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BOOK REVIEW

David Ellerman: Neo-Abolitionism: Abolishing Human Rentals in Favor of Workplace Democracy

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This is a review of Professor David Ellerman's book *Neo-Abolitionism: Abolishing Human Rentals in Favor of Workplace Democracy,* a recent book that is the result of several decades of the author's theoretical elaboration. The book deals with the reintroduction of jurisprudence in basic microeconomic theory and reinterpretation of its basic categories in terms of "property and contracts" and as opposed to the standard neoclassical treatment that proposes a stylized deductive analysis of productivity sets and marginal factor productivity in the context of a competitive economic system. The author's thesis can be broadly divided into two parts. The first concerns a radical critique of the neoclassical theory of production and property per se, pointing out the missing elements and inconsistencies in what is called "the fundamental myth" of neoclassical economics. In his own words, the myth consists of the idea that the rights to the (whole) product in a productive opportunity set are part and parcel of the ownership of capital (the "means of production"). The second part of his thesis has to do with the appropriation of the entire product and the role of labor as a "rented" factor of production in capitalist corporations. In this case, the author states that the owners of capitalist corporation, the shareholders, appropriate the entire net output after consuming the services of the rented factors (labor and capital). All non-proprietary factors are rented by an employer (the shareholders or their majority representatives in the corporation) and are treated as merely efficient causes of production or leased objects. In the case of labor, but not in the case of capital, the lease relationship is legally fictitious because, based on the doctrine of inalienable rights, the author argues that human beings as moral entities must be harnessed with the legal principle of imputation of legal responsibility that cannot be detached from their personality. The explanation and justification of this doctrine relates to how persons are in fact different from things. This implies, in logical terms, the factual inalienability of responsible action. Since responsible agency is not factually transferable, the contract that legally treats that power as transferred to the employer is a false contract.

Furthermore, the labor or natural rights theory of property states that people have a natural right and symmetrically a natural obligation to bear the positive and negative fruits of their labor. More specifically, the legal principle of imputation applies to all intentional human activities, but not to things and animals. De jure responsibility is assigned in terms of the de facto or factual responsibility of persons, which implies that the normative theory of appropriation of assets and liabilities is only applied to the responsible actions of persons. The combination of these principles implies that only labor can be given the right to appropriate the entire (residual) product in a production process, while owned things or animals (goods) cannot have the same right, since they can at most be paid a rental price that reflects scarcity in the event that they are not owned by the people employing those resources.

This brief description of the content of the book requires a great deal of discussion and better understanding, which the author develops in detail in the following chapters. A first important comment related to Professor Ellerman's work has to do with the opening or rediscovery of a Law and Economics perspective of research in the foundations of microeconomics. The need to clearly specify the nature and terms of property and contract and not simply assume them as unexplained preconditions in microeconomic analysis is keenly felt and requires a new beginning in the study of fundamental notions that represent antecedents of economic analysis. The other comments require depth and breadth of discussion and have to do with Professor Ellerman's specific theses.

As explained by the author in the opening chapters of the book, explanations concerning the appropriation of the whole net product of business corporations have entertained a long, noble, and important scholarly debate. The fundamental myth highlighted by Professor Ellerman lies in the fact that both orthodox and heterodox economists, whether neoclassical, Austrian or Marxist, have viewed ownership of capital itself as the justification for the appropriation of the whole net product (profit). That is, the fundamental myth has to do with product and management rights attached to the means of production. The analysis of the corporation relates to lease relationships, i.e., "who hires what or who?". Lease relationships are the key to differentiating a corporation from the contractually determined "enterprise" or "firm", which is the legal entity that undertakes a production process as a going concern using certain capital assets. Membership rights in a corporation must be distinguished from personal rights related to patronage in a cooperative enterprise. A capitalist corporation is characterized by zero patronage, so that membership rights become floating rights that can be bought and sold independently of any functional role or patronage, i.e., they can be treated as property rights.

While in standard neoclassical theory the private ownership of the means of production is seen as implying that the entire net product would be allocated to capital and, by legal translation, to its owners, in reality the "ownership" of capital over the corporation is merely a fictitious legal construct that cannot imply the appropriation of the entire product because capital is owned by corporations, not vice versa. Consequently, the corporation itself, whose rights of control are vested in the entity that employs the other factors of production, is the only legal entity that can own the whole net product resulting from the production process. As evidence of this claim, the author takes the case of the possibility of renting capital. When capital is rented out to another company (e.g., in leases), its ownership remains inscribed in the original owners, but the entire product of its operation is appropriated by the company leasing the capital assets. Thus, ownership of a thing cannot in itself imply appropriation of the entire product. This is the completion of argument about the fundamental myth which gets the actual property rights straight in the capitalist system, in opposition to neoclassical and Marxist interpretations.

After a discussion of the fundamental myth that undermines neoclassical economics at its foundation, the author's arguments continue with a discussion of the properties of labor. A corporation cannot rent a worker in the same way that a capital good can be rented, since the services of labor as living services are embedded in the worker herself/himself and the worker is endowed with moral responsibility for the actions he/she is taking. They have to do with the contrast between the legal and the factual. Of course, labor can be legally hired, but a person's "employment" cannot be transferred to the "employer", i.e., the responsible agency remains with the worker. For this reason, workers but not physical assets may always be eligible to appropriate the entire product.

The factual pattern of contractual relations by which one factor of production hires on other factors in the marketplace determines the identity of the firm, i.e., the party undertaking production as a going concern. This relationship is created between an employer and the other resources that make up the production process. It depends on which factor is able to possess sufficient human, financial and physical capital to be able to start a business and hire other factors. The indeterminacy of the identity of the employing factor opens the door to a new normative approach in which human agency and not physical capital is privileged as the party undertaking production.

The debate on ownership in the capitalist corporation has not stopped with the concept of "private ownership of the means of production", but has evolved primarily in the direction of contemporary financial economics. In more recent doctrines, the underlying principle of ownership has increasingly been identified not with physical capital and other assets per se, but with financial capital or equity, which is owned by the shareholders and gives a proportional share of control over the corporation. The market value of equity shares (full-risk financial capital) incorporates the expected value of future profits and defines the degree of financial capitalization of the company. By virtue of its high degree of riskiness and strategic relevance, equity requires that investors have control over the organization, because if they did not have it, they would suffer from high risks of opportunistic behavior by other stakeholders and inability to carry out highly specific investments (see the classic works of Williamson, 1975, and Hansmann, 1996). In other words, equity ownership has historically emerged as the financial instrument that embodies capitalist control over the corporation. The entire net value (profit) is imputed on the shares of capital, which in the ordinary operation of the system can be bought and sold, but also partially liquidated in the form of dividends. The capital stock, or the people who own the stock (the shareholders) is the hiring factor that controls the corporation and employs all other factors of production including materials, workers and managers. In Professor Ellerman's and other similar proposals (see, e.g., Jossa and Cuomo, 1997), current equity holders can remain high-risk securities holders in a democratic firm but only as debt holders, who have no control rights to elect directors and appoint managers.

Professor Ellerman's critique, in this case, is based on the observation that a corporation is only indirectly owned by the shareholders, since control is not based on the personal rights of the shareholders and their operation within the organization, but on private ownership of a financial instrument. Consequently, patrimonial nature of control rights can prevent the active participation of human agency and the imputation of responsibility in the production process. Furthermore, this can, though need not, lead to several important distortions, that is the fact that shareholders often do not perform any work in the organization (absentee ownership); the problem that share ownership can be highly concentrated (either because the organization was created by a small number of people or because large percentages of shares have been acquired by the same people or institutions) and lead to high degrees of wealth concentration at the macroeconomic level; the possibility of bequeathing shares, which shows their nature as property and not as personal rights of control; the possibility of manipulating the value of shares by top decision makers for example through the mechanisms of the stock option or the purchase of own shares. Although the nature of capitalist property can lead to various undesirable effects and its justness can be debated, it has proven to be viable as institutional solution supporting the development of the system. Furthermore, as said, capitalist ownership violates natural rights upheld by the labor theory of property. Human rental deprives human agency of its just right to the imputation of responsibility and appropriation of the whole net product of labor. If it were not for the employment contract, a conventional corporation would just be a container of assets, like a real estate holding company (but without employees) where assets could only be used by their owners or rented out, instead of people rented in.

Accordingly, in the last chapters of the book, the author imagines a normative perspective that is based on the theory of inalienable rights that descends from the Reformation and radical Enlightenment, for example in the critique of the voluntary contract of slavery (e.g., Hegel), which historically and logically precedes the critique of the employment contract. From this perspective, responsibility cannot be imputed indirectly to human action through the medium of ownership of financial instruments, but only directly through the personal rights of the member-patrons of an association of producers. This direct imputation must have to do with the unfolding of the production process within the organization, i.e., with the labor activity of the people working in it. This interpretation is compatible with Professor Ellerman's assertion that the ownership of the modern corporation corresponds to the limiting case in which the patronage of the persons active in it is null and void, while control is surreptitiously transferred to ad hoc financial instruments. This transfer is made possible by labor legislation that allows for the renting of the human being and thus the replacement of active control and participation of persons by the use of causally efficacious services of persons and things.

This argument leads to the final comments on the author's work. His interpretation stands in stark contrast to the dominant scientific understanding of the production process and the imputation of the product of economic activity. His effort is all the more valuable in the historical reconstruction of the origins of modern capitalist institutions, which is often lacking in standard microeconomic theorizing. His normative perspective calls for a new approach to the study of microeconomics, with a much stronger institutional and historical focus. Although his theses on inalienable rights, human agency, and labor control are highly controversial and may be debated or rejected by many commentators embracing more traditional approaches, they are in any case an impetus for innovating academic research as they require new conceptual tools and elaboration. The reintroduction of jurisprudence into economics has the important effect of pushing the scholar to question the very foundations of standard economic theory and teaching students to be aware of the institutional substrate (property and contract) that underlies microeconomic analysis and modeling. Professor Ellerman's unique approach to the "labor theory of property" (as opposed to the Marxian labor theory of value) requires a new awareness of the active role of human agency in production and how this role is embodied in property and contract. Creating a new scientific perspective opens the door to challenging but potentially fruitful implications. First, if control of people working in the organization is required on a normative basis (which may lead to subsequent legal regulation), how will the corporation procure financial resources, and how will it be financially sustainable and valued by the market, given that control rights as property rights would be replaced by personal rights that cannot be sold as such in the marketplace (contrary to Professor Gregory Dow's competing approach, as in his 2003 and 2018 books)? Would the absence of valuation by financial markets create inefficient resource allocation and distorted incentives (as orthodox economics argues), or would it instead lead to the creation of a more financially and economically sustainable and stable system? As a tentative answer, it is interesting to note that a democratic enterprise or worker cooperative could not be valued by the market, as it would not be a saleable commodity. It would become akin to a human-made common good, such as a city, that produces economic wealth but is not priced by the market and owned as a commodity by anyone. In other words, following the example above, are cities "inefficient" because they are not in the market? Finally, Professor Ellerman's analysis is developed on normative grounds from a philosophical or rights-based deontology, which are different from the dominant utilitarian tradition that takes efficiency (Pareto) and competition as the dominant normative criteria. Each perspective can have radically different implications on "positive economics". These implications require analysis and represent fruitful fields for comparing different theoretical doctrines. These fundamental questions and their answers would not even be possible were it not for Professor Ellerman's enlightened scientific and philosophical contribution.

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