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*FAREWELL
TO THE
SELF-EMPLOYED*

*Deconstructing a Socioeconomic
and Legal Solipsism*

MARC LINDER

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A poor independent workman...in his separate independent state, is less liable to the temptations of bad company, which in large manufactories so frequently ruin the morals of the other.

**ADAM SMITH,
AN INQUIRY INTO THE NATURE AND CAUSES
OF THE WEALTH OF NATIONS
83-84 (E. Cannan ed. 1937 [1776])**

This Bill is a helpful measure, under which anyone can agree with his employer that he or she is henceforth to be treated as self-employed merely by completing a simple form.... Self-employment is one of the most obvious escape routes from that sterile employee culture which was recently condemned by His Royal Highness the Prince of Wales. ... Employers will be able to employ people...without the fear of becoming locked in by employment protection laws and the other burdens on businesses.

**91 PARL. DEB., H.C. (6th ser.) 147 (1986)
(Michael Forsyth, M.P.)**

In German Idealism and in Marx, self-consciousness, self-determination, and self-realization qualified as the concepts in which the normative content of modernity was summarized. The meaning of the prefix "self" has, to be sure, been distorted in the wake of a possessive individualism and under the banner of sheer subjectivity. We must give back to this "self" its intersubjective meaning. ... No one is a subject who belongs only to himself.

**JÜRGEN HABERMAS,
DIE NACHHOLENDE REVOLUTION
35 (1990 [1988])**

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*FAREWELL
TO THE
SELF-EMPLOYED*

Introduction: The Transvaluation of a Real Self-Contradiction

"At least you're your own boss."
"To be a boss of nothing is nothing."¹

Being self-employed...is for workers a less efficient substitute than placing money in the bank is for investors.²

The notion that a worker can--and would want to--"employ" himself is a curious one. After all, given the ideological freight of alienation³ and exploitation associated with "employment," why would a worker do unto himself what capitalists do unto others?⁴ And even granting the socioeconomic, epistemological, and psychological possibility of self-employment, how does a self-employer/self-employee⁵ differ from an other-directed employee, and why does that difference make a difference?

Because economists and sociologists of the left and the right have persistently treated self-employment as a black box, the recent wave of literature devoted to counting or commenting on the alleged growth in the number of self-employed⁶ since the mid-1970s has submerged the formulation of these vital questions. Consequently, the deployment of an arsenal of sophisticated statistical techniques may be projecting shoddy ordnance.⁷ Paradoxically, then, precisely at the moment of its renewed zenith, the category of self-employment is ripe for

dismantling.

This perception of an increase in the number of self-employed⁸ can most adequately be studied in the context of the contemporaneous⁹ proliferation of diverse forms of employment that deviate from the modern capitalist model of "total employment."¹⁰ Abandoning that paradigm of the full-time, permanent, on-location, exclusive relationship of a worker to one enterprise, the subsidiary regime embodies a temporal casualization and physical externalization of employment relationships.¹¹ Whether they involve part-time, temporary, home, leased, subcontracted, or contract labor or self-employed workers, all of these forms effect significant reductions in wages, fringe benefits, and the costs of unionization by forging just-in-time work forces.¹² In the case of firms most blatantly intent on realizing these cost savings, "the self-employed workers were former employees who were asked back to work on a special project."¹³

Whereas these disemployment strategies are typically imposed unilaterally, regardless of the workers' preferences, a more subtle technique addresses the aspirations of the mass of dependent contractors who may no longer be satisfied with the "veritable Eden of the natural human rights...Freedom, Equality, Property" that is the labor market.¹⁴ Pursuing a consensual tack, some employers and state bureaucracies have dangled before workers the prospect of trading their merely formal independence for real independence from the traditional other-directed workplace. Instead of being confined to owning and negotiating the best terms for the sale of their labor power,¹⁵ they urge workers to take control of the circumstances under which they transform that ability to work into actual labor. Hence the slogan of a large temporary employment agency in France: "Soyez propriétaire de votre travail."¹⁶

This book argues that the socioeconomic theory of self-employment is rooted in a misconceptualization and that the formulation of public policy toward the self-employed is misguided and dysfunctional. The book begins with an analysis of the methodological basis of the most important mode of enumerating the self-employed, which reveals

defects so fundamental as to render the commonly used data virtually worthless. In this connection sociologists and economists are taken to task for their penchant to count before knowing what it is they are studying (see chapter 2). Chapter 3 develops a class-rooted analysis of self-employment focusing on the latter's hybrid character, which makes it, at least as an ideal type, extraterritorial to capitalist production. The question of economic and personal independence--the holy grail of self-employment--forms a crucial link in this discussion. Chapter 4 is devoted to several currently prominent substantive aspects of the self-employed: where they work, how much they earn, and what inferences can be drawn from the dramatic rise in the number or share of self-employed women. In chapter 5 the relationship between self-employment and unemployment and the legislative and judicial reevaluation it is undergoing are examined. Underlying this change is an appreciation of the self-employed as tendentially overlapping with the dependent employed population. Contrary to the claims of some researchers that the official statistical account of self-employment is flawed because it ignores those who have incorporated (themselves), an examination of tax, pension, and corporation law in chapter 6 explains why this approach cannot save the thesis of a renaissance of the self-employed. The last chapter offers a political-economic explanation of the need to dismember the category of the self-employed and to redistribute its constituent parts to the capitalist and working classes, where they objectively--and increasingly subjectively--belong.

NOTES

1. BERNARD MALAMUD, *THE ASSISTANT* 30 (n.d. [1957]).
2. Daniel Fischel, *Labor Markets and Labor Law Compared with Capital Markets and Corporate Law*, 51 U. CHI. L. REV. 1061, 1066 (1984).
3. The locus classicus of the discussion of alienated labor and self-alienated workers in capitalist societies is still Karl Marx, *Ökonomisch-philosophische Manuskripte (Erste Wiedergabe)*, in I:2 KARL MARX [&] FRIEDRICH ENGELS, *GESAMTAUSGABE (MEGA)* 187, 234-47 (1982 [1844]). For a brief discussion

of the results of an empirical study of alienation among farmers in the process of becoming subordinated to agribusiness capital, see William Heffernan, *Social Dimensions of Agricultural Structures in the United States*, 12 *SOCIOLOGIA RURALIS* 481, 487-88 (1972). Self-employment should not be confused with so-called autonomous activities standing outside the sphere of commodities and exchange, which have figured prominently in Gorz's recent work. See, e.g., André Gorz, *Allocation universelle: version de droite et version de gauche*, 41 *LA REVUE NOUVELLE* 419, 424-26 (1985); ANDRÉ GORZ, *MÉTAMORPHOSES DU TRAVAIL* (1988).

4. But see Mervyn Rothstein, *From Cartoons to a Play About Racism*, N.Y. Times, Aug. 17, 1991, at 11, col. 1: "I had this boss who was an alcoholic jerk...and he was so bothersome and so difficult to be around that I quit and swore I was never going to work for anybody else again; I was going to be self-employed" (quoting Lynda Barry).

5. That these terms--instead of the drab past participle *self-employed*--have never caught on, may have to do with embarrassment at the starkness of the paradox that they express.

6. For an international overview, see THOMAS HAGELSTANGE, *DIE ENTWICKLUNG VON KLASSENSTRUKTUREN IN DER EG AND IN NORDAMERIKA* (1987).

7. Perhaps the best example is an older effort by STANLEY LEBERGOTT, *MANPOWER IN ECONOMIC GROWTH: THE AMERICAN RECORD SINCE 1800*, at 364-84 (1964), who devotes twenty pages to his statistical methodology without ever discussing what defines the self-employed--other than "being one's own boss...sitting under one's own fig tree and having no one to say him nay." *Id.* at 30. Within a much briefer quantitative compass, even Marxist sociologists unthinkingly identify the self-employed with the "independent petty bourgeoisie." See, e.g., ALBERT SZYMANSKI, *CLASS STRUCTURE: A CRITICAL PERSPECTIVE* 164-66 (1983). See also JOACHIM BISCHOFF ET AL., *JENSEITS DER KLASSEN? GESELLSCHAFT UND STAAT IM SPÄTKAPITALISMUS* 81-84 (1982) (uncritical acceptance of West German census data on *Selbständige*). The first scholarly monograph on the self-employed to appear in the United States in thirty years, while vaguely aware of these fundamental socioeconomic and conceptual problems, also perpetuates this hypostatizing tradition. ROBERT L. ARONSON, *SELF-EMPLOYMENT: A LABOR MARKET PERSPECTIVE* 2 (1991) ("ambiguity in the definition of self-employment itself"). For further critique, see Marc Linder, *Book Review*, 98 *AM. J. SOC.* ___ (1992).

8. As ARONSON, *SELF-EMPLOYMENT* at 26, observes, whereas the earlier literature stressed the irrationality of self-employment, those writing in the 1980s, impressed by the apparent increase in self-employment and thus viewing it in the most favorable light, have reached for a rational motivation and located it in nonpecuniary advantages such as control and time flexibility, which Aronson characterizes as exercises in circularity.

9. On the evolution of the temporary employment regime, see Mack Moore, *The Temporary Help Service Industry: Historical Development, Operation, and Scope*, 18 INDUS. & LAB. REL. REV. 554 (1965).

10. See Jean-Jacques Dupeyroux, *Et maintenant?* DROIT SOCIAL, July-Aug. 1981, at 486; Efrén Córdova, *From Full-time Wage Employment to Atypical Employment: A Major Shift in the Evolution of Labour Relations?* 125 INT'L LAB. REV. 641 (1986); Robert Moberley, *Temporary, Part-Time, and Other Atypical Employment Relationships in the United States*, 38 LAB. L.J. 689 (1987).

11. See U.S. GENERAL ACCOUNTING OFFICE, WORKERS AT RISK: INCREASED NUMBERS IN CONTINGENT EMPLOYMENT, LACK INSURANCE, OTHER BENEFITS (HRD-91-56, Mar. 1991); *Rising Use of Part-Time and Temporary Workers: Who Benefits and Who Loses? Hearing Before a Subcomm. of the House Comm. on Gov't Operations*, 100th Cong., 2d Sess. 137-38 (1988) (statement of R. Dillon).

12. See *id.* at 37 (statement of A. Freedman); RICHARD BELOUS, THE CONTINGENT ECONOMY: THE GROWTH OF THE TEMPORARY, PART-TIME AND SUBCONTRACTED WORKFORCE 31 (1989); Peter Kilborn, *Part-Time Hirings Bring Deep Change in U.S. Workplaces*, N.Y. Times, June 17, 1991, at A1, col. 6; Anthony Millican, *IRS Auditing Harbor Trucking Firms Over Status of Drivers*, L.A. Times, Aug. 30, 1991, at B3, col. 3 (NEXIS).

13. *Rising Use of Part-Time and Temporary Workers* at 20 (statement of Janet Norwood, Comm'r, U.S. Bureau of Labor Statistics). See also BNA PENSIONS & BENEFITS DAILY, Aug. 28, 1991 (NEXIS) (laid-off employees returning as "consultants" without benefits).

14. 1 KARL MARX, DAS KAPITAL, *republished in* II:5 KARL MARX [&] FRIEDRICH ENGELS, GESAMTAUSGABE (MEGA) 128 (1983 [1867]). Of "Bentham," that is, egotism, they may not have tired.

15. Although often regarded as Marxist jargon, the term *labor power* (*Arbeitskraft* or *Arbeitsvermögen*) was commonly used in legal and economic discourse in Germany in the nineteenth century. See, e.g., 1 Annalen des Königl. Sächs. Oberappellationsgerichts, No. 44, 1 Apr. 1859, at 130, 132 (1860) ("Bei eintretender Entlassung und Vorenthaltung der Gegenleistung wird derselbe in der Regel genöthigt sein, seine Zeit und Arbeitskraft zu anderweitigem Erwerbe zu benutzen"). For earlier use in the same sense without a source, see 1 JACOB GRIMM & WILHELM GRIMM, DEUTSCHES WÖRTERBUCH 543 col. 2 (1854). When writing in English, Marx used the term *labouring power*. See Karl Marx, VALUE, PRICE AND PROFIT, in II:4, text. pt. 1 KARL MARX [&] FRIEDRICH ENGELS, GESAMTAUSGABE (MEGA) 383, 411 (1988 [1865]).

16. Dupeyroux, *Et maintenant?* at 486.

