Property and Economic Power

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These ideas are derived from Karl Polanyi's *The Great Transformation* and John R. Commons' *Legal Foundations of Capitalism*. One of the key ideas is that the market economy and economic power are historically recent phenomena. Both books attempt to account for the evolution of these phenomena. While the evolution as described may not be fully historically accurate, it serves to distinguish property and power in market economics from equivalent forms in pre-market economies. It seems to me that these contrasts provide valuable insights.

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The Commons account of the evolution of economic power includes the following elements: 1) the economic significance of property evolved by extension from property rights established to protect owners in secure physical possession of the objects owned, 2) property rights in the sense of secure physical possession were established in political struggles beginning in the Middle Ages to control arbitrary action and violence on the part of rulers and the upper classes, 3) the taming of physical violence and arbitrary action of the rulers by establishing more orderly political processes provided the opportunity for the emergence of economic power of control over markets and pecuniary extortions, and 4) once economic power became important, then the arbitrariness in its use needed to be restrained and made responsible in a manner somewhat parallel to the way in which constitutional government limited arbitrary political rule.

Commons traces the evolution of property from the Norman Conquest of 1066 to the 1920's. He stresses over and over again that property rights arose out of the need of the weak for protection against the arbitrariness of the strong in an age of physical violence. Property developed through the evolution of the common law and derives from the customs of the people. It was in conflict with royal prerogative and privileges created by the latter.

The contending parties varied over time. They included conflicts between the king and the upper classes as well as conflicts between the upper classes and the common people with the king attempting to protect the rights of the latter. The issues involved attempt to convert privileges (royal favors)
security of physical possession (trespas, recovery of stolen goods, etc.).
Thus, at an early stage, enforcement of repayment of debt was a matter of the return of the very coins lent.

The courts were reluctant to enforce promises because in other contexts of the time (among the upper class) promises were matters of very personal nature rather than objective legal obligations. Performance of a promise was a matter of personal honor and the sanctions depended on the disapproval of one's peers. Promises were so dependent on the personality of the parties and on the nature of the relation between them that it was very difficult to conceive of the law stepping in to enforce a promise when the sense of obligation and honorable conduct failed to compel a person to deliver on a promise; that is, failure to live up to a promise was a signal of the unworthiness of such a person and a challenge to the opposite party and the consequences were social disapproval or personal action to compel redress. It was particularly difficult to see how an obligation established by the promise of one person could be transferred by the opposite person to a third party. This is understandable when obligations depend on the very personal nature of the relation as say between husband and wife or parent and child; it is then inconceivable that duties owed by A to B would be made an obligation of A to C by the action of B without any consultation of A. Yet this is precisely the kinds of rights and obligations that were to be established when credit instruments were made negotiable.

The eventual full development of enforcement and negotiability of credit was a matter of interaction between the developing commercial life and its

patterns of conduct and customs on one hand and the development of property and contract law adopted to and facilitating further evolution of commercial life. The legal relations as they eventually evolved, succeeded in providing a basis for complex interactions between people through financial institutions and financial and commodity markets. In certain restricted areas of conduct, promises could then be made very impersonally without impairing on one's personality, and yet could provide a powerful basis for national and world economies.

In Commons' view the preceding developments set the stage for the emergence of economic power. The struggles for constitutional government tamed physical violence and provided a securer basis for commerce and manufacturing freer from arbitrary interference by rulers and other wielders of physical power. The preceding and continuing evolution of the law gave merchants and industrialists the necessary legal devices for dealing with each other. But now, particularly from the nineteenth century onward, the development of commerce and manufacturing created new forms of power over the fate of others, power held by financial institutions, by railroads and warehouses, by large manufacturing companies as employers and as buyers and sellers of commodities. This was a power over employment and income opportunities of workers, farmers, and small businessmen.

In economic theory power is dealt with as a matter of monopoly and oligopoly and it is conceived that economic power is absent when perfect competition governs market relations. In Commons economic power is conceptualized differently. The crucial aspect of power is the dependence of many on the
decisions of those who wield economic power, and the issue is whether that power is exercised arbitrarily or whether it is limited and can be held to account by representative institutions. Thus the issue of economic power is seen in a parallel manner to the issues of physical violence and political power: unlimited arbitrary exercise versus institutionally limited and responsible use of power (constitutional government).

This emphasis on the arbitrariness or responsibility and accountability in the use of power is most clearly relevant to labor-management relations. Arbitrary power is the unlimited right of employers and their foremen to lay off workers without having to justify their action (whether the cause is decreased demand, inefficiency of the worker, attempt to stave off unionization or a mere whim). That power becomes limited and accountable through the collective bargaining machinery: seniority rules, a quasi-judicial system for handling grievances, the labor-management contract and collective bargaining and strikes. This machinery of industrial government was gradually made possible by the growth of countervailing political and economic power of the workers through labor unions and government legislation and administrative machinery. These institutions developed through prolonged conflict between economic groups, and required much trial and error effort to develop procedures adapted to conditions of industrial life.

Economic theory emphasizes the alternatives that parties have and thus the market interactions between competitive firms, while in Commons the emphasis is more on "internal" interactions within going concerns. Power is limited by "external" alternatives as well as by the ability to hold the decision maker
to account through "internal" institutions of industrial government. In the long run, economic alternatives as well as technological change and economic development may be the more important factors in affecting the fate of a person. But the security and dignity of individuals in the lower echelons of large organizations requires orderly rules and the existence of machinery through which grievances can be handled and explanations demanded.

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Polanyi's major concern is with the emergence of a market society as a distinct form of social organization. In his position the distinguishing feature of non-market societies is the absence of markets for labor and land as major determinants of factor returns, with the position in the social organization being the major determinant of incomes and occupational roles (markets for sale of surplus commodities may, however, exist in such societies). European manorial agriculture in the Middle Ages, the Indian caste system or African "communal" tenures are examples of such non-market social systems.

The absence of a labor market in a traditional non-market society is equivalent to the absence of footloose labor, workers whose access to income depends on the decision of another person, an employer. In traditional societies a person's station in life and his occupation are not determined by bargains freely entered into but are primarily the result of an inherited status from one's parents. Tenure positions involve access to a piece of land and an obligation to pass on some of the produce or to work for a social superior.
Neither rights in land nor rights in labor are negotiable. While there are persons who resemble modern tenants, they do not get their rights to land from a landowner by making a contract with him. Tenants are persons who inherit that position, along with obligations to the landowner, but without their access to land dependent on the decision of the landowner to make a contract.

It is characteristic of such a system that no individual has a clear right to change the relations between parties. By way of contrast, an owner of fee-simple title in the Anglo-American legal system can operate the land himself, he can sell it, or he can bring in a tenant under terms established by contract between him and the tenant. The crucial point is that such an owner can eliminate the existing set of relationships between himself and others connected with his land and establish new ones. Such a right to 'wipe the slate clean' does not exist in traditional societies. The whole structure with various people having customary commitments and obligations to each other is such that no person within that system has a clear legal right to abolish one set of relationships and to bring in people as workers or tenants on a new set of terms. In that sense there is neither a market for land nor for labor.

The upper classes in traditional society view the product of the land as available to them because of the obligations of the lower classes and the work of the latter on the land; the valuable rights stem from the superior role in the social organization rather than from ownership of land per se. In the process of modernization the fee-simple conception of ownership emerges which makes land valuable as a commodity that can be freely bought and sold, or used
by the owner with the aid of other factors of production as he best sees fit, with any restrictions originating from the social organization.

With the shift to markets in land and labor, ownership of property acquires a narrower social meaning, and the interests of property owners may become antagonistic to the interest of workers.

In traditional society the elite landlords and the peasants complemented and needed each other. The elite needed the peasants as its source of power (its "troops"), as well as for the work and income obtained from them. The peasants needed the elite to protect them from and provide links with the outside world, as well as to provide organization and leadership in community affairs. The two classes faced the outside world together. The isolation of the local community, the dangers lurking from outside, and the stability of social relations gave legitimacy to the status of the elite.

On the other hand the interests of the two rural classes diverged when the landlords turned to modern economic opportunities. Whenever landlords became actively engaged in management, they sought to shed previously existing social obligations to other tenure groups in order to gain a free hand in controlling land use. This and their interest in low wages and in keeping unneeded peasants off their land changed them from defenders of local interests against a distant government into property owners needing strong governmental authority to protect them in the use of their property.

With the emergence of property and labor as commodities, individuals became much more vulnerable to changing economic conditions; or to put it somewhat differently, individuals faced changing economic conditions in isolation rather than as members
of an integrated and sheltering social system. And these changing economic
decisions were transmitted through the decisions of property owners in their
roles as employers, buyers and sellers who now had no social obligations to
the people with whom they dealt.

This is an additional aspect of decision making by wielders of economic
power. While Commons stressed the need to control power because of its
arbitrary use, the issues raised by Polanyi suggest that the common people need
_protection against rational use of economic power_ when such rational decisions
generate unemployment and decreases in income. Under modern conditions when
access to income depends on the employer's decision to hire labor, and labor is
viewed as a cost of production, then decreases in demand for the product are
transmitted to workers as lay offs. And while economic growth increases the
demand and income for workers as a group, individually they are still vulnerable
to unemployment.

Polanyi was very pessimistic about the future of the market economy, because
of the vulnerability of social organization to market forces. A number of remedies
and modifications of the market economy have developed or become more effective
since he wrote in the early 1940's. These include the use of fiscal and monetary
policy to stabilize the economy, unemployment insurance, and the taming of market
forces by the large business firms (Galbraith's Ideas in _American Capitalism_
and _The New Industrial State_). But another remedy has been the one that Commons
was concerned with when he analyzed the role of labor unions and the emergence
of industrial government. These institutions shield workers not only against
arbitrary power but they can also be used to modify the manner in which changing economic conditions are transmitted to the workers. Thus seniority rules build for the worker a "property" right in the job with increased length of employment. A number of unions have negotiated agreements which controlled the rate of economic change and its impact on employment with features such as restricting employment decreases to normal rate of attrition of the labor force (retirements, deaths and normal incidence of change of employment), retraining provisions and first choice at new types of jobs, large severence pay for workers laid off due to technological change, etc.

Thus reactions against the emergence of economic power and the vulnerabilities of a market economy brought forth countervailing groups and institutional devices to limit the full exposure of property rights to economic forces.