



## Comment on “A Critique of Kirzner’s Finders-Keepers Defense of Profit”

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It is a pleasure to respond to Theodore Burczak’s penetrating and lucid critique of my use of the pure discovery element in the market process (to suggest a finders-keepers defense of the justice of entrepreneurial profit). I believe that Burczak’s criticisms do not necessarily undermine my defense of entrepreneurial profit; and I believe that Burczak’s criticisms, together with my present response, can usefully advance understanding of the place of economic justice in markets. I am grateful for this opportunity to comment on Burczak’s paper.

Burczak’s critique consists of two separate and independent lines of argumentation. I will take up each of these in turn.

### A. Burczak’s First Line of Criticism

This line of criticism relates to the legitimacy of the exchange of labor-time for wages, permitting the employer to retain what the laborer’s work produces that is in excess of the wages paid. My defense of the justice of entrepreneurial profit (for those who accept the finders-keepers ethic) did not question this legitimacy. But Burczak, relying on the work of David Ellerman, flatly denies such legitimacy. Ellerman maintains (in Burczak’s words) “that the right to the entire product of one’s labor is an inalienable right” that should not (and, absent fraud or other injustice, cannot) be transferred, even with consent. “The typical employment contract in a capitalist enterprise is consequently illegitimate.” This illegitimacy stems from the idea that a laborer, being a human being, not a “thing,” necessarily retains “juridical responsibility” for his actions. Just as a convicted criminal cannot transfer his responsibility for his crime to another, in exchange for money, so too can a worker not transfer the human responsibility for his actions to an employer in exchange for money. If the responsibility for his actions remains the worker’s, it is illegitimate for the employer to appropriate the fruit of what the worker (*not* the employer) has created by those actions.

Now, at first glance this thesis of Ellerman might not seem to affect my own defense of the justice of entrepreneurial profit, at all. My argument was, after all, not intended as a personal credo. It was intended (and explicitly presented) as an argument that should convince those who, for their own philosophical or other reasons, happen to accept the finders-keepers ethic. Burczak’s critique would then seem merely to require that I make it clear, in addition, that my argument is intended only for those (surely the vast majority of the public reading

my argument) who do indeed accept the legitimacy of the wage-for-labor-time exchange (i.e. for those who have not been convinced to the contrary by Ellerman's work). However, this easy way out is not quite sufficient.

This is so because Burczak maintains that there are elements in my own work which, if followed consistently, must *require* me to accept Ellerman's thesis. So that, by grounding a defense of capitalist justice on an (implicit) denial of Ellerman's thesis, I have, Burczak suggests, contradicted myself. I believe, however, that no such contradiction in fact exists here in my work.

Burczak correctly points out that, like Ellerman, I emphasize the entrepreneurial (i.e. the "ultimately responsible") element in the laborer's decision (following on Mises's insight that each and every human action is, in a real sense, entrepreneurial). He, therefore, believes that I am logically required to accept Ellerman's conclusion that the wage-for-labor-time exchange is illegitimate, since such exchange consists of the illegitimate "thingification" of the laborer. Quoting Ellerman, Burczak writes: "The owner of an entity rented out is . . . not a legal party to the decisions about the entity's use. Therefore, when an entity hired out is a person, the person has a legal role of a thing."

I believe, however, that there is a logical non-sequitur in Burczak's application of this reasoning to claim a contradiction between (a) my position that the laborer, *in choosing which job to accept*, is acting as (an "ultimately responsible") entrepreneur, and (b) my (implicit) acceptance of the legitimacy of the wage-for-labor-time exchange. Let me use Burczak's own example of the role of a gun in a bank robbery. The gun is "an inanimate object without a will, [it] cannot share responsibility for the crime with the robber." But surely one who owns a gun and knowingly rents it out to a known would-be bank robber *does* bear juridical and moral responsibility for his action; his renting out the gun, permitting the would-be robber to choose which bank to rob with it, does not imply that *he* (the owner of the gun) has become a "thing." Similarly, my observation that, in choosing an employer to whom to rent out his labor time, a laborer is acting entrepreneurially, does not, in itself, contradict the "thingification" which Burczak (following Ellerman) finds in the circumstance that the laborer's time now, once he has taken the job, "belongs" to the employer.

Strictly speaking the above is sufficient, I believe, to rebut the logical content of Burczak's critique of my position (as being contradictory). However, I find it difficult to resist pointing out, in addition, that, if one accepts the reasoning of the preceding paragraph, one has in one's hand (if one chooses to use it) an insight which might defend the legitimacy of the wage-for-labor-time exchange, *in spite of* one's accepting (as in fact I do certainly accept) that a worker never does lose ultimate moral responsibility for any actions he takes as an employee. Consider an owner of a gun who is asked to rent it for a day to a person whom he does not know to be a would-be bank robber. The owner may tell the would-be renter: "I am prepared to rent the gun to you for a day. However, since I do not know you, and fear you may use the gun for criminal purposes (for which I am *not* prepared to rent it to you), I propose the following: Let *me* retain the gun on my person for the entire day, except that I will accompany you wherever you wish to go during this day, and will gladly turn over the gun to you (whenever you wish to use it, for purposes which you will select), provided that your proposed use does not violate my moral code." Let us suspend our disbelief concerning the plausibility of any such bizarre proposal. Clearly if such a proposal *were* made and

accepted, we would have a case where the owner of the rented gun (a “thing” for sure) has *retained* moral and juridical responsibility for its use *throughout its period of rental*.

I see no reason not to understand the laborer’s position in an employment contract to be exactly that of my gun-owner; and the laborer’s rented *time*, to be exactly similar to the gun. There is nothing in such a contract which appears to be illegitimate, unjust, or fraudulent.

Let us turn to Burczak’s second line of criticism.

### **B. Burczak’s Second Line of Criticism**

This line of criticism is based on the thesis that, in capitalist systems, those who do not possess capital may be absolutely unable to borrow capital funds at *any* rate of interest. A would-be entrepreneur (who “sees” an opportunity to capture pure profit through a productive enterprise, if only he could secure the needed capital funds) is in fact unable to grasp such profit, because he lacks capital. So that while one may describe the profit made by those producer-entrepreneurs who themselves possess capital (or who *do* have access to capital markets) as profits which they have “found,” or “created,” this does not necessarily render the capture of such profit legitimate, since others are *not* able to grasp such profit (even where they happen to be the first to “see” the opportunity which the successful capitalist-entrepreneur eventually grasped).

Now, although there may well be grounds for challenging the “credit-rationing models” upon which Burczak rests this line of criticism, my response here will *not* depend upon any such challenge. For the sake of argument only, let us accept the relevance of these models. My response to this second line of criticism takes the form of asking the reader to choose out of the following two, mutually exclusive, options: *Either* (a) the assumed requirement (for the capture of entrepreneurial profit) of *prior* ownership of capital means that such capital is to be treated as an indispensable *ingredient* in the recipe for grasping pure profit (i.e., as a “factor of production” in the “production” of profit), **or** (b) such a requirement does *not* have this meaning. Let us take up option (b) first.

In this option (b), while it is believed that an entrepreneur cannot capture pure profit unless he already possesses assets, such assets do not constitute a tool or instrument with which the entrepreneur’s alert propensity to see and grasp profit opportunities is exercised. An entrepreneur sees the possibility of using some extra lumber which he happens to possess, to make some furniture. He expects to be able to sell the furniture for a price exceeding the costs of all needed inputs (including the opportunity cost of the lumber itself). The lumber is certainly a factor of production in the production of the furniture. But it is not to be seen, on this option, as a factor participating in the gaining of pure profit. It is the vision, energy and initiative of the entrepreneur which has won him the profit—despite the fact that we may assume that, had he not already possessed the lumber, he might not have been able to acquire any. A mountain-climber who notices and grasps an unusually beautiful flower while on hike, may be said to have “found” the flower purely as a result of his alertness. The flower is *not* the product of his strong legs, which made it possible for him to undertake the hike.

On this option (b), the pure profit gained has been “found,” “created,” by the entrepreneur alone. The fact that others who do *not* own lumber, *cannot* grasp such profit, even if their

entrepreneurial vision is no less insightful than that of the lumber-owner, does not in the slightest alter the “found,” “created,” character of the profit so gained. *If* one accepts a finders-keepers ethic, one can surely see the legitimacy of such gain. While such legitimacy might certainly seem to be *enhanced* in situations where the successful entrepreneur has no differential advantage (such as, prior ownership of lumber) over other potential entrepreneurs, the presence of such differential advantage does not eliminate the finders-keepers basis for the justice of profit gained. The hiker who found the beautiful flower while mountain-hiking is not, surely, to be denied just ownership of the flower because crippled or older folk were unable to go hiking. (My own frequent reference to the circumstance than *anyone* could have found what the successful entrepreneur has found—reference which Burczak cites most relevantly—were observations that, based on my own non-acceptance of the conclusions of the credit-rationing literature, *enhanced* the persuasiveness of the finders-keepers ethic applicability. But the essence of the finders-keepers ethic does *not*, surely, depend in any way critically upon the possibility of such enhanced persuasiveness).

All the above rests on option (b), in which the owned assets (required, according to Burczak’s critique, for the capture of pure profit) are *not* seen as *ingredients* in such capture. Let us, however, now consider the other option, option (a).

Option (a) saw owned assets as an input into the “productive” process of grasping perceived pure profit. So that the grasping of pure profit *can no longer be seen as an act of pure discovery or “creation.”* Those who do not possess capital assets simply cannot “produce” profit; those whose capital permits them to win profits cannot be said to have “found” these profits (since by my own definition, pure discovery, pure creation, pure “finding” *does not itself require any inputs whatsoever.*) Clearly, according to *this* option the finders-keepers ethic cannot be used to defend the justice of pure profit, since nothing was “found.”

In response to this possible line of argument I would merely point out that, on this option, “profit” has simply become reclassified as a return on capital (as it was seen by the classical economists and by Marx). On this view, there does not exist any category of pure entrepreneurial profit that cannot be imputed to a capital source. But, I must point out, the theory of justice which I proposed as a defense of capitalist profit, and which Burczak is criticizing, was proposed exclusively as a possible solution for the ethical puzzle posed by the phenomenon of pure entrepreneurial profit (for which no inputs whatsoever are required). By embracing option (a), we are not refuting the discovery-theory of justice, we are declaring that theory to be unnecessary, since the problem it set out to solve never does exist and never can exist (except, Burczak accepts, in the case of pure arbitrage).

Of course, declaring so called entrepreneurial profit to be a return on capital, does not establish its legitimacy. Of course broader questions concerning the justice of capitalist income distribution require more comprehensive answers than that provided by the discovery-theory of the justice of pure entrepreneurial profit. My point here is only that, if option (a) is chosen, then Burczak’s critique does not relate at all to my defense of the justice of pure entrepreneurial profit. Broader questions concerning the justice of capitalism, then, go beyond the scope of Burczak’s paper,—and certainly beyond the permissible length of this comment.