian* theories, and (B) *rights-based* (or deontological) theories. Bergson-Samuelson welfare economics is a well-known example of a utilitarian normative economic theory [Bergson 1966; Samuelson 1972]. In Samuelson's memorable phrase, "The cash value of a doctrine is in its vulgarization," and the cash value of welfare economics is to be found in the wealth maximization of the Law and Economics approach to jurisprudence. Immanuel Kant and Ronald Dworkin are classical and modern examples of ethical and juridical thinkers using a rights-based approach [Dworkin 1978, 1985]. The labor theory of property and the democratic principle of self-government are rights-based theories with direct economic implications when applied to production [Ellerman 1984, 1985, 1986]. The theory sketched here integrates the labor theory of property and democratic theory into a Kantian framework.

There are at least two non-equivalent versions of "the" categorical imperative found in Kant's writings. The first version is the *generalization or universality principle:* "Act only on that maxim through which you can at the same time will that it should become a universal law" [Kant 1964, p. 88]. The second version is the *personhood principle:* "Act in such a way that you always treat humanity, whether in your own

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person or in the person of any other, never simply as a means, but always at the same time as an end" [Kant 1964, p. 96].

Philosophical exegesis has, for the most part, concentrated on the first version of the categorical imperative, which emphasizes the generalizability or universalizability of actions [for example, Paton 1948; Singer 1961; Gregor 1963; Wolff 1969]. But that principle is more formal than substantive. The second version of the categorical imperative, the "principle of personality" [Jones 1971], holds out more promise for substantive implications, and that is the Kantian principle developed here. The "Kantian" adjective is only for historical reference. Our purpose is not Kant exegesis; there is no claim that the theory presented here is the "true meaning" of Kant's ethical theory.

The theory is not a utilitarian theory. It is based on the concept of persons as having intrinsic dignity, as being ends-in-themselves, as opposed (say) to being represented by inputs with certain weights in a social welfare function.

Kant used the language of "persons" and "things" to differentiate beings who were ends-in-themselves from those who might function solely as means.

> Beings whose existence depends, not on our will, but on nature, have none the less, if they are non-rational beings, only a relative value as means and are consequently called *things.* Rational beings, on the other hand, are called *persons* because their nature already marks them out as ends in themselves—that is, as something which ought not to be used merely as a means—and consequently imposes to that extent a limit on all arbitrary treatment of them (and is an object of reverence) [Kant 1964, p. 96; or in Wolff 1969, p. 53].

Therefore we will straightaway adopt the concise formulation of the Kantian categorical imperative as the following *person/thing principle:* "Act in such a way that you always treat human beings as persons rather than as things."

The person/thing principle is sometimes used to provide side constraints on individual actions. "Side constraints upon action reflect the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent [Nozick 1974, pp. 30–31].

The analysis presented here will focus on institutions, not actions, and the Kantian principle will be applied (contra-Nozick) to provide a rights-based critique of institutions that treat persons as things *even with consent,* for instance, to exclude a system of contractual slavery.

Treating Persons as Things: The Paradigm Case of Slavery

Chattel slavery provided the pardigmatic example of an economic institution that treated persons as things. But what aspect of slavery constituted treating persons as things? Liberalism might answer, "the involuntariness of slavery." But the answer is inadequate. Involuntariness was a sufficient but not a necessary condition for slavery. Recent scholarship has emphasized a *hidden history of liberalism* that not only condoned voluntary contractual forms of self-enslavement or selling oneself, but reinterpreted historical slavery as being based on such implicit contracts [Philmore 1982].

The modern libertarian philosopher, Robert Nozick, argues that a free libertarian society should allow individuals to sell themselves into slavery. A people may alienate and transfer the right of self-government to some sovereign person or body such as a constitutional monarch, a body of oligarchs, or, in the parlance of modern libertarianism, a "dominant protective association" [Nozick 1974, p. 113]. "The comparable question about an individual is whether a free system will allow him to sell himself into slavery. I believe that it would" [Nozick 1974, p. 331].

Would such a system of *voluntary* contractual slavery be an institution that treated persons as things? Does neoclassical welfare economics provide an alternative critique of voluntary slavery?

An Application: Voluntary Slavery in Neoclassical Economics

The normative principles of welfare economics, for instance, Pareto optimality, do not provide an argument against voluntary slavery. The standard general equilibrium model of competitive capitalism (for example, Arrow-Debreu [1954] allows certain forms of self-sale in order to exhibit the usual efficiency properties. The economic meaning of a self-sale contract is the sale of labor by the lifetime. According to George H. Sabine, Chrysippus, the third century stoic philosopher, noted that "no man is a slave 'by nature' and that a slave should be treated as a 'laborer hired for life' [Sabine 1958, p. 150].

In more recent times, James Mill elaborated on the distinction between buying and hiring people from the employer's viewpoint.

> 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 [Mill 1826, Chap. I, section II].

To display the desired efficiency results, a competitive model allows all commodities, including future-dated labor services, to be marketed. For example, the Arrow-Debreu model has complete future markets in all commodities. A consumer/worker "is to choose (and carry out) a consumption plan made now for the whole future, i.e., a specification of the quantities of all his inputs and all his outputs" [Debreu 1959, p. 50].

The competitive equilibrium requires each consumer/worker to make a utility-maximizing choice of using or selling a lifetime of labor. The model thus allows contractual slavery in the sense of selling a lifetime of labor (not necessarily all to the same employer) because Pareto optimality could not be assured if certain trades were forbidden.

The theorem that a competitive equilibrium is Pareto optimal is one of the crown jewels of modern economics; it is the (first) fundamental theorem of welfare economics. Neoclassical economists are understandably reticent to recognize that *the basic efficiency theorem for competitive capitalism presupposes a form of contractual slavery.* Some economists have been courageous enough to admit the problem.

> Now it is time to state the conditions under which private property and free contract will lead to an optimal allocation of resources. . . . The institution of private property and free contract as we know it is modified to permit individuals to sell or mortgage their persons in return for present and/or future benefits [Christ 1975, p. 334; quoted in Philmore 1982, p. 52].

But such forthrightness is quite the exception. To my knowledge, the point is not admitted in a *single* economics textbook. Not one.

Far from providing a critique of voluntary slavery, neoclassical "normative economics" presupposes that lifetime labor contracts are allowed to obtain the fundamental efficiency theorem.

How can a system of voluntary slavery be criticized if it really is voluntary? Liberalism has no unified answer. There are two venerable traditions of liberal thought, the *non-democratic alienist* tradition (for example, Hobbes and Nozick), which argued that the basic rights an individual has as a person could be voluntrily alienated, and the *democratic inalienist* tradition of liberalism, which argued such rights were inalienable.

The Kantian principle of not treating persons as things *does* provide a critique of voluntary slavery, and it is squarely in the inalienist tradi-

tion. In brief, the argument is as follows. The legal role of a slave still has the characteristics of being a chattel, a non-person, or a thing—independently of whether the legal condition of being a slave was acquired voluntarily or involuntarily. In spite of a legal contract to take on the legal role of a thing, the individual *in fact* remains a person. Being a person is not an alienable condition or characteristic; personhood as a factual status is unchanged by consent or contract. Since personhood is not factually alienable by consent, any contract pretending to legally alienate personhood would be an institutionalized fraud. Any legal system, such as Nozick's "free system," which validated such contracts, would be authorizing the legal treatment of persons as things in violation of the Kantian principle.

A Kantian Analysis of the Employment Relation

If a contract selling a lifetime of labor involves treating a person as a thing, what about a twenty-year contract or a contract for any shorter period? A contract to sell labor for a given period is a contract to hire or rent out the person for that period. The modern legal system has invalidated voluntary self-sale contracts, but it still permits the self-rental contract, that is, the present employer-employee contract. "Since slavery was abolished, human earning power is forbidden by law to be capitalized. A man is not even free to sell himself: he must *rent* himself at a wage" [Samuelson 1976, p. 52].

Does the Kantian analysis of the self-sale contract carry over to the self-rental contract? Is renting a person treating that person as a non-person, a thing? This requires a more detailed analysis of what it means to have the legal role of a non-person or thing. The difference between the legal role of a person or a thing will be analyzed from two viewpoints: actions and decisions. The analysis of *acting* as a person versus *being employed* as an instrument is an application of the *labor theory of property* [Ellerman 1985]. The analysis of the *delegation* versus the *alienation of decision-making* is an application of the *democratic theory of government* [Ellerman 1986]. The labor theory of property and democratic theory dovetail into the Kantian person/thing principle by providing the substantive analysis of acting and deciding as a person as opposed to being used as a non-person or thing.

Acting as a Person Versus Being Employed as an Instrument

In the past, economists have wondered if labor has some unique attribute that is relevant to distributional questions and that is not shared

by the services of the other factors such as capital and land. The labor theory of property is based on an answer to that question. The answer is *responsibility.* All the factors are productive in the sense of marginal productivity theory. All the factors are causally efficacious; otherwise there would be no reason to use them. But only intentional human actions, that is, labor (in the broad sense that includes managerial actions), can be responsible. This is clear in jurisprudence. Burglars have the tools of their trade and those tools have a marginal productivity in the execution of their assigned tasks. But the tools can shoulder no responsibility for the results of their use.

> An instrument of labour is a thing, or a complex of things, which the worker interposes between himself and the object of his labour and which serves as a conductor, directing his activity onto that object [Marx 1977, p. 285].

Thus the responsibility is imputed through the tools as a conductor or conduit solely to the person or persons using the tools.

Economists are accustomed to conceptualizing production using the distributive shares metaphor. The worker, "Monsieur le Capital and Madame la Terre" [Marx 1967, 830], are animistically pictured as "cooperating together" to produce the product. Under competitive circumstances, the product is imputed to the factors in accordance with their marginal productivity. But the animistic agency assigned to the nonhuman factors is only a metaphor (pathetic fallacy). Since the nonhuman factors lack the capacity for responsibility, the distributive shares picture cannot possibly be accurate in describing responsibility. As in the case of the burglars and their tools, only the persons performing the activity can be responsible for the results.

One of the founders of marginal productivity theory, Friedrich von Wieser, recognized the exclusive responsibility of labor quite explicitly.

> The judge . . . who, in his narrowly-defined task, is only concerned with the *legal imputation,* confines himself to the discovery of the legally responsible factor—that person, in fact, who is threatened with the legal punishment. On him will rightly be laid the whole burden of the consequences, although he could never by himself alone—without instruments and all the other conditions—have committed the crime. The imputation takes for granted physical causality. . . .
>
> If it is the moral imputation that is in question, then certainly no one but the labourer could be named. Land and capital have no merit that they bring forth fruit; they are dead tools in the hand of man; and the man is responsible for the use he makes of them [Wieser 1889, pp. 76–79].

The *labor theory of property* (not to be confused with the labor theory

of value, see Ellerman [1983]) is the application to property appropriation of the usual *juridical norm* of assigning or imputing *legal responsibility* in accordance with *de facto responsibility.* Legal responsibility is a creature of the law, while de facto responsibility is a question of fact. A mismatch between the two is a violation of juridical norm, as, for example, when the wrong person is convicted of a burglary. In that case the legal responsibility for the burglary is assigned to one person when another person was de facto responsible for the deed.

When applied to production, the juridical principle of imputation starts with the *fact* that "no one but the labourer could be named." Only Labor (always in the inclusive sense of all the people, managers and non-managers, working in the firm) can be *de facto* responsible for the results of production. And those results must be viewed in an algebraically symmetric manner as being both positive and negative. If the outputs $Y = f(X_1,X_2)$ are produced by using up the inputs X_1 and X_2, then the positive results are the production of Y and the negative results are the using up of X_1 and X_2. In vectorial terms, the *positive product* is $(Y,0,0)$ and the *negative product* is $(0,-X_1,-X_2)$. The total results of production are represented by the vector sum of the positive and negative products, which will be called the:

whole product	=	positive product	+	negative product
$(Y,-X_1,-X_2)$	=	$(Y,0,0)$	+	$(0,-X_1,-X_2)$.

Since "no one but the labourer could be named," the people working in the firm (Labor) are jointly de facto responsible for producing the outputs *and* for using-up the inputs, that is, for producing the whole product. Thus, according to the labor theory of property (that is, the juridical norm of imputation in property-theoretic clothing), the people working in the company should legally appropriate the positive and negative fruits of their labor, that is, the whole product. Then the legal responsibility, both positive and negative, would be assigned according to de facto responsibility. From the legal standpoint, the "firm" by definition owns the outputs and is liable for the inputs, so the argument implies that *Labor should be the firm.* That is the pure and simple *property argument* for the labor-managed firm.

This property-theoretic argument for labor-managed firms is not a value-theoretic argument. It says nothing about prices or values. It is totally independent of neoclassical price theory or any other value theory such as the "labor theory of value" (as a value theory as opposed to an ill-formulated version of the labor theory of property). Far from implying a certain price of labor, the theory implies that Labor ought

to be the residual claimant (and thus not a hired factor at all).

The argument about the appropriation of the whole product ($Y,-X_1,-X_2$) makes no assumptions whatsoever about the prior distribution of ownership of the factors X_1 and X_2. Labor in that firm should not appropriate the assets X_1 and X_2. Instead, Labor should appropriate the liabilities $-X_1$ and $-X_2$ for using up the factors X_1 and X_2. The prior ownership of the factors X_1 and X_2 only determines to whom Labor should be liable for using up X_1 and X_2. The labor theory of property to past production or some factors might be "gifts of nature," but that does not affect the analysis of the current production opportunity $Y = f(X_1,X_2)$.

We can establish the connection with the Kantian principle by defining how a person can have the legal role of a non-person or thing from the viewpoint of action. Since things can have no responsibility for their services,

> persons have the *legal role of things* or non-persons from the viewpoint of action if the persons bear no legal responsibility for the results of their actions within the scope of the role.

The previous example was the legal role of the slave regardless of whether or not the condition was acquired voluntarily. But that characteristic of the contractual slave's role is independent of the duration of the contract. It is the same if the labor is sold by the lifetime or by the day.

The employees in a capitalist firm also have the legal role of an instrument or thing within the scope of the employment. That is, the employees have no legal responsibility for, or ownership of, the proposed outputs ($Y,0,0$), and the employees have no legal responsibility or liability for the used-up inputs ($0,-X_1,-X_2$). The employees are "employees" by the employer (who could be individuals, artificial persons, or the state as in the socialist firm). All the legal responsibility for the positive and negative results of their actions is imputed back through the employees as a conduit or conductor to the employer. The legal "imputation takes for granted" the employees' actions *as if* they had only physical causality with no de facto responsibility. Thus the employees have the legal role of instruments or things within the scope of their employment.

Only when the people working in a firm are "the firm," that is, when the firm is labor-managed, do those people have the joint legal responsibility for the positive and negative fruits of their labor. A simple example of a labor-managed firm would be a "self-employed" individual in a one-person business. The person owns the output ($Y,0,0$), holds

the liabilities for the used-up inputs ($0,-X_1,-X_2$, and has the specific decisionmaking control over the work process. When the output Y is a tangible appropriable product, there is no possible confusion that the self-employed person is "employed" by the customer buying Y. When Y is an intangible non-appropriable effect, the self-employed person is usually called as "independent contractor" (for instance, lawyers, plumbers, and electricians in independent practice). When a person "hires" a plumber to fix a faucet or "hires" a lawyer to represent them, the plumber and lawyer are not employees of that person.

Agency law is concerned with cases that require differentiating independent contractors from employees. The independence test looks to who bears the costs of the liabilities ($0,-X_1,-X_2$) and the control test looks to who has specific control over the work process (see Coase [1973]). The question of control or decisionmaking within the employer-employee relation is considered below. Since independent contractors have legal responsibility for their outputs ($Y,0,0$) (albeit intangible), for their input-liabilities ($0,-X_1,-X_2$), and have decisionmaking control over their work, the critique developed here does not apply to independent contractors (one-person labor-managed firms), only to the employment relation.

The employee has two legal roles: the role of the owner/seller of labor services, and the role of the employee performing the labor services. When slaveowners, during a slack season, hired slaves out to work on other plantations or on the docks, it was easy to separate the two roles since they were played by different people. The same conceptual separation must be made when the labor-seller and employee roles are played by the same person. It is only in the *employee's role* that a person has the legal role of non-responsible instrument (in the sphere of production), not in his role as a seller of labor (in the sphere of exchange.)

The same person in the labor-seller's role receives the payment for the labor services. In spite of the popular but misleading distributive shares metaphor, the wage payment does not somehow "represent" an ownership share in the product. The employer legally appropriates 100 percent of the produced outputs but also holds 100 percent of the liabilities for the used-up inputs. Instead of owning a share of the product, the factor suppliers are simply the parties to whom those liabilities are legally owned. The wage payment satisfies those legal liabilities owed by the employer to the employees.

The Delegation Versus The Alienation of Decisionmaking

We now consider how a person might have the legal role of a non-

person or thing from the viewpoint of decisionmaking. Just as a thing cannot be responsible, so a thing cannot make decisions. It is a "conduit" for decisions, as for actions. Since things cannot make decisions,

> persons have the *legal role of things* or non-persons from the viewpoint of decisionmaking if the persons are not a legal party, directly or indirectly, to the decisions made about the services performed within the scope of their role.

When the owner of an entity hires out the entity to be used by another person, then the second person, the renter, takes over the legal responsibility and the decisionmaking for the use of the entity within the scope of the rental contract. That is the *alienation and transfer* of decisionmaking about the entity's use from the owner to the renter. For instance, when a person rents a car, an apartment, or a sum of money, then, within the limits of the contract, the renter decides on use. The owner and renter do *not* co-decide about use; it is the renter's decision. The owner is *not a legal party* to those use decisions.

It is important to clearly distinguish renting an entity out, where decisionmaking is transferred, from the *delegation* of some decisionmaking about an entity's use to another party. For example, consider the difference between loaning a sum of money to another person to invest, and delegating certain investment decisions about the money to the other person as a financial manager. In the latter case, the decisionmaking is not alienated or transferred; it is only delegated. This means the manager acts in the name of and in the interest of the owner who has decided to follow the investment choices of the manager. From the legal viewpoint, the decisions are still ultimately the decisions of the owner. But when the money is loaned out, the borrower makes investment decisions in his own name and interests. The lender is not a legal party, directly or indirectly, to those investment decisions.

A person has the legal role of a thing from the viewpoint of decisionmaking if the person is not a legal party to the decisions about the services performed in that role. The owner of an entity rented out is, as we have seen, not a legal party to the decisions about the entity's use. Therefore when the entity hired out is a person, the person has the legal role of a thing. The person in the role of the owner of the entity hired out, that is, in the labor-seller's role, is not a legal party to the decisions made within the scope of the employment contract. Decisionmaking power is not delegated from the employees to the employer; the employer decides in his own name. The legal decisionmaking authority is alienated and transferred to the employer. As the decisionmaking

power was alienated, the employees are not a legal party to those decisions and thus the employees' role is the role of non-persons or things.

The opposite relationship between workers and the manager can be found when production is organized on a democratic basis, that is, in the labor-managed firm. Then the decisionmaking power is delegated to the managers from those being managed, so a democratic firm is called "self-management" just as a democratic government is an example of self-government. There is, of course, a managerial hierarchy, but it is based on the democratic delegation of authority, not on the alienation and transfer of decisionmaking power. The managers exercise their delegated decisionmaking authority in the name of those managed. In delegating that authority, the workers have decided to follow the choices of the managers so the decisions are ultimately the decisions of the workers themselves. Each worker is thus *directly or indirectly a legal party* to the decisionmaking about their actions. In a democratic organization, the decisions about the people being governed are directly or indirectly (that is, through delegation) the decisions of those being governed; that is the basic idea of *self*-government. And that is the fundamental *democratic argument* for the labor-managed firm.

The acid test to differentiate delegated from alienated decisionmaking is the question of in whose name does the decision-maker decide. The democratic leader decides in the name of the members of the democratic polity, while the employer, like a monarch or Hobbesian sovereign, decides in his own name. It may well happen that the employer will delegate some authority to the employees over the specifics of their work. That does not reverse or cancel the original alienation of authority from the employees to employer. The employee then acts in the employer's name, not in his own name.

This analysis of delegated versus alienated decisionmaking descends from democratic theory in the inalienist tradition of liberal thought [Ellerman 1986]. The alternative alienist tradition also founded government on consent, on a voluntary contract—the *pactum subjectionis*—which alienated and transferred the right to govern to the sovereign, who governed in his own name. The democratic inalienist tradition argued that the *pactum subjectionis* was only a collective version of the self-enslavement contract. Similarly, it cast people in the legal role of non-persons without legal decisionmaking capacity. Since people in fact remained fully capacitated persons, the *pactum subjectionis* was invalid under natural law. The rights to self-government are inalienable. Instead of the social contract of subjugation, the inalienist tradition founded government on the democratic constitution, which

secured rather than alienated the right to self-government and which delegated certain decisionmaking powers to duly authorized governing bodies.

Both the alienist and inalienist traditions of liberal thought based government on consent. The real debate was over whether or not the social contract could alienate basic rights. Could it alienate the decisionmaking powers to the government, or must it be only a delegation?

> This dispute also reaches far back into the Middle Ages. It first took a strictly juristic form in the dispute . . . as to the legal nature of the ancient "translatio imperii" from the Roman people to the Princeps. One school explained this as a definitive and irrevocable alienation of power, the other as a mere concession of its use and exercise. . . . On the one hand from the people's abdication the most absolute sovereignty of the prince might be deduced. . . . On the other hand the assumption of a mere "concessio imperii" led to the doctrine of popular sovereignty [Gierke 1966, pp. 93–94].

This ancient *translatio*-or-*concessio* debate continues today in the workplace. There are two opposite models of production. There is the capitalist firm (including the state-socialist firm) where the legal decisionmaking power is alienated ("translatio") to the employer. And there is the democratic firm where the decisionmaking power is delegated ("concessio") to management from those being managed.

One must be careful to distinguish between a person's legal role and the person's factual role. In spite of the legal role of a non-person, the slave in fact remained a person. The same holds for the employee's role. The employee is in fact not a conduit of responsibility; the employee inexorably remains a de facto responsible person. The employees, together with any working managers-employers, are de facto co-responsible for the results of their actions. And the same holds for decisions. The employee is not in fact a transmission belt for decisions; the employee inexorably remains a deciding agent. In performing work, the employees are in fact constantly accepting and ratifying the decisions of the employers. It is only in their *legal role* that the employees have *no legal responsibility* for their actions and are *not a legal party* to the decisions. The role mismatch between the legal and factual roles is the basis for the normative critique of the legal institution of renting human beings. There is no wrong in legally treating things as things; the problem is legally treating persons as things.

Final Remarks

Our purpose has been to outline the application of the Kantian per-

son/thing principle to normative political economy. The Kantian principle is to treat human beings as persons rather than as things. When developed and refined, the labor theory of property and democratic theory fit precisely into the Kantian principle by analyzing, from the respective viewpoints of actions and decisions, how persons could have the legal role of non-persons or things. The theory was applied not only to a contractual form of slavery where labor is sold by the lifetime but to our present system of production based on renting or hiring people.

Employees are not a legal party to the decisions about their actions, and the employees have no legal responsibility for the results of their actions. On both counts, when a person is rented, the person takes on the legal role of a thing. But in spite of that legal contractual role, the individual remains a person. Therefore such contracts to voluntarily take on the legal role of a non-person or thing are inherently invalid. The rights the contracts pretend to alienate are thus inalienable. The democratic inalienable-rights tradition of liberal thought contributes that heritage to normative political economic theory.

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