FAREWELL TO THE SELF-EMPLOYED

Deconstructing a Socioeconomic and Legal Solipsism

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Contributions in Labor Studies, Number 41

GREENWOOD PRESS
New York • Westport, Connecticut • London

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HD
8036
.L561
1992

Library of Congress Cataloging-in-Publication Data

Linder, Marc.
Farewell to the self-employed : deconstructing a socioeconomic and legal solipsism / Marc Linder.
p. cm.—(Contributions in labor studies, ISSN 0886-8239 ; no. 41.)
Includes bibliographical references and index.
ISBN 0-313-28466-0 (alk. paper)
1. Self-employed. I. Title. II. Series.
HD8036.L56 1992
331.12—dc20 91-39643

British Library Cataloguing in Publication Data is available.

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Library of Congress Catalog Card Number: 91-39643
ISBN: 0-313-28466-0
ISSN: 0886-8239

First published in 1992

Greenwood Press, 88 Post Road West, Westport, CT 06881
An imprint of Greenwood Publishing Group, Inc.

Printed in the United States of America

The paper used in this book complies with the Permanent Paper Standard issued by the National Information Standards Organization (Z39.48-1984).

10 9 8 7 6 5 4 3 2 1

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3

Class: Exploitation, Dependence, Risk, and Insecurity

> [U]ne question aussi controversée que celle de la petite bourgeoisie, et aussi génératrice de bla-bla-bla.[1]

The Hybrid Character of the Self-Employed: Extraterritorial Tertium Quid

> The *separation* [of labor and the ownership of the means of production] appears as the normal relationship in this society. Where it therefore in fact does not occur, it is presumed and...so far correctly; for (in contrast to ancient Roman or Norwegian conditions) (or American conditions in the Northwest of the United States) here the *union* appears as accidental, the *separation* as normal, and therefore the separation is seized on as the relationship even if the person unites the various functions. It stands out here very strikingly that the capitalist as such is only [a] function of the capital, the worker [a] function of the capacity to work.[2]

Among the preclassical and classical economists of the eighteenth and nineteenth centuries the figure of those who today would be called self-employed was a common trope in the context of a theory of value and the distribution of income.[3] Writing almost a half-century before Adam Smith, Richard Cantillon discussed capitalless, labor-only independent workers--"les Entrepreneurs dans leurs propre travail...qui n'ont pas besoin de fonds pour s'établir"--such as

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coppersmiths, needle women, chimney sweeps, water carriers, painters, doctors, and lawyers.[4] These--together with "beggars" and "robbers"--he classified with entrepreneurial merchants, manufacturers, and employers as receiving "gages uncertains" in contradistinction to those who received "gages certains."[5] Interestingly, Cantillon subtly relativized the degree of uncertainty distinguishing the "two classes" by adding that the wages of the hired class were certain only "pour le tems [sic] qu'ils en jouissent."[6] Widespread unemployment among employees would then have tended to undermine any categorical divide between the two groups.

The classical economists, writing as the capitalist mode of production began to create a categorical class division between those who owned only their labor and those who owned capital and employed the former, regarded the independent worker as an anomaly.[7] Adam Smith, for example, alluded to the unusual hybrid character of workers who still possessed capital or of capitalists who still worked:

> It sometimes happens...that a single independent workman has stock sufficient both to purchase the materials of his work, and to maintain himself till it be compleated. He is both master and workman, and enjoys the whole produce of his own labour.... It includes what are usually two distinct revenues, belonging to two distinct persons, the profits of stock, and the wages of labour.
>
> Such cases, however, are not very frequent, and in every part of Europe, twenty workmen serve under a master for one that is independent.[8]

By the middle of the nineteenth century, John Stuart Mill adopted a much more radical position, relegating the independents to the role of atavists. While recognizing that only in England, Scotland, and parts of Belgium and Holland were land, capital, and labor "the property of separate owners" in agriculture,[9] Mill observed a definitive class divide in industry:

> In the case of manufacturing industry there never are more than two classes, the labourers and the capitalists. The...system in which capital was owned by the labourer, was coeval with free labour.... The artisan owned the loom or the few tools he used, and worked

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> on his own account.... In country villages, where a carpenter or a blacksmith cannot live and support hired labourers on the returns of his business, he is even now his own workman; and shopkeepers are their own shopmen or shopwomen. But wherever the extent of the market admits of it, the distinction is now fully established between the class of capitalists, or employers of labour, and the class of labourers; the capitalists, in general, contributing no other labour than that of direction and superintendence.[10]

The question of the laborer's dependence on capital was raised in a more self-consciously theoretical form in connection with the late nineteenth-century economists' debate over the so-called wage-fund doctrine. One of the leading American political economists of the period, Frank Taussig, objectively synthesizing the themes raised by Cantillon and Smith, stated that whereas "hired laborers...get stipulated money shares [and] take no chances," "independent laborers," who "have some capital," are "residual sharers" "because they are independent producers. They are owners of part of the gross output of society. They sell what they turn out and so become holders in the first instance of part of the money income of society."[11] Ironically, as in present-day sociological and economic discussions of self-employment, this economists' debate also appeared to turn on legal formalisms:[12]

> [W]e should not be consistent if we drew the line between wages and not wages according to the bare independence of the workman. The cobbler who works alone in his petty shop gets, in the main, a return for labor as much as the workman in the shoe factory; the peddler and the shopkeeper's assistant...all earn an income by labor. ... But in one important respect the receipts of the independent laborer...are to be put in the same class as those of well-to-do capitalists.... The independent workman gets a primary and not a derivative share of the total income of society. ... He becomes legal and absolute owner of a part of the output of society, and so comes into control of part of the gross money income. He may be fettered by debt...but he is dependent on no fixed bargain for the money income. Herein his situation differs essentially from that of the hired laborer [who] gets his money income as a result of a bargain by which he sells his working power for a space. The independent workman gets his income directly from the sale of what he makes. The situation is not always advantageous to the latter. ... But the hired workman is directly dependent for his

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> money income on an employing capitalist; the independent workman is not.[13]

Reduced to its conceptual core, Taussig's point is that so-called independent workers are subject to greater risk than are wage workers.[14] This distinction appears more plausible with regard to artisans than with regard to those selling services. There does seem to be a tangible difference between a cobbler's selling shoes to the public and a factory worker's selling his labor power to a capitalist, who controls every aspect of the production and investment process. But what happens to this difference as applied, for example, to workers, such as taxi drivers, whose physical distance from their employers and direct cash contact with final consumers render the conventional indicia of control ambiguous and therefore amenable to contractual manipulation by employers?[15] Even bracketing the puzzles created by the materiality or corporeality of the services rendered, an issue subsists regarding the quality of risk. Unless the 'independent worker' has invested considerable capital (including human capital), the loss of which would impose a telling economic injury on him,[16] it is unclear how the risks differ. Thus, a service provider with few or no means of production is as economically "mobile" as a wage laborer. Although the hired worker may be guaranteed his wages for all the work he has performed, that guarantee lasts only as long as his pay period. Beyond that, he assumes all the risks of insecurity associated with unemployment.[17] How a buffer of one day's or one week's wages (which the employee has effectively 'lent' to the employer)[18] can qualitatively distinguish the employee from the self-employee is unclear.[19]

A rough analogy, then, obtains between the situation of an at-will employee and that of a tailor who produces only for the bespoke trade (rather than for inventory for an anonymous market). The further removed the employee becomes from the pure at-will regime and the more protected she is by agreements secured by unions and state intervention, and the more means of production in which the "independent worker" has invested and the more she produces ex ante for the market, the more plausible the

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distinction becomes. But with regard to the capitalless service provider, the distinction is legal and circular: she is excluded from labor unions and unemployment insurance programs because she is independent--that is, because the customer pays the employee rather than the employer; yet that independence--that is, assumption of risk--may, on closer scrutiny, consist of little else than the modicum of income security that she is denied by virtue of those very legal exclusions.

In conceptualizing the self-employed, it is crucial to focus on the proposition, which existed in inchoate form among the classical economists, that the self-employed are a *tertium quid* enjoying a kind of extraterritorial status within capitalism and yet crucially informed by it.[20] Whether they were regarded as a vestigial curiosity or as having a future niche as well,[21] independent workers came to be seen as an exception to a binary world who were of neither class and yet of both. This framework posits that the independent, "so-called old middle class [*Mittelstand*]" does not represent a nominal category arbitrarily created by considerations of expediency but rather a group the members of which "even on the basis of *economic* logic are neither proletarians nor capitalists, but rather some third entity...labor citizens [*Arbeitsbürger*]."[22]

The theoretically most sophisticated formulation of this conceptualization of independent producers as a hybrid form is to be found in one of the complex of manuscripts Marx prepared in the early 1860s for use in his unfinished magnum opus:

> It is possible that these producers, who work with their own means of production, not only reproduce their laboring capacity, but also create surplus value inasmuch as their position permits them to appropriate their own surplus labor or a part of the same.... The independent peasant or artisan is cut up into two persons. ... As owner of the means of production he is a capitalist, as worker he is his own wage laborer. Thus he pays himself his salary as capitalist and draws his profit from his capital, i.e., he exploits himself as wage laborer and pays himself in the surplus value the tribute that labor owes capital. ... The *social determinateness* of the means of production in capitalist production--so that they express a certain relation of production--has so coalesced with, and in the

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> mode of representation of bourgeois society is so inseparable from the material existence of these means of production as means of production that that determinateness (categorical determinateness) is applied even where the relationship directly contradicts it. The means of production become capital only so far as they become autonomous as an autonomous power over against the labor. In the stated case the producer--the worker--is owner, proprietor of his means of production. They are therefore not capital, as little as he is a wage laborer vis-à-vis them. Nevertheless they are conceived of as capital and he himself is sundered in himself, so that *he* as capitalist employs himself as wage laborer. ... That he however can appropriate the whole product of his own labor *for himself*, and the surplus of the value of his product over the average price is not appropriated by a third *master*...he owes not to his labor--which does not distinguish him from other workers--but rather to the ownership of the means of production.[23]

A crucial implication of this analysis is the subversion of the notion that a worker who is "his own employer"[24] moves within a solipsistic world. The very subsumption of this self-exploiter under capitalistically determined forms of production means that he can appropriate his surplus labor only in the manner that all capitalists do: by participating in the competitively induced redistribution of societally created surplus value effected by the equalization of the rate of profit in accordance with the total capital of each capitalist.

Unconcerned with operationalizing these criteria, Marx offered no practical guidelines as to the threshold volume of means of production in any particular branch of production that would enable solo owner-workers to ward off interloping surplus-value snatchers.[25] Marx's overarching conception of the tendencies of capitalist accumulation, which would, by raising the capital requirements for competitiveness, undermine the tenability of niches for small producers, presumably subordinated this phenomenon to the main lines of societal development. To the extent that such interstices are constantly being reproduced within capitalism, Marx posed a methodological puzzle. For if Joan Robinson, adapting Oscar Wilde's bon mot, was right that from a Marxist perspective the only thing worse than being exploited is not being exploited (that is, being unemployed), then with regard to independent workers the predicament becomes:

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The only thing worse than being successfully self-exploiting is being unsuccessfully self-exploiting. In other words, the would-be or pseudo-independent who exploits herself but only for the benefit of her real but informal employer has worse than the worst of both worlds because the conditions (including the length of the workday, the intensity of work, and the exploitation of family members) to which she subjects herself often are worse than those of the factory. The problem is separating out the successes from the failures.

That this is no easy analytic undertaking can be seen from the case of so-called contract farmers with significant capital investment whose relationships with the processing industry have led some to characterize them as "'semi-proletarians.'"[26] Identifying those who own and control enough means of production to be in a position to capture some part of the surplus they produce is also exacerbated by the fact that many run-of-the-mill workers--for example, skilled tradespeople in construction, whose employee status is uncontested--may derive some portion of their income from their ownership of their tools.[27] The need to ferret out and to understand myriad complex, intricate, and subtle details of alleged self-employees' work situations therefore precludes the use of individualized census surveys alone because of the cost.

The reason that economists are currently engaged in a dispute as to whether the self-employed should be studied from the perspective of entrepreneurship or as a labor market phenomenon is that they fail to appreciate the hybrid character of capital-owning workers. The most recent monograph devoted to self-employment in the United States does recognize that the self-employed combine the functions of employer and employee in a single individual.[28] That Aronson's analysis is nevertheless marred by confusion is all the more remarkable because he states programmatically that "self-employment is basically an alternative means of earning a living by the sale of one's labor."[29] Ironically, Aronson's critical insight becomes submerged because he extinguishes the categorical distinction between the self-employed and

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employees by erring in an unusual direction--by implying that even the most independent of the self-employed are merely selling their labor: "Self-employment is the oldest way by which individuals offer and sell their labor in a market economy."[30] Ultimately, then, all Aronson means is that "most self-employed workers are not entrepreneurs in the classic sense, that is, individuals with a unique mission of breaking new ground in the production and/or distribution of goods and services."[31]

Aronson's inability to adhere consistently to this program emerges clearly in his explanation of his decision to use a narrow definition of self-employment that excludes unpaid family workers and partners: "These more inclusive definitions raise questions...about the degree of autonomy and control these workers have over their labor, which, in my view, theoretically distinguishes self-employment from wage and salary employment."[32] The presence of patriarchal domination may be an excellent reason to withhold self-employed status from unpaid wives and children,[33] and subordination to the decision-making process of a bureaucracy controlled by hundreds of co-equals may also justify the refusal to classify partners as self-employed.[34] But what Aronson fails to recognize is that even the most exclusive definition raises exactly the same question as to adequate criteria of class membership,[35] which he neglects in his substantive discussions.

The way out of this analytic morass leads through a discussion of the touchstone of the microeconomics of self-employment: dependence.

Heteronomy

> Others, who may be counted as and may consider themselves as self-employed, perhaps working at home, are essentially disguised employees, receiving inputs and delivering outputs to a single "employer". While the "employers" may reduce their exposure in the sense that they are given some paid work, these "nominal" or "pseudo" self-employed workers may be in an especially precarious situation, as they are atomised, have little market (or bargaining)

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> power and are generally unprotected by labour legislation. Other dependent workers who may be counted statistically as self-employed include artisans or street vendors who are dependent on others for their premises and whose work may be controlled by the owners of such premises or by suppliers of credit or inputs.[36]

> [T]he illusion of autonomy is grasped tightly precisely because it helps to compensate for and legitimate the practical realities of being even more tied to their work, and dependent on bank managers etc., than they had been as employees.[37]

In connection with their attempt to document the rise in self-employment in the late 1970s and early 1980s, sociologists Steinmetz and Wright believe they are merely stating an obvious tautology when they assert that "[s]elf-employment means, literally, being employed by oneself."[38] Given the specific meaning of *employment* within capitalist relations of production, however, what it means to employ oneself is not quite so self-explanatory. The ideological inversion that occurs "when an independent worker...[who] works for himself and sells his own product...is viewed as his own employer (capitalist), who employs himself as worker"[39] leaves in its wake a very material consequence: his ability to appropriate his own surplus labor[40] entails a level of self-exploitation that replicates that prevailing in the canonical dichotomized capitalist-wage labor sector.[41]

Steinmetz and Wright's further specification that the nonemploying self-employed (or pure petty bourgeois) "own their own means of production and do not sell their labor power on the labor market"[42] is still not sufficient. Although guidelines may be unobjectionable as abstract principles, they are not self-executing; to identify--rather than merely to define--employment that is disassociated from the sale of labor power is precisely the complex task at hand.[43]

The socioeconomic conceptualization of what constitutes the peculiar autonomy or independence[44] of the "motley collection of occupations" embracing the self-employed centers on the fact that the latter are distinguished from employees by obtaining their income in part from the ownership of the necessary means of production ("albeit in small measure").[45] Thus, a class that stands between capital

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and the proletariat must be further characterized "by ownership of capital...that is large enough to give its owner...independence and autonomy vis-à-vis capital, but not large enough to afford pure surplus-value income."[46] A self-employed person who owned large amounts of physical capital presumably could not employ it alone and would almost definitionally require employees to valorize it. This conceptual link between the smallness of the capital and the ability to set it in motion alone supports the prima facie plausibility of confining the category of the self-employed to those without employees.[47] Just how complicated the process of identifying the self-employed among capital-owning workers is[48] can be gauged by the methodological shortcut to eliciting the requisite information that Steinmetz and Wright propose concerning nominally self-employed service workers with no capital and little income. They argue that the basic issue in situating such workers in the class structure is to locate them within the social relations of production:

> If they sell their labor services to individuals who buy those services directly for their use-value, then these providers would be characterized as petty bourgeois, even if their income was low. But if those services are sold to capitalists, so that after selling their labor power the providers' work is performed within capitalist production under the control of the firm, then they would be workers, even if they still had the legal status of "self-employment." The relational properties are entirely different for someone taking children into her or his own home on a fee-for-service basis and for an employee of a child-care firm.... A similar point could be made concerning the contrast between a self-employed carpenter who sells carpentry services to individuals for home repairs and a nominally self-employed carpenter who actually works for a capitalist construction firm.[49]

Steinmetz and Wright appear to have confused different levels of analysis. That a house cleaner performs so-called unproductive labor--so that her 'master' does not appropriate surplus value--in no way means that she is not an employee. Indeed, even if she cleaned house for a different family every day of the year,[50] classifying her as self-employed would be whimsical at best. And in fact the law (in the United States) deems her an employee of each and every such family.[51] The

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reason that an independent carpenter is not considered the employee of each and every customer for whom he builds a garage or bookshelves is presumably that the nonfirm consumer cannot control him because he is far more skilled and knowledgeable than the customer. But this relationship of nondomination at the point of production is not per se a function of the fact that the customer is using the products as use-values, for a similar relationship may arise vis-à-vis a capitalist firm that cannot control the carpenter because, being in a different product market, it knows just as little about carpentry as the house owner and cannot integrate the carpenter into its organization.[52]

The real difficulty arises in connection with an independent worker who, for example, produces commodities which he sells directly to consumers.[53] Even Wright concedes that the autonomy of such "independent direct producers characterized by a 'unity of conception and execution'" "may be a rather romantic image of the petty bourgeoisie":

> The contrast between independent producers (self-employed artisans, craftspersons, shop-keepers, farmers, etc.) with such autonomy and proletarian wage-labourers without such autonomy may simply be incorrect. [S]elf-employed petty-bourgeois producers may have little choice over how they produce or, in some circumstances, even over what they produce. Their options are constrained by markets, by credit institutions, by long-term contracts with capitalist enterprises, and so on.[54]

Indeed, Wright must also concede that even in the absence of any direct capital-labor relationship, "*some* petty bourgeois...will actually be exploited by capital (through unequal exchange on the market) because they own such minimal means of production.... Exploitation status, therefore, cannot strictly be equated with self-employment/wage-earner status."[55] But if, with regard to such controlling dimensions of class as exploitation, domination, dependence, alienation, income, and insecurity, the "semi-proletarianized self-employed (proletarian subordination within petty-bourgeois production)"[56] are virtually indistinguishable from employees,[57] the chief

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impediment to assimilation of the two must lie in the isolation and atomization of the self-employed. This socioeconomic location entails the absence of both a tangible exploiter[58] and co-exploited workers whom it is feasible to join in confronting the common source of exploitation.[59] To the extent, however, that the current trend toward casualization of the labor force is more than a cyclical phenomenon, even this distinguishing feature of self-employment may become muted and blurred.

One recent approach to demarcating the status of the self-employed seeks to cut the Gordian knot of class analysis. Taking as its point of departure a Weberian market position perspective, it argues that the supply and demand for anyone's services are much more determinative than ownership of the means of production:

> Owning property, whether a professional practice or a shop, owning the means of production, can hardly be important in and of itself in assuring one control over one's economic fate and one's work. Surely the more critical matter is the relationship one has to the market, capitalist or otherwise. When one's goods or services are so valuable on the market as to make consumers supplicants, then one can exercise considerable control over the terms, conditions, content, and goals of one's work. But when one's goods or services are not in heavy demand, then one can only be a desperate supplicant of indifferent consumers or employers. If one concedes the critical significance of position in the market, then whether one is employed or self-employed ceases to be a serious issue. ... Given a strong position in the market, one can be employed and nonetheless "write one's own ticket." [T]he very concept of self-employment is misleading in a market economy. In a market economy one's labor is a commodity whether one sells it to an employer or to a customer. [I]t might be well to make the assumption that, when one is self-employed, one is not independent but rather operating a franchised trade, the terms of the franchise varying with the institutions that structure one's place in the market.[60]

Although this approach purports to lead to the express dissolution of the distinction between employees and self-employees at the end of the spectrum where all manner of workers with the greatest bargaining power become independent, it also implies the breakdown of the categorical

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divide where self-employed and employees are powerless. But this "monetary exchange asymmetries" approach[61] tends to blur the distinction between market relations and capitalist-labor domination.[62] At some points during the business cycle and in some places it may be true that "[t]he indispensable man, like the indispensable commodity, commands the high price," in which case "the employee is very independent and must be placated by an almost obsequious attitude on the part of the employer."[63] The question, however, is whether the extraordinary character of such a constellation of market forces among employees makes this analysis fruitful.[64]

An important empirical-historical task is sorting out those among the formally self-employed who were evicted by an "economy of 'poverty'" from a wage-labor market on which they could no longer successfully compete.[65] In an "act of desperation,"[66] such "'workers have had to buy their jobs.'"[67] And the jobs that they "buy" are largely substandard, which may account for the gap in incomes in nonprofessional occupations[68] as between the self-employed and their employee counterparts.[69] Because a significant component of nominal self-employment consists of such refugees and expellees from the traditional employment relationship,[70] the self-employment rate among persons in poverty working fulltime and yearround is twice as high (13.0 per cent) as the overall self-employment rate among the full-time working population (6.25 per cent).[71]

To this group in particular the claim applies that "one of the major attractions of self-employment is that its duration is not dependent upon the will of an employer."[72] Yet the question must still be answered as to why employers are not willing to sustain the underemployment that the self-employed accept. The answer may run as follows: employers might be willing to do so if they had no capital to amortize and could pay their employees on a share basis--that is, if they had no fixed costs.[73] Steinmetz and Wright misstate this question when they argue that acceptance of the claim that the income of the self-employed is lower than that of employees is incompatible with the view of self-employment

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as a flight from low-wage employment.[74]

The crucial missing link is that because of institutional wage rigidity, it is not possible for employees, beyond certain narrow limits, to bid down wages in an effort to retain employment.[75] For this reason it frequently is the case that "the unemployed can drive down wage rates and secure employment only by setting up as independent entrepreneurs."[76] The real significance of this highly touted countercyclical role of self-employment[77] can be gauged by the fact that it is functionally equivalent to suspending minimum wage and maximum hours laws during depressions. After ejection from the formal wage-labor sector, such workers might, to the extent that they are perceived as selling a product rather than their labor, be able to avoid the social opprobrium associated with wage-cutting:

> It does not require any romanticism about solidarity to suggest that competing for an existing job by undercutting the wage might be seen as demeaning, whereas selling off your full load of halibut at the market-clearing price, whatever it may be, would carry no corresponding overtone of betrayal or self-abnegation.[78]

Unions, however, have traditionally not found the transmogrification persuasive.[79] In this disbelief they are supported by the so-called backward-bending supply curve of labor. Although this model is generally used to explain why an increase in wages may reduce the supply of labor,[80] it is also available to explain why during depressions a decline in wages may call forth an increase in supply.[81] At those times of distress, two phenomena that are otherwise occluded or deemed special cases emerge more clearly. One is that the labor market may be honeycombed with "forced sales."[82] The other is that those who respond 'perversely' to falling prices by offering still more should be assimilated to the class of laborers. No fruitful reconceptualization of self-employment can result from an analysis that, by failing to crystallize out what is essential to self-employment, makes it impossible to distinguish the real from the pseudo-self-employed. One such prototypically neoclassical approach[83] argues:

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> Conceptually, self-employment can be considered as disintermediation in the labor market. Firms function as intermediaries and receive profit by taking the differential between what a customer pays for the service or good and what the firm pays for its labor and other costs. By selling labor directly to the customer (i.e., self-employment), they can reap part of the profit. Thus, labor increases its income.[84]

Disintermediation would make sense only where the employer serves merely as a kind of employment agency, somehow creating a market niche that secures it arbitrage profits. Temporary agencies and "employee leasing" may be contemporary examples of such arbitrage.[85] If the employees being shunted back and forth between these lessor and lessee entities could acquire the information required to break through the arbitragers' monopoly, they could presumably capture part of "the differential." But in the typical case, where the employer owns the means of production, self-employment would be of no use to a would-be former employee unless he had accumulated enough savings to replicate the employer's capital stock. Absent such means of production, the newly minted self-employed would, ceteris paribus, be working at a much lower level of productivity, which would, in turn, generate a much lower income for her. Alternatively, such a pseudo-self-employed worker would find the conditions of heteronomy reproduced in a different form.

Questionable, by way of contrast, is whether, at least in the context of the debate concerning class position, any important economic or sociological insight is gained by explaining why some highly compensated self-investors in concentrated human capital such as physicians or lawyers may be in practice by themselves or employed by or associated with a hospital or firm.[86] It seems doubtful--however these professions are classified--whether such locations have much in common with the historical controversies over class structure and the position of a petty bourgeoisie as a third force.

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NOTES

1. CHRISTIAN BAUDELOT, ROGER ESTABLET, & JACQUES MALEMORT, LA PETITE BOURGEOISIE EN FRANCE 231 (1981 [1974]).

2. KARL MARX, ZUR KRITIK DER POLITISCHEN ÖKONOMIE (MANUSKRIPT 1861-1863), in II:3, text pt. 6 KARL MARX [&] FRIEDRICH ENGELS, GESAMTAUSGABE (MEGA) 2181 (1982). This manuscript used to be known as THEORIES OF SURPLUS VALUE.

3. *See, e.g.*, 1 HENRI STORCH, COURS D'ECONOMIE POLITIQUE 279 (J. B. Say ed. 1823 [1815]): "Souvent un ouvrier possède un petit capital suffisant pour acheter des outils et des matières, et pour subsister jusqu'à ce qu'il puisse porter son ouvrage au marché. Quand un pareil ouvrier travaille pour son propre compte, il est à la fois entrepreneur, capitaliste et ouvrier." *See also* JAMES MILL, ELEMENTS OF POLITICAL ECONOMY (3d ed. 1826 [1821]), *reprinted in* JAMES MILL, SELECTED ECONOMIC WRITINGS 203, 228 (Donald Winch ed. 1966): "The labourer is sometimes the owner of all the capital which his labour requires. ... In the greater number of cases...the labourer is one person, the owner of the capital another. [T]he commodity, which was produced by the shoemaker, when the capital was his own, belonged wholly to himself, and constituted the whole of his reward, both as labourer and capitalist."

4. RICHARD CANTILLON, ESSAI SUR LA NATURE DU COMMERCE EN GÉNÉRAL 52 (Henry Higgs ed. 1931 [1755]) (written between 1730 and 1734).

5. *Id.* at 54.

6. *Id.*

7. Ricardo, whose austere modeling of capitalism included the three mutually exclusive classes of laborers, capitalists, and landowners, was the most radical. On Marx's methodological abstractions in this regard, see 3 KARL MARX, DAS KAPITAL, in 25 MARX-ENGELS WERKE ch. 52 (1964 [1894]); Abram Harris, *Pure Capitalism and the Disappearance of the Middle Class*, 47 J. POL. ECON. 328 (1939).

8. ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 65-66 (Edwin Cannan ed. 1937 [1776]).

9. JOHN STUART MILL, PRINCIPLES OF POLITICAL ECONOMY 238-39 (W. Ashley ed. 1921 [1848]).

10. *Id.* at 240-41. ALFRED MARSHALL, PRINCIPLES OF ECONOMICS 243-44 (1952 [1890]), regarded the "village artisan who...makes things on his own account for sale to his neighbours" as "rare."

11. F. TAUSSIG, WAGES AND CAPITAL: AN EXAMINATION OF THE WAGES FUND DOCTRINE 111, 112, 71 (1896). Another late-nineteenth-century American economist did impute a "residual share" to wages but not in a sense implicating the assumption of risk relevant here. Francis Walker, *The*

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Source of Business Profits, 1 Q.J. ECON. 265, 282 (1887). For a critique, see GEORGE GUNTON, PRINCIPLES OF SOCIAL ECONOMICS 180-81 (1897).

12. Taussig received a law degree in addition to a doctorate in economics from Harvard in the 1880s. 3 JOSEPH DORFMAN, THE ECONOMIC MIND IN AMERICAN CIVILIZATION: 1865-1918, at 264-45 (1949). He was doubtless one of the only such dual-degreed academics at that time and perhaps even the first in the United States.

13. TAUSSIG, WAGES AND CAPITAL at 72-73.

14. An early American political economist made the same point when he stated that "the pedler with his pack, who makes wages only, although employed in the same business which, on a large scale, produces what are usually termed profits," also takes the risk of success. 1 H. CAREY, PRINCIPLES OF POLITICAL ECONOMY 325 (1837).

15. *See* Marc Linder, *Towards Universal Worker Coverage under the National Labor Relations Act: Making Room for Uncontrolled Employees, Dependent Contractors, and Employee-Like Persons*, 66 U. DET. L. REV. 555 (1989).

16. *See* Arthur Hadley, *Profits*, in 3 CYCLOPAEDIA OF POLITICAL SCIENCE, POLITICAL ECONOMY AND OF THE POLITICAL HISTORY OF THE UNITED STATES 375, 376 (John Lalor ed. 1884) ("once engaged in business he cannot go out of it when he fails to make the expected profit, without sacrificing a great part of his invested capital and losing the chance of ever again doing business on the same terms"). This reasoning later supported a disqualification for unemployment compensation benefits to unemployed workers who become self-employed on the ground that the need to valorize the invested capital was inconsistent with unavailability for work: "The fact that a man has set himself up in business implies an intention to continue operations, particularly where, because of investment of capital...it would be difficult or to his economic disadvantage to wind up his business immediately." 2 Fed. Security Agency, Unemployment Compensation Interpretation Service: Benefit Series 326, 329 (944-Minn. A, Decision of App. Tribunal, Sept. 14, 1938). In order to gauge a claimant's subjective intent--that is, whether he was merely trying to eke out an existence while intending to return to the labor market--some states looked to the size of the business, including the capital stock, in preference to a claimant's own allegations. *See id.* at 2234, 2237 (2225-Mich. R, Decision of App. Bd., June 15, 1939); U.S. Employment & Training Adm., Benefit Series Service--Unemployment Insurance, Rep. No. 290-73 (July 1974) (TPU-415.15-69, Idaho A, No. 390-74, Feb. 22, 1974) (worker with no capital investment not disqualified as self-employed). *But see id.* at 1480, 1481 (1772-R.I. A, Decision of Referee, Feb. 22, 1939) ("the making of an investment in the past cannot bar a claimant from receiving compensation if totally unemployed").

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17. In this sense it is therefore wrong to assert that "[u]ncertainty of success cannot well affect the wages of common labour, since no man, unless he be to a certain extent a capitalist, unless he have a fund for his intermediate support, can devote himself to an employment in which success is uncertain." NASSAU SENIOR, AN OUTLINE OF THE SCIENCE OF POLITICAL ECONOMY 209 (1939 [1836]).

18. In a questionnaire he formulated in 1880 to be used as the basis of a statistical investigation of the French working class, Marx posed this question: "[*A*]*t what terms* are your wages paid? in other words how long a credit must you give to your master before receiving pay for work done?" Karl Marx, *Questionnaire for Workers*, in I:25 KARL MARX [&] FRIEDRICH ENGELS, GESAMTAUSGABE (MEGA) 199, 204 (1985 [1880]).

19. A turn-of-the-century American political economist combined the positions of Cantillon and Taussig by emphasizing that "wages may also be received by small independent producers who perform their own labor." CHARLES BULLOCK, THE ELEMENTS OF ECONOMICS 271 (2d ed. 1913 [1905]).

20. *See* ERIK WRIGHT, CLASS STRUCTURE AND INCOME DETERMINATION 95 (1979).

21. For very brief interpretations of Smith's view, see SAMUEL HOLLANDER, THE ECONOMICS OF ADAM SMITH 103-104, 115 (1976 [1973]); MAXINE BERG, THE AGE OF MANUFACTURES: INDUSTRY, INNOVATION AND WORK IN BRITAIN 1700-1820, at 59-64, 278-86 (1985).

22. FRITZ MARBACH, THEORIE DES MITTELSTANDES 67 (1942).

23. MARX, ZUR KRITIK DER POLITISCHEN ÖKONOMIE (MANUSKRIPT 1861-1863) at 2180-81. In their dogmatic Marxist work, Baudelot et al. have failed even to reproduce the dogma correctly by arguing syllogistically that because (1) the petty bourgeois "vivent d'une rétrocession de plus-value" and (2) artisans and farmers "n'EXPLOITENT personne et ne sont EXPLOITÉS par personne"; therefore, (3) the petty bourgeoisie does not include artisans or paysans. BAUDELOT, ESTABLET, & MALEMORT, LA PETITE BOURGEOISIE EN FRANCE at 41, 14, 221.

24. MARX, ZUR KRITIK DER POLITISCHEN ÖKONOMIE (MANUSKRIPT 1861-1863) at 2155.

25. A very plastic description of the efforts of one group of self-employed to maintain their hybrid status can be found in the position that physicians in the Am. Med. Ass'n took until recently:

> The AMA opposed any one else, such as an investor, making a return from physicians' labor. The AMA was saying...that there must be no capital formation in medical care (other than what doctors accumulated), that the full return on physicians' labor had to go to physicians, and consequently, by implication, that if medicine required any capital that

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> doctors themselves could not provide, it would have to be contributed gratis by the community, instead of by investors looking for a profit.

PAUL STARR, THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE 216 (1982).

26. John Wilson, *The Political Economy of Contract Farming*, REV. RADICAL POL. ECON., Winter 1986, at 47, 56. For an early example of a contract farming relationship in which Campbell Soup Co. treated carrot farmers as de facto piece-rate workers, see Campbell Soup Co. v. Wentz, 172 F.2d 80 (3d Cir. 1948).

27. *See* ARONSON, SELF-EMPLOYMENT at 43; Marc Linder, *Self-Employment as a Cyclical Escape from Unemployment: A Case Study of the Construction Industry in the United States During the Postwar Period*, 2 RESEARCH IN SOC. OF WORK: PERIPHERAL WORKERS 261, 262 (1983). *See also* STEWART CLEGG, PAUL BOREHAM, & GEOFF DOW, CLASS, POLITICS, AND THE ECONOMY 81 (1986) ("craftspeople who purvey manual skills which might otherwise be for sale as wage-labour").

28. ARONSON, SELF-EMPLOYMENT at 118-19.

29. *Id.* at xi.

30. *Id.* at ix.

31. *Id.* at xi. This is Schumpeter's narrow, not Frank Knight's broader, sense. *See* DAVID EVANS & LINDA LEIGHTON, SELF-EMPLOYMENT SELECTION AND EARNINGS OVER THE LIFE CYCLE 3 (U.S. Small Bus. Adm., Dec. 1987): "Self-employed workers are certainly Knightean entrepreneurs because they have control over their workplace and they bear risk as residual income claimants." Evans and Leighton's *petitio principii* is obvious: the whole point of analysis is whether in fact these criteria are met.

32. ARONSON, SELF-EMPLOYMENT at xii.

33. *See* Daniel Bertaux & Isabelle Bertaux-Wiame, *Artisanal Bakery in France: How It Lives and Why it Survives*, in THE PETITE BOURGEOISIE: COMPARATIVE STUDIES OF THE UNEASY STRATUM 155-81 (F. Bechhofer & B. Elliott ed. 1981); Carl Cuneo, *Has the Traditional Petite Bourgeoisie Persisted?* 9 CANAD. J. SOC. 269, 293-94 (1984); Harriet Friedmann, *Patriarchal Commodity Production*, SOCIAL ANALYSIS, Dec. 1986, at 47-55.

34. In fact, the BLS/BOC data on the unincorporated self-employed already include partners in such a way that it is not possible to go behind and to correct them. *See* MANUAL at D6-24.

35. Similarly, BEVERLY LOZANO, THE INVISIBLE WORK FORCE: TRANSFORMING AMERICAN BUSINESS WITH OUTSIDE AND HOME-BASED WORKERS 11 (1989), who correctly observes that the BOC cannot ask or answer the subtle questions (concerning independence, autonomy, access to profits, number of clients, who controls the pace of work, sets the price, and

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owns the equipment) necessary to identify a third category of those she calls "informal workers," fails to see that the same deficiencies render the prevailing dichotomy between the self-employed and employees equally unsubstantiated.

36. INTERNATIONAL LABOUR OFFICE, THE PROMOTION OF SELF-EMPLOYMENT 1-2 (Int'l Lab. Conf., 77th Sess., Rep. VII, 1990)

37. Catherine Hakim, *Self-Employment in Britain: Recent Trends and Current Issues*, 2 WORK, EMPLOYMENT & SOCIETY 421, 434 (1988).

38. George Steinmetz and 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, 979 (1989). Aronson's claim that Steinmetz and Wright "have explained the rise in nonfarm self-employment as an anticapitalist development" is wholly without foundation. *See* ARONSON, SELF-EMPLOYMENT at 118.

39. 3 MARX, DAS KAPITAL at 882. *See also* THOMAS CARVER, PRINCIPLES OF POLITICAL ECONOMY 385-86 (1919) ("In many small enterprises the independent business man does his own work and is therefore a laborer...and furnishes his own capital and is therefore his own capitalist").

40. 3 MARX, DAS KAPITAL at 882.

41. In fact, since the self-employed presumably work with an inferior capital stock, the level of self-exploitation may even exceed that obtaining in the dominant sector.

42. Steinmetz and Wright, *The Fall and Rise of the Petty Bourgeoisie* at 980.

43. *See* Marc Linder and John Houghton, *Self-Employment and the Petty Bourgeoisie: Comment on Steinmetz and Wright*, 96 AM. J. SOC. 727, 729 (1990). Marx himself merely names--rather than solves--the problem when he says that nonemploying independent artisans or farmers sell commodities rather than their labor. MARX, ZUR KRITIK DER POLITISCHEN ÖKONOMIE (MANUSKRIPT 1861-1863) at 2179.

44. This essence is expressed in French and German, where the self-employed are called *indépendants* and *Selbständige*, respectively. *See* 10/1 JACOB GRIMM & WILHELM GRIMM, DEUTSCHES WÖRTERBUCH 494 (1905) ("selbständig" as adjective: independent in economic or legal sense). Germans have eschewed such linguistically available coinages as *Selbstbeschäftigte, Selbstbeschäftiger, Selbstangestellte, Selbstarbeitgeber*, or *Selbstarbeitnehmer*. The mere fact that a linguistic community constructs some workers as *independent*, however, does not explain that independence. As a French legal scholar noted, defining economic dependence by reference to receiving income for an activity compensated by others is "fuzzy" "in contemporary societies where practically all the citizens are economically dependent on one another." JEAN-JACQUES DUPEYROUX, SÉCURITÉ SOCIALE 244 (1967).

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45. Frank Bechhofer & Brian Elliott, *The Voice of Small Business and the Politics of Survival*, SOCIOLOGICAL REV., Feb. 1978, at 57, 61.

46. EMIL GRÜNBERG, DER MITTELSTAND IN DER KAPITALISTISCHEN GESELLSCHAFT: EINE ÖKONOMISCHE UND SOZIOLOGISCHE UNTERSUCHUNG 168 (1932).

47. If, moreover, half of all men shifting from employee status to self-employment also change their industry or occupation, EVANS & LEIGHTON, SELF-EMPLOYMENT SELECTION AND EARNINGS at 3, it is questionable whether the capital they bring is competitively relevant. WILLIAM FORM, DIVIDED WE STAND: WORKING-CLASS STRATIFICATION IN AMERICA 30-31 (1985), adduces work autonomy, property ownership, above-average occupational skills, and favored ascriptive status (i.e., male, white, native-born) as the characteristic resources of the self-employed. Only the first two distinguish the self-employed from employees, whereby autonomy derives largely from ownership of the means of production (and unusual skills, which may be viewed as human capital).

48. MARCIA LEVY, SELF-EMPLOYMENT IN THE COVERED WORK FORCE 22 (Soc. Sec. Adm. Staff Paper No. 19, 1975), exaggerated in stating that the data confirm "[t]he typical picture of self-employed individuals as farmers, shopkeepers, or professional persons engaged in their own practice."

49. George Steinmetz & Erik Wright, *Reply to Linder and Houghton*, 96 AM. J. SOC. 736, 738-39 (1990).

50. It is not even in law--let alone socioeconomically--the case that the "labor-only self-employed" are in reality employees only if they "sell their labor power only to one contractor or capitalist rather than to a variety of contractors and...do not sell their products directly to consumers." Steinmetz & Wright, *Reply to Linder and Houghton* at 739 n.5. *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, 469-71 (1986-87).

51. *Id.* at 469-70.

52. *See* MARC LINDER, THE EMPLOYMENT RELATIONSHIP IN ANGLO-AMERICAN LAW: A HISTORICAL PERSPECTIVE 11-14 (1989).

53. Marx refers to the "independent artisan, who works for stray customers." MARX, ZUR KRITIK DER POLITISCHEN ÖKONOMIE (MANUSKRIPT 1861-1863) at 2133. For a schematic explanation of various outwork and homework relationships, see LINDER, THE EMPLOYMENT RELATIONSHIP IN ANGLO-AMERICAN LAW at 6-11; GERALD JAYNES, BRANCHES WITHOUT ROOTS: GENESIS OF THE BLACK WORKING CLASS IN THE AMERICAN SOUTH, 1862-1882, at 26-29 (1986).

54. ERIK WRIGHT, CLASSES 53 (1985).

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55. *Id.* at 103 n.39. For mathematical proof of how unequal exchange can generate a division of nonemploying independent producers into exploited and exploiters, see JOHN ROEMER, A GENERAL THEORY OF EXPLOITATION AND CLASS 123-32 (1982); *idem, New Directions in the Marxian Theory of Exploitation and Class*, in ANALYTICAL MARXISM 81, 84-90 (J. Roemer ed. 1985 [1982]). For incisive criticism of Roemer's overall revision of Marx, see W. Anderson & Frank Thompson, *Neoclassical Marxism*, 52 SCI. & SOC. 215 (1988).

56. WRIGHT, CLASSES at 62 n.47.

57.

> Under circumstances in which the self-employed are economically insecure, it is difficult to claim that they are autonomous in their work, that they are truly free to make their own decisions and be their own bosses while surviving as well. ... If we think of the "free" artisan and shopkeeper in the same terms, we cannot fail to observe how penury, long hours, panicky fear of losing essential customers, and bankruptcy are commonly associated with the condition of self-employment.... Indeed, it might be argued that such oppressive conditions are typical of self-employment, success being the exception. Beggars and ragpickers, after all, are self-employed.

ELIOT FREIDSON, PROFESSIONAL POWERS: A STUDY OF THE INSTITUTIONALIZATION OF FORMAL KNOWLEDGE 124 (1986).

58. That is, other than the self-exploiter herself. Ontogeny recapitulates phylogeny here: just as it was once said that it was senseless for workers in a socialist state to strike against themselves, a self-employed worker would have to be schizophrenic to take action against herself. But then the hybrid model posits the self-employed as literally schizoid ("cut up into two persons").

59. "The self-employed are isolated workers who do not come together politically.... If the self-employed cannot act in their self-interest, they cannot link up with other employees to increase working-class political power." WILLIAM FORM, DIVIDED WE STAND at 263. *See also* William Form, *Self-Employed Manual Workers: Petty Bourgeois or Working Class?* 60 SOCIAL FORCES 1050, 1062-65 (1982) (self-employed are more conservative than employees). For a historical discussion of the reverse process--the integration of isolated workers into formal proletarian positions--in terms of organization and consciousness, see LINDER, EUROPEAN LABOR ARISTOCRACIES at 202-205.

60. FREIDSON, PROFESSIONAL POWERS at 124-25.

61. *See* WILLIAM REDDY, MONEY AND LIBERTY IN MODERN EUROPE: A CRITIQUE OF HISTORICAL UNDERSTANDING ch. 3 (1987).

62. For a critique, see Marc Linder, *What Is an Employee? Why It Does, But Should Not, Matter*, 7 LAW & INEQUALITY 155, 172 n.75 (1989).

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63. THOMAS CARVER, PRINCIPLES OF POLITICAL ECONOMY at 378-79, 402.

64. *See* Marc Linder, *Employees, Not-So-Independent Contractors, and the Case of Migrant Farmworkers* at 470-71.

65. *See* DIETER BÖGENHOLD, DIE SELBSTÄNDIGEN: ZUR SOZIOLOGIE DEZENTRALER PRODUKTION 218 (1985). TOM ELFRING, SERVICE SECTOR EMPLOYMENT IN ADVANCED ECONOMIES: A COMPARATIVE ANALYSIS OF ITS IMPLICATIONS FOR ECONOMIC GROWTH 137 (1988), mentions peddlers, shoe cleaners, small-scale retailers, and repairers as among those pushed into self-employment "because it is their only option." Or as Irving Leveson, *Some Determinants of Non-Farm Self-Employment*, MONTHLY LAB. REV., May 1968, at 11, 16, framed the issue, "a prerequisite for access to self-employment as a vehicle for social mobility may be the attainment of a minimum occupational level."

66. Harold Aurand, *Self-Employment: Last Resort for the Unemployed*, INT'L SOC. SCI. REV., Winter 1983, at 7, 9 (discussing coal miners in the 1930s).

67. JAMES WOOD, EMPLOYMENT EXPERIENCE OF PATERSON BROAD-SILK WORKERS, 1926-36: A STUDY OF INTERMITTENCY OF EMPLOYMENT IN A DECLINING INDUSTRY 32-33 (WPA Nat'l Research Proj. 1939), quoting SILK TEXTILE WORK ASSIGNMENT BOARD, REPORT UPON CONTRACT WEAVING IN THE RAYON AND SILK INDUSTRY 4 (mimeo. 4387, 1935) (latter document, according to RLIN, OCLC, and 546 NATIONAL UNION CATALOG: PRE-1956 IMPRINTS 156 col. 1 (1978), held only by John Crerar Library, which was folded into University of Chicago Library, which in turn sold document to Detroit Public Library, which lost it). *See generally*, ALFRED OXENFELDT, NEW FIRMS AND FREE ENTERPRISE: PRE-WAR AND POST-WAR ASPECTS 120-23 (1943). Truck and taxicab drivers are contemporary examples of workers who buy their vehicles in order to avoid unemployment. *See* Richard Peterson, John Schmidman, & Kirk Elifson, *Entrepreneurship or Autonomy? Truckers and Cabbies*, in VARIETIES OF WORK 181, 184, 190 (P. Stewart & M. Cantor ed. 1982). For another example of the flight of the unemployed into nominal self-employment, see U.S. BUREAU OF LABOR STATISTICS, IMPACT ON WORKERS AND COMMUNITY OF A PLANT SHUTDOWN IN A DEPRESSED AREA 18 (Bull. No. 1264, 1960). In Britain, too, it has been established that for some, "self-employment represents a second-best alternative to an employee job." While such "involuntary entrants...seek only to provide themselves with a job," even among the voluntary, some "seek[] only to 'own their own job.'" Catherine Hakim, *New Recruits to Self-Employment in the 1980s*, 97 EMPLOYMENT GAZETTE 286, 290, 291 (1989). *See also* JAMES TREBLE, URBAN POVERTY IN BRITAIN 1870-1914, at 47-49 (1979) (hawking as response to cyclical unemployment).

68. Even in the professions such as medicine and law, "[t]he relative status of the salaried and independent groups may be reversed during cyclical depressions when large numbers of previously salaried individuals may become unemployed and enter individual practice because they find it impossible to obtain salaried employment." MILTON FRIEDMAN & SIMON

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KUZNETS, INCOME FROM INDEPENDENT PROFESSIONAL PRACTICE 297 (1945). More recently, self-employed accountants, doctors, and lawyers, appear to have had higher earnings than their employee counterparts. *See* Eugene Becker, *Self-Employed Workers: An Update to 1983*, MONTHLY LAB. REV., July 1984, at 14, 18.

69. In this regard it is wrong that if the self-employed in hard times drive themselves and families harder, "[i]t is largely a private question as to how badly or how well they treat themselves in terms of hours and conditions of work." INTERNATIONAL LABOUR OFFICE, THE PROMOTION OF SELF-EMPLOYMENT 5 (Int'l Lab. Conf., 77th Sess., Rep. VII, 1990). Through the force of competition, such substandard labor conditions may have an impact on formal employees. Such entities have therefore often been called "'cockroach' shops." *See* WOOD, EMPLOYMENT EXPERIENCE OF PATERSON BROAD-SILK WORKERS, 1926-36 at 33.

70. As has long been recognized, a large or even increasing number of self-employed in a branch may indicate overcrowding rather than prosperity. *See* ANNETTE LEPPERT-FÖGEN, DIE DEKLASSIERTE KLASSE: STUDIEN ZUR GESCHICHTE UND IDEOLOGIE DES KLEINBÜRGERTUMS 19, 19 n.20 (1974).

71. *See* Kurt Bauman, *Characteristics of the Low-Income Self-Employed*, 40 INDUS. REL. RES. ASS'N PROC. 339, 340 (1987) (data include the incorporated self-employed). *See also* David Evans & Linda Leighton, *Some Empirical Aspects of Entrepreneurship*, 79 AM. ECON. REV. 519, 521 (1989) ("Poorer wage workers--that is, unemployed workers, lower-paid wage workers, and men who have changed jobs a lot--are more likely to enter self-employment...all else equal. These results are consistent with the view of some sociologists that 'misfits' are pushed into entrepreneurship").

72. JOSEPH PHILLIPS, THE SELF-EMPLOYED IN THE UNITED STATES 51 (1962).

73. MARTIN WEITZMAN, THE SHARE ECONOMY: CONQUERING STAGFLATION (1984), generalizes this claim to all employment.

74. *Reply to Linder and Houghton* at 737 n.2.

75. For a sketch of an explanation of this phenomenon emphasizing the central role of social norms, see ROBERT SOLOW, THE LABOR MARKET AS A SOCIAL INSTITUTION 28-50 (1990).

76. Lloyd Reynolds, *Cutthroat Competition*, 30 AM. ECON. REV. 736, 747 n.29 (1940).

77. *See* Martha Loufti, *Self-Employment Patterns and Policy Issues in Europe*, 130 INT'L. LAB. REV. 1, 17 (1991).

78. SOLOW, THE LABOR MARKET AS A SOCIAL INSTITUTION at 39.

79. *See infra* ch. 5.

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80. *See, e.g.*, MICHAEL PIORE, BIRDS OF PASSAGE: MIGRANT LABOR AND INDUSTRIAL SOCIETIES 95-98 (1979).

81. *See* Otto Nathan, *Favorable Economic Implications of the Fair Labor Standards Act*, 6 LAW & CONTEMP. PROBS. 416, 417 (1939); PAUL SAMUELSON, ECONOMICS 577 n.2 (9th ed. 1973 [1948]).

82. 4 PARL. DEB. H.C. (5th ser.) 382 (1909) (Mr. Balfour); Robert Hale, *Minimum Wages and the Constitution*, 36 COLUM. L. REV. 629, 630 (1936).

83. For criticism of the neoclassical analysis of the labor market, see SOLOW, THE LABOR MARKET AS A SOCIAL INSTITUTION.

84. Steve Balkin, *Self-Employment Assistance Programs in the United States Targeted to Low-Income Disadvantaged People*, in 40 INDUS. REL. RES. ASS'N PROC. 356, 359-60 (1987). *See also* STEVE BALKIN, SELF-EMPLOYMENT FOR LOW-INCOME PEOPLE (1989).

85. *See generally*, BELOUS, THE CONTINGENT ECONOMY.

86. David Rabban, *Distinguishing Excluded Managers from Covered Professionals under the NLRA*, 89 COLUM. L. REV. 1775, 1845, n.327 (1989), sharing Freidson's perspective, argues that "[w]hen demand for their services is high, salaried professionals often have substantially more autonomy than self-employed 'free' professionals who have difficulty attracting clients or who are dependent on only a few clients."

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