
***FAREWELL
TO THE
SELF-EMPLOYED***

*Deconstructing a Socioeconomic
and Legal Solipsism*

MARC LINDER
//

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Conclusion: Dissolution and Reconstitution

[S]ome of these so-called independent contractors are about as independent as Charley McCarthy without Edgar Bergen.¹

Even if complainant, in the eyes of the law, is an independent contractor, he is in the same practical position as any poor man hunting or holding part time service as an employe.²

When the majority of the constitutional committee convening in Frankfurt on Main in 1848 recommended to the plenum that the franchise be limited to the self-employed (*Selbständige*), thus excluding all artisan apprentices, workers, messengers, and day laborers, Bruno Hildebrand, a professor of economics, argued that such a step would discriminate against half of the male population as not being emancipated. He criticized the "conceptualization [*Begriffsbestimmung*]" of the term *selbständig* itself because "[p]recisely the persons whom it [the constitutional committee] excludes are largely economically more independent [*selbständiger*] than those whom it admits to suffrage. It is...the many small masters who are down and out, are in want, and currently must qualify as proletarians."³ The greater half of the masters, whose incomes were lower than that of the lowest daily wage in German factories, were "unfortunately nothing more than proletarians, who just like the day laborers, live from hand to mouth."⁴ Hildebrand then posed a series of rhetorical

questions designed to underscore the spurious and threadbare character of the alleged bright line between proletarians and self-employed workers:

[W]ho is more independent [*selbständig*], who is economically in a more independent position? the individual small master shoemaker, who with all his belongings belongs to the leather dealer and depends on the benevolence of his creditor, or the journeyman artisan, who at any moment can abrogate his contract? Who is more independent, the thousands of master weavers, who fetch their yarn for work from their patron every week and with their whole existence are tied to his favor, or the factory workers, who in rivalry with the machines have practiced their strength and can enter new contracts everywhere?⁵

Tailoring his analysis to a specific context, Hildebrand clearly articulated the issue of whether any principled political justification underlay or flowed from a formal but hollow and misleading economic distinction between employees and the self-employed. The transition to universal adult suffrage in many societies has witnessed the same or similar debates⁶ that triggered the conclusion that degrees of formal economic dependence were irrelevant to the entitlement to participation in political processes. But the controversy over the converse issue--whether the economically allegedly more independent group should be protected by the same socioeconomic measures that employees have secured--has proved to be a more protracted one. Yet as transposed and adapted to this other arena, the old arguments for exclusion and segregation continue to make little sense.

This claim can best be probed by examining the post-World War II debate over the inclusion of the self-employed in the social security old-age and survivors insurance system. That brisk ideological opposition to the assimilation of the self-employed has yielded to acknowledgment of the broad interpenetration of employees and self-employees offers strong support for the argument that the socioeconomic basis of self-employment has itself undergone a transformation. In the congressional discussion of coverage of the nonfarm, nonprofessional self-employed in 1949-50, the ranking

Republican on the Senate Finance Committee, Senator Millikin, spoke for those who insisted on the existence of a chasm between employees and self-employers:

They have a choice of whether they want to become workers or whether they want to be proprietors. If they choose to be proprietors, they choose to take the opportunity for larger gains than the worker gets and suffer the chance of larger losses. Is there not an inconsistency?

...

On the theory that it is somewhat fallacious to say that an individual employee can bargain at arm's length with large employers. And there was a social need for giving the employee this kind of protection. When you get into the field of the self-employed and independent contractors, you are bringing the benefits of the system to a category of people who...come in under an entirely different philosophy.

...

A man...has to make a fundamental decision. He is either going to take what security he can get out of being an employee, with whatever certainty there is of getting a wage envelope at the end of the week, or he is going to take his chances as an employer or as an independent contractor, with the benefits that accompany that, when there are any, and take the losses when they occur.⁷

To Millikin's controlling, albeit abstract, principle of risk his interlocutors counterposed the practical problem of "whether the self-employed who have reached the age of retirement without resources, and there will be a considerable proportion of them--it is in the very nature of the competitive economy that there are failures as well as successes--...are going to have something better than charity."⁸ The confrontation dissolved, however, when Millikin conceded that "a fellow who has misjudged those risks can be just as needy as an industrial worker,"⁹ and his opponents were constrained to agree with him that conferring coverage on the self-employed represented a break with the original principles of social security.¹⁰

This mutual accommodation, which facilitated the admission of the urban nonprofessional self-employed in 1950,¹¹ was a watershed because it marked a definitive recognition of the socioeconomic reality of a blurred frontier between employees and self-employed in terms of income

and security and an abandonment of fundamentalism concerning the tie between risk and self-responsibility. Indeed, one of the practical points advanced in favor of inclusion of the self-employed in the old-age pension program was precisely the fact that the frequent movement between employee and self-employee status deprived such workers of part of their pension credits.¹² To be sure, the debate flared up again briefly over the admission of farmers,¹³ lawyers,¹⁴ and physicians¹⁵ in the 1950s and 1960s. But these rearguard actions were doomed; the principle of assimilation had been established. Promotion by the state of accelerated circulation among the unemployed, self-employed, and employees beginning in the 1980s strikingly demonstrates just how far the ideology of self-contained self-employment has been eroded during the postwar period.

Ironically, in spite of this sea change, even some Marxists woodenly champion shibboleths of a class taxonomy that operate to fracture and disable a more united front of workers precisely when the current phase of economic restructuring is sapping whatever vitality the distinction may once have had. Many are the ways in which employers can cause their dependent workers to appear to be working on their own. Imposing entrepreneurial-like risk on workers is one particularly obfuscating way, and since the risk of not being offered any work and hence of not receiving any income has been crystallized out by economists over the past 250 years as the most prominent negative hallmark of self-employment,¹⁶ it is worth dwelling on the manipulability of its form and the frailty of its substance.

Private duty nurses, for example, may work directly for those (or the families of those) to whom they tend, or they may work through a registry. The BOC automatically classifies all such workers as self-employed rather than as employees of the registry (let alone of the families).¹⁷ But what in fact is the difference between such nurses and those who are on the payroll of a nursing agency that does not pay the nurses for their waiting time¹⁸ (whether spent at the agency or at home)? Indeed, as "the temporary help industry" has come to "provide[] an alternative to traditional

sources of personnel for temporary duty--nursing registries which find assignments for self-employed nurses for a fee and on-call pools operated by hospitals,"¹⁹ this equivalence is no longer speculative. Although even the risk of loss of income (rather than of capital) is not a rigorous criterion of independence,²⁰ unilateral imposition of such risk by employers is so arbitrary as to deprive it of any significance at all as a distinguishing characteristic of independence.²¹

Risk, however, no longer seems to be necessary to identify the self-employed when a federal trial judge can hold--and three federal appellate judges can take seriously--the claim that undocumented Mexican laborers whom a gold and silver mining firm housed in its camp and paid a daily flat-rate wage invariant to productivity might not be the company's employees,²² or a congressman can introduce a bill to amend the IRC so as to classify as "self-employed" non-English speaking, unskilled Vietnamese seafood processing workers merely because they are paid on a piece rate and "frequently will move around a state or even the country as they perceive more desirable employment opportunities."²³ Far too little appreciated is how arbitrarily or culturally constructed the designation may be.²⁴

It is time to recognize that the self-employed as a "class of worker"--in contradistinction to the petty bourgeoisie as a social class²⁵--do not constitute a theoretically coherent category. The identification of the two has been too facile.²⁶ Those who have been labeled self-employed are not identical with the petty bourgeoisie, who include small capitalists; in addition, many of these self-employed are not part of the petty bourgeoisie at all but are merely isolated workers. If analysis of the petty bourgeoisie as a political-economic actor is to retain its vitality,²⁷ it must be grounded in a more intelligible conceptual framework.

Parsimony of logic, overall coherence of analysis, and the ability to make sense of the political economy of work and class suggest that if the notion of *self*-employment is to live up to its solipsistic aspirations, it must exclude all those who, because they employ and exploit others,²⁸ are not economically self-sustaining.²⁹ But even this criterion is

inadequate because few of those who nominally meet this solipsistic standard display the requisite substantive characteristics.³⁰ In particular, they must own enough physical or human capital to enable them to avoid the exploitation and control or domination characteristic of the antagonistic wage labor-capital relationship. They must, in other words, be independent enough to avoid having to sell and place at the disposal of others their labor power. This independence of the labor market extends to the process of production itself, where owning and possessing the skill to operate their own means of production places them beyond capital's grasp.

To spell out these criteria is virtually to explain why a historically dwindling number of workers can meet them. The semi-solipsistic world of simple commodity production as situated within the capitalist mode of production, to the extent that it ever made socioeconomic sense,³¹ was more meaningful when the size and productivity of the competing capitalist entities had not yet made a mockery of the self-employed's independence. As the capital threshold for successful competition--that is, the minimum optimal scale for taking advantage of minimum unit costs³²--rose, it became increasingly implausible that any solo worker could both accumulate that amount of capital and set in motion and valorize it alone.³³ Although market niches always crop up for small entities in the interstices between large-scale capitalist firms, eventually they too become subject to the economies of scale that drive them into ever more diminutive kinds of economic activity.³⁴ To be sure, the self-employed are not would-be steel producers stymied by the cost of competitive technology. Yet to elude the snares of direct or indirect exploitation and dependence, self-employed workers would literally be required to locate an enclave in which they could shelter themselves from oligopolistic landlords, suppliers of materials or equipment, buyers, and creditors, who, through market (or quasi-production) relations, mimic the exploitation of a traditional capitalist employer.³⁵

The very names used in reference to the self-employed suggest a degree of economic well-being which does not correspond with the facts. The term "independent" is a good example of this: "Independent proprietor," "independent contractor," "independent businessman"—the only thing these men are independent of is an employer. In every other respect their competitors, customers, the wholesaler, banker, landlord, etc.—dictate to the small businessman much as would an employer. They do so somewhat less directly perhaps. But by limiting the amount of business he does, by influencing the prices he charges, by determining the margin of profit he shall retain for himself, or by granting or withholding credit, they make him quite as dependent economically as is the person who works for others.³⁶

Doubtless workers do exist who are "remote from the classic social predicament to which Marx, outstandingly, had drawn attention."³⁷ Someone who makes jewelry by hand and sells it on the street might fit the description, particularly if he faced no large-scale capitalist competitors. Whether this jewelry producer-merchant's income exceeds or falls below the range of working-class incomes is not an essential determinant of his class position. But the fact that even relatively solvent economic agents may require their employers, contractees, or customers to finance the purchase of their means of subsistence through installment payments³⁸ suggests that income as a derivative, market-oriented criterion of class may be a sensitive indicator of the progressively diminished class scope of economic independence. Income is, moreover, a means of distinguishing the successful self-exploiters from the failures. The former manage to generate supra-working-class income by virtue of replicating (or perhaps even surpassing) the kind of exploitation to which they would be subject as outright employees and appropriating at least part of their labor that would have been appropriated by their capitalist employers; the latter do not even benefit from their self-exploitation.

Ironically, however, from the perspective of the propagandistic drawing power of the ideology of self-employment as an escape from oppressive employment into self-directed entrepreneurialism, it is precisely this linchpin of self-employment as ideal type that would daunt and dissuade potential entrants: that success presupposes the

reproduction of the most disheartening aspects of employment. In particular, mimetic self-exploitation preserves the epochal distinction between the employer's time and the employee's own time that presumably underlies the romantic yearning to escape the boss's time clock.³⁹

The thrust of this discussion suggests that the category of self-employed is grossly overinclusive and should be disbanded and then replaced by several distinct constituents, who should be redistributed among other classes.⁴⁰ The reform proposal outlined here is meant to serve only as a modification of the prevailing socioeconomic taxonomy; that is, it is designed to guide data collecting for the purpose of class analysis.⁴¹ The proposal is not designed to promote a yet more subtle set of legal classifications or dichotomies.⁴² Instead of a more refined test to identify and segregate dependent workers for purposes of protective statutes,⁴³ the chief desideratum in this area of the law is decommissioning the dysfunctional distinction between employees and self-employees altogether.⁴⁴

The first comprises small capitalist-employers, who should not be viewed as *self-employed* because their employees contribute to the reproduction of their capital and income.⁴⁵ This group is part of the capitalist class, and its activities should not be studied as labor market phenomena.

The second group encompasses the 'independents,' whose human and cultural capital confers upon them their special status. Yet even these professionals' independence has been contested:

First, self-employment may not even offer a living. ... 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. In the case of medicine, history is littered with circumstances in which physicians had to fit their diagnoses and their remedies to the prejudices of their patrons.... And in the case of law it is not difficult to find circumstances in which the self-employed were dominated and controlled by their clients...as are even elite law firm lawyers serving powerful clients today.⁴⁶

Even abstracting from the issue, for example, of how many doctors and lawyers in "solo" practice really work without exploiting nurses,⁴⁷ secretaries, and other assistants and associates, the sociotechnologically determined constantly rising minimum level of physical investment in tandem with the accumulation and centralization of corporate capital in the hospital industry⁴⁸ may be in the process, if not of proletarianizing them, at least of inflicting on them "a profound loss of autonomy."⁴⁹

The third group consists of the those who in the nineteenth century qualified as the members par excellence of the petty bourgeoisie: shopkeepers⁵⁰ and independent artisans.⁵¹ For Marx, the interesting class issue involved the latter: could they by their labor alone set into motion enough capital to enable them to prevent their suppliers, customers, creditors, and landlords from appropriating a sufficiently significant share of their surplus labor to distinguish the artisans from proletarians?⁵² Even more so today than then, it appears increasingly difficult for one person to accumulate and to valorize such threshold amounts of capital as would generate incomes outside the range of their employee counterparts. In this sense, they replicate the problem just adumbrated for the professions although the appropriation of a significant level of human capital may alleviate this dilemma. Dynamically, over time, this group shades off into the fourth and last group.

Franchisees, too, belong to the third group.⁵³ To the extent that they are left "with virtually no autonomy and independence *despite* a major investment of funds in their business,"⁵⁴ they may be more analogous to managers (who have assumed a risk of loss of capital) than to the traditional self-employed.⁵⁵ The fact that the number of the more loosely controlled trade-name franchises (e.g., automobile dealerships and gas stations) declined continuously from 1972 to 1988 from 262,100 to 140,820, while the number of business-format franchises (such as fast-food restaurants), the day-to-day operation of which franchisors can regulate by means of prescribing standards and quality controls, almost doubled (from 189,640 to 368,458),⁵⁶ supports this thesis.⁵⁷

Special attention should be paid to the last group: the "loners,"⁵⁸ the "isolated" (or "proletaroid"),⁵⁹ who merely sell their labor power because they do not own the means of production, have no autonomy with regard to the labor process,⁶⁰ and receive very low incomes, which make a mockery of any sense of independence.⁶¹ Socioeconomic class analysis would be furthered if the BOC collected data on whether the alleged self-employed employ others.⁶² If the West German definitional guideline--"decisive is the economic independence"⁶³--is taken as a cue, the self-employed would not, for example, include the underground self-employed; these are the so-called "Mole People," who live in a railroad tunnel in Manhattan but of whom "[p]robably most are self-employed."⁶⁴ These are the "independents," the only content of whose "independence consist[s] in the necessity or bearing the[ir] misery independently."⁶⁵

The isolated would also embrace "informal" workers, who are "disguised wage labor" or "self-employed proletarians" subject to "the worst features of both worlds: They face the risks of self-employment and simultaneously confront the wage worker's dependence on capital."⁶⁶ For example, home computer workers would probably be classified by the BOC as self-employed, yet even as to these relatively highly skilled workers who may own or lease more equipment than most other home workers, this "label is...misleading" because "informal workers can be so thoroughly dependent on the enterprises to which they are connected that they call to mind the wage worker's dependence on an employer."⁶⁷ Relatively few such workers have health insurance, and some earn less than the minimum wage⁶⁸--in part because they are not compensated for work-related tasks "which would fall within regular on-site work hours."⁶⁹ Moreover, even when employers relinquish direct supervision over the pace and quality of work, it reappears in payment by result, which in turn generates increased competition, longer hours, and greater insecurity:⁷⁰ "[T]he deadline ensures that regardless of the hour at which outside workers choose to *begin* their working day, they will either extend it or increase its pace to

the point at which the deadline can be met."⁷¹ Consequently, the work of isolated workers "is in fact characterized by mechanisms of external control that, however subtle they might be, result in external pressures that determine the pace of work and the design of the product as effectively as does the direct supervision to which wage workers are subject."⁷²

Such workers, who are characterized by unstable earnings and lack of job security, autonomy, or independence,⁷³ should not be confused with small capitalists or independents. That they have accepted or had imposed on them some measure of income risk does not transform them into entrepreneurs,⁷⁴ especially where the total structural relationship in which they are embedded systemically disables them from becoming capital accumulators. If they share with employees the categorical class characteristic of being deprived of the ability to accumulate sufficient capital to leave the working class, then employers' tactics of manipulating them into assuming risk should not be allowed to obscure their situation.⁷⁵ The solidity of their membership in the dependent working class is underscored in those cases in which they must "slip back into" undisputed employee status when their "business dips"⁷⁶--to prop up not their accumulation but their subsistence.

The perceived increase in self-employment must be understood as one segment of the impressive continuing growth of temporally, spatially, and/or organizationally atomized workers.⁷⁷ These contingent workers are estimated to make up as much as a quarter of the work force in the United States.⁷⁸ Part-time workers alone now account for almost one-fifth of national employment.⁷⁹ Although far smaller in number, temporary workers have experienced extraordinary growth since the early 1980s. Temporary-help supply firms--on whose payroll temporary workers remain while they are supervised by the customer firms--alone may employ upwards of one million workers.⁸⁰ These figures do not include temporary workers hired directly by firms or so-called leased employees.⁸¹

Common to all of these variants of "just-in-time-employment" is that "[t]he employer is paying only for the

time needed." But the unspoken converse of the fact that "[t]he largest cost-saving advantage in contingent employment systems is reduction in paid non-productive time"⁸² is that employers have succeeded in shifting to workers the consequences of the firms' own entrepreneurial failure to reorganize the flow of work so as to reduce "non-productive time."⁸³ Just-in-time-employment practices are merely a more subtle way of ordering employees to clock out. In both cases, employers manage to impose the risk of gaps in employment, and hence income, on their workers.⁸⁴ Because this risk has been deemed the most telling distinction between employees and self-employers, once this sizable sector of acknowledged employees has been compelled to accept responsibility for piecing together enough part-time and temporary jobs to secure a living wage, the categorical distinction collapses. If the labor force is sufficiently vulnerable, it no longer matters whether the employer treats these workers as employees or self-employed.⁸⁵ The rise in nominal self-employment then emerges as an epiphenomenon of the contingent work force.⁸⁶ Consistent with this overall pattern, even the increase in the self-employed was fueled by part timers.⁸⁷

Whether the contingent workers' isolation results from the part-time or temporary nature of the relationship or from performing the work in the workers' homes⁸⁸ or in the interstices between a labor supplier and labor employer,⁸⁹ it is this separation and segregation--rather than the rhetorical (petty) independence of being a propertied laborer--that distinguish the lower echelons of the self-employed from the historical petty bourgeoisie.⁹⁰ And it is also this quasi-quarantine that may ultimately exert a much greater impact on the structure of class relationships than any other aspect of pseudo-self-employment.⁹¹ As Adam Smith recognized more than two centuries ago: "A poor independent workman...in his separate independent state, is less liable to the temptations of bad company, which in large manufactories so frequently ruin the morals of the other."⁹²

If the study of the self-employed is motivated by class analysis, it is revealing that Marx as a revolutionary politician

was much less obsessed than sociologists today with the niceties of taxonomy.⁹³ In preparing a "Questionnaire for Workers" in 1880 to serve as the basis of a statistical inquiry for French socialists, he included the following question:

If you work at home, state the conditions of your working room; whether you use only tools or also little machines; whether you employ your wife and children or other helpmates, adults or children, male or female; whether you work for private customers or for an "entrepreneur;" whether you engage directly with him or through middlemen.⁹⁴

For Marx, then, those engaged in workerlike activities under workerlike conditions were categorically and politically members of the working class⁹⁵ regardless of the phenomenological confusion capitalists were able to disseminate through manipulation of forms of payment, assumption of risk, and visibility to the customer.⁹⁶

However this controversy is ultimately resolved by future societal development, the salient point remains the political-ideological import of the isolation of low-income loners from both the employing-exploiting class and the spatially-organizationally aggregated wage-earning class.⁹⁷ Whatever the taxonomic position and active role of the self-employed within the class structure may have been in the past, the pronounced decline of the unionized working class⁹⁸ and the concomitant proliferation of a largely "on-demand,"⁹⁹ "at-risk,"¹⁰⁰ and contingent work force only marginally integrated into the social wage¹⁰¹ may contribute to the assimilation of all these working-class strata.¹⁰² If, in addition, the latter mobilize to consolidate and to intensify the trend toward parity of state protective programs for the self-employed,¹⁰³ the distinction between employees and self-employees may eventually become moot.¹⁰⁴ Finally, adoption of a guaranteed social income decoupled from the employment relationship would virtually eliminate the distinctive socioeconomic character of self-employment altogether.¹⁰⁵

Self-employment as a mass phenomenon long ago lost the struggle against colonization by the capitalist labor market; it can no longer function as a refuge of independence from

class domination. To the extent that even the largest individual capital is "wholly dependent for its survival...on a vast network of laws, protection, services, inducements, constraints, and coercions provided by innumerable governments" without which "the firm would instantly disappear,"¹⁰⁶ political-economic conflict that once focused on the place of production shifts its locus in part to the state.¹⁰⁷ Here even those whose employer is obscured may be in a better position to perceive life chances and to articulate interests in common with the rest of the dependent laboring population.¹⁰⁸ Such a prospect becomes plausible, however, only where it is palpably true that "only...the *form*" distinguishes the exploitation of the two groups: "The exploiter is the same: *capital*."¹⁰⁹

NOTES

1. *Exploiting Workers by Misclassifying Them as Independent Contractors: Hearing Before the Employment and Housing Subcomm. of the House Comm. on Government Operations*, 102d Cong., 1st Sess. 2 (1991) (Rep. Tom Lantos).
2. *Suchodolski v. American Fed'n of Labor*, 127 N.J.Eq. 511, 512 (1940).
3. 7 STENOGRAPHISCHER BERICHT ÜBER DIE VERHANDLUNGEN DER DEUTSCHEN CONSTITUIERENDEN NATIONALVERSAMMLUNG ZU FRANKFURT AM MAIN 5285 (F. Wigard ed. 1848-49).
4. *Id.* at 5285-86.
5. *Id.* at 5286.
6. On the debate in England in 1867, see LINDER, *EUROPEAN LABOR ARISTOCRACIES* at 100-103.
7. *Social Security Revision* at 95, 491-92.
8. *Id.* at 2095 (testimony of Sumner Slichter).
9. *Id.* at 2094.
10. *See, e.g., id.* at 491 (testimony of Marion Folsom, treasurer of Eastman Kodak, member of Committee on Economic Security Advisory Council, and future Secretary of HEW). Arthur Altmeyer, the Commissioner of Social Security, sidestepped the question; *id.* at 95.
11. Ch. 809, § 104(a), 64 Stat. 492 (1950).

12. *Social Security Revision* at 95 (testimony of A. Altmeyer); *SMALL BUSINESS PROBLEMS* at 20-22.

13. For Senator George, who had supported coverage of the urban self-employed in 1950, inclusion of farmers smacked of "creeping socialism." 100 CONG. REC. 15,409 (1954).

14. For a sample of the debate within the profession, see Harold Love, *Social Security and Retirement Plans for Lawyers: It Need Not Mean Socialism*, 38 A.B.A.J. 463 (1952); Arthur Larson, *Social Security and Self-Employed Lawyers: A Plea for Re-evaluation*, 39 A.B.A.J. 971 (1953); Allen Oliver, *Lawyers and Social Security: No Need for Change*, 40 A.B.A.J. 586 (1954).

15. See 111 CONG. REC. 16,104-109 (1965).

16. See *supra* ch. 3.

17. See *supra* ch. 2.

18. On the compensability of waiting time under the Fair Labor Standards Act, see Marc Linder, *Class Struggle at the Door: The Origins of the Portal-to-Portal Act of 1947*, 39 BUFFALO L. REV. 53 (1991). Although "the availability on the premises of manpower which can be made available to a customer on short notice is something of value to an employer," 117 CONG. REC. 21192 (1971) (Rep. Mikva), temporary employee firms do not compensate the waiting time of their "people," whom they cynically regard as their "inventory." *Day Laborer Protection Act of 1971: Hearings Before the Special Subcomm. of the House Comm. on Education and Labor*, 92d Cong., 1st Sess. 75 (1972) (testimony of Elmer Winter, President of Manpower, Inc.).

19. Max Carey & Kim Hazelbaker, *Employment Growth in the Temporary Help Industry*, MONTHLY LAB. REV., Apr. 1986, at 37, 41.

20. See Linder, *The Joint Employment Doctrine* at 323 n.14.

21. See Linder, *Towards Universal Worker Coverage under the National Labor Relations Act* at 585-92; *idem*, *From Street Urchins to Little Merchants* at 860; SPEIER, *DIE ANGESTELLTEN VOR DEM NATIONALSOZIALISMUS* at 65.

22. See *General Investment Corp. v. United States*, 823 F.2d 337 (9th Cir. 1987). See generally, *Employee-Independent Contractor Issues: Hearing Before the Subcomm. on Commerce, Consumer, and Monetary Affairs of the House Government Operations Comm.*, 101st Cong., 1st Sess. (1989). Aronson is quadruply incorrect in asserting that "[t]hus far, the federal courts have upheld the very strict standards developed under wage-hour legislation to determine the legitimacy of claims of independent contractors. Those standards...have been applied in...workers' compensation and unemployment insurance." ARONSON, *SELF-EMPLOYMENT* at 114. The standards are not strict nor have they have been uniformly upheld; the standards used under workers' compensation and unemployment insurance are different and more relaxed than wage-hour standards; and finally it is not the claims of

independent contractors that constitute the abuse but rather the claims of employers that their employees are independent contractors. *See generally*, MARC LINDER, *THE EMPLOYMENT RELATIONSHIP IN ANGLO-AMERICAN LAW: A HISTORICAL PERSPECTIVE* (1989). On schemes devised by building firms in Britain to enable their workers to become self-employed while continuing to work for them, see De N. Clark, *Industrial Law and the Labour-Only Sub-Contract*, 30 *MOD. L. REV.* 6, 11 (1967).

23. 133 Cong. Rec. E 4877 (Dec. 18, 1987) (LEXIS) (Rep. Tauzin). A federal district court's ruling that these workers were also not employees under the Fair Labor Standards Act was overturned in *McLaughlin v. Seafood, Inc.*, 867 F.2d 875 (5th Cir. 1989).

24. For example, in France, models are salaried employees of modeling agencies; in the United States, most are deemed independent contractors. *See* Gordon Mott, *Male Models Chase A Dream in Paris*, *N.Y. Times*, Sept. 30, 1987, at 19, col. 1, 21 (nat. ed.). Inexplicably, even a Marxist sociologist can speculate that "people who do various kinds of contract work may say that they work for someone else, even though they are in fact self-employed." WRIGHT, *CLASS STRUCTURE AND INCOME DISTRIBUTION* at 154.

25. For dogmatic overviews of Marx's writings on the petty bourgeoisie, see 2 HAL DRAPER, *KARL MARX'S THEORY OF REVOLUTION: THE POLITICS OF SOCIAL CLASSES* 288-316 (1978); MICHAEL MAUKE, *DIE KLASSENTHEORIE VON MARX UND ENGELS* 61-68 (1973 [1970]).

26. *See* Linder & Houghton, *Self-Employment and the Petty Bourgeoisie*.

27. Belgium, for example, has developed a range of corporatist representation for "the middle classes" since the beginning of the twentieth century. *See* Arrêté royal instituant au ministère de l'industrie et du travail un Office des classes moyennes, Jan. 15, 1906, No. 10, at 65; Arrêté royal portant règlement organique du Ministère des Affaires économiques et des Classes moyennes, Dec. 11, 1939, No. 865, at 6252, 6258 (creation of direction générale des classes moyennes "en vue de l'encouragement ou de la défense des intérêts des classes moyennes"); Recueil des lois et arrêtés royaux, June 15, 1954, No. 494, at 2818-21 (creation of Ministère des Classes moyennes/Ministerie van Middenstand). The statutory term designating this class within Belgian social legislation is "independent workers" ("travailleurs indépendants"; the Flemish counterpart, "zelfstandigen," is cognate to the German term). *See, e.g.*, Arrêté royal organisant le statut social des travailleurs indépendants, July 27, 1967, No. 1053, at 3236. For detailed narratives of the origins and evolution of this representation and legislation, which includes an account of initial resistance to inclusion by the independents, see *VINGT ANS AU SERVICE DES CLASSES MOYENNES* (Institut Belge d'information et de Documentation ed. 1974); *INSTITUT NATIONAL D'ASSURANCES SOCIALES POUR TRAVAILLEURS INDÉPENDANTS, 50 ANS D'ALLOCATIONS FAMILIALES, 30 ANS DE PENSIONS, 20 ANS DE STATUT SOCIAL* (1988). The ministry's political charge transcends that of its nearest ideological counterpart in the United States, the Small Business

Administration, which has its roots in antimonopoly, procompetitive movements, and was, at least originally, heavily oriented toward securing for small business a larger share of federal government contracts. See ADDISON PARRIS, *THE SMALL BUSINESS ADMINISTRATION* (1968). The National Association of the Self-Employed, which was founded in 1981, appears to be a relatively nonpolitical service organization offering group medical insurance and other benefits to its 300,000 members. See SELF-EMPLOYED AMERICA, March/April 1991.

28. But see Howard Aldrich & Jane Weiss, *Differentiation within the United States Capitalist Class: Workforce Size and Income Differences*, 46 AM. SOC. REV. 279 (1981) (arguing that distinction between small employers and nonemploying petty bourgeoisie is unnecessary for analyzing income differences). On the connection between self-exploitation of the self-employed and their exploitation of their employees, see JOHN GALBRAITH, *ECONOMICS AND THE PUBLIC PURPOSE* 73-75 (1973).

29. Where the alleged self-employed worker patriarchally presides over (and perhaps even exploits) co-working unpaid family members, he forfeits his status just as if he hired nonfamily employees. If, on the other hand, the family operates as a democratically organized cooperative undertaking, it may as a unit be self-employing—subject to the proviso set forth in the text. As a sociohistorical matter, it is important to recall that "[t]he idea of an individual male wage-earner supporting his family was unfamiliar in the first half of the nineteenth century. It was assumed that all members of the household contributed to the family enterprise in agriculture, trade, manufacture or handicraft." Catherine Hakim, *Census Reports as Documentary Evidence: The Census Commentaries 1801-1951*, 28 SOCIOLOGICAL REV. 551, 554 (1980).

30. Indeed, even some of those who appear to be employers are themselves employees of larger entities. See *Walling v. Twyeffort, Inc.*, 158 F.2d 944 (2d Cir. 1947); Linder, *The Joint Employment Doctrine* at 332-45.

31. See MARC LINDER, *REIFICATION AND THE CONSCIOUSNESS OF THE CRITICS OF POLITICAL ECONOMY: STUDIES IN THE DEVELOPMENT OF MARX' THEORY OF VALUE* 151-75 (1975). David Brody, *Time and Work during Early American Industrialism*, 30 LAB. HIST. 5, 14, 27 (1989), undercuts whatever vitality the category may have had historically by characterizing as self-employed unskilled laborers, piece-rate workers, sweated outworkers, and those whose wages and hours were governmentally prescribed.

32. See F. SCHERER, *INDUSTRIAL MARKET STRUCTURE AND ECONOMIC PERFORMANCE* 84 (2d ed. 1980 [1970]); ALFRED CHANDLER, JR., *SCALE AND SCOPE: DYNAMICS OF INDUSTRIAL CAPITALISM* 27 (1990).

33. Not even MICHAEL PIORE & CHARLES SABEL, *THE SECOND INDUSTRIAL DIVIDE: POSSIBILITIES FOR PROSPERITY* 303-307 (1984), who advocate "the ideal of yeoman democracy" in "a republic of small holders," take the position

that flexibly specialized craft producers could compete with mass production if they were self-employed solo producers.

34. On how this process also occurred historically in the wholesale and retail trades, see GLENN PORTER & HAROLD LIVESAY, *MERCHANTS AND MANUFACTURERS: STUDIES IN THE CHANGING STRUCTURE OF NINETEENTH-CENTURY MARKETING* (1989 [1971]).

35. See JEFFREY HARROD, *POWER, PRODUCTION, AND THE UNPROTECTED WORKER* 248-64 (1987).

36. *SMALL BUSINESS PROBLEMS* at 7-8.

37. GEORGE KENNAN, *MEMOIRS 1925-1950*, at 7 (1967). Kennan states that none of his American ancestors, who had emigrated to the United States in the eighteenth century and farmed, "had ever been in significant degree an employer of labor; not one had ever sold his own labor to an entrepreneur, to be used for commercial gain." *Id.* at 6-7. However representative Kennan's forebears might have been for the nineteenth century, today's family farmers cannot escape the Marxist "predicament." Pig farmers, for example, who are "driven to indoor pens by the need to keep production prices down," do not earn enough to buy the costly ventilation equipment that would prevent the human health problems caused by the noxious gases produced by decomposing hog waste indoors. Peter Kilborn, *The Perils of Pig Farming Touch Man and Beast*, N.Y. Times, Aug. 25, 1991, § 1, at 1, col. 2, at 14, col. 2 (nat. ed.).

38. As the author of "the most popular" college economics textbook at the turn of the century and future president of Yale remarked:

It is characteristic of the modern industrial system that a laborer who owns no capital, though nominally free to do what he pleases, must actually find some property owner who will give him enough to keep him alive during the period which must elapse between the rendering of the labor and the sale of the finished product. Under such circumstances, the laborer almost inevitably submits to the direction of the property owner in deciding how his labor shall be applied. Laborers without capital must necessarily work on this basis; even those who have small amounts of capital habitually do so.

ARTHUR HADLEY, *ECONOMICS: AN ACCOUNT OF THE RELATIONS BETWEEN PRIVATE PROPERTY AND PUBLIC WELFARE* 121 (1896). On Hadley, see 3 JOSEPH DORFMAN, *THE ECONOMIC MIND IN AMERICAN CIVILIZATION: 1865-1918*, at 258-59 (1949).

39. See E.P. Thompson, *Time, Work-Discipline and Industrial Capitalism*, *PAST & PRESENT*, Dec. 1967, at 56, 60-61.

40. On the splintering of the *Mittelstand*, see GRÜNBERG, *DER MITTELSTAND IN DER KAPITALISTISCHEN GESELLSCHAFT* at 167.

41. Wright's call for "detailed work histories" has still not been heeded. WRIGHT, CLASS STRUCTURE AND INCOME DETERMINATION at 230.
42. "[T]here can be no watertight legal definition of who is a 'dependent' worker and who is 'independent.'" Bob Hepple, *Restructuring Employment Rights*, 15 INDUS. L.J. 69, 75 (1986).
43. As has been suggested by Patricia Leighton, *Employment Contracts: A Choice of Relationships*, 90 EMPLOYMENT GAZETTE 433, 439 (1982); *idem*, *Employment and Self-Employment: Some Problems of Law and Practice*, 91 EMPLOYMENT GAZETTE 197 (1983); and Hakim, *Self-Employment in Britain*, at 425.
44. See LINDER, THE EMPLOYMENT RELATIONSHIP IN ANGLO-AMERICAN LAW at xii-xiii.
45. See generally, RICHARD SCASE & ROBERT GOFFEE, THE ENTREPRENEURIAL MIDDLE CLASS 70-97 (1982). If the point of including such persons in the discussion of self-employment is to gauge their contribution to job creation, the much-touted impact of small employers appears to have been exaggerated. See CHARLES BROWN, JAMES HAMILTON, & JAMES MEDOFF, EMPLOYERS LARGE AND SMALL (1990). Or as an Israeli Treasury spokesman asked rhetorically when the self-employed demanded a two percent reduction in national insurance payments that was designed to encourage employment: "What are they going to do, employ themselves twice?" Evelyn Gordon, *NII Refutes Self-Employed's Charges*, Jerusalem Post, Aug. 26, 1991 (NEXIS). At the time of the Keogh Bill debates, it was asserted that seven million self-employed had eleven million employees. 108 CONG. REC. 18757 (1962) (Sen. Smathers). The tendency to confuse the self-employed with small capitalists--or owners of firms of any size for that matter--is not restricted to the United States. See, e.g., 7 SVEND AAGE HANSEN & INGRID HENRIKSEN, DANSK SOCIAL HISTORIE: VELFÆRDSSTATEN 1940-78, at 201-205 (1980) (analyzing self-employed [*selvstændige*] in Denmark in the postwar period).
46. ELIOT FREIDSON, PROFESSIONAL POWERS: A STUDY OF THE INSTITUTIONALIZATION OF FORMAL KNOWLEDGE 124 (1986).
47. See Wagner, *The Proletarianization of Nursing in the United States*.
48. See STARR, THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE at 420-49.
49. *Id.* at 446. See also Dirk Johnson, *Doctors' Dilemma: Unionizing*, N.Y. Times, July 13, 1987, at 21, col. 3 (nat. ed.) (discussing efforts by physicians to form unions); Lisa Belkin, *Doctors Lose Autonomy To Health-Care Networks*, N.Y. Times, Nov. 11, 1991, at A1, col. 1 (nat. ed.) (networks prescribe how much doctors may charge and what procedures they may perform).

50. "[P]our Marx, en 1848-1852, le petit bourgeois, c'est le boutiquier; mieux, *la petite bourgeoisie*, comme classe...c'est 'la boutique.'" BAUDELOT, ESTABLET, & MALEMORT, *LA PETITE BOURGEOISIE EN FRANCE* at 20.

51. Farmers obviously form a third very large sector of this group. Agriculture has been ignored in this book because the current debate centers on the issue of an alleged resurgence of self-employment; yet no proponent of this thesis argues that the United States or any other advanced capitalist country has witnessed a significant rise in the number of self-employed farmers. Since family farms operated without the use of hired workers represent a significant--albeit dwindling--share of solo self-employed, reference must be made in passing to the debate as to whether such farmers are caught up in the process of proletarianization. See, e.g., John Davis, *Capitalist Agricultural Development and the Exploitation of the Propertied Laborer*, in *THE RURAL SOCIOLOGY OF THE ADVANCED SOCIETIES: CRITICAL PERSPECTIVES* 133 (Frederick Buttel & H. Newby ed. 1980); INGOLF VOGELER, *THE MYTH OF THE FAMILY FARM: AGRIBUSINESS DOMINANCE OF U.S. AGRICULTURE* 134, 138-43 (1982); DAVID GOODMAN AND MICHAEL REDCLIFT, *FROM PEASANT TO PROLETARIAN: CAPITALIST DEVELOPMENTS AND AGRARIAN TRANSITIONS* (1982); *idem*, *Capitalism, Petty Commodity Production and the Farm Enterprise*, 25 *SOCIOLOGIA RURALIS* 231 (1985); SUSAN MANN, *AGRARIAN CAPITALISM IN THEORY AND PRACTICE* (1990). Unfortunately, the controversy has largely been conducted at the level of taxonomy without connection to political consequences.

52. To be sure, in terms of income, a large segment of retailers must be viewed as part of the working class, yet they constitute the group "with the most emphatic petty bourgeois [*Mittelstand*] consciousness." FRITZ MARBACH, *THEORIE DES MITTELSTANDES* 280 (1942).

53. The judiciary has done obeisance to the ideological function of franchising: "If our economy had not developed that system of operation [franchises subject to close restrictions] these individuals [franchisees] would have turned out to have been merely employees." *Susser v. Carvel Corp.*, 206 F. Supp. 636, 640 (S.D.N.Y. 1962).

54. Hakim, *Self-Employment in Britain* at 425.

55. ARONSON, *SELF-EMPLOYMENT* at 36.

56. U.S. DEPARTMENT OF COMMERCE, OFFICE OF SERVICE INDUSTRIES, *FRANCHISING IN THE ECONOMY 1986-1988*, at 1, 3-4 (1988).

57. Only one case appears to have held that alleged franchisees were employees of the franchiser. *Mister Softee of Indiana, Inc. v. Oil, Chemical and Atomic Workers Int'l U.*, 162 N.L.R.B. 354 (1966). See generally, HAROLD BROWN, *FRANCHISING: REALITIES AND REMEDIES* (rev. ed. 1990).

58. *Self-employment: Lots of Loners*, *ECONOMIST*, Mar. 23, 1985, at 66 (increase in self-employment in Britain due in part to "larger firms"

employment preferences...to reduce labour hassles and costs such as pensions, sickness and holiday pay").

59. WERNER SOMBART, *DIE DEUTSCHE VOLKSWIRTSCHAFT IM NEUNZEHNTE JAHRHUNDERT* 455-58 (1954 [1903]).

60. *See, e.g.,* Angela Dale, *Social Class and the Self-Employed*, 20 *SOCIOLOGY* 430 (1986).

61. *See* GRÜNBERG, *DER MITTELSTAND IN DER KAPITALISTISCHEN GESELLSCHAFT* at 102, 128-29. Many older workers become self-employed because they lose their strength and control over the pace of work or because their skills become obsolete. *See* ARONSON, *SELF-EMPLOYMENT* at 23.

62. For 1939 it was estimated that slightly more than three-fifths of all self-employed were nonemployers, ranging from one-fifth in construction to ninety-seven per cent in "independent hand trades." *See* *SMALL BUSINESS PROBLEMS* tab. 6 at 34. The West German census has developed a separate detailed classificatory system for the isolated ("alleinschaffend"). *STATISTISCHES BUNDESAMT, 12 VOLKS- UND BERUFSZÄHLUNG VOM 6. JUNI 1961: ERWERBSPERSONEN IN WIRTSCHAFTLICHER UND SOZIALER GLIEDERUNG* 23-24 (1961); *Das neue Schema der Sozio-ökonomischen Gliederung*, in *WIRTSCHAFT UND STATISTIK*, May 1970, at 247-48.

63. *STATISTISCHES BUNDESAMT, 1 VOLKS- UND BERUFSZÄHLUNG VOM 6. JUNI 1961: DIE METHODISCHEN GRUNDLAGEN DER VOLKS- UND BERUFSZÄHLUNG 1961*, at 144 (1961) ("[a]usschlaggebend ist die wirtschaftliche Selbständigkeit").

64. John Tierney, *In Tunnel, "Mole People" Fight to Save Home*, *N.Y. Times*, June 13, 1990, at A1, col. 2, at A20, col. 1 (nat. ed.).

65. SPEIER, *DIE ANGESTELLTEN VOR DEM NATIONALSOZIALISMUS* at 65.

66. BEVERLY LOZANO, *THE INVISIBLE WORK FORCE: TRANSFORMING AMERICAN BUSINESS WITH OUTSIDE AND HOME-BASED WORKERS* 11, 12 (1989).

67. *Id.* at 2.

68. *Id.* at 89, 157.

69. *HOME-BASED CLERICAL WORKERS: ARE THEY VICTIMS OF EXPLOITATION?* H.R. REP. NO. 677, 99th Cong., 2d Sess. 7 (1986).

70. LOZANO, *THE INVISIBLE WORK FORCE* at 66. *See also* Agis Salpukas, *Trucking-Driving Couple Share Life on the Road*, *N.Y. Times*, July 25, 1988, at 29, col. 1 (nat. ed.) ("having invested \$53,000 in his used truck," driver (and his wife) feel "intense pressure to keep moving" to meet "tight schedule necessary to serve" customers).

71. LOZANO, THE INVISIBLE WORK FORCE at 79. *See also*, Eileen Boris, *Regulating Industrial Homework: The Triumph of "Sacred Motherhood,"* 71 J. AM. HIST. 745, 746 (1985).

72. LOZANO, THE INVISIBLE WORK FORCE at 11.

73. *See* Hakim, *Self-Employment in Britain* at 444.

74. As one of the leading nineteenth-century economists put it:

In most cases, employers take all the risk; that is, they insure regular wages to their hands, whether the work be constant or irregular, lucrative or insufficient to pay the expenses. ... Sometimes, however, the person employed takes the risk, and his Wages, when he is at work, must be high enough to compensate him for occasional necessary idleness.

FRANCIS BOWEN, AMERICAN POLITICAL ECONOMY 192-93 (1969 [1870]).

75. *See, e.g.*, Peter Kilborn, *Tomato Pickers' Hope for Better Life Becomes Victim as Industry Steps In*, N.Y. Times, May 9, 1991, at A10, col. 1 (nat. ed.); Marc Linder, *Petty-Bourgeois Pickle Pickers: An Agricultural Labor-Law Hoax Comes a Cropper*, 25 TULSA L.J. 195, 258-59 (1989).

76. Kilborn, *Tomato Pickers' Hope for Better Life Becomes Victim as Industry Steps In* at A10, col. 4.

77. *See generally*, U.S. WOMEN'S BUREAU, FLEXIBLE WORKSTYLES: A LOOK AT CONTINGENT LABOR (1988).

78. BNA, DAILY LAB. REP., July 18, 1985, at A-3 (LEXIS); GAO, WORKERS AT RISK (HRD 91-56, 1991).

79. *See* Thomas Nardone, *Part-Time Workers: Who Are They?*, MONTHLY LAB. REV., Feb. 1986, at 13. Involuntary part-time workers have been increasing faster than those who prefer part-time employment. *See* Chris Tilly, *Reasons for the Continuing Growth of Part-Time Employment*, MONTHLY LAB. REV., Mar. 1991, at 10.

80. *See* U.S. BLS, INDUSTRY WAGE SURVEY: TEMPORARY HELP SUPPLY, SEPTEMBER 1987 (Bull. 2313, 1988); Wayne Howe, *Temporary Help Workers: Who They Are, What Jobs They Hold*, MONTHLY LAB. REV., Nov. 1986, at 45; Max Carey & Kim Hazelbaker, *Employment Growth in the Temporary Help Industry*, MONTHLY LAB. REV., Apr. 1986, at 37. In 1988, the president of Manpower, Inc., testified before Congress that his company alone employed more than 500,000 people annually. *See Rising Use of Part-Time and Temporary Workers* at 101-102 (statement of M. Fromstein). At least for purposes of workers' compensation, the courts have ruled that firms that "buy some" "temporary help" from entities like Manpower that are "in the business of selling temporary help" are also employers. *See, e.g.*, St. Claire v. Minnesota Harbor Serv., Inc., 211 F. Supp. 521, 523 (D. Minn. 1962).

81. A leasing firm furnishes all the workers a customer-firm requires for a particular operation or project.

82. *Rising Use of Part-Time and Temporary Workers* at 37 (statement of A. Freedman, Conference Bd.).

83. The controversy over the forging of a large contingent of contingent workers recapitulates the statutory struggle in the 1940s over whether so-called nonproductive activities at the beginning and end of the workday were compensable under the Fair Labor Standards Act. See Linder, *Class Struggle at the Door* at 59-64.

84. Two decades ago, then Rep. Mikva introduced a remarkable bill that would have partially closed this gap for low-paid, unskilled, manual workers employed through temporary-help services. The Day Laborer Protection Act of 1971 would have included as compensable hours worked under the Fair Labor Standards Act all "travel time between the job site and the temporary help service, time spent at the job site, and one-half the time spent awaiting assignment at the temporary help service prior to being sent to a job site." H.R. 9282, 92d Cong., 1st Sess. § 6(b), 117 CONG. REC. 21,192 (1971). For an unsympathetic assessment of the bill, see Mack Moore, *Proposed Federal Legislation for Temporary Labor Services*, 26 LAB. L.J. 767 (1975). For an extraordinary judicial award of compensation for travel time without express statutory warrant, see *Vega v. Gasper*, 118 Lab. Cas. (CCH) ¶ 35,474 (W.D. Tex. Apr. 30, 1991).

85. A real-world example will illustrate this point. The owner of a shipping agency-warehouse in Laredo, Texas, instead of rationalizing his operations, pays his loaders/unloaders a piece rate and instructs them to wait outside for the next truck. If the unemployment rate is high enough, an abundant supply of workers with no compensable opportunity costs makes it possible for the employer to pay for a five- rather than an eight-hour workday.

86. "[A] significant portion of the 8.3 million workers who are listed by the Labor Department as self-employed, often contracting with companies for their services, also fall into this category [of full-time temporary workers]." Louis Uchitelle, *Reliance on Temporary Jobs Hints at Economic Fragility*, N.Y. Times, Mar. 16, 1988, at 1, col. 1, 32, col. 1 (nat. ed.).

87. Among those whose usual work was nonagricultural self-employment, part-timers increased from 16.5 per cent in 1970 to 27.5 per cent in 1982. See EMPLOYMENT AND EARNINGS, Jan. 1971, tab. A-22 at 130; *id.*, Jan. 1983, tab. 34 at 168.

88. See, e.g., Francis Horvath, *Work at Home: New Findings from the Current Population Survey*, MONTHLY LAB. REV., Nov. 1986, at 31; *Oversight Hearings on the Department of Labor's Proposal to Lift the Ban on Industrial Homework: Hearings Before the Subcomm. on Labor Standards of the House Comm. on Education and Labor*, 99th Cong., 2d Sess. (1986); Bettina Berch, *The Resurrection of Out-Work*, MONTHLY REV., Nov. 1985, at 37. ARONSON, SELF-EMPLOYMENT at 114, underestimates the abuses of industrial homework. Charles Craver, *The Vitality of the American Labor Movement in*

the Twenty-First Century, 1983 U. ILL. L. REV. 633, 641, speaks opaquely of "relatively 'self-employed' individuals working out of their own homes."

89. For the parallel process in Britain, see Catherine Hakim, *Employers' Use of Homework, Outwork and Freelances*, 92 EMPLOYMENT GAZETTE 144 (1984); JAMES ROBERTSON, *FUTURE WORK: JOBS, SELF-EMPLOYMENT AND LEISURE AFTER THE INDUSTRIAL AGE* (1985).

90. See Arno Mayer, *The Lower Middle Class as Historical Problem*, 47 J. MOD. HIST. 409, 425, 432 (1975); GRÜNBERG, *DER MITTELSTAND* at 102, 28-29. For the outline of an imaginary reconstruction of petty bourgeois petty commodity production, see ROBERTO UNGER, *FALSE NECESSITY: ANTI-NECESSITARIAN SOCIAL THEORY IN THE SERVICE OF RADICAL DEMOCRACY* 29-30, 181-87, 223-28, 342-47 (1987). For an account of one historical example of such production, see Harriet Friedmann, *Simple Commodity Production and Wage Labour in the American Plains*, 6 J. PEASANT STUD. 71 (1978).

91. Several unsuccessful attempts have been undertaken in Congress to mandate some pro rata pension and group health benefits for contingent workers. See H. 2563, 101st Cong., 1st Sess. (1989), in 135 CONG. REC. H 2286 (June 6, 1989); *id.*, E 2013 (June 7, 1989) (Part-Time and Temporary Workers Protection Act of 1989); S. 1309, 100th Cong., 1st Sess. (1987), in 133 CONG. REC. 7475 (June 2, 1987) (Part-Time and Temporary Workers Protection Act of 1987).

92. SMITH, *WEALTH OF NATIONS* at 83-84.

93. See generally, ALLIN COTTRELL, *SOCIAL CLASSES IN MARXIST THEORY* (1984).

94. Marx, *Questionnaire for Workers* at 200.

95. For an example of modern legislation protecting homeworkers regardless of whether they are "an employe, agent, independent contractor, or any other person," see the Pennsylvania Industrial Homework Law, 43 PA. STAT. ANN. § 491-3 (Purdon 1964). Moreover, at least one federal judge has suggested that "it makes some sense to say that the FLSA [Fair Labor Standards Act] should apply to homeworkers, regardless of the type of work and the contract under which they work." *Fegley v. Higgins*, 760 F. Supp. 617, 622 (E.D. Mich. 1991).

96. *But see* 32 MARX-ENGELS WERKE 167 (1965) (letter from Marx to Engels (Sept. 26, 1868)) ("A large, the largest part of these shopkeepers suffer all the miseries of the proletariat, in addition the 'anxiety' and 'thralldom to respectability,' and without the compensating self-confidence of the better workers").

97. Employers are clearly engaged in the divide-and-conquer strategy of using contingent workers as "buffers [a]s the tradeoff for granting more employment security to the 'primary' work force." Audrey Freedman, *How*

the 1980's Have Changed Industrial Relations, MONTHLY LAB. REV., May 1988, at 35, 38.

98. See, e.g., CHARLES HECKSCHER, *THE NEW UNIONISM: EMPLOYEE INVOLVEMENT IN THE CHANGING CORPORATION* (1988); PAUL WEILER, *GOVERNING THE WORKPLACE: THE FUTURE OF LABOR AND EMPLOYMENT LAW* (1990).

99. Anne Polivka & Thomas Nardone, *On the Definition of "Contingent Work"*, MONTHLY LAB. REV., Dec. 1989, at 9, 10.

100. BNA, DAILY LAB. REP., July 18, 1985, at A-3 (LEXIS) (Audrey Freedman, Conf. Bd.).

101. For an extended theoretical account of these developments, see Jeffrey Pfeffer & James Baron, *Taking the Workers Back Out: Recent Trends in the Structure of Employment*, 10 RES. IN ORGANIZATIONAL BEHAV. 257 (1988).

102. As an example, the largest union in Britain, the General, Municipal, and Boilermakers' Union, has responded to requests from former white-collar members who set up their own businesses with severance-redundancy payments to unionize them. BNA, DAILY LAB. REP., May 28, 1987, at A-12 (LEXIS).

103. Proposals for expanding coverage of mandatory medical insurance in the United States have moved in this direction. See, e.g., HENRY AARON, *SERIOUS AND UNSTABLE CONDITION: FINANCING AMERICA'S HEALTH CARE* 141 (1991). In Scandinavia the self-employed are eligible for unemployment insurance benefits. See LINDER, *THE EMPLOYMENT RELATIONSHIP IN ANGLO-AMERICAN LAW* at 215, 232 n.167.

104. "With companies and those who work for them increasingly setting up innovative arrangements--flex time, telecommuting, job sharing, three- and four-day weeks, on-call assignments--the old standards defining just who is an employee seem increasingly imprecise." Daniel Woskowitz, *IRS Sharpens Definitions of Who Is an Employee*, Washington Post, Sept. 2, 1991, at F15 (NEXIS). For recognition--at least in the setting of the Third World--of the absence of a "clear-cut dichotomy" between wage labor and self-employment, which, however, fails to conceive of the latter as a reified relationship, see Alison MacEwen Scott, *Who are the Self-Employed?* in *CASUAL WORK AND POVERTY IN THIRD WORLD CITIES* 105 (R. Bromley & C. Gerry ed. 1979).

105. See Alejandro Portes, Manuel Castells, & Lauren Benton, *Conclusion: The Policy Implications of Informality*, in *THE INFORMAL ECONOMY: STUDIES IN ADVANCED AND LESS DEVELOPED COUNTRIES* 298, 309-10 (A. Portes, M. Castells, & L. Benton ed. 1989).

106. ROBERT DAHL, *AFTER THE REVOLUTION: AUTHORITY IN A GOOD SOCIETY* 120, 123 (1971 [1970]).

107. For a broad analysis of the evolving political-economic and ideological roles of the state, see ALAN WOLFE, *THE LIMITS OF LEGITIMACY: POLITICAL CONTRADICTIONS OF CONTEMPORARY CAPITALISM* (1980 [1977]).

108. On the history of the conceptualization of the class relationships between a proletarian core and workers on the periphery, see ADAM PRZEWORSKI, *CAPITALISM AND SOCIAL DEMOCRACY* 47-97 (1987 [1985]). For a vacuously rhetorical attempt to apply that tradition in the context of the contemporary growth of contingent employment and self-employment, see Chris Gerry, *The Working Class and Small Enterprise in the UK Recession*, in *BEYOND EMPLOYMENT: HOUSEHOLD, GENDER AND SUBSISTENCE* 288 (N. Redclift & E. Mingione ed. 1985).

109. KARL MARX, *DIE KLASSENKÄMPFE IN FRANKREICH 1848 BIS 1850*, in I:10 KARL MARX [&] FRIEDRICH ENGELS, *GESAMTAUSGABE (MEGA)* 119, 187 (1977 [1850]).