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As of January 26, it's illegal to unlock your cell phone and switch to a different service plan without the permission of your current provider.[1] This comes as the result not of a new law, but of the opinion of the Librarian of Congress (who apparently has authority to interpret the Digital Millennium Copyright Act).

This is just one more example of an old problem. In all areas of our lives, we're subject to "contracts" to which (in legal theory) we're equal parties, but which in fact are boilerplate written for us by institutions on terms dictated by the party with the real bargaining power.

Roderick Long's discussion of the phenomenon ("How Inequality Shapes Our Lives," C4SS, Jan. 9, 2013)[2] is worth quoting at length:

> Suppose you forget to pay your power bill ….
> What happens? Your provider disconnects you,

[1] *After Today, You'll Need Your Wireless Provider's Permission To Unlock New Cellphones*, Chris Morran, Consumerist, Jan. 25, 2013

[2] *How Inequality Shapes Our Lives*, Roderick Long, C4SS, Jan. 9, 2013

and you'll probably have to pay an extra fee to get service reestablished. You also get a frowny face on your credit report.

On the other hand, suppose that, for whatever reason (internet glitches, downed power lines after a storm, or who knows), you suffer a temporary interruption of service from your provider. Do they offer to reimburse you? Hell no. And there's no easy way for you to put a frowny face on their credit report.

Now, if you rent your home, take a look at your lease. Did you write it? Of course not. Did you and your landlord write it together? Again, of course not. It was written by your landlord (or by your landlord's lawyer), and is filled with far more stipulations of your obligations to her than of her obligations to you. It may even contain such ominously sweeping language as "lessee agrees to abide by all such additional instructions and regulations as the lessor may from time to time provide" (which, if taken literally, would be not far shy of a slavery contract). If you're late in paying your rent, can the landlord assess a punitive fee? You betcha. By contrast, if she's late in fixing the toilet, can you withhold a portion of the rent? Just try it.

Now think about your relationship with your employer. In theory, you and she are free and equal individuals entering into a contract for mutual benefit. In practice, she most likely orders the hours and minutes of your day in exacting detail …. [T]he contract is provided by her and is designed to benefit her. She also undertakes to interpret it; and you will find yourself subjected to loads of regulations

pectations of a given market. So when the standard practice of consumers in a given market is to click on a EULA or Terms of Service agreement without reading it, or intending to abide by it, the specifications of any such agreement should not rise to the standard of "meeting of minds."

It's a long-standing moral principle that agreements made under duress are not binding. We all need to adopt a far more critical attitude toward the so-called "contracts" that bind our daily lives, and toward the real authority of the parties that claim our obedience and compliance. And whenever and wherever necessary, we need to say "I never agreed to that." In some cases, the very power differential by which the unequal contract was made in the first place means that open defiance isn't practical. In those cases, the proper response is passive aggression: to smile, nod our heads, and then do what we want when those in authority are no longer looking. This is, for example, a time-honored model of labor resistance on the job, through such forms of direct action as the slow-down, work-to-rule, "good work" strike, "open mouth" and sick-out.

The most important thing is to kill off, in our own minds, both the legitimacy of these "agreements" and the "authorities" with whom we made them. The system depends on willing acquiescence and obedience by the majority of its subjects. Kill off the little boss in your head that tells you to obey, and you kill the system.

> and directives that you never consented to. And if you try inventing new obligations for her as she does for you, I predict you will be, shall we say, disappointed.
>
> These aren't merely cases of some people having more stuff than you do. They're cases in which some people are systematically empowered to dictate the terms on which other people live, work, and trade.

Long's last example, the employment contract, is especially fundamental. University of Michigan scholar Elizabeth Anderson coined the term "Contract Feudalism"[3] to describe this one-sided relationship. Although in legal theory you are an equal party to a contract by which you sell your labor to an employer, your de facto relationship amounts to a kinder and gentler version of the older master-servant relationship. The reason for this is that, as in every other theoretically equal relationship, the party which can afford to walk away from the table has the power to dictate the terms of the contract.

The cultural reproduction apparatus of corporate state capitalism is heavily invested in producing a citizenry that either fails to perceive this inequality, or — if it does perceive it — sees it as a natural and inevitable state of affairs. If challenged, most people will argue that something called "economies of scale" require an efficiently run society to be administered by enormous, hierarchical institutions to which we have a one-sided relationship.

But it is, in fact, neither natural nor inevitable. In every case, Long argues, these unequal relationships result from the deliberate application of human power. In every case, the state intervenes to limit competition between suppliers of capital, between employers of labor, between distributors of proprietary

[3] *Contract Feudalism*, Kevin Carson, C4SS, Sep. 15, 2012

information, and between landlords, so that workers' bargaining power is reduced to the point that they must accept a wage less than their full product as a condition for employment, and sellers of goods and services extract super-profits from consumers via unequal exchange.

In every case, it is the state which intervenes on the side of capitalists, landlords and employers, and puts them in a position of superior bargaining power from which they can dictate the terms of contract with workers and consumers.

In fact the very authority by which the state presumes to do these things — the so-called Social Contract — is itself an example of the same phenomenon. Most likely neither you nor your parents nor any of your ancestors ever explicitly consented to obey the commands of the state. The argument for the so-called Social Contract is that you, and your parents before you, "consented" to obey the state's command either when you were born, or reached the age of reason, and continued to live within its borders rather than picking up and leaving. The obvious question is, was the state in a legitimate position of authority to present you with this choice in the first place. If someone walks into your living room and says "By continuing to reside here you consent to obey all my commands," do they thereby acquire a legitimate claim to your obedience if you remain?

It's a lot like the way a bank notifies you that it's changing the terms of the "contract" between you so that, by failing to cancel your credit line, you "consent" to the interest rate on your credit card balance being raised to 30%. The state says, "Hey, if you didn't recognize our authority you could have packed up and emigrated when you turned 18. By continuing to live here, drive on our roads, etc., you consented to our authority."

To many libertarians on the political and cultural Right instinctively identify with employers, landlords, and service providers on this issue. They are, in my opinion, fundamentally wrong-headed to do so. The proper position for any genuine

advocate of freed markets is not to defend everything that is called "property" or "contract," but only justly acquired property and valid contracts. Contracts whose terms reflect the systematic intervention of the state in the market on behalf of privileged classes are most definitely not valid, and any self-described "free market libertarian" who defends them is unworthy of the name.

Our strategy on the free market Left should be to encourage as many people as possible to look at the man behind the curtain, and to see through the corporate state's claims that the present system is natural and inevitable. An important common thread running through our critique of all these unequal power relationships masquerading as contracts is the concept variously known as the adhesion contract and the odious debt. The adhesion contract is any contract which binds unequal parties, and whose terms are dictated almost entirely by the stronger party at the expense of the weaker. An odious debt is a debt contract which fits this description. The global movement for debt jubilee, to which I am quite sympathetic, argues that any Third World debt contracted by a dictator or authoritarian government unaccountable to its people should be nullified as odious debt.

Opposition to adhesion contracts of all kinds is based on the centrality of the principle of "meeting of the minds" in contract law. How many of the contracts you sign in your daily life — EULAs, shrink-wrap or click-wrap contracts, credit card agreements, telephone service plans, website terms of service — are dense, lengthy boilerplate written up by the other side's lawyers, which you perfunctorily check off or click without reading? And the company and its lawyers are fully aware that nobody reads those terms, or cares what they state, or has any intention of abiding by anything they regard as unreasonable, when it writes them.

Normally, in contract law, one of the tests for establishing a "meeting of minds" is the normal standards, practices or ex-