

Reply to Jamie Morgan's Commentary on 'The Labour Theory of Property and Marginal Productivity Theory'

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Abstract

Jamie Morgan's commentary (Morgan, 2016) on my paper 'The Labour Theory of Property and Marginal Productivity Theory' (Ellerman, 2016) largely focuses on a number of dogs that didn't bark in the paper. My focus on the root institution of the renting of persons (the employment relation) is 'incomplete' because it neglects all the accumulated historical results of that institution, e.g., the resulting power relations or the resulting obscene mal-distribution of wealth and income. However, I argue that the critique *should* be focused on the root of the matter and not on the accumulated symptoms. Even if there was some miraculous redistribution of wealth to restart the clock ('year zero') in an economy still based on the human rental system, then the critique based on the labour theory of property would still apply. After discussing the main points of Morgan's commentary, I conclude that the commentary exhibits a troubling postmodern anathema to abstract theory in much heterodox economics—even alternative theories—in favor of atheoretical but morally charged descriptions of particular economic, political, sociological, and psychological concerns—which is all too reminiscent of Marx's volumes of moral invective to compensate for the deficiencies in his labour theory of value and exploitation.

Key works: labour theory of property, power relations, employment system of renting persons, theories of exploitation, the corporate legal form

1. Introduction: Power relations

I am grateful for Jamie Morgan's commentary (2016) because many of the points he raises will surely occur to others and really need to be addressed. As Morgan surmised at the end of his commentary: 'Ellerman may have some further comment on this.'

One general point of the commentary was that my treatment of the labour theory of property (LTP) did not address power relations. In this case, my reluctance to go charging into the swamp of discussions about economic, political, sociological, and psychological 'power relations' was deliberate—even though that seems to be a favorite pastime in many heterodox circles as an alternative to clearly formulated abstract theory. The fact that most real world contractual relations involve inequalities of power is surely a truism. The real point is that power relations are irrelevant to the critique provided by LTP since it is *not* a critique based on unequal power relations and thus the critique would not be resolved by, say, wealth redistributions or more countervailing power to collectively bargain the human rental contract.

The methodological point is that if one is going to criticise a practice or a whole system *because of X* (e.g., unequal power relations), then one is implicitly accepting the framing that this X-critique of the practice or system would be resolved if X was removed. If a defender of the

system posits a version without X and the critic says 'It's still wrong,' then the defender is well justified in asking: 'Why don't you tell me the real reason why you think the system is wrong, and stop engaging in apparently ancillary discussions about X?'. Morgan says the presentation of LTP is perhaps 'incomplete' because it lacks this sort of ancillary discussion about X = unequal power relations.

Moreover, neoclassical theory does have a theory about power relations expressed in the contrast between competitive markets on the one hand and monopolistic/monopsonistic markets on the other hand. There is also a neoclassical theory of exploitation which applies to the non-competitive case where input suppliers would be paid less than the value of the marginal product of their inputs and output buyers would pay more than the marginal cost of the outputs. Thus neoclassical theory does have a theory based on power relations, the power of a monopsonistic buyer of inputs or a monopolistic seller of outputs.

The neoclassical apologists for the employment system would like nothing better than to have an excuse to avoid the main point about the inalienability of responsible agency in favor of engaging with critics in endless discussions about the economic, political, sociological, and psychological nuances of 'power relations'—in addition to the usual discourse about making markets more competitive. I made it quite clear the LTP critique was *not* based on such power relations and such resulting 'exploitation,' and I take that to be a virtue of the theory, not a vice.

2. Basic neoclassical apologia based on voluntariness, not absence of power relations

Furthermore, the *basic* neoclassical-Austrian-classical-liberal defense of the system of renting, hiring, or 'employing' people is not that the system is ideally competitive (when they really aren't) but that the market contractual relations are *voluntary*. Unfortunately, most of the leftwing criticism argues that wage labour is X = 'not really voluntary'—which is superficial because it accepts the classical liberal framing that human rentals would be acceptable if they were 'truly' voluntary. And then defenders and critics of the system can again charge off with swords waving into the bog of arguments about whether or not unequal power relations prevent market contracts from being 'really' voluntary.

One way to better understand the neo-abolitionist critique of a truly voluntary contract to rent persons (Ellerman, 2015), is to transpose the arguments back to a hypothetical economy based on civilised voluntary slavery contracts. The most sophisticated defenders of slavery argued in favor of an idealised system of implicitly or explicitly voluntary self-enslavement contracts in which the employer could buy labor by the working-lifetime instead of just for specified periods of time. They recognised that the existing system of slavery often fell far short of that and they earnestly wanted to reduce those abuses.

Who were some of those sophisticated defenders of voluntary slavery contracts? The most sophisticated modern defender of the human rental system was Frank H. Knight who pointed out that Adam Smith's classical liberal defense of competitive markets was built on a foundation provided by the three pillars of classical liberal thought.

The classical exposition of the new doctrine in its positive aspect was Adam Smith's *Wealth of Nations*, published in 1776. 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. (Knight, 1947, p. 27, fn. 4)

As I have pointed out elsewhere (e.g., Ellerman, 2010a, 2015b), all three of these founders of classical liberal thought *accepted* a civilised voluntary slavery contract. Locke's defense of such a contract, which he renamed 'drudgery' (*Second Treatise*, §24), is too well known to quote but the passages from Montesquieu and Blackstone are little known.

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. (Montesquieu, 1912 [1748], Vol. I, Bk. XV, Chap. V)

Like Locke and Montesquieu, Blackstone would reject an uncivilised 'contract' where the master had the power to legally kill the slave and such a slave would be free 'the instant he lands in England.'

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. (Blackstone, 1959 [1765], section on 'Master and Servant')

In spite of being defended by Knight's 'great names' in classical liberal thought [not to mention modern libertarians such as Harvard's late Robert Nozick (1974)], the voluntary master-slave contract is today recognised as being invalid in the advanced democracies. What are the reasons why it is outlawed?

- Was it because the real wages (paid in food, clothing, and shelter) of the slaves were below the value of their marginal product (or contained less labour-time than was expended by the slaves)—which would only imply higher real wages?
- Was it because of the hugely unequal power relations between the prospective masters and slaves—which would only argue for some countervailing power on behalf of the slaves?
- Was it because of the obscenely unequal distribution of wealth and income between masters and slaves—which would argue for redistributive policies like the more progressive income taxes, larger estate taxes, and perhaps a guaranteed minimum income suggested by today's progressive reformers to address today's human rental system?

No, these were not the reasons why that voluntary contract was *abolished* (as opposed to being modified or reformed in the above indicated ways). The self-sale contract, like today's self-rental contract, is invalid for reasons inherent in the contract itself, not because of the inevitable inequalities in power relations used to get people to consent to it. I have elsewhere (1992, 2010a, 2015a) outlined the intellectual history of the inalienable rights doctrine that descends to modern

times from the Reformation and Enlightenment through the abolitionist and democratic movements. That critique also applies to the voluntary human rental contract that is the basis for today's employment system. This neo-abolitionist critique is not grounded on the X of power relations (or non-competitive markets in the neoclassic proffered self-critique)—or for that matter on the whole train of X, Y, and Z abuses so well described by Marx in his volumes of moral invective¹ that covered up for the lack of a sound theoretical critique since it was based on the labour theory of value and exploitation.

3. The fundamental myth and the laissez-faire imputation mechanism

Morgan's treatment of the fundamental myth was somewhat garbled and confused with the way the assets and liabilities created in production are imputed in the absence of any legal trial (the laissez-faire mechanism of imputation).

Firstly the fundamental myth is not part of the legal system (since capital is perfectly rentable); it is part of the standard ideology accepted by *both* the left and right concerning the 'rights of capital.' It is the idea that the right to the product (and discretionary management rights over production) are part and parcel of the 'ownership of the means of production.' The idea is easily defeated by pointing out that in our present system, capital goods are just as rentable as persons, and the legal party that ends up owning the product and managing the process of production is determined by who rents what or whom. In short, 'being the firm' is a contractual role determined by the pattern of contracts (e.g., capital hiring labour rather than the reverse—which of course depends in part on power relations). It is not a prior property right as seems to be indicated by the common phrase 'ownership of the firm' as if residual claimancy is already 'owned' prior to market contracts being made one way or the other.²

The fundamental myth is not a part of the legal system but it is part of neoclassical capital theory and corporate finance theory (see Ellerman, 1992) and is apparently accepted or perhaps not even noticed by the purported heterodox Cambridge critics of capital theory (Harcourt, 1972) who only criticise orthodox capital theory because of X = aggregate notions of capital, reswitching, and all that.

The second point is about how the property system works—how it imputes the liabilities for the used-up inputs and the ownership of the produced outputs in the normal operation of any private property market economy (such as a labour-managed market economy with the human rental contract abolished). Somehow in Morgan's treatment of this mechanism, there was no mention of the input liabilities (the negative product) which together with the produced outputs (the positive product) comprise the 'whole product.'

¹ As Albert O. Hirschman put it, Marx's 'works exhibit a simple juxtaposition of scientific apparatus and moralistic invective, wholly *unversöhnt*' [unresolved] (Adelman, 2013, p. 570).

² As a personal aside, I am embarrassed to note that I was in the thrall of the fundamental myth when I first published on this topic in the pink of youth (Ellerman, 1973) and it took a couple of years to work my way out of it. To understand the market mechanism of appropriation, one needs to first understand that are product rights are not already part of the 'ownership of the means of production.'

The algebraic symmetry in the concept of the whole product (what neoclassicals just call the 'production vector') seems to be a particularly difficult point to understand. One does not have to be a mathematician to know about negative numbers in addition to positive numbers. One does not have to be an accountant to know about expenses in addition to revenues. And one does not have to be a neoclassical economist to understand that inputs are used up in addition to outputs being produced in production. Why is it so difficult to think in an algebraically symmetric manner about production?

The laissez-faire imputation mechanism is *not* a system where someone grabs the produced outputs and the Law says 'Let it be.' It is the system where one party has already paid all the costs (i.e., appropriated the negative product) and then the Law say 'Let it be' when that same party sells the produced outputs. Thus the Law or 'Invisible Judge' imputes the whole product to that one party who got into the contractual position (thanks to the human rental contract) of being the last owner of the input services used up in production (treating the productive activity of the people working in the firm as one of those used-up inputs) and thus was in the defensible position to claim and sell the produced outputs.

It has nothing to do with the fundamental myth. But there is something 'fundamental' associated with that market mechanism of imputation, namely the fundamental theorem (unmentioned by Morgan) which gives the conditions such that laissez-faire imputation would be in accordance with the basic juridical principle of imputing legal responsibility according to de facto responsibility, i.e., would be in accord with the modern treatment of the labour theory of property. Those conditions and the theorem are outlined in the paper (see Ellerman, 2014 for more details). The final part of the paper shows how the renting of persons inherently violates those conditions due to the de facto inalienability of responsible agency. Thus the 'natural system of private property and free contracts' is in fact based on the inherently invalid human rental contract (whose longer term version is already abolished) which allows 'an institutional robbery—a legally established violation of the principle on which property is supposed to rest' This quote is from John Bates Clark (in my paper) when Clark confidently thought that marginal productivity theory would 'seal the deal' for the human rental system and show it was not an institutional robbery.

Morgan also argued that by focusing on the institutional robbery at the root of the human rental system, I was somehow neglecting the grotesque mal-distribution of wealth that

is a source of power, which in turn is rooted in socio-economic relations and is manifested in influence. This, for example, is basic to Piketty and many others argument regarding the institutional problems of wealth and income inequality....'
(Morgan, 2016, p. 41)

In terms of the historical analogy, by focusing on the underlying master-slave relation, one is 'neglecting' the mal-distribution of wealth between masters and slaves (and the resulting power/socio-economic relations) which could be addressed by more progressive taxes and social redistributive programs. At some point, one needs the clarity to differentiate the root of the problem from the symptoms. Just as one can have financial leverage by renting other people's money and getting its returns, so one can have human leverage by renting other people

themselves and thereby appropriating the (positive and negative) fruits of their labor. The grotesque mal-distribution of wealth and income today is the *result* (i.e., the accumulated symptoms) of centuries of institutional robbery by thus 'leveraging' human beings first in the system of owning other people and more recently by the current system of renting other people.

Yes, the resulting mal-distribution of wealth and income is 'basic to Piketty' and to similar progressive and even left-leaning Nobel-prize-winning economists. But that is a focus on the accumulated symptoms or effects, not on the root cause, and their various redistributive palliatives do not reach to the root which is the whole institution of the renting of human beings. In terms of the historical analogy, a redistribution of ante-bellum wealth in favor of the slaves (surely, a good thing), while keeping the institution of ownership of other persons intact, would not get to the root of the problem. Morgan is correct that my neo-abolitionist focus on the root cause may seem to some as being 'incomplete' without some fashionable hand-wringing about all the accumulated symptoms.

4. Personhood

On the basic issue about the inalienability of responsible agency, Morgan notes that this is:

at root an argument concerning the nature of personhood, the nature of what it means to be human. It is an ontological claim. So one might also note that Ellerman's case – in at least its normative dynamic – requires a clear ontological argument regarding the nature of personhood (and species-hood), and the possible consequences of personhood for socio-economic forms, including the case for economic democracy. (Morgan, 2016, pp. 41-2)

This is certainly correct as a matter of moral philosophy and I have written extensively about this elsewhere (1988, 1992). But the social scientist can take a more modest stand by arguing not the moral philosophical question of whether or not a certain principle is right or wrong, but by arguing the analytical/factual question of whether or not a given system violates a certain principle (regardless of what one thinks about the principle).

Consider the case of Milton Friedman who was a great advocate of 'positive economics' and who at the same time argued that the competitive system involving human rentals satisfied 'the ethical proposition that an individual deserves what is produced by the resources he owns' (Friedman, 1976, p. 199). Friedman did not try to philosophically argue for the supposed principle, which he called the 'capitalist ethic' (Friedman, 2002, p. 164); he only argued that the competitive system in fact satisfied the principle. Or consider Frank Knight who argued that the competitive system satisfies '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")' (Knight, 1956, p. 292). One can argue against their assertions, as I do in the paper, without indulging in a moral argument over the principle 'what a man soweth that shall he also reap.'

In fact, I think it is largely a waste of time to dive into moral philosophy and argue with the intellectual hirelings of the employment system over the moral principle of 'what a man soweth that shall he also reap' or the moral status of institutionally treating persons as things. Nor is that necessary. One only has to show that the system of renting persons violates that principle and

treats persons as things since the employees in an employment firm owe zero percent of negative fruits of their joint labor (the input-liabilities) and own zero percent of the positive fruits of their joint labor (the output-assets)—exactly the legal role of rented things.

The defenders of the faith in the 'science of economics' are perfectly free to disagree with the moral principles at stake by saying 'Yes, employees have the institutional role of rented things, but that is OK' or 'Yes, employees appropriate zero percent of the (positive and negative) fruits of their labor, but that is OK'. However, I think the defenders of the faith will wisely choose to just avoid this whole set of arguments. When they want to prove their value to their social masters by engaging with critics of the system, they will search for some member of the dwindling band of Marxian economists to serve as their foil (Ellerman, 2010c) in arguments about whether or not 'wages are too damn low' due to power relations in non-competitive markets, about the labour theory of value, or about abolishing the 'private ownership of the means of production.'

Furthermore, one of the dogs that didn't bark in Morgan's commentary was my whole discussion of marginal productivity theory (MPT) which was one of the main points of the paper (see the title) since I have written about the LTP extensively elsewhere. In particular, there was no commentary on the stunning success of neoclassical theory to get liberal-progressive thinkers to implicitly accept the metaphorical application of the responsibility principle in MPT as correct in theory, since 'critics' such as Lester Thurow, John Rawls, and Steve Keen only attack such things as X = measurement difficulties in practice, non-competitiveness of labor markets, and the background mal-distribution of wealth—all of which were long ago acknowledged by sophisticated defenders of the system of human rentals such as Frank Knight. And it is not just a question of 'value preferences' as to whether one 'likes' or 'dislikes' the normative version of MPT; the point is that the co-called 'critics' proffer no critique *in principle* of that 'capitalist ethic.'

5. The corporation as a 'deeply problematic' legal entity

The last major point raised by Morgan is about the corporation as a 'deeply problematic' (p. 39) legal entity and the whole corporate governance debate. I did not directly address these issues in the paper but I am glad to briefly comment on them. I am afraid that much of the progressive commentary attacking the very idea of a corporation as a separate legal party (i.e., separate assets and liabilities from the individual members) is largely superficial and the policy recommendations that follow from the arguments would be quite counterproductive.

Here in the United States, these arguments are often focused on the *Citizens United* case which many critics think was based on the argument that corporations are legal 'persons' and thus should have the same constitutional rights as natural persons—even though the judge writing the dissenting opinion noted specifically that this was *not* the argument (Ellerman, 2010b). The policy recommendation drawn from this 'criticism' is that only *natural* persons should have the rights of free speech to make political campaign contributions. No policy would be better for the super-rich 1% than this silly idea wherein, to echo Anatole France's sarcasm, the average person on the street and the Koch brothers would each have an equal right to as much public voice as they could individually afford. Any legal organisation which might amplify the public voice of ordinary citizens by joining them together in a labour union or a non-profit NGO would also not

be a natural person and thus would also be forbidden along with conventional corporations from constitutionally protected associational speech in the form of campaign contributions.

The basic idea of a corporation as a separate legal party from its members is, far from being 'deeply problematic,' is an important social invention (e.g., to foster risk-taking innovation) and should not be attacked simply because it is the most common legal shell for institutional robbery of the whole system of renting persons (which is just as 'problematic' when the employers are natural persons or partnerships). The corporate form should be preserved for the democratic labour-managed firms of the future after the abolition of the human rental contract, and it is the form for the fledgling worker cooperative corporations of today, e.g., those incorporated under cooperative *corporation* law such as the law I co-drafted for Massachusetts back in the early 80s (Ellerman and Pitegoff, 1982).

The long quote by John Kay (p. 40) from the *Financial Times* is also typical of the superficial analysis and criticism of the corporate form. Kay makes the point that shareholders are not really 'owners' since they can't just walk into 'their' corporation and grab something as their personal property and use it to pay off a personal debt. But that is a banality true in a worker cooperative or in any other organisation (e.g., any club, association, or NGO) that is a separate legal party from the individual member—so it has little to do with corporate governance debate.

Kay also makes the point that the shareholders' right to appoint the directors who select the managers is only 'theoretical.' This is the common lament about the separation of ownership and control in the large publicly traded corporations so that the 'shareholders' democracy' exists only in theory, not in practice. But the nontrivial point that one will not find in the FT is that 'shareholders' democracy' would not be democratic even if it did exist in practice.

The simple reason is that democracy is the collective form of *self*-government, and the people being managed by the directors and their managers are the people working in the corporation, not the far-flung shareholders. The so-called 'shareholders' democracy' if it existed in practice, not just in theory, would be like the people of Russia going through a whole set of vigorous discussions, deliberations, and debates and then voting to elect the government of Poland. But, alas, as liberal critics would lament, such a 'democracy' would only be 'theoretical' in Kay's words if the voting rights of the Russian people to elect the government of Poland were usurped by the unaccountable nomenklatura of the Communist Party. Unfortunately, the real critique of the corporate governance debate about 'shareholders' democracy' will not be found in the writings of liberal critics like John Kay or printed in the pages of the FT.

I have written at length over the decades about how differently a democratic corporation would be structured (Ellerman 1984, 1990). But contrary to the apparent policy recommendation of the book (Tombs and Whyte, 2015) referenced by Morgan and subtitled 'Why corporations must be abolished'—I would never suggest that the corporate form should be abolished so that the worker-members would have unlimited personal liability for their cooperative's economic liabilities. Again, this silly policy recommendation would only be favorable to the rich since only they could then afford to undertake the risks of enterprise on any scale.

Apparently the real concern of Tombs and Whyte and much of the other 'anti-corporate' literature cited by Morgan is that crimes of commission and negligence committed by corporate managers might go unpunished—which is a very real fear given the extent to which the present-day legal and legislative system is suborned to the corporate employers—which is reminiscent of the way the judges, state legislatures, and politicians of the ante-bellum South were suborned to the economic masters of that time. The underlying normative principle of that critique is that corporate managers like other people should be held legally responsible for their de facto responsible actions—a legal principle that in its application to questions of property appropriation is called 'the labour theory of property.'

6. Summary: the postmodern anathema to alternative abstract theory

In summary, I think Morgan's commentary reflects a troubling anathema to abstract theory exhibited by many heterodox economists. Instead of being able to pinpoint the problems in neoclassical microeconomic theory, as I tried to do with marginal productivity theory, these heterodox economists eschew clear abstract alternative theory altogether in favor of a postmodern dive into the particulars of economic, political, sociological, and psychological concerns—a strategy aptly summarised in Robert Solow's famous quip: 'Après moi, la sociologie.'

There was one exception (which proved the rule) when some radical economists learned a bit of linear algebra to espouse the modern matrix treatment of Marx's labour theory of value. But that episode blew up in the faces of the matrix Marxists since the resulting *clarity* only served to show that, at root, the matrix-Marxian theory was only an 'interest grumble' and even had no particular connection to human labour (Ellerman, 1983; Wolff, 1984).

Hence most heterodox criticisms of neoclassical theory today show a postmodern aversion to clear alternative abstract theory (particularly in microeconomics) in favor of showing how any abstract theory neglects all the richness of the particular economic, political, sociological, and psychological concerns. In the case at point, Morgan did not criticise the labour theory of property directly so the brunt of his commentary was to *correctly* point out the 'incompleteness' of abstractly focusing only on the root cause to the neglect of all the particular accumulated historical results of the institution of renting human beings.

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