

# On the Employer-Employee Relationship<sup>1</sup>

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## Abstract

Much heterodox economics criticizes neoclassical microeconomics as being unrealistic. Yet, as Frank Knight pointed out, it was not meant to be realistic but to posit a normative ideal, the perfectly competitive market economy. Hence serious criticism needs to focus on that competitive ideal, not on its imperfect realization in the real world. Which institutions are at fault in the competitive ideal? This paper focuses on the institution of renting, hiring, employing, or leasing people. Much contemporary progressive narrative criticizes the employment relation in terms of unequal bargaining power and seeks remedies in terms of more equal bargaining power and redistributions of income. This paper analyzes employment in terms of the renting of persons and revives the inalienable rights critique of even fully voluntary contracts to sell or rent oneself out. The implication is the abolition of the employment contract for the renting of persons in favor of the system of workplace democracy where the legal members of a firm are the people working in it.

**Keywords:** neoclassical microeconomics; the competitive ideal; employment relation; human rentals; inalienable rights; workplace democracy

## 1. Introduction

Heterodox or non-neoclassical microeconomics is in a state of disarray. The scientific prestige of neoclassical theory is based on the unified standard microeconomic theory. The main criticism of neoclassical microeconomics is that it is not realistic; it does not describe the “real world.” But this is fully agreed by neoclassical theorists. The most philosophically and methodologically sophisticated is arguably Frank Knight who clearly made the point that the theory of a competitive market economy is not intended to be descriptive.

Economic theory is not a descriptive, or an explanatory, science of reality. Within wide limits, it can be said that historical changes do not affect economic

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<sup>1</sup> This essay is a summary of the arguments in my two new books published by SpringerNature: *Neo-Abolitionism: The Case for Abolishing Human Rentals in Favor of Workplace Democracy*, and the follow-up book applying the arguments to neoclassical microeconomic theory: *Putting Jurisprudence Back into Economics: What is Really Wrong in Today's Neoclassical Theory*.

theory at all. It deals with ideal concepts which are probably as universal for rational thought as those of ordinary geometry.<sup>2</sup>

The fact that description of ideal behaviour in part explains actual behaviour operates as a source of confusion; the notion that economics is a science explanatory of actual behaviour is the most important single confusion in the methodology of the science.<sup>3</sup>

The role of competitive microeconomic theory is not as a descriptive theory, but as a regulative ideal to be approached as closely as possible in practice. Those who base their criticism of competitive microeconomics on it not being realistic only invite the sophisticated micro-theorist to say: “Yes, we agree, so help us make the real world economy more like the competitive ideal.” The point is simple; serious criticism of neoclassical microeconomics needs to attack the competitive ideal itself, not just its divergence from the real world.

The next question is the point of attack: private property, market economy, employment relation, or what? The point of attack argued for here starts with the last major abolition in the economy, the abolition of slavery. The abolitionist case was not a critique of private property in general but of one type of property in persons, i.e., the ownership of their lifetime of services.<sup>4</sup> The abolitionist case was not a critique of markets in general but of the slavery market—where abolition applied not only to involuntary slavery but also to voluntary contracts for slavery or lifetime servitude. The abolitionist case was not a critique of all legal relationships but of the master-slave relation (whether established involuntarily or voluntarily).

The current economic system was arrived at by abolishing the ownership of workers (meaning the ownership of all their services) in favor of the voluntary renting, hiring, employing, or leasing of workers for some time period. That institution is totally taken for granted in neoclassical microeconomics. This paper summarizes the neo-abolitionist case for the abolition of not only the ownership of workers but also the renting of people in favor of workplace democracy.

## **2. The difference one word makes**

In teaching Economics 101, I would describe a slavery economy, e.g., the Antebellum South, as a private property market economy where the workers were owned by their employer. Then after noting that just as one could own a car or rent a car, I asked if anyone knew of an economy where the workers were rented instead of owned? One quick answer was “feudalism”, but I would explain that the serfs were attached to the land and thus part of the manor. They were a superior class to slaves (or “servi” in Latin) since the serfs were not chattel that could be ‘sold down the river’ Indeed, a retronym was needed to separate the serfs and “servi” so the slaves in the European Middle Ages were renamed after their most common ethnic origin (Slavs). But the original question is: does anyone know of an economy based on renting people? After a

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<sup>2</sup> Knight, Frank H. 1969. *The Ethics of Competition and Other Essays*. Freeport NY: Books for Libraries Press, p. 277.

<sup>3</sup> *Ibid.*, p. 279.

<sup>4</sup> The slave-owners and their apologists made the point that slavery does not involve the ownership of a person’s soul (“Souls don’t chop cotton; labor does”); it was a means to acquire a secure source of labor.

pause, an African-American student might point out that during slack times, field slaves were rented out as stevedores on the docks or to work in military construction projects.<sup>5</sup>

If I had asked instead if anyone know of an economy where workers were *hired* or *employed*, then the answer would be a ‘no-brainer.’ Just one word, asking about “rented” people instead of “hired” people makes a huge difference in the consciousness of people living in today’s economic system. Yet technically, the employment relation is the renting of people, the purchase of a person’s services (e.g., a person-day)—just as renting a car for a day is the purchase of a car-day or the renting of an apartment for a month is the purchase of an apartment-month of services. In the US, we say people are hired and cars are rented, but in the UK, a rental car is called a “hire car.”

Some Economics 101 textbook writers are forthright enough to point out these simple facts (although almost all are not). The greatest of the neoclassical economists, Paul Samuelson, was quite clear on the point.

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.<sup>6</sup>

Other textbook writers could be equally forthright.

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.)<sup>7</sup>

One of Samuelson’s teachers, Frank Knight, used the synonym of leasing.

[I]n a free society the larger part of the productive capacity employed (as matters stand today in a typical Western nation) consists of the services of human beings themselves, who are not bought and sold but only, as it were, leased.<sup>8</sup>

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<sup>5</sup> Hulse, Thomas. 2010. “Military Slave Rentals, the Construction of Army Fortifications, and the Navy Yard in Pensacola, Florida, 1824-1863.” *The Florida Historical Quarterly* 88 (4 Spring): 497–539.

<sup>6</sup> Samuelson, Paul A. 1976. *Economics*. New York: McGraw-Hill, p. 52 (his italics).

<sup>7</sup> Fischer, Stanley, Rudiger Dornbusch, and Richard Schmalensee. 1988. *Economics*. New York: McGraw-Hill, p. 323.

<sup>8</sup> Knight, Frank. 1936. “The Quantity of Capital and the Rate of Interest: I.” *Journal of Political Economy* 44 (4): 433–63. p. 438.

### 3. Owned workers versus rented workers

The bald comparison of owned workers under slavery and today's rented workers misses the point that the employment relation is voluntary—which was hardly the case for historical slavery. And contrary to much progressive narrative by philosophers and legal theorists,<sup>9</sup> the human rental contract is indeed voluntary by any juridical standard and even compares favorably to the unbargained contracts of adhesion that consumers face at supermarkets or department stores.

Thus, the real point of comparison is between a system of *voluntary* contractual lifetime or long-term servitude with today's system of voluntary limited-term human rental contracts. Conventional classical liberalism, as opposed to a much deeper tradition of inalienable rights in democratic or Enlightenment classical liberalism (seemingly little known among today's progressives), has no principled differentiation between long-term (e.g., for a working lifetime) and short-term voluntary labor contracts—as long as they are voluntary. This is as true for the founders as for today's descendants of Adam Smith. As Frank Knight points out: "Interestingly enough, the political and legal theory had been stated in a series of classics, well in advance of the formulation of the economic theory by Smith. The leading names are, of course, Locke, Montesquieu, and Blackstone."<sup>10</sup> Yet all three of those founders of conventional classical liberalism condoned a voluntary contract of lifetime servitude (perhaps using some euphemisms). Here are the relevant quotes.

For, if once *Compact* enter between them, and make an agreement for a limited Power on the one side, and Obedience on the other, the State of War and *Slavery* ceases, as long as the Compact endures.... I confess, we find among the *Jews*, as well as other Nations, that Men did sell themselves; but, 'tis plain, this was only to *Drudgery*, not to *Slavery*.<sup>11</sup>

This is the true and rational origin of that mild law of slavery which obtains in some countries; and mild it ought to be, as founded on the free choice a man makes of a master, for his own benefit; which forms a mutual convention between two parties.<sup>12</sup>

Yet, with regard to any right which the master may have lawfully acquired to the perpetual service of John or Thomas, this will remain exactly in the same state as before: for this is no more than the same state of subjection for life, which every apprentice submits to for the space of seven years, or sometimes for a longer term.<sup>13</sup>

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<sup>9</sup> Mishel, Lawrence, ed. 2022. "Not So Free to Contract: The Law, Philosophy, and Economics of Unequal Workplace Power." *Journal of Law and Political Economy* 3 (1).

<sup>10</sup> Knight, Frank. 1947. *Freedom and Reform*. New York: Harper & Row., p. 27, fn. 4.

<sup>11</sup> Locke, John. 1690. *Second Treatise on Government*, § 24.

<sup>12</sup> Montesquieu, Count. 1748. *Spirit of the Laws*, Vol. I, Bk. XV, Chap. V.

<sup>13</sup> Blackstone, William. 1765. *Commentaries on the Laws of England*, Section on "Master and Servant."

These are the aspects of classical liberalism that today's neoclassical (and Austrian) economists simply do not address. They are unable or unwilling to address what might be called "Philmore's Challenge."

Contractual slavery and constitutional non-democratic government are, respectively, the individual and social extensions of the employer-employee contract. Any thorough and decisive critique of voluntary slavery or constitutional non-democratic government would carry over to the employment contract—which is the voluntary contractual basis for the free market free enterprise system.<sup>14</sup>

Thus, it should come as little surprise when today's classical liberals or libertarians advocate that people should be able to voluntarily alienate their legal self-governance rights not only in the workplace (as in the employment contract) but in municipal or state governments as in charter or startup cities or in today's Dubai.

The comparable question about an individual is whether a free system will allow him to sell himself into slavery. I believe that it would.<sup>15</sup>

But it may be a little more surprising to find the same assumption in neoclassical economics. The crown jewel in neoclassical economics is the theorem that a competitive equilibrium is allocatively efficient (or Pareto optimal). This theorem requires the assumption of complete futures markets in all commodities. If there was a limitation on the time span of human rental contracts, say at ten years of service, then there might be willing buyers and sellers of labor services dated eleven years in the future so outlawing that transaction would preclude allocative efficiency. The fact that the crown jewel theorem of neoclassical microeconomics requires allowing what Blackstone called "perpetual service" contracts is not mentioned, to the author's knowledge, in any textbook. But the econometrician, Carl Christ, pointed it out in no less a forum than Congressional testimony.

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.<sup>16</sup>

According to Frank Knight, the present limitation on long-term or lifetime labor contracts is "logically not a part of the property system." Indeed, it is "one of the defects of our civilization..."<sup>17</sup>

If laborers were not guaranteed the "inalienable right" of freedom, that is, if they could make enforceable time contracts for work and thus capitalize their labor

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<sup>14</sup> Philmore, J. 1982. "The Libertarian Case for Slavery: A Note on Nozick." *Philosophical Forum* XIV (Fall): 43–58, p. 55.

<sup>15</sup> Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York: Basic Books, p. 331.

<sup>16</sup> Christ, Carl F. 1975. "The Competitive Market and Optimal Allocative Efficiency." In *Competing Philosophies in American Political Economics*, ed. John Elliott and John Cownie, 332–38. Pacific Palisades, CA: Goodyear. pp. 337-8.

<sup>17</sup> Knight, Frank. 1965 (1921). *Risk, Uncertainty and Profit*. New York: Harper Torchbooks, p. 350, fn. 1.

power they would in an economic sense be more secure—in the sense in which the slave has security.<sup>18</sup>

The point is that conventional classical liberalism and even contemporary economic theory have no principled differentiation between long-term human rental contracts forbidden by inalienable rights and the short-term human rental contracts of today's economy where such inalienable rights supposedly do not apply.

#### **4. Persons and things in production**

Even since the marginalist revolution at the end of the nineteenth century, economics has been dominated by a certain “picture” of production where “input services cooperate together to produce the product” and then attention is to be focused on the “division or distribution of the product.” What could be wrong with that picture? Clearly all the inputs must productively contribute to the product, and the revenue from the product must eventually be distributed to the owners of those inputs.

What's wrong with that picture is that it does not distinguish between persons and things. It does not differentiate between the responsible actions of persons and the causally efficacious services of things. Knight loved the word “productive” since it blurred the difference between responsible actions and the efficacious services of things.

Of course, in their non-professional lives, neoclassical economists know the difference between responsible actions and the mechanical services of things. When called in for jury duty for the trial of a person accused of committing murder with a gun, the economist will presumably not ask the judge why the gun is not on trial. The economist knows that responsibility is imputed back through the “instruments” to their human user. But search through the entire literature of neoclassical (or heterodox?) economics to try to find such a simple aspect of jurisprudence recognized in the context of normal production. The author has only been able to find a single example of an economist, indeed, the juridically-trained Austrian economist, Friedrich von Wieser, who stated the simple facts.

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.<sup>19</sup>

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<sup>18</sup> Knight, Frank. 1956. *On the History and Method of Economics*. Chicago: Phoenix Books, p. 93, fn. 6.

<sup>19</sup> Wieser, Friedrich von. 1930. *Natural Value*. New York: G.E. Stechert, pp. 76-9.

That was the juridically-trained von Wieser speaking. But for the *economist*, von Wieser, the implication was that economics apologetics *obviously* needs a different notion of responsibility than the usual legal or moral responsibility based on the difference between persons and things. Economics needs the notion of the “economically responsible factors” so that “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.”<sup>20</sup> Instead of seeing the usual legal and moral notions of responsibility and imputation applying to the system of property and contracts that underlies a market economy, the economics profession ‘needs’ to devise a different ‘picture’ of the “division of the return from production” that ignores the difference between persons and things and treats them all as “economically responsible factors.”

But how else can economics account for the “division of the product”? The answer is to look at the actual rather than metaphorical “division of the product” in terms of property assets and liabilities. There is no actual division to the ownership of the product; it is *all* owned by the employer or employing corporation. And the production of the product is not the only property-related result of production. There is also the using up of the inputs which creates the liability to pay for those inputs—which is typically paid off by the employer purchasing the necessary inputs beforehand (except for labor). In fact, the assets representing the produced product and the liabilities representing the used-up inputs are both *correctly* represented by the respective positive and negative entries in the modern economic notion of “input-output vector”<sup>21</sup> or production vector. And the point is that, in fact, one party, typically the employer (natural person or corporation), gets that whole vector—which we might, for historical reasons, call the “whole product.”<sup>22</sup>

The legal party that gets or appropriates the whole product (input liabilities plus output assets) of production is typically called the “firm.” Given today’s obscene distribution of income and resulting wealth, progressive economists focus on unequal bargaining power and the “question of distribution” which is treated in neoclassical microeconomics as a metaphorical “division of the product” according to the metaphorical notion of “economically responsible factors.” But insofar as the actual legal facts are allowed in the ‘science of economics,’ the people rented into a firm own *zero* percent of the output-assets and owe *zero* percent of the input-liabilities. Try to find a single economics book that states those simple facts. What economists apparently cannot say was clearly said by an economic sociologist over a century ago.

There is much theoretic discussion to the "right of labor to the whole product" and much querying as to how much of the product belongs to the laborer. These questions never bother the manufacturer or his employee. They both know that, in actual fact, all of the product belongs to the capitalist, and none to the laborer. The latter has sold his labor, and has a right to the stipulated payment therefor. His claims stop there. He has no more ground for assuming

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<sup>20</sup> Ibid., p. 76.

<sup>21</sup> Quirk, James, and Rubin Saposnik. 1968. *Introduction to General Equilibrium Theory and Welfare Economics*. New York: McGraw-Hill, p. 27.

<sup>22</sup> Menger, Anton. 1899. *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*. Translated by M.E. Tanner. London: Macmillan and Co.

a part ownership in the product than has the man who sold the raw materials, or the land on which the factory stands.<sup>23</sup>

The wages are not a “share of the product” but are one of the input-liabilities owed and paid off by the employer. The fundamental question is not about getting a bigger piece of the pie any more than the question about slavery was whether the real income of the slaves (food, clothing, or shelter) was less than their marginal productivity (e.g., the pathetic debate<sup>24</sup> that followed the Fogel and Engerman’s econometric analysis of slavery).<sup>25</sup>

## 5. Who is to be the firm in the first place?

By focusing on distribution and redistribution of the inequality symptoms of the human rental system,<sup>26</sup> economists miss the prior and fundamental predistributive question of who is to be the firm in the first place;

- Capital (the owners of capital renting people to undertake production),
- Labor (people renting or owning the capital needed for production), or
- the State renting or owning both capital and labor as in socialism/communism.

In today’s free market economy, labor may hire capital just as capital may hire labor, so what is the problem? It is part of the operation of a private property market economy that one legal party cannot pay off the input-liabilities and then another party get the first ownership of the produced outputs. One party has to appropriate that whole production vector or whole product, so the question is who should be that party, the firm, in the first place. The question is *not* whether or not “the labor-power... were paid for at its full value.”<sup>27</sup>

In the legal system, the assignment of liabilities for property damages is governed by the principle of assigning legal responsibility according to factual responsibility, the juridical principle of imputation. The ideological role of marginal productivity theory is to try to show that competitive equilibrium imputes a metaphorical “share of the product” to each factor according to its metaphorical “economic responsibility.”

The basic postulate on which the argument rests is the ethical proposition that an individual deserves what is produced by the resources he owns.<sup>28</sup>

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<sup>23</sup> Fairchild, Henry Pratt. 1916. *Outline of Applied Sociology*. New York: Macmillan, pp. 65-66

<sup>24</sup> For instance, David, Paul A., Herbert G. Gutman, Richard Sutch, Peter Temin, and Gavin Wright. 1976. *Reckoning with Slavery*. New York: Oxford University Press.

<sup>25</sup> Fogel, Robert W., and Stanley L. Engerman. 1974. *Time on the Cross*. Boston: Little, Brown and Company.

<sup>26</sup> Blanchard, Olivier, and Dani Rodrik, eds. 2021. *Combating Inequality: Rethinking Government's Role*. Cambridge MA: MIT Press.

<sup>27</sup> Marx, Karl 1867 (1867). *Capital (Volume I)*. B. Fowkes Trans., New York: Vintage Books, p. 357 fn. or Chap. 10, sec. 3.

<sup>28</sup> Friedman, Milton. 1976. *Price Theory*. Chicago: Aldine, p. 199.



The analysis [of market competition] shows how, under the conditions necessary for its existence, this organization achieves ... *justice* in the distribution of the total product, ... justice by the principle of equality in relations of reciprocity, giving each the product contributed to the total by its own performance (“what a man soweth that shall he also reap”).<sup>29</sup>

These arguments pay homage to the imputation principle; the only problem is that input-suppliers only own a *metaphorical* share of the product, and the imputation is according to a *metaphorical* notion of ‘economic’ responsibility.

What is the result if we apply the actual non-metaphorical notion of legal or moral imputation to the actual property rights and liabilities generated in production? As von Wieser pointed out, “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.” In other words, it is the people who work in an economic enterprise, employees and managers, working employers and ‘hired hands,’ who perform the deliberate human actions that use up input services of things such as land and capital in the process of producing the output-assets. Hence the actual legal or moral imputation principle assigns those input-liabilities and those output-assets to the people working in the firm. In legal terms, they should be the legal members of the firm as a corporate entity.

Such a firm is called a “democratic firm” or “workplace democracy” and is exemplified in the Mondragon system of worker cooperatives.<sup>30</sup> The application of democratic theory to the workplace<sup>31</sup> was well stated by Justice Louis Brandeis.

The civilized world today believes that in the industrial world self-government is impossible; that we must adhere to the system which we have known as the monarchical system, the system of master and servant, or, as now more politely called, employer and employee. It rests with this century and perhaps with America to prove that as we have in the political world shown what self-government can do, we are to pursue the same lines in the industrial world.<sup>32</sup>

The legal or moral notion of imputation gives the same answer to the question of who should be the members of the firm; the people working in the firm. This was pointed out by the UK’s Tory MP known as the “Minister of Thought”, Lord Eustace Percy.

Here is the most urgent challenge to political invention ever offered to the jurist and the statesman. The human association which in fact produces and distributes wealth, the association of workmen, managers, technicians and directors, is not an association recognised by the law. The association which the law does recognise—the association of shareholders, creditors and directors—is incapable of production and is not expected by the law to perform

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<sup>29</sup> Knight, Frank. 1956. *op. cit.*, p. 292.

<sup>30</sup> Whyte, William Foote, and Kathleen King Whyte. 1991. *Making Mondragon. 2nd revised ed.* Ithaca: ILR Press.

<sup>31</sup> Dahl, Robert A. 1985. *Preface to Economic Democracy.* Berkeley: University of California Press, p. 91.

<sup>32</sup> Brandeis, Louis D. 1934. *The Curse of Bigness.* New York: Viking, p. 35

these functions. We have to give law to the real association, and to withdraw meaningless privilege from the imaginary one.<sup>33</sup>

This 'outlandish' notion of applying the *actual* principle of legal and moral imputation to the *actual* liabilities and assets created by the responsible action of persons is the modern rendition of the old "labor theory of property." It is the only notion of legitimately initiating (or terminating) property rights outside of exchange or gifts. Thus far from being "based on private property," the current system based on renting persons violates the very standard of legitimation for private property.

## 6. Back to inalienable rights

There is the dangling question of what is wrong with a free and voluntary contract for the purchase and sale of human labor? Is it primarily a matter of unequal bargaining power between employer and employee? Should we play the parlor game of raising our standards of voluntariness so the labor contract is seen as coercive?

This takes us back to the deeper tradition of democratic classical liberalism in the theory of inalienable rights. The basis for the theory is a claim about the facts of human nature, not a claim about rights or bargaining power. It is a fact of human nature that people cannot by some voluntary act alienate their *factual* responsibility for their deliberate actions. In a contract to rent out one's car or apartment, the rented thing can in fact be turned over to the renter who is responsible for the use they make of the rented *thing*. But one cannot do the same by renting out oneself.

One of the founders of Swedish social democracy, Ernst Wigforss, made the point long ago that labor does not have the (factual) alienability required by a purchase and sale contract.

There has not been any dearth of attempts to squeeze the labor contract entirely into the shape of an ordinary purchase-and-sale agreement. The worker sells his or her labor power and the employer pays an agreed price. What more could the worker demand, and how could he or she claim a part in the governance of the company? ...But, above all, from a labor perspective the invalidity of the particular contract structure lies in its blindness to the fact that the labor power that the worker sells cannot like other commodities be separated from the living worker. This means that control over labor power must include control over the worker himself or herself. Here perhaps we meet the core of the whole modern labor question, and the way the problem is treated, and the perspectives from which it is judged, are what decide the character of the solutions.<sup>34</sup>

The Law fully recognizes this *fact* (about the inalienability of human agency) in the case of employer and employee cooperating together to commit a crime. The servants in work suddenly become the partners in crime.

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<sup>33</sup> Percy, Lord Eustace. 1944. *The Unknown State: 16th Riddell Memorial Lectures*. London: OUP, p. 38.

<sup>34</sup> Wigforss, Ernst. 1923. *Den Industriella Demokratiens Problem 1*. Stockholm: A.-B. Hasse W. Tullbergs boktryckeri, p. 28 (quote translated by Patrik Witkowsky).

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.<sup>35</sup>

Yet when employee and employer have 'jointly carried out a *non*-criminal venture', then the employees do not suddenly morph into robots or non-responsible instruments. It's not the facts that change; it is the Law that then recognizes the human rental contract as valid (unlike the case of a hired criminal contract), and the employer appropriates 100% of the input-liabilities and 100% of the output-assets. The law for renting persons, like the old law for owning persons, pretends to legally determine when persons are legally persons and when they are legally rented or owned 'things.' As stated by an Antebellum judge, the slaves in fact

are rational beings, they are capable of committing crimes; and in reference to acts which are crimes, are regarded as persons. Because they are slaves, they are ... incapable of performing civil acts, and, in reference to all such, they are things, not persons.<sup>36</sup>

It was this sort of mismatch between factual persons being legally treated as things that accounted for the abolition of voluntary contracts of lifetime servitude in addition to abolishing involuntary slavery. And it was this fact about human nature that one's personhood cannot be voluntarily alienated that rendered the lifetime contracts invalid and those rights inalienable. Those facts about the voluntary inalienability of factual personhood are the same for the short-term human rental or employment contract as for the long-term contract for selling labor services.

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<sup>35</sup> Batt, Francis. 1967. *The Law of Master and Servant*. 5th ed. London: Pitman, p. 612. This is the same lawbook quoted in an earlier edition to describe the role of the servant or employee in: Coase, Ronald H. 1937. "The Nature of the Firm." *Economica* IV (Nov.): 386–405, p. 403.

<sup>36</sup> Catterall, Helen T. 1926. *Judicial Cases Concerning Slavery and the Negro*. Vol. III. Washington, DC: Carnegie Institute, p. 247.