

Methodology

Certainly there would be some advantage in clarity deriving from greater emphasis on the distinction between the self-employed and wage and salary workers. ... Occasionally, even persons quite familiar with labor force concepts seem to forget what they include.¹

Count First and Ask Questions Later-- or, No Enumeration without Cogitation?

It is well-known that the first theoretical activity of Understanding, which still wavers halfway between sensuousness and thinking, is *counting*. Counting is the first free theoretical act of Understanding of the *child*.²

Enumeration demands *kinds* of things or people to count. Counting is hungry for categories. ... What could be more inevitable than the class struggle about which Marx hectored us. Yet the social classes are not something into which a society is intrinsically sorted. On the contrary, it is the early nineteenth-century counting-bureaucracies that designed the class structure in terms of which we view society. [B]ureaucrats...designed easily countable classifications into which everybody had to fall--and thenceforth did.³

Quantitative studies of self-employment are a case study in unself-conscious "concept-laden perception."⁴ Although at

times conceding that "[t]he meaning and measurement of self-employment is itself something of an enigma,"⁵ the empirical literature neglects to conceptualize that puzzle.⁶ Its procedures reveal no effort that even remotely resembles decoding. To the extent that the surveys generating the 'raw' data rest on the same unreflective methodology underlying the explanatory loop into which the refined numbers are fed back, the system becomes immune to disconfirmation.

To be sure, self-employment hardly represents the first instance of social scientists' counting a group that they have not bothered to define or to conceptualize. Yet empirical research founded on the assumption that everyone knows a self-employed person on sight⁷ or through introspection carries with it special methodological and substantive perils. These derive from the fact that self-employment itself belongs to that class of social forms of "pseudo-objectivity (and thus pseudo-legitimacy) that agents unwittingly impose on their social relations and whose proper characterization requires a special sort of critical theory."⁸ The appearance of a self-employing and self-exploiting worker-capitalist is both incongruous and reflective of reality--a false reality that is necessarily generated by the reification arising from the need to process the anomaly of the ownership and control of the means of production by the person working on them in a society in which the two are categorically assigned to two different classes.⁹ The resulting "economic mysticism"¹⁰ is both reality and a distortion of reality. Although it may be true that "[a] man who can explain mirages does not thereby cease to see them,"¹¹ social scientists have not even conceived of self-employment as requiring social theorizing.

Isolated voices of protest have alerted colleagues to the problematical character of this cavalier empirical methodology--if not of the concept of self-employment itself. Thus, one social scientist, then in the employ of the British Department of Employment, argued that statistics on self-employment "are not designed to serve anyone's purposes, with the self-employed category being merely the 'residual' group left over once employees were identified. [T]hey don't serve lawyers' interest in the master-servant dichotomy."¹²

Economists and sociologists interested in entrepreneurial activity and social stratification, respectively (that is, investment and ownership of the means of production), are said to be similarly ill served.¹³ Hoping to overcome this tradition, this social scientist proposes as empirically operationalizable desiderata both a "refined classification of different types of self-employment" on a continuum from nominal self-employment to the entrepreneurial small business owner-manager and a reliable rule of thumb to distinguish employees, nominally self-employed labor-only subcontractors, and one-person businesses.¹⁴

An empiricist has attacked the assumed "identity between entrepreneurship and self-employment" because the two "are conceptually distinct and have been muddied by the lack of measures that would distinguish those who innovate from those offering labor directly rather than through an intermediary, such as an employer."¹⁵ He, too, pleads "for empirical research to distinguish...those who simply wish to sell their labor on the best terms under the circumstances"¹⁶--presumably in order to eliminate them from the ranks of the self-employed.

Ironically, by way of contrast, Marxist sociologists who trivialize the conceptual defects as mere taxonomic "slippages between concepts and measurements" while conceding the need "to investigate such internal differentiation and proletarianization tendencies"¹⁷ seem prepared to proceed with theoretical elaboration based on thoughtless enumeration. At such a juncture in the research process, it is therefore appropriate to open the black box in order to observe the chaos that prevails at the point of data collection.

The Origin of the Term *Self-Employed*

There is now a regular association of *employment* with *work*. For most people of working age, it is widely believed, to be not employed is to be not working. ... So prepotent is this idea that even those people who work on their own account, as independent craftsmen, consultant professionals, freelances, contractors, owner-occupier farmers and so on, are said to be *self-employed*. A legal

fiction, of an employer who employs himself, is invented to conform to the predominant idea that all work is employment.¹⁸

If the woman on the street or the man on the Clapham omnibus were asked today to state spontaneously what *self-employed* means, the answer might be something to the effect: 'Working on your own, working for yourself.' Eliciting exactly what that means and how it differs from 'working for someone else,' would doubtless require an extended dialogue. Tracing the rise and diffusion of such terms and their incorporation into a community's lexicon may shed light on the timing, frequency, intensity, and spread of, and general familiarity with, the underlying phenomena. Socioeconomic conceptualizations such as *employment* and *self-employment*, as Marx and Raymond Williams have explained, both reflect and distort reality. Although the American *self-employment* captures the twofold character of the ideology more poignantly¹⁹ than the preferred English term, *working on own account*,²⁰ it is the meaning attached to the term²¹ rather than the precise lexical identification that is at issue.²² Lexicographers, who missed the dating of the printed use of the word by at least three decades, perversely did not introduce "self-employed" until the group's decline was established and its fall forecast.²³ Yet there was a logic to this belated recognition: by delaying acceptance until the core of the independent workers was hollowed out by the consolidation of an economy dominated by oligopolistic capitals,²⁴ dictionaries unwittingly underscored the increasingly ideological motif of "self-employment."

Internationally, the great national census bureaucracies could not generate convergence toward a uniform terminology until they evinced an interest in the underlying phenomenon of socioeconomic class.²⁵ This they did not do until the end of the nineteenth century,²⁶ when the national governments in the three leading European capitalist countries, Germany (in 1882), England (in 1891),²⁷ and France (in 1896), introduced a tripartite class taxonomy--employer, employee, and "worker on own account" (*Selbständige* or *travailleurs isolés*)²⁸ into their censuses of population.²⁹ In the United States, the Bureau of the Census

(BOC) did not begin collecting usable data on class until 1940, in spite of the fact that as early as 1869, the economist Francis Walker, who was to become the superintendent of the census the next year, published an article in the popular press calling for such an enumeration:

It is undoubtedly very interesting and amusing for gentlemen of leisure, to take down the ponderous volumes of the census, and find that there were ten submarine divers in the United States in 1860, and five chiropodists.... But it is of a great deal more consequence that the statesman and the economist be able to ascertain...how many...are working for themselves, and sharing in the profits of business, and how many are dependent upon stipulated wages. The greatest social and industrial questions of the day connect themselves with this.³⁰

The U.S. Census of Population did not begin collecting data on those "Working on Own account" until 1910,³¹ which, however, because of their poor quality, were never published.³² In its "Instructions to Enumerators" that year, the BOC also delineated the group residually:

Persons who have a gainful occupation and are neither employers nor employees are considered working on their own account. They are the independent workers. They neither pay nor receive salaries or regular wages. Examples of this class are: Farmers and owners of small establishments who do not employ helpers; professional men who work for *fees* and employ no helpers; and, generally speaking, hucksters, peddlers, newsboys, bootblacks, etc., although it not infrequently happens that persons in these pursuits are employed by others and are working for wages, and in such case should, of course, be returned as employees.³³

The precise class focus on those whom sociologists have taken to calling the "pure petty bourgeois"³⁴ is remarkable. It avoids the trap of labeling as self-employed small (or even large) employers, whose livelihoods depend on the exploitation of others' labor. The emphasis on the apartness or isolation from the relationship of wage labor captures more of the essence of the socioeconomic position occupied by such persons than does the later--and ideologically more freighted--term *self-employed*. Yet its limitations become

evident in the light of the BOC's insistence on a formalistic, spatially defined class framework: "[A] washerwoman or laundress who works out by the day is an *employee*, but a washerwoman or laundress who takes in washing is either *working on own account*, or, it may be, an *employer*."³⁵

Although the censuses of population asked questions concerning class of worker from 1910 forward, the BOC did not publish the data until 1940.³⁶ The BOC had originally planned to publish separate data for employers and "own-account workers...who employed no helpers." Ultimately, however, it combined the two categories because enumerators had "failed to distinguish properly between them."³⁷

The first usage of *self-employment*, according to the *Oxford English Dictionary* (OED), dates back to 1745, but the expression was not used in its current and relevant sense.³⁸ The OED lists as the first use of *self-employed* a question propounded by a member of Parliament in 1947 as to "why persons who would qualify otherwise for the extra cheese ration are ineligible if they are self-employed."³⁹ When Noah Webster published his *A Dictionary of the English Language* in 1828, he did not include an entry. Neither did the twelve-volume *The Century Dictionary and Cyclopedia* of 1911.⁴⁰ Two decades later, the second edition of *Webster's New International Dictionary of the English Language*⁴¹ finally listed (without definition) the currently unusual "self-employer"⁴² along with "self-employment."⁴³ By the 1960s, *Webster's Third New International Dictionary of the English Language* at last included "self-employed"⁴⁴ as "earning income directly from one's own business, trade, or profession rather than as a specified salary or wages from an employer."⁴⁵ Why other large dictionaries continued to omit the word⁴⁶ is unclear since it met the traditional criteria for inclusion.⁴⁷ By the 1970s, *The Random House Dictionary of the English Language* was tracing "self-employed" to the years 1945-50.⁴⁸ A decade later, *Webster's Ninth New Collegiate Dictionary* narrowed the origin to 1946.⁴⁹ Although unidentified,⁵⁰ that source turned out to be a brief reference in the *New Republic* to benefits to which "self-employed veterans" were entitled.⁵¹

Several early uses,⁵² antedating those traced by lexicographers, served to define the universe of covered workers under ameliorist social legislation. The tentative draft of a health insurance act submitted by the American Association for Labor Legislation in 1916 included a provision for voluntary insurance of "[s]elf-employed persons whose earnings do not exceed \$100 a month on average."⁵³ When California enacted its workers' compensation statute in 1917, it treated as employees working members of partnerships who received wages irrespective of profits, and then established a procedure to resolve insurance issues concerning "self-employing persons."⁵⁴ The first state unemployment compensation statute in the United States, enacted in Wisconsin in 1932, in an apparent attempt to mark off those whose attachment to the wage-earning labor force made it reasonable to expect their employers "to build up a limited reserve for unemployment,"⁵⁵ deemed ineligible for benefits any employee "[i]f he is ordinarily self-employed, but has been temporarily (for not more than five months) employed in an employment subject to this chapter and can, at the termination of such temporary employment, reasonably return to this self-employment."⁵⁶

A landmark study in the 1920s by the National Bureau of Economic Research (NBER) of the growth of unions was confronted with an embarrassing lack of data when, in seeking to calculate the degree of organization, it discovered the absence of an appropriate denominator encompassing only wage earners. Other scholars sifting through the data of the censuses of 1900 and 1910 had applied various criteria to crystallize out what they called "independent" workers (such as farmers, entrepreneurs, and professionals).⁵⁷ Later, economists and statisticians began reserving the term "independent workers" for entrepreneurs without employees.⁵⁸ The NBER study, carrying on the tradition of making "arbitrary decisions," segregated out employers and "self-employed."⁵⁹

A second, even more urgent, need for data on the self-employed arose in connection with the enactment of social security legislation in 1935.⁶⁰ Because old-age benefit

payments were keyed to wages for "employment" performed "by an employee for an employer,"⁶¹ those who fell into neither group had to be subtracted from the estimated number of covered workers.⁶² The Committee on Social Security of the Social Science Research Council commissioned Wladimir Woytinsky to work up such data. Woytinsky, who in the 1920s had compiled a massive international comparative statistical work from a socialist class perspective,⁶³ pointed to the need to collect data "on the shiftings of workers from wage or salaried work, i.e. from *dependent* work, to proprietary or *independent* pursuits."⁶⁴ Like his predecessors, Woytinsky was unable to disentangle within the "independent workers" employers on the one hand and those "working on their own account without employees," that is, "self-employed persons,"⁶⁵ on the other.

Continued dissatisfaction with the lack of census data on "the so-called self-employed,"⁶⁶ especially in connection with efforts during the Great Depression to create macroeconomic national accounts that lent themselves to Keynesian policies to overcome mass unemployment,⁶⁷ led the BOC to initiate monthly household surveys in 1940 that finally collected data on "the self-employed class."⁶⁸ The popularization of the expression *self-employed* in the immediate post-World War II period may have been associated with the inception of BOC's Current Population Survey (CPS) in 1947⁶⁹ and especially with the so-called GI Bill of Rights. That statute was well known for providing loan guarantees to veterans for investments in businesses.⁷⁰ More remarkably, the act conferred readjustment allowances on unemployed and underemployed self-employed veterans of World War II. Thus, any veteran who was "self-employed for profit in an independent establishment, trade, business, profession or other vocation" and showed net monthly earnings of less than \$100 when "fully engaged in such self-employment," was entitled to receive a subsidy up to \$100 per month.⁷¹ In explaining this provision, which was absent from the Senate bill, the House report justified the "equality" of treatment as between employees and "persons not employed by any one other than themselves" by reference to

"pursuits which require a period of waiting before any considerable returns may be expected."⁷² Undercutting all objections to inclusion of the self-employed in the unemployment insurance system before⁷³ and since, Congress found that the administrative difficulties could be overcome.⁷⁴

What is most remarkable about this congressionally mandated sponsorship of the vocabulary and substance of self-employment⁷⁵ is that it firmly operated with the notion of the self-employed as a dependent class of workers subject to the same vicissitudes of a dynamic postwar economy⁷⁶ and as deserving of state intervention as employees.⁷⁷ That this subversive sense did not catch on in popular rhetoric may be explained by the contemporaneous campaign on the right to prevent the self-employed from being "scoop[ed]...into the voracious maw of Social Security"⁷⁸ and to prohibit unions from "forcing or requiring any...self-employed person to join any labor or employer organization."⁷⁹

The BOC retained the "working on own account" language through the 1940 census,⁸⁰ modifying it to "In OWN Business" in 1950.⁸¹ The gradualness of the linguistic transition to *self-employment* is shown by the curious fact that the data collection (input) and result (output) terms were disjointed in 1950: while the schedule did not ask respondents whether they were "self-employed" but rather whether they were "in OWN business," the answers were published as referring to "Self-employed workers."⁸² Whether this terminological conflation served to identify in the public mind operating a business with "employing" oneself is unclear. In any event, not until the 1960 census were respondents themselves directly asked whether they were "self-employed in own business, professional practice or farm."⁸³ By the time of the following censuses, *self-employed* finally achieved the status of the hegemonic public term.⁸⁴

What You See Is What You Conceived: The Current Population Survey

There is a sense in which many of the facts presented by the bureaucracies did not even exist ahead of time. Categories had to be invented into which people could conveniently fall in order to be counted.⁸⁵

[F]acts do not owe their origin to an act of authorship. [T]he first person to find and report a particular fact has not created the fact; he or she has merely discovered its existence. ... Census-takers, for example, do not "create" the population figures that emerge from their efforts; in a sense, they copy these figures from the world around them.⁸⁶

Since virtually all analyses of self-employment are based on the data generated by the CPS, it is crucial to examine the specific question that is supposed to elicit that information. When the BOC gathers data on the self-employed, it does so from the perspective of class--that is, "class of worker."⁸⁷ How similar is the BOC approach to those prevailing in academic sociological circles? According to two influential Marxist sociologists, "[a] self-employed person...earns an income at least in part through his or her own labor but not by selling his or her labor power to an employer for a wage."⁸⁸ One problem in operationalizing this class-based definition is that although the BOC defines "[s]elf-employed persons" as "those who work for profit or fees in their own business, profession or trade, or operate a farm,"⁸⁹ it does not screen responses to sort out active owner-managers from the passive drawers of profit. In fact, apart from obvious and gross inconsistencies such as a self-identified government employee's responding that he is self-employed, neither the interviewer on the spot nor the BOC after the fact probes into or challenges respondents' replies to the question relating to "class of worker."

The question as to class of worker that is put to approximately 70,000 households monthly⁹⁰ is the last part of a five-part question labeled: "23. DESCRIPTION OF JOB OR BUSINESS."⁹¹ The first part of the question that the interviewer propounds to the respondent⁹² reads: "23A. For

whom did...work? (*Name of company, business, organization or other employer.*)⁹³ Following three further parts directed at the nature of the business or industry, the kind of work, and the activities or duties of the job, the interviewer asks the class-of-worker question:

23E. Was this person

An employee of a PRIVATE Co, bus., or individual for wages, salary or comm[ission].

A FEDERAL government employee

A STATE government employee

A LOCAL government employee

Self-empl. in OWN bus., prof. practice, or farm

Is the business incorporated? {Yes
{No

Working WITHOUT PAY in fam. bus. or farm⁹⁴

Although these questions appear straightforward enough, the empirical world is full of surprises and oddities, so the BOC equips its fieldworkers with a thick manual, a number of pages of which are devoted to the question at hand, to help them deal with the unusual and unexpected. But before it proceeds to the convolutions of reality, the *Interviewer's Manual* seeks to make the interviewer's work easier by means of the following instruction:

Item 23E can frequently be filled from information already given for items 23A-D. However, if there is any doubt at all, ask the necessary questions to ascertain the facts. Utilize the "Who Pays" criteria, that is, record the class of worker category according to who pays the person's wages or salary. For persons paid by check, the employer's name will usually be entered on the check.⁹⁵

The instruction seems to suggest that the preferred or presumptive or at least a common method of identifying the self-employed is not based on self-reporting at all; instead,

interviewers are encouraged to use their powers of deduction. Precisely how an interviewer could conclude that a respondent is self-employed based on the name and kind of business, kind of work, and nature of job is unclear--unless the respondent specifically stated in answer to question 23A that she worked for "herself."⁹⁶ It is instructive to examine the possible results of a response that she worked as a cosmetologist at a business called The Herr Doctor.

First, the BOC defines "business" very generously:

A business exists when one or more of the following conditions is met:

- Machinery or equipment of substantial value in which the person has invested capital is used by him/her in conducting the business. Hand rakes, manual lawnmowers, hand shears, etc., would not meet the criterion of substantial value; however, if a business or service is publicly advertised...consider it a business even if the invested capital is not of substantial value.
- An office, store, or other place of business is maintained.
- There is some advertisement of the business or profession by:
 - listing it in the classified section of the telephone book
 - displaying a sign
 - distributing cards or leaflets or otherwise publicizing that a particular kind of work or service is being offered to the general public.⁹⁷

Within this capacious framework, it comes as no surprise that even if he or she is a sixteen-year-old full-time school child working only a few hours per week, "a paperboy/girl has his/her own business"⁹⁸ and will be reported as a full-fledged self-employed person--provided that the publisher imposes the risk of nonpayment (by the subscriber) on the child.⁹⁹

Given this extensive latitude, no inference could logically be drawn as to whether the cosmetologist (1) owned the business and worked there alone or with employees, (2) really worked there at all or merely lived on the profits created by the employees, (3) was an employee of the



business, or (4) 'rented a chair' there, being treated by the owner as self-employed regardless of how she viewed herself.¹⁰⁰ The "Who Pays" criterion, finally, appears calculated not only to befog the distinction between employees and self-employees but also to mislead as to which of two entities might be the real employer of an uncontroverted employee.¹⁰¹

After this interlude, the *Manual* continues with "Cautions regarding class-of-worker entries":

Report employees of a corporation as employees of a private employer.... Do not report corporation employees as owning their own business even though they may own part or all of the stock of the incorporated business. If a respondent says that a person is self-employed, and you find that the business is incorporated, mark "I" for the "Is the business incorporated?" circle.¹⁰²

A literal reading of this instruction suggests that no one would ever be classified as an incorporated self-employed unless the respondent intoned the talismanic word, *self-employed*. The intent of this instruction may have been to prevent the classification of people such as the president of General Motors (and of smaller corporations) as self-employed,¹⁰³ as well as to avoid involving the interviewers in complicated issues of corporation and securities law. Yet even on its face, it is a singularly inept and perverse method of identifying the incorporated self-employed.¹⁰⁴

The directive issued as to partners is similarly puzzling. First, a blanket rule is set forth that "two or more persons who operate a business in partnership should be reported as self-employed in own business."¹⁰⁵ Thus, even if the respondent is one among hundreds of partners in a rigidly hierarchically managed firm, she would automatically be listed as self-employed without having to utter the magic word. Then the interviewer is required to ask whether the business is incorporated.¹⁰⁶ How the interviewer would know an 'incorporated partnership' when she saw one, the *Manual* does not explain.

The instructions relating to several specific occupations also raise questions as to the meaningfulness of the survey

results. That housecleaners, launderers, cooks, cleaning persons, and baby-sitters employed in other people's households are peremptorily excluded from the class of self-employed¹⁰⁷ is a surprising stroke of substantive economic realism.¹⁰⁸ Yet by virtue of answering "herself" to question 23A, a respondent could evade this restriction--and join the tens of thousands of self-employed reported for these occupations. Another substantive intervention involves the directive to record as self-employed "persons who own a sales franchise and are responsible for their own merchandise and personnel."¹⁰⁹ Because the *Manual* does not spell out what such responsibility entails, it is difficult to imagine either that the interviewer knows on her own or that nationally uniform reporting can result. In any event, the directive suggests that sales franchisees may be recorded as self-employed without their direct self-identification or any probing into the details of their relationship with the franchiser.

Finally, the *Manual* expressly instructs the interviewers that "[p]eople who sell Avon and Tupperware products...because they are not considered employees of those companies...are self-employed."¹¹⁰ The elusive passive voice of the directive appears to suggest that the sellers are not considered employees *by those companies*. By this substantive intervention the Bureau of Labor Statistics (BLS) and BOC are, without justification, helping to consolidate the public relations gains secured by these companies in their efforts to evade payment of employment taxes for their low paid workers.¹¹¹ This hands-off attitude toward self-identification stands in sharp contrast to an instruction to enumerators at the 1910 Census of Population. Then even lawyers and doctors were excluded from the "employee" category only if they "in their work, are not subject to the control and direction of those whom they serve."¹¹²

Against the background of all these defects, it is hardly surprising that when questions were raised as to whether the CPS questionnaire was adequately designed to elicit accurate responses to the class-of-worker questions, one of the managers of the CPS conceded that the question might be conceptually flawed.¹¹³

NOTES

1. JOSEPH PHILLIPS, *THE SELF-EMPLOYED IN THE UNITED STATES* 8 (1962).
2. Karl Marx, *Die Verhandlungen des 6. rheinischen Landtags. Erster Artikel: Debatten über Preßfreiheit und Publikation der Landständischen Verhandlungen*, Rheinische Zeitung, May 5, 1842, Beiblatt, at 1, col. 1; reprinted in I:1 KARL MARX [&] FRIEDRICH ENGELS, GESAMTAUSGABE (MEGA) 121, 122 (1975).
3. Ian Hacking, *Biopower and the Avalanche of Printed Numbers*, 5 HUMANITIES IN SOCIETY 279, 280 (1982).
4. HAROLD BROWN, PERCEPTION, THEORY AND COMMITMENT: THE NEW PHILOSOPHY OF SCIENCE 85 (1979 [1977]).
5. ARONSON, SELF-EMPLOYMENT at xi.
6. Although Aronson completes this sentence with the phrase, "as readers of this study will discover," he never explores the subject—notwithstanding references to "[q]uestions about the degree of independence of some individuals reported...as self-employed." *Id.* at 140.
7. Unjustifiably so since thirty-eight per cent of employers from any one of which workers received all their income (amounting to at least \$10,000 reported on Form 1099-MISC) misclassified their workers as independent contractors. See U.S. GENERAL ACCOUNTING OFFICE, TAX ADMINISTRATION: INFORMATION RETURNS CAN BE USED TO IDENTIFY EMPLOYERS WHO MISCLASSIFY WORKERS 4-5 (GGD-89-107, Sept. 25, 1989). In light of the significant cost reductions accruing to employers who succeed in converting their employees into self-employees, it is plausible that many such employers know full well that their workers are not self-employed. A simpler strategy still is not to report such transactions at all. See *idem*, TAX ADMINISTRATION: MISSING INDEPENDENT CONTRACTORS' INFORMATION RETURNS NOT ALWAYS DETECTED (GGD-89-110, Sept. 1989).
8. Julius Sensat, *Reification as Dependence on Extrinsic Information* 3 (unpub. MS, 1991).
9. See *infra* ch. 3.
10. Julius Sensat, *Methodological Individualism and Marxism*, 4 ECON. & PHIL. 189, 203-207 (1988).
11. G. Cohen, *Karl Marx and the Withering Away of Social Science*, in MARX, JUSTICE, AND HISTORY 288, 294 (Marshall Cohen et al. ed. 1980 [1972]).
12. Catherine Hakim, *Self-Employment in Britain: Recent Trends and Current Issues*: 2 WORK, EMPLOYMENT & SOCIETY 421, 424 (1988).

13. *Id.*

14. *Id.* at 445.

15. ARONSON, SELF-EMPLOYMENT at 21 n.3.

16. *Id.* at 28.

17. George Steinmetz & Erik Wright, *Reply to Linder and Houghton*, 96 AM. J. SOC. 736, 738, 739 (1990).

18. RAYMOND WILLIAMS, THE YEAR 2000, at 85 (1983).

19. As do the German *Arbeitgeber* and *Arbeitnehmer* vis-à-vis *employer* and *employee*. For positive valuation of the German terms as opposed to *capital* and *labor*, see ARTHUR PERRY, PRINCIPLES OF POLITICAL ECONOMY 183 (1891).

20. Even as late as World War II, Beveridge, in his report that crucially contributed to the expansion of the social insurance system in Britain under the Labour government, used the terms "persons working on their own account" and "independent workers" rather than *self-employed*. WILLIAM BEVERIDGE, SOCIAL INSURANCE AND ALLIED SERVICES 126, 53 (Cmd. 6404, 1942). The expression was also current in the United States in the nineteenth century: "[T]he laboring class here...have a small capital, which, if they saw fit, they might employ in establishing themselves in business on their own account...thus ceasing to work for Wages." FRANCIS BOWEN, AMERICAN POLITICAL ECONOMY 179-80 (1969 [1870]). French economists also used it: "[L]es travailleurs industriels se divisent en deux classes, celle de *entrepreneurs* qui travaillent pour leur propre compte, et celle de ouvriers qui louent leur travail aux entrepreneurs." 1 HENRI STORCH, COURS D'ÉCONOMIE POLITIQUE 277 (J. B. Say ed. 1823 [1815]). The French translation of *Das Kapital*, which, according to Marx, possessed a scientific value independent of the German original, contains a passage--without a parallel in the German--referring to "petits producteurs indépendents, travaillant à leur compte." KARL MARX, LE CAPITAL, *republished in II:7* KARL MARX [&] FRIEDRICH ENGELS, GESAMTAUSGABE (MEGA) 678 (1989 [1875]).

21. The only major American dictionary to capture even part of the socioeconomic essence of "self-employed" defines it as "[e]arning and directing one's own livelihood, working for oneself, rather than an employer." AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1176 (1969). One modern British dictionary defines "self-employed" with the emphasis on independence: "working independently in one's own business." CHAMBERS 20TH CENTURY DICTIONARY 1177 (1987).

22. On the evolution of the underlying concept in economic theory before the use of the term *self-employment*, see *infra* ch. 3.

23. See LEWIS COREY, *THE CRISIS OF THE MIDDLE CLASS* 112-50 (1935); SUMNER SLICHTER, *THE CHALLENGE OF INDUSTRIAL RELATIONS: TRADE UNIONS, MANAGEMENT, AND THE PUBLIC INTEREST* 1 (1947); FRANÇOISE BOURIEZ-GREGG, *LES CLASSES SOCIALES AUX ÉTATS-UNIS* 28-29 (1954); JOSEPH PHILLIPS, *THE SELF-EMPLOYED IN THE UNITED STATES* 1, 3 (1962).

24. On the ideology of independence in the nineteenth century, see DANIEL RODGERS, *THE WORK ETHIC IN INDUSTRIAL AMERICA, 1850-1920*, at 30-43 (1978).

25. IAN HACKING, *THE TAMING OF CHANCE* 3 (1990), fails to reflect on the possibility that bureaucrats became interested in collecting data on classes because the latter's objective existence had turned into a subjective problem for the state or that classes became self-conscious without the prior intercession of national census bureaus: "Marx read the minutiae of official statistics.... One can ask: who had more effect on class consciousness, Marx or the authors of the official reports which created the classification into which people came to recognize themselves?" As an example of how "counting...creates new ways for people to be," Hacking argues that after factory inspectors had finished their reports, "the owner had a clear set of concepts about how to employ workers according to the ways in which he was obliged to classify them." Ian Hacking, *Making Up People*, *RECONSTRUCTING INDIVIDUALISM: AUTONOMY, INDIVIDUALISTS, AND THE SELF IN WESTERN THOUGHT*, 222, 223 (T. Heller ed. 1986). At one point, however, Hacking does differentiate himself from the static nominalist (such as Hobbes), who "thinks that all categories, classes, and taxonomies are given by human beings rather than by nature and that these categories are essentially fixed throughout the several eras of humankind." Instead he aligns himself with a more plausible "dynamic nominalism," which claims "not that there was a kind of person who came increasingly to be recognized by bureaucrats or by students of human nature but rather that a kind of person came into being at the same time as the kind itself was being invented. In some cases...our classification and our classes conspire to emerge hand in hand, each egging the other on." *Id.* at 228. He envisions two vectors: (1) "labeling from above, from a community of experts who create a 'reality' that some people make their own" and (2) "autonomous behavior of the person so labeled, which presses from below, creating a reality every expert must face." *Id.* at 234. As a result, "numerous kinds of human beings and human acts come into being hand in hand with our invention of the categories labeling them." *Id.* at 236.

26. In 1831, the British census for the first time divided "[t]he agricultural class" into "families of Occupiers of land who employ labourers," "of Occupiers who do not employ Labourers," "and of Agricultural Labourers," "the two first of these distinctions being deemed more generally illustrative of the grade and condition of those under whose care the soil is cultivated, than the number of acres occupied, or the amount of rental." 1 ABSTRACT OF THE ANSWERS AND RETURNS: ENUMERATION ABSTRACT ix (1831). "Masters" and "Workmen" outside of agriculture were returned together. *Id.*

at xiii. Although the census of 1841 discontinued the collection of data on agricultural employers and nonemployers, the practice was resumed in 1851, at which time an "imperfect" return of masters in trades was also published: "Many persons, who have no men in their employ, work on their own account in a small way, and call themselves masters. To this head 41,732 masters in the return apparently belong; which includes, however, probably a certain number of masters who employ men, but did not state their numbers." II:I CENSUS OF GREAT BRITAIN, 1851. POPULATION TABLES: AGES, CIVIL CONDITION, OCCUPATIONS, AND BIRTH-PLACE OF THE PEOPLE lxxviii (1854). The data are at *id.*, tab. 31 at lxxvii. The imperfection of these data was emphasized at the next census as well. See 3 CENSUS OF ENGLAND AND WALES FOR THE YEAR 1861: GENERAL REPORT 29 (1863). For analysis of these data, see J. Banks, *The Social Structure of Nineteenth Century England as seen through the Census*, in THE CENSUS AND SOCIAL STRUCTURE: AN INTERPRETATIVE GUIDE TO NINETEENTH CENTURY CENSUSES FOR ENGLAND AND WALES 179, 186-91 (Richard Lawton ed. 1978) On partial censuses already in the 1840s in some German states, see 2 QUELLEN ZUR BEVÖLKERUNGS-, SOZIAL- UND WIRTSCHAFTSSTATISTIK DEUTSCHLANDS 1815-1875. QUELLEN ZUR BERUFS- UND GEWERBESTATISTIK DEUTSCHLANDS 1816-1875: PREUBISCHE PROVINZEN (Antje Kraus ed. 1989).

27. The relevant questions on the British census schedule (cols. 7-9) referred to "Employer," "Employed," "Neither Employer, nor Employed, but worker on own account," with the last named further defined as "independent workers or dealers." 4 CENSUS OF ENGLAND AND WALES, 1891: GENERAL REPORT 139, 36 (C.-7222, 1893). So many returns were marred by intentional and unintentional mistakes--in part "dictated by the foolish...desire of persons to magnify the importance of their occupational condition"--however, as to make the data "excessively untrustworthy." *Id.* at 36. In his otherwise interesting account of these censuses, ARTHUR MARWICK, CLASS: IMAGE AND REALITY IN BRITAIN, FRANCE AND THE USA SINCE 1930, at 59-63 (1980), missed the tripartite class taxonomy, confusing it with occupational classifications.

28. The French census category included "petits patrons travaillant seuls," "ouvriers à domicile," and "ouvriers ou des employés occupés irrégulièrement dans des maisons différentes." RÉPUBLIQUE FRANÇAISE, MINISTÈRE DU COMMERCE, DIRECTION DU TRAVAIL, SERVICE DU RECENSEMENT PROFESSIONNEL, 4 RÉSULTATS STATISTIQUES DU RECENSEMENT GÉNÉRALE DE LA POPULATION EFFECTUÉ LE 24 MARS 1901: POPULATION PRÉSENTE. RÉSULTATS GÉNÉRAUX 230 (1906). W. WOYTINSKY, DIE WELT IN ZAHLEN: DIE ARBEIT 24 n.1 (1926), notes that this category may include "proletarian elements."

29. For an analysis of the data and identification of the sources, see MARC LINDER, EUROPEAN LABOR ARISTOCRACIES: TRADE UNIONISM, THE HIERARCHY OF SKILL, AND THE STRATIFICATION OF THE MANUAL WORKING CLASS BEFORE THE FIRST WORLD WAR 68, 220, 269 n.155, 332-33 nn. 44-46 (1985).

30. Francis Walker, *American Industry in the Census*, 24 ATL. MONTHLY, 689, 700 (1869).
31. The Twelfth Census expressly refrained from distinguishing employers from employees by means of special returns on the schedule. U.S. BUREAU OF THE CENSUS, SPECIAL REPORTS: OCCUPATIONS AT THE TWELFTH CENSUS xix (1904).
32. See U.S. BUREAU OF THE CENSUS, THIRTEENTH CENSUS OF THE UNITED STATES TAKEN IN THE YEAR 1910, 4 POPULATION: OCCUPATIONAL STATISTICS 15 (1914).
33. U.S. BUREAU OF THE CENSUS, 200 YEARS OF U.S. CENSUS TAKING: POPULATION AND HOUSING QUESTIONS, 1790-1990, at 53 (1989).
34. See, e.g., George Steinmetz & Erik Wright, *The Fall and Rise of the Petty Bourgeoisie: Changing Patterns of Self-Employment in the Postwar United States*, 94 AM. J. SOC. 973 980 n.8 (1989).
35. U.S. BUREAU OF THE CENSUS, 200 YEARS at 53. For a more coherent reconceptualization of this spatial framework, which divides the group into two sectors—the substantively independent (such as doctors and lawyers) and the isolated quasi-employees—see *infra* ch. 7.
36. See U.S. BUREAU OF THE CENSUS, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, 2 POPULATION: CHARACTERISTICS OF THE POPULATION, part 1: UNITED STATES SUMMARY 14 (1943); ROBERT JENKINS, PROCEDURAL HISTORY OF THE 1940 CENSUS OF POPULATION AND HOUSING 63 (1985).
37. U.S. BUREAU OF THE CENSUS, SIXTEENTH CENSUS, 2 POPULATION, pt. 1 at 14.
38. 9 OXFORD ENGLISH DICTIONARY 411 (1933); 14 OXFORD ENGLISH DICTIONARY 908 (2d ed. 1989), citing JOHN MASON, SELF-KNOWLEDGE: A TREATISE 60 (1853 [1745]). An American edition reveals that Mason did not use the term in an economic or occupational sense. JOHN MASON, SELF-KNOWLEDGE: A TREATISE 76 (Philadelphia 1801).
39. 14 OED at 911 (citing 445 PARL. DEB., H.C. (5th ser.) 1441 (1947)). In fact, the previous year, the Minister of National Insurance and a member of Parliament both spoke of "self-employed persons" in connection with coverage under the national insurance bill. 419 PARL. DEB., H.C. (5th ser.) 537 (1946). From the context, they do not appear to have been coining the term.
40. SIDNEY LANDAU, DICTIONARIES: THE ART AND CRAFT OF LEXICOGRAPHY 336 (1989 [1984]), calls it "[t]he finest American historical dictionary."
41. Which, according to Landau, "takes the prize as the largest lexicon in English." *Id.* at 64.

42. Although the dictionary did not offer a citation, a slip bearing this entry is in the citation file of Merriam-Webster, which Roger Pease made available on April 22, 1991. The left-wing authors of a tripartite ("employee, self-employer, or employer") class analysis of the 1920 census of population included tenant farmers "among the self-employers, along with small shopkeepers, although the economic condition of many in both groups is worse than the condition of many wage-earners." 6 RAND SCHOOL OF SOCIAL SCIENCE, THE AMERICAN LABOR YEAR BOOK 20-21 (1925).

43. WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 2269 (2d unabridged ed. 1947 [1934]).

44. Lexicographers appear to have acknowledged *self-employed* only as an adjective, although it is used as a noun. Merriam-Webster has in its citation file a source from the 1930s using the word as a substantive: "Its [social security's] technique cannot be readily adjusted to the problems of insecurity confronting such large sectors of the population as the farmers, the business men, the professional classes, and the self-employed." Abraham Epstein, *The Future of Social Security: Needed Amendments in the Present Law*, NEW REPUBLIC, Jan. 27, 1937, at 373, 373. This citation was omitted from the dictionary apparently because of a corrupt entry on the slip. Telephone interview with Roger Pease, Apr. 22, 1991.

45. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 2060 (unabridged ed. 1969 [1961]).

46. See, e.g., AMERICAN COLLEGE DICTIONARY (1963); FUNK AND WAGNALL'S NEW STANDARD DICTIONARY OF THE ENGLISH LANGUAGE (1963); WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY (unabridged ed. 1962); WEBSTER'S NEW COLLEGIATE DICTIONARY (1961). "Self-employed" finally was adopted in WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY 784 (1965), which was based on WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY.

47. These include frequency, duration, and diversity. See LANDAU, DICTIONARIES at 162. A possible reason for exclusion was the apparent bias some dictionaries exhibited against overloading with *self-* words.

48. THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1736 (2d ed. 1987). Although the source is not identified, the citation file is based on the OED source for 1947. Telephone interview with Charles Steinmetz (an editor of RANDOM HOUSE DICTIONARY), Apr. 22, 1991. In the first edition, this dictionary defined "self-employed" as "earning one's living directly from one's own profession or business, as a free-lance writer or artist, rather than as an employee earning salary or commission from another." THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1294 (1969 [1966]). The hired-gun imagery is noteworthy, as is the focus on occupations largely occupied by self-employed.

49. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1066 (1983).

50. Roger Pease of Merriam-Webster identified it from the citation file. Telephone interview, Apr. 22, 1991.

51. NEW REPUBLIC, Aug. 26, 1946, at 218.

52. One of the standard economics textbooks around World War I used the term in a straightforward fashion, suggesting that it was not a neologism. See THOMAS CARVER, PRINCIPLES OF POLITICAL ECONOMY 216-17 (1919). The most widely used English translations of DAS KAPITAL have Marx writing (in the 1860s) of "the self-employed worker," "self-employment of producers" and "self-employed producers." 1 KARL MARX, CAPITAL 928 (Ben Fowkes tr. 1976); 2 KARL MARX, CAPITAL 34 (1974 [1967]); 3 KARL MARX, CAPITAL 600 (1974 [1967]). The originals (some of which have not been published yet) and the manuscript that Engels published after Marx's death use the expressions "selbstwirtschaftende Arbeiter," "Selbstarbeit der Produzenten," and "selbst arbeitenden Produzenten." 23 MARX-ENGELS WERKE 790 (1962); 24 MARX-ENGELS WERKE 41 (1963); 25 MARX-ENGELS WERKE 614 (1964). They can more accurately be rendered as "self-laboring," "self-labor," or "self-working producers" (or "producers who themselves work"). The English translation of the first volume, which was prepared under Engels' supervision, comes closer by translating the term as "the labourer working for himself." KARL MARX, CAPITAL: A CRITICAL ANALYSIS OF CAPITALIST PRODUCTION, in II:9 KARL MARX [AND] FRIEDRICH ENGELS, GESAMTAUSGABE (MEGA) 661 (1990 [1887]). Ironically, Marx may nevertheless have coined the term in English. In his notebooks from the 1860s he characterized absolute surplus value production as the formal subsumption of labor under capital "weil sie sich nur *formell* von den frühere[n] Produktionsweisen unterscheidet, auf deren Grundlage sie unmittelbar entspringt..., sei es nun daß darin die Producer selfemploying, sei es daß die unmittelbaren Produzenten Surplusarbeit für andre liefern müssen." Karl Marx, *Das Kapital (Ökonomische Manuskripte 1863-1865)*, in II:4, text pt. 1 KARL MARX [AND] FRIEDRICH ENGELS, GESAMTAUSGABE (MEGA) 96 (1988).

53. Comm. on Soc. Insur. of the Am. Ass'n for Lab. Legis., *Health Insurance: Tentative Draft of an Act*, 6 AM. LAB. LEGIS. REV. 239, 242 (1916). The draft was printed and circulated in December 1915. See HACE TISHLER, SELF-RELIANCE AND SOCIAL SECURITY, 1870-1917, at 169 (1971). I. M. Rubinow, one of the leading advocates of universal sickness insurance at the time, referred, in the period immediately preceding the publication of the aforementioned draft on health insurance, not to the self-employed but to "the small independent producer or shopkeeper," such as a cobbler, tailor, or bicycle repairer, "who often is forced to remain independent because he is unable to obtain remunerative employment." I. Rubinow, *Standards of Sickness Insurance. I*, 23 J. POL. ECON. 221, 233 (1915). See also I. Rubinow, *Compulsory Old-Age Insurance in France*, 26 POL. SCI. Q. 500, 515 (1911) ("small independent farmers and merchants employing no hired help"). The fact that a contemporaneous massive government compilation regarding various social security systems in Europe consistently used terms like "independent persons" rather than *self-employed* to describe those excluded

from coverage suggests that the term may not have been coined before World War I. See 1 TWENTY-FOURTH ANNUAL REPORT OF THE COMMISSIONER OF LABOR: WORKMEN'S INSURANCE AND COMPENSATION SYSTEMS IN EUROPE 1363 (1911).

54. 1917 Cal. Stat. ch. 586, §§ 8(b) and 57(b); *Employers' Liability Assur. Corp. v. Industrial Accident Comm'n*, 187 Cal. 615, 203 P. 95 (1921).

55. 1931 Wis. Laws ch. 20, § 108.01(1) (Spec. Sess.).

56. *Id.* § 108.04(5)(f).

57. See, e.g., Isaac Hourwich, *The Social-Economic Classes of the Population of the United States. II*, 19 J. POL. ECON. 309, 314 (1911); Carl Hookstadt, *Reclassification of the United States 1920 Occupation Census, by Industry*, MONTHLY LAB. REV., July 1923, at 1.

58. See, e.g., WILLFORD KING, *THE NATIONAL INCOME AND ITS PURCHASING POWER* 48 (1930). DAVID MONTGOMERY, *BEYOND EQUALITY: LABOR AND THE RADICAL REPUBLICANS 1862-1872*, at 449 (1967), in analyzing the census of 1870, includes employers, company officials, and self-employed under the rubric "independent." By way of contrast, the British census of 1841 restricted the term "independent" to those who did not work at all but "who support themselves upon their own means without any occupation." ABSTRACT OF THE ANSWERS AND RETURNS: OCCUPATION ABSTRACT, M.DCCC.XLI, Pt. 1: ENGLAND AND WALES 8 (1844).

59. LEO WOLMAN, *THE GROWTH OF AMERICAN TRADE UNIONS 1880-1923*, at 75 (1924). The two were lumped together since the census offered no way to separate them. Since Wolman uses "self-employed" in a very unself-conscious manner, it seems unlikely that he was coining the term. ABRAHAM EPSTEIN, *INSECURITY: A CHALLENGE TO AMERICA* 5 (1933), referred to "the total number of employers and self-employed."

60. See Laura Wendt, *Census Classifications and Social Security Categories*, SOC. SEC. BULL., April 1938, at 3.

61. Ch. 531, §§ 202(a)(1) and 210(a) and (b), 49 Stat. 620, 623, 625 (1935).

62. The original exclusion of the self-employed from the old-age insurance system appears to have been based on perceived administrative difficulties. See U.S. ADVISORY COUNCIL ON SOCIAL SECURITY, FINAL REPORT: DECEMBER 10, 1938, S. DOC. NO. 4, 76th Cong., 1st Sess. 23 (1939); *idem*, RECOMMENDATIONS FOR SOCIAL SECURITY LEGISLATION, S. DOC. NO. 208, 80th Cong., 2d Sess. 15 (1949); *Social Security Revision: Hearings Before the Sen. Comm. on Finance*, 81st Cong., 2d Sess. 2138-39 (1950) (testimony of J. Brown).

63. See, e.g., W. WOYTINSKY, *DIE WELT IN ZAHLEN: DIE ARBEIT* 1-68 (1926).

64. W. WOYTINSKY, THE LABOR SUPPLY OF THE UNITED STATES: OCCUPATIONAL STATISTICS OF THE 1930 CENSUS TABULATED BY CLASS OF WORKER AND INDUSTRY, AS WELL AS BY SEX, RACE, AND AGE GROUPS 8 (1936).

65. W. WOYTINSKY, LABOR IN THE UNITED STATES: BASIC STATISTICS FOR SOCIAL SECURITY 16, 24, 240 (1938).

66. SPURGEON BELL, PRODUCTIVITY, WAGES, AND NATIONAL INCOME 210 (1940). Bell's computations were made difficult by the fact that many census occupational classifications, including barbers, lawyers, and retail dealers, undifferentiatedly included wage earners and self-employed. *Id.* at 212-13. His own criteria for resolving borderline workers--single versus numerous employers, payment according to time versus piece, and provision of no versus some productive capital, whereby the presence of two of the three was dispositive; *id.* at 214--are not persuasive. See Marc Linder, *Employees, Not-So-Independent Contractors, and the Case of Migrant Farmworkers: A Challenge to the "Law and Economics" Agency Doctrine*, 15 N.Y.U. REV. L. & SOC. CHANGE 435 (1986-87).

67. Without using the term *self-employed*, Simon Kuznets was attempting to bring some functional order into national income accounting. The distinctions that he drew between labor income and entrepreneurial income as based on whether the participant "himself engages in the production process or participates solely through his property" and whether he shares in the management and disposition are, to be sure, plausible. SIMON KUZNETS, NATIONAL INCOME AND ITS COMPOSITION, 1919-1938, at 80-81 (1941). Nevertheless, as Kuznets realized, the problem remains that "frequently one who may appear to be an entrepreneur is really an employee." *Id.* at 405. And if employees are defined as those "who have little voice in the decisions an enterprise makes and can be easily separated from it," *id.* at 81, workers in one-person entities, no matter how dependent they were substantively, would be classified as entrepreneurs.

68. U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS: LABOR FORCE 3 (Ser. P-50, No. 1, July 11, 1947). The self-employed were defined as "working on their own farm or in their own business, profession, or trade for profit or fees." *Id.* at 4.

69. See U.S. BUREAU OF THE CENSUS, SUPPLEMENT TO THE MONTHLY REPORT ON THE LABOR FORCE, No. 58-S, May 12, 1947, at 1, 3; *idem*, CURRENT POPULATION REPORTS: MONTHLY REPORT ON THE LABOR FORCE: AUGUST, 1947, at 5, 8 (Ser. P-57, No. 63, Sept. 4, 1947); JOSEPH DUNCAN & WILLIAM SHELTON, REVOLUTION IN UNITED STATES GOVERNMENT STATISTICS, 1926-1976, at 54-55 (U.S. Dep't of Commerce, 1978); MARGO ANDERSON, THE AMERICAN CENSUS: A SOCIAL HISTORY 159-90 (1988).

70. Servicemen's Readjustment Act of 1944, ch. 268, § 503, 58 Stat. 284, 292 (1944).

71. *Id.* § 902(a) and (b), 58 Stat. at 297-98.

72. H. REP. NO. 1418: PROVIDING FEDERAL GOVERNMENT AID FOR THE READJUSTMENT IN CIVILIAN LIFE OF RETURNING WORLD WAR II VETERANS, 78th Cong., 2d Sess. 13, 14 (1944). In conference the wording of the House version was modified; for the original House provision, see 90 CONG. REC. 4336 (1944).

73. On the unprecedented nature of this inclusion, see National Comm. on Soc. Legis., Nat'l Lawyers Guild, *The Servicemen's Readjustment Act of 1944: "The G.I. Bill of Rights,"* 5 LAWYERS GUILD REV. 90, 98 (1945).

74. H. REP. 1418 at 14. The straightforward administrative procedures are set out at 38 C.F.R. § 36.514 and §§ 36.525-.532 (Supp. 1944). WILLIAM HABER & MERRILL MURRAY, UNEMPLOYMENT INSURANCE IN THE AMERICAN ECONOMY: AN HISTORICAL REVIEW AND ANALYSIS 147 n.6 (1966), assert without sources that "[a] number of self-employed, especially farmers, drew benefits under conditions that brought criticism of the program." A review of state administrative agency decisions, many of which turned on whether workers met the requirement of being "fully engaged," does not reveal outrageous facts. See 8-10 Fed. Security Agency, Unempl. Compensation Interpretation Serv.: Benefit Series (1945-1947).

75. "Congress obviously thought it desirable to encourage discharged veterans to go into self-employment, or at least to assist those who wished to do so." 8 Fed. Security Agency, Unemployment Compensation Interpretation Service: Benefit Series 166, 167 (10159-Kans. V, Decision of App. Referee, June 20, 1945).

76. See Employment Act of 1946, ch. 33, § 2, 60 Stat. 23 (1946) (including self-employment). In an interesting postwar labor dispute, picketers described themselves as "self-employed veterans." *Miller v. Tobin*, 70 N.Y.S.2d 36, 37 (1947). The number of reported nonagricultural self-employed and the rate of self-employment rose sharply during the first two postwar years. See PHILLIPS, *THE SELF-EMPLOYED IN THE UNITED STATES* at 15-20.

77. After World War II, the Social Security Bd. renewed its advocacy of the incorporation of the self-employed into the social security system. See, e.g., A. Altmeyer, *Improving Old-Age and Survivors Insurance*, SOC. SEC. BULL., March 1946, at 3 (Chairman of Social Security Bd.); Wilbur Cohen, *Coverage of the Self-Employed under Old-Age and Survivors Insurance: Foreign Experience*, *id.*, Aug. 1949, at 11 (advisor to Social Security Comm'r).

78. 94 CONG. REC. 2143 (1948) (statement of Rep. Gearhart). On the background to this campaign in the 1940s, see Marc Linder, *From Street Urchins to Little Merchants: The Juridical Transvaluation of Child Newspaper Carriers*, 63 TEMPLE L. REV. 829, 840-45 (1990).

79. Labor Management Relations Act, ch. 120, § 101, 61 Stat. 140 (1947) (codified at 29 U.S.C. § 158(b)(4)(i)(A) (1973)).

80. U.S. BUREAU OF THE CENSUS, 200 YEARS at 59, 65. It was in 1940 that the BOC began referring to this question as "class of worker." *Id.* at 65. Only persons, including peddlers, "operating their own unincorporated business enterprises" were classified as employers or own-account workers. U.S. BUREAU OF THE CENSUS, SIXTEENTH CENSUS, 2 POPULATION, pt. 1 at 14; U.S. BUREAU OF THE CENSUS, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, 3 POPULATION: THE LABOR FORCE, part 1: UNITED STATES SUMMARY 299 (1943).

81. U.S. BUREAU OF THE CENSUS, 200 YEARS at 74.

82. 2 U.S. BUREAU OF THE CENSUS, CENSUS OF POPULATION: 1950: CHARACTERISTICS OF THE POPULATION, part 1: UNITED STATES SUMMARY 61, tab. 53 at 1-101, 1-461, 1-475 (1953). Enumerators were instructed not to report employees of incorporated businesses as being in their own business "even though they own part or all of the stock of the incorporated business." *Id.* at 1-476. A similar transition occurred earlier in the household surveys: when the BOC began publishing data on the "self-employed," the question on the schedule actually referred to "own-account worker." U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS: LABOR FORCE BULLETIN: LABOR FORCE, EMPLOYMENT, AND UNEMPLOYMENT IN THE UNITED STATES, 1940 TO 1946, at 5, tab. 2 at 18 (Ser. P-50, No. 2, Sept. 11, 1947).

83. U.S. BUREAU OF THE CENSUS, 200 YEARS at 79.

84. *Id.* at 85, 92, 102 (1970, 1980, and 1990 censuses included an additional subquestion as to whether the business was not incorporated or incorporated).

85. HACKING, THE TAMING OF CHANCE at 3.

86. Feist Publications, Inc. v. Rural Telephone Service Co., 59 U.S.L.W. 4251, 4253 (No. 89-1909, Mar. 27, 1991). Telephone subscribers' names and telephone numbers "are uncopyrightable facts; they existed before Rural reported them and would have continued to exist if Rural had never published a telephone directory." *Id.* at 4257. The U.S. Supreme Court here adopts a naive epistemology. Its application to the self-employed would make it impossible to recognize that if "employees" are socially constructed, then dependent "self-employed" are second-order constructions.

87. U.S. BUREAU OF THE CENSUS, INTERVIEWER'S MANUAL: CURRENT POPULATION SURVEY D6-21 (CPS-250, rev. July 1989) (hereinafter "MANUAL"). The BOC made available a copy of this internal document, which is not published by the Government Printing Office.

88. Steinmetz & Wright, *The Fall and Rise of the Petty Bourgeoisie* at 979.

89. EMPLOYMENT AND EARNINGS, Mar. 1989, at 120.

90. A facsimile of CPS-1--Basic Questionnaire (Form CPS-1) for March 1988 is reproduced in U.S. BUREAU OF THE CENSUS, MONEY INCOME OF HOUSEHOLDS, FAMILIES, AND PERSONS IN THE UNITED STATES: 1987, at 197-201 (Curr. Pop. Rep., Ser. P-60, No. 162, 1989).

91. *Id.* at 200.

92. The respondent--who may be as young as fourteen--may be answering on behalf of all other members of the household. One possible source of error in the CPS is the fact that proxies respond on behalf of eighty per cent of all male household members. See NATIONAL COMMISSION ON EMPLOYMENT AND UNEMPLOYMENT STATISTICS, COUNTING THE LABOR FORCE 143 (1979). The BOC believes that the data on self-employment are not significantly affected by reliance on proxy respondents. See PHILIP MCCARTHY, SOME SOURCES OF ERROR IN LABOR FORCE ESTIMATES FROM THE CURRENT POPULATION SURVEY 31-37 (Nat'l Comm'n on Employment and Unemployment Statistics Background Paper No. 15, 1978). See generally, U.S. BUREAU OF LABOR STATISTICS, CONCEPTS AND METHODS USED IN LABOR FORCE STATISTICS DERIVED FROM THE CURRENT POPULATION SURVEY (Rep. No. 463, 1976); U.S. BUREAU OF THE CENSUS, THE CURRENT POPULATION SURVEY: DESIGN AND METHODOLOGY (Technical Paper 40, 1978); U.S. DEP'T OF COMMERCE, OFFICE OF FEDERAL STATISTICAL POLICY AND STANDARDS, AN ERROR PROFILE: EMPLOYMENT AS MEASURED BY THE CURRENT POPULATION SURVEY (Statistical Working Paper 3, 1978).

93. MONEY INCOME OF HOUSEHOLDS, FAMILIES, AND PERSONS IN THE UNITED STATES: 1987 at 200.

94. *Id.*

95. MANUAL at D6-22.

96. That this response is not uncommon becomes clear from the instruction relating to consultants who state that they do not have a business: they are to be reported as self-employed under 23A and 23E. See *Id.* at D6-27.

97. *Id.* at D5-8-9.

98. For belated judicial recognition of the absurdity of this position, see *Hearst v. Iowa Dep't of Revenue & Fin.*, 461 N.W.2d 295, 306 (Iowa 1990) ("To expect these child carriers, the majority of whom are between the ages of ten and twelve, to correctly figure, collect, and remit the proper amount of tax due is ludicrous") (dictum). Or as the chairman of a congressional subcommittee, confronting an employer of child newspaper subscription solicitors who had treated them as independent contractors, put it: "How do you visualize a 10 year old being an independent contractor? ... We can call him a rear admiral but that doesn't make him a rear admiral." *Children at Risk in the Workplace: Hearings Before the Employment and Housing Subcomm. of the Comm. on Government Operations*, 101st Cong., 2d Sess. 295 (1990) (Rep. Lantos).

99. MANUAL at D5-10. Although the CPS collects data on fifteen year olds, the BLS currently reports labor force data only on those sixteen and older. On school children, see *id.* at D-5-1, 5-14, 5-17. For an explanation of why such imposition of risk does not convert an employee into independent businessboy/girl, see Linder, *From Street Urchins to Little Merchants*. The number of self-employed sixteen and seventeen year olds rose from 36,000 in 1969 to 51,000 in 1975, falling off to 24,000 by 1990. Before BOC/BLS stopped collecting data on fourteen-and fifteen-years-olds (in 1982), the self-employed among them peaked at 100,000 in 1972 and 1975. See EMPLOYMENT AND EARNINGS, Jan. 1970, tab. A-18 at 116, A-26 at 130; *id.*, Jan. 1973, tab. 26 at 142; *id.*, Jan. 1976, tab. 20 at 148, tab. 28 at 155; *id.*, Jan. 1991, tab. 23 at 191. That twice as many of the younger cohort were reported as self-employed despite the fact that more than twice as many of the older cohort were in the labor force may largely be accounted for by the dearth of lawful employment opportunities available to the younger children other than newspaper delivery; sixteen and seventeen year olds have predominantly found employment in stores and fast-food restaurants. See ELLEN GREENBERGER & LAURENCE STEINBERG, WHEN TEENAGERS WORK: THE PSYCHOLOGICAL AND SOCIAL COSTS OF ADOLESCENT EMPLOYMENT 10-89 (1986).

100. On the extent of self-employment in beauty and barber shops, see Horst Brand & Ziaul Ahmed, *Beauty and Barber Shops: The Trend of Labor Productivity*, MONTHLY LAB. REV., Mar. 1986, at 21, 23.

101. Thus, for example, crewleaders, fronting for farmers, often pay migrant farmworkers with checks drawn on accounts that are in economic reality the farmers'. See generally, Marc Linder, *The Joint Employment Doctrine: Clarifying Joint Legislative-Judicial Confusion*, 10 HAMLINE J. PUB. L. & POL. 321 (1989). Interestingly, in its Instructions to Enumerators at the 1910 Census of Population, the BOC stated that "the boss of a gang" should not be returned as an employer because "while any one of these may employ persons, none of them does so in transacting his *own* business." U.S. BUREAU OF THE CENSUS, 200 YEARS at 53.

102. MANUAL at D6-24. How interviewers are supposed to "find" the business to be incorporated, the *Manual* does not explain. It seems implausible that they would demand to see the articles of incorporation. Not much more plausible is the notion that all the respondents answering on behalf of the eighty per cent of men not at home at the time of the interview really know whether that household member's business is incorporated.

103. In a previous section devoted to "Definition of class-of-worker entries," the MANUAL instructs the interviewer not to ask "foremen, superintendents, managers, or other executives hired to manage a business or farm, salesmen working on commission or officers of corporations" "who report themselves as working for profit or fees in OWN business" whether the business is incorporated. Instead, these persons are to be entered directly as private employees. *Id.* at D6-23. This injunction was first adopted for the 1910 Census of Population. See U.S. BUREAU OF THE CENSUS, 200 YEARS at 53.

104. Ronald Tucker of the Demographic Surveys Div. of the BOC expressed the fear that the incorporated self-employed might be undercounted because interviewers, upon hearing the response that the respondent worked for a corporation, might never proceed to ask whether the respondent was self-employed. Telephone interview Ronald Tucker, Apr. 18, 19, 1991.

105. MANUAL at D6-24.

106. *Id.*

107. *Id.* at D6-24-25. Although the CPS records hardly any household self-employed in these occupations, many are recorded for nonpersonal services. Already at the time of the 1910 Census of Population, enumerators were instructed to return domestic servants "always" as employees although "the person employing a domestic servant is not always returned as an employer." U.S. BUREAU OF THE CENSUS, 200 YEARS at 53.

108. Real estate agents are deemed mandatory employees "because they must work for a licensed broker." MANUAL at D6-26. It is unclear how the BOC knows that registered and practical nurses who report "private duty" as their business are self-employed rather than employees of a nurses' registry. *See id.* at D6-25. These comments were absent from the July 1985 revision of the *Manual*. For a contrary classification, see SPURGEON BELL, PRODUCTIVITY, WAGES, AND NATIONAL INCOME 214-15 (1940); SPEC. COMM. TO STUDY PROBLEMS OF AMERICAN SMALL BUSINESS, SMALL BUSINESS PROBLEMS: SMALL BUSINESS WANTS OLD-AGE SECURITY, 78TH CONG., 1ST SESS. 14 (Sen. Comm. Print No. 17, 1943). Even an author who laments the transformation of self-employed private duty nurses into employees concedes that even in their heyday their status was "contradictory" because of their "use by patrons as servant, maid, cook, and housemother." This position was reflected in the fact that they commonly received compensation in the form of room and board, which depressed their wage levels. David Wagner, *The Proletarianization of Nursing in the United States, 1932-1946*, 10 INT'L J. HEALTH SERVICES 271, 273 (1980). *See also* BARBARA MELOSH, "THE PHYSICIAN'S HAND": WORK CULTURE AND CONFLICT IN AMERICAN NURSING 77-111 (1982); SUSAN REVERBY, ORDERED TO CARE: THE DILEMMA OF AMERICAN NURSING, 1850-1945, at 95-105, 176-79 (1987).

109. MANUAL at D6-26.

110. *Id.* at D6-26. This reference to Avon and Tupperware was not in the *Manual* at the time of the July 1985 revision.

111. *See* Marc Linder, *The Involuntary Conversion of Employees into Self-Employed: The Internal Revenue Service and Section 530*, 22 CLEARINGHOUSE REV. 14, 20 n.77, 21 (1988).

112. U.S. BUREAU OF THE CENSUS, 200 YEARS at 53.

113. Ronald Tucker also expressed surprise and concern to the BLS that BLS was tabulating data on the incorporated self-employed at all.