
 Review

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

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Working for a wage under the direction of a boss is a ubiquitous fact of life in the modern world. The identity of many people is wrapped up in the work they perform for an employer. While it would elicit outrage at a backyard neighborhood barbecue to announce that one was being forced to work as a slave by the grocery store down the street, it goes unremarked if someone is introduced as the salaried butcher or produce manager who has chosen to work at the same store. Absolutely normal. So, David Ellerman has a very tough nut to crack to convince people that the everyday employment contract is unjust, “inherently invalid,” a “natural rights fraud,” and should therefore be abolished, which is the singular argument of his book *Neo-Abolitionism*.

The acceptability of wage labor rests on its consensual nature: if you do not like what the boss asks you to do, just quit; get another job. If you believe are not being paid enough, find someone willing to pay more. If you think your employee lacks skill or effort, “let her go” and search for someone better. On both sides of the exchange, people are free to choose, and what can be freer than that?

But Ellerman thinks there is more to liberal justice than consent. He presses at three intersecting angles to try to crack the injustice-of-wage-labor nut. First is the idea that is impossible for people to alienate responsibility for their thoughts and actions, thereby becoming a thinking or doing machine that is subject to the will of a master or employer. One can choose to *obey*, yes, but the typical economic metaphor that a person rents labor services in the same way that a capital owner rents machine services is only that, a metaphor. Human beings always remain responsible for their intentional actions and never assume a machine-like role. Second is the commonly accepted notion that legal responsibility should line up with factual responsibility. Ellerman calls this the juridical principle of imputation. He argues that applying this imputation principle to joint production means that jointly responsible mental and manual workers should jointly hire the capital, jointly organize production, and jointly own the results of the collective human efforts inside a firm. This arrangement would manifest a genuine “labor theory of property.” Third is the liberal, democratic principle that legitimate governance authority flows from the elective, legislative, and constitutional choices of the people being governed. One should obey legal authority because one helped make the rules. A similar democratic principle should apply to firm governance.

I have taught these ideas for many years in a class on economic justice, and there are several potential misconceptions about Ellerman’s neo-abolitionist argument to prohibit wage labor—human rentals—that need to be directly

addressed, as Ellerman does in his book. The neo-abolitionist position is not against private property. It is thoroughly liberal in respecting the value of property rights, except, that is, for the legitimacy of a property right in another person's labor time acquired through force or voluntary exchange. Neo-abolitionists are not anti-market, except for the wage labor market: firms should be organized so that workers are members of the firm, rather than its employees. The neo-abolitionist view is not anti-hierarchical, as long as any workplace hierarchy is the product of authority delegated and recallable by the worker-members. Neo-abolitionists are not opposed to independent contractors; in fact, the explicit goal is to achieve universal self-employment.

The book has three substantial chapters that explore in detail the pillars of Ellerman's neo-abolitionist position—a chapter on contract, a chapter on property, and chapter on governance—bookended by introductory and summary chapters. It is more elegantly structured and compactly reasoned than Ellerman's earlier book on *Property and Contract in Economics* (1992), which also made the case for economic democracy. The arguments of the three chapters are meant to work together, but Ellerman misses an important link that I think might make his neo-abolitionist call even stronger.

Chapter two explores the factual inalienability of responsibility for intentional acts and why Ellerman believes that this inalienability should make voluntary slavery contracts and labor rental contracts both legally unenforceable *and* legally prohibited. The unenforceability conclusion rests on a firmer foundation than the plea for prohibition, which I hope to show using Ellerman's own discussion.

Ellerman exploits the intuition behind the law's treatment of the criminous employee to make the point about the legal unenforceability of the voluntary employment contract. If I hire my friend Rick to help rob a bank, and we are both caught, he will not be able to avoid the legal consequences of his participation in the robbery by arguing that his robbing activity was controlled by me, much like I was in control of the rented car that we used to get away. Rick might insist that he is in the same position as the owner of a car, that is, merely the owner of a labor service over which I assumed control as the result of our labor contract, making him as responsible for the crime as the owner of the car rental service. But while the court may indeed find no legal responsibility for the car rental agency, which had no knowledge of my planned burglary, at some point Rick would have been aware that his rented labor involved making threats, at my command, to a bank clerk. The court would reject his claim that these threats were not his intention because he was subject to my authority via employment, since Rick's labor services are not separable from Rick the responsible agent. Typical liberal jurists thus recognize that Rick never alienates responsibility for any of his freely chosen actions, and they would thus find him legally responsible for the robbery.

Ellerman explores in some detail Randy Barnett's explanation for why factual inalienability can lead to the libertarian state's refusal to enforce contracts for the specific performance of labor (Barnett 1986). Barnett writes:

If rights are enforceable claims to control resources in the world and contracts are enforceable transfers of these rights, it is reasonable to conclude that a right to control a resource cannot be transferred where the control of the resource itself cannot in fact be transferred. Suppose that A consented to transfer partial or complete control of his body to B. Absent some physiological change in A (caused, perhaps, by voluntarily and knowingly ingesting some special drug or undergoing psychosurgery) there is no way for such a commitment to be carried out (Barnett 1986, p. 188, quoted in Ellerman, p. 55).

Since competent, unaltered adult people are always in control of their minds and bodies—responsibility for one's thoughts and actions is inalienable—“the services of the employees cannot be the subject of a valid contracts” (Barnett 1986, p. 199, quoted in Ellerman, p. 56). Because employment contracts are invalid, Barnett argues that liberal courts should not force recalcitrant employees to perform the mental and physical actions to which they originally agreed. Ellerman is surprised that Barnett does not go further to conclude that the invalidity of employment contracts should lead to their prohibition.

Earlier in the chapter Ellerman remarks that “[i]nalienability theory does not place any limits on the *individual actions* such as ‘capitalist acts between consenting adults’ (Nozick’s phrase) or wanting to act slavishly towards others or have others act slavishly towards them” (Ellerman, p. 36). If one wants to pretend to be a slave, the liberal state does not intercede. The fact of inalienability only leads to a liberal government’s unwillingness to enforce any sort of temporary or permanent agreement to obey, much as Barnett argued. Thus, if someone pretending to assume the role of “voluntary slave” chooses to walk away, the contractual “owner” has no legal recourse from the liberal state and would be prevented from using private coercion to enforce the slave contract. Likewise, if my friend Rick walks away from our agreement for him to follow my orders to install a roof, I cannot get the police to bring him back. Nor would the legal system in a liberal society allow me to use physical coercion to keep him on task. (My use of other potentially coercive measures that do not involve the threat of physical force to get Rick to obey are another matter. More on that below.) But if inalienability does not limit individual actions, it is hard to see how acknowledging inalienability must lead to the *abolition* of wage labor or to the prohibition of a person obeying an employer’s commands in exchange for a wage or salary. Ellerman should not be startled that Barnett’s analysis of inalienability did not produce a neo-abolitionist conclusion.

Chapter three is devoted to a theory of justice in the appropriation of new property that originates through joint production. Ellerman asks, who is and who should be the “appropriator of the whole product”? Appropriation means having the responsibility for paying the bills and being the first owner of newly created goods and services. He begins by dispensing with what he calls the “fundamental myth” of capital: that ownership of the means of production also involves the right to control production and the right to acquire the product. He demonstrates the adoption of this myth by various liberal and Marxist economists and easily refutes it by showing that rented capital has no rights of control or appropriation. Rather, control and appropriation flow from the entrepreneurial activity of hiring labor and capital. Ellerman calls this “the *laissez faire* mechanism of appropriation” (Ellerman, p. 85). Entrepreneurial appropriation often appears to be capitalist appropriation, because capital owners enjoy the power to hire labor that asset-poor workers do not generally possess with regards to hiring capital, a point Ellerman only makes in passing (Ellerman, p. 78).¹

Ellerman argues that a genuine labor theory of property would connect justice in appropriation to the *performance* of manual and mental labor, rather than to the (invalid) *ownership* of a servant’s labor that Locke famously asserted. That is, control of production, paying the bills, and being the first owner of new product should be the responsibility of all the workers engaged in production inside the firm. If a true labor theory of property were in force, labor will hire capital, thus aligning legal responsibility for production with factual responsibility, and thereby assume the appropriator’s role. Once again, this would require the abolition of human rentals. The argument for justice in appropriation is another way to get at the inalienability of responsibility and intention.

The fourth chapter applies the liberal democratic principle to the question of firm governance. The dominant branch of economic liberalism, expressed in a compact form by Milton Friedman (1962), frames the evaluation of economic systems in terms of a contrast between consent and coercion: when people consent, they are free, whether or not governance institutions are democratic, as long as coercion is kept to a minimum. Consent-based governance does not necessarily need to be democratic, even though that was Friedman’s own preference, as long as it is constrained by the rule of law and constitutional restrictions on its authority to limit coercion and is easy to exit. Thus, charter cities can be defended as a liberal, consent-based form of government. (As can conventional capitalist firms, once liberals acknowledge that they, too, govern).

James Buchanan framed a commitment to liberalism a different way, emphasizing individual sovereignty rather than consent, and Ellerman exploits a Buchanan-like understanding of the foundations of liberalism to argue that all governance institutions should be democratic, both public and private governments. First, Buchanan.

The justificatory foundation for a liberal social order lies, in my understanding, in the normative premise that individuals are the ultimate *sovereigns* in matters of social organization.... The central premise of *individuals as sovereigns* does allow for delegation of decision-making authority to agents, so long as it remains understood that individuals remain as *principals*. The premise denies legitimacy to all social-organizational arrangements that negate the role of individuals as sovereigns or principals (Buchanan 1999, p. 288; quoted in Ellerman, p. 128).

Following the premise of individual sovereignty, liberal government would always take a democratic form, in which people may delegate authority to rule makers and rule enforcers to act in their name, but those rulers must answer to and potentially be recallable by the sovereign people. Ellerman maintains that adherence to Buchanan's principle of individual sovereignty correctly rules out constitutional autocracies, liberal dictators, charter cities, and any other form of non-democratic government, even if it follows the rule of law. The important distinction that democratic classical liberalism makes is between institutions that allow the voluntary *delegation* of authority but not the voluntary *alienation* of authority where those governed do not act as principals.

The conventional, neoclassical theorists of the firm deny that private firms exercise governmental authority. For instance, Armen Alchian and Harold Demsetz assert that private enterprise "has no power of fiat, no authority, no disciplinary action any different in the slightest degree from ordinary market contracting between any two people" (Alchian and Demsetz 1972, p. 777; quoted in Anderson 2017, p. 54). Ellerman rightly rejects this conclusion, citing Coase's description of the legal difference between independent contractors, whose customers have no control rights over their labor time, and employees whose employers do indeed enjoy control rights over the work process (Ellerman, pp. 51-2). But he does not draw an important connection that might help to seal the deal for workplace democracy with democratic classical liberals, who seem to be his intended audience given the dismissals of Marxism scattered through his text.

Let's return to Barnett's libertarian discussion that inalienability leads to the unwillingness of the liberal state to enforce the specific performance of labor. Who, then, enforces the wage-labor contract, specifically the worker's promise to exert some effort on the job? In a series of articles, Samuel Bowles and Herbert Gintis (e.g., Bowles and Gintis 1988, 1990, 1993) proposed what they called a model of "contested exchange" in which some contracts were "endogenously enforced," particularly the wage-labor contract. By endogenous enforcement of the labor contract, they asserted that the promise to work hard was enforced by employers, via a combination of resource expenditure on employee monitoring, the payment of "employment rents" that raised wages above a market-clearing level thereby giving workers something to lose if fired, and the continual threat of non-renewal of the contract. In this way, employers can exercise power to get workers to obey their commands, a power that would not exist if the labor market generally tended toward a market-clearing equilibrium in which the cost of switching jobs (and finding a less demanding employer to obey) was no greater than the cost of changing grocers in search of higher quality produce.² Although Bowles and Gintis did not emphasize the inalienability of labor like Barnett and Ellerman—instead they located the need for endogenous contract enforcement in information asymmetries and the inherently incomplete nature of the labor contract—they did provide a convincing economic model of private governance in the employment firm.

Ellerman's appeal to *democratic* liberal principles in his argument for abolishing labor rentals would be strengthened by connecting it more clearly back to the inalienability argument for the unenforceability of a worker's breach of the labor contract by the liberal state. Inalienability leads to the need for endogenous contract enforcement, and endogenous enforcement of a worker's promise to obey makes it clear that employment firms are privately governed. Moreover, private governance in employment firms is exercised in the interests of capitalist-entrepreneurs rather than the workers. Since capitalist-entrepreneurs have a lot to gain through maintaining leverage over rented labor, they are not likely to concede to a spontaneous reversal of the current capital-labor governance relationship after reading Ellerman's book. Thus, some sort of constitutional requirement of workplace democracy would be necessary to achieve Buchanan's liberal

organizational principle of individual sovereignty so that workers are principals who delegate power to the agents involved in firm management. Private democratic governance is as fundamental as public democratic governance.

Despite his failure to provide a comprehensive theory of private government in the employment firm, Ellerman makes a forceful case for abolishing human rentals based on the inalienability of responsibility, a labor theory of property, and democratic self-governance. Some readers will no doubt reject his legal and deontological arguments out of concern that universal self-employment would have deleterious consequences in terms of market coordination and innovation. They might even point to these purported static and dynamic efficiency flaws as explanations for why democratic firms have not spontaneously emerged, ignoring the ways in which wealth disparities shape economic evolution (Bowles and Gintis 1992). Yet even if these efficiency concerns were valid, Ellerman's book should lead thoughtful classical liberal readers to wonder why efficiency should trump the liberal idea of inalienability of responsibility and the liberal principle of individual sovereignty that run through his book.³

NOTES

- 1 See Bowles and Gintis (1992) and Burczak (2016) for a deeper exploration of the lack of reciprocal power in the relationship between capital and labor and a rejection of the libertarian myth that assuming the entrepreneurial role never requires prior ownership of assets.
- 2 It is possible to see employer power as a species of coercion. See Burczak (2013) for a comparison of Bowles and Gintis and Hayek on the question of private coercion in the employment relationship.
- 3 Thanks to Andrew Farrant for some helpful suggestions on an earlier draft.

REFERENCES

- Alchian, A. and H. Demsetz. 1972. Production, Information Costs, and Economic Organization. *American Economic Review* 62(5): 777-795.
- Anderson, E. 2017. *Private Government. How Employers Rule Our Lives (and Why We Don't Talk about It)*. Princeton: Princeton University Press.
- Barnett, R. 1986. Contract Remedies and Inalienable Rights. *Social Philosophy Policy* 4(1): 179-202.
- Bowles, S. and H. Gintis. 1988. Contested Exchange: Political Economy and Modern Economic Theory. *American Economic Review* 78(2): 145-150.
- _____. 1990. Contested Exchange: New Microfoundations for the Political Economy of Capitalism. *Politics and Society* 18 (June): 165-222.
- _____. 1992. Power and Wealth in a Competitive Capitalist Economy. *Philosophy and Public Affairs* 21(4): 324-353.
- _____. 1993. The Revenge of Homo Economicus: Contested Exchange and the Revival of Political Economy. *Journal of Economic Perspectives* 7 (Winter): 83-102.
- Buchanan, J. 1999. The Foundations for Normative Individualism. In: *The Collected Works of James Buchanan. Volume I. The Logical Foundations of Constitutional Liberty*, pp. 281-291. Indianapolis: Liberty Fund.
- Burczak, T. 2013. A Hayekian Case for a Basic Income. In: *Basic Income and the Free Market: Austrian Economics and the Potential for Efficient Redistribution*, Ed. G. Nell, pp. 49-64. Basingstoke: Palgrave Macmillan.
- _____. 2016. A Critique of Kirzner's Finders-Keepers Defense of Profit. In: *The Collected Works of Israel Kirzner. Discovery, Capitalism, and Distributive Justice*, eds. P. Boettke and F. Sautet, pp. 233-54. Indianapolis: Liberty Fund.
- Ellerman, D. 1992. *Property and Contract in Economics*. Oxford and Cambridge, MA: Basil Blackwell.
- Friedman, M. 1962. *Capitalism and Freedom*. Chicago: University of Chicago Press.