FAREWELL TO THE SELF-EMPLOYED

Deconstructing a Socioeconomic and Legal Solipsism

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Congress realized that the income of self-employed persons is in most instances a combination of income from both labor and invested capital, and deliberately chose not to attempt the difficult, if not impossible, task of separating one from the other.  

The complaint voiced by several researchers that the exclusion of the incorporated self-employed from the count has vitiated quantitative and qualitative analysis of self-employment calls for discussion of a number of interrelated characteristics of this subgroup.

Was Henry Ford Self-Employed?

The modern American is not self-employed.... Whether the president of General Motors or a floor-sweeper in a Chevrolet plant, the "worker" today is what Marx defined as a proletarian: a man who sells his labor to those who control the "tools of production," in exchange for which he receives a "wage" payment. No individual is wealthy enough to own personally the vast capital resources required for modern industrial production; hence, we all become employees, that is, economic dependents of organizations. ... Even those who are self-employed are not necessarily economically independent. The local franchised dealer for a national corporation may have his economic affairs as effectively
administered by the manufacturer as though he were a direct employee.²

The chief vehicle of collecting information on the self-employed, the CPS questionnaire, does not delve into socioeconomically sensitive detail that would enable the BLS/BOC to verify self-reported data on self-employment.³ In particular, it fails to explore such issues as the share of stock ownership above which it would be appropriate to characterize a corporate president as self-employed. Although the categorization of the president of General Motors as not self-employed appears uncontroversial, what about that of Henry Ford II at the time he or his family owned or controlled a controlling interest in the Ford Motor Company? And with regard to an empirically more relevant phenomenon, what about working shareholders in much smaller incorporated businesses?

Steinmetz and Wright distinguish between "[r]entier capitalists," who do not work for income, and "[e]ntrepreneurial capitalists," who do.⁴ The former they describe as "coupon-clipp[ers]...receiving an income strictly from investments."⁵ What about owners who do not receive a fixed income but fluctuating (so-called residual) profits and rely largely on their managers? Although they cannot seriously be deemed to "work for profit...in their own business," it is unlikely that the state will compel census respondents to incriminate themselves; it has, after all, been some time since it was socially acceptable to call people "capitalists"—by distinguishing between working and nonworking owners.

So long as a business has a payroll (that is, employees), whether it is incorporated or unincorporated does not affect the class status of the owner. She may be a small capitalist or a large one, but she is neither a dependent worker⁷ nor self-employed. The question is not so much whether the owners of incorporated businesses should be classified as employees or self-employers but whether it makes sense to lump together manager-owners of large firms with one-person entities regardless of whether the latter are incorporated. In favor of an inclusive grouping, it can be
said that it is no less meaningful to classify (the original) Henry Ford and the owner-operator of a one-person hot dog stand as self-employed than to call both the current president of Ford Motor Company and his production-line workers employees. Although there is force to this argument, visiting the improprieties of the latter classification on the former is not a valid justification. If self-employment is viewed as a dual or hybrid category combining labor and (petty) capital, capturing its essence requires a lower and an upper cutoff point. In other words, exclusion must extend to both crypto-employees and crypto-capitalists.

The socioeconomic sense underlying this categorization is rooted in the ontogenetically transitional character of autonomous producers, "who employ no workers, and therefore do not produce as capitalists." If self-employment is viewed as a dual or hybrid category combining labor and (petty) capital, capturing its essence requires a lower and an upper cutoff point. In other words, exclusion must extend to both crypto-employees and crypto-capitalists.

It is then also the law that economic development distributes the functions to different persons and the artisan or farmer...will either gradually transform himself into a small capitalist, who also exploits other workers, or he will lose his means of production (this may happen at first although he remains their nominal proprietor...) and be transformed into a wage laborer.

That this process is not merely cyclical but also secular is shown by the monotonic decline in the rate of self-employment from the poorest to the richest countries today. If the study of the self-employed is not to be a sterile exercise in taxonomy, investigation of their concrete relations remains a research desideratum.

The BOC/BLS's reclassification in 1967 of the incorporated self-employed as employees was part of a larger project to revamp the procedures for collecting data on employment and unemployment in order to implement national economic policies. That expedience rather than theoretical rigor underlay the changes recommended by the so-called Gordon Committee emerges from the guideline that different uses and purposes of data on employment "may require different concepts and definitions." Therefore "no single definition of the labor force...is obviously the correct one." Instead, "[e]ach concept should correspond to
objectively measurable phenomena and should depend as little as possible on personal opinion or subjective attitudes." Moreover, "the concepts should be operationally feasible. It should be possible to get reliable data at reasonable cost."^15

The committee's specific interest in the self-employed, to whom "[r]elatively little attention is paid," related to their occupational distribution, analysis of which might contribute to understanding changes in the volume of employment and unemployment.\textsuperscript{16} Although the committee maintained that "[b]y the nature of the case, unemployment is almost nonexistent among the self-employed," it also acknowledged that "[c]ertain types of self-employment may rise as workers lose jobs in a business contraction. The apple sellers of the Great Depression are a classic example."\textsuperscript{17} The possibility of self-misclassification in household surveys arose because

[s]ome persons may regard themselves, or are considered by their wives, as self-employed even though they operate an incorporated business and are listed on its payroll as salaried officers or are otherwise on the payroll of an establishment. This would most likely occur among owners of small retail or service establishments or among salesmen who operate on a relatively loose relationship with their organization.\textsuperscript{18}

In the construction industry, too, "many workers think of themselves as self-employed or alternate between self-employed and wage or salary work. There is no independent evidence on the number who might be reported as self-employed although they are actually, or at least legally, employees."\textsuperscript{19}

When the BLS adopted the recommendations of the Gordon Committee in 1967, it concurred in the view that estimates of self-employment had been too high "because they included some persons who were the operators of small incorporated family enterprises and regarded themselves as proprietors rather than as wage or salary workers. The misclassification of these wage and salary workers as self employed" largely underlay the discrepancies between household and establishment data.\textsuperscript{20} In order to segregate the two groups, the CPS inserted a question asking "all
persons reported as self employed in a nonfarm business as to whether the business was incorporated."21 The result "was to reduce the average level of nonfarm self-employment by about 750,000."22

To be sure, the BLS/BOC erred in reclassifying all incorporated self-employed as employees in 1967 (just as it had erred earlier in classifying them all as self-employed). But such a binary approach is inescapable where, in the absence of a socioeconomically sensitive inquiry, self-identification prevails. The point is not to return to the status quo ante but to determine who among the incorporated and unincorporated self-employed in fact live up to that class status. And neither the owner of a large corporation with many employees nor the dependent carpenter who incorporates in the hope of taking advantage of some tax code provision belongs to the self-employed.

How the Reagan Tax Reforms Inhibited Incorporation by the Self-Employed

The term "employee" includes...an individual who is a self-employed individual. ... An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer.23

A number of sociologists and economists have stressed that the CPS undercounts the self-employed because it definitionally excludes the incorporated self-employed, who have been increasing more rapidly than the unincorporated. Steinmetz and Wright, for example, created data on the incorporated self-employed by interpolating and extrapolating from the figures on incorporated self-employment that the BLS did publish on three occasions since BLS/BOC began classifying the incorporated self-employed as employees in 1967. The benchmarks they used are: 1967, 850,000; 1976, 1,500,000; 1978, 2,100,000; 1982, 2,800,000.24 These intervals indicate that Steinmetz and Wright were interpolating and extrapolating on the assumption that the rates of increase among incorporated self-employed were: seventy-six per cent
Farewell to the Self-Employed

(eight per cent per annum) between 1967 and 1976; forty per cent (twenty per cent per annum) between 1976 and 1978; eighty-seven per cent (fourteen per cent per annum) between 1976 and 1982; and 229 per cent (fifteen per cent per annum) between 1967 and 1982.

In August 1989, the BLS began tabulating (but not publishing) these data—the nonsampling error in which may be so great as to make them worthless—separately once again. The annual averages outside agriculture were 3,311,000 in 1989 and 3,356,000 for 1990. The increase from 1982 to 1990 thus amounted to only twenty per cent, or 2.5 per cent annually. Thus Steinmetz and Wright, who do not specify the rate of extrapolation they used for the period after 1982, may have been overestimating the growth during that period by a factor of four- to sixfold.

It was no coincidence that 1982 marked a turning point for incorporation by the self-employed. Until then, such incorporations had been vitally induced by the significant tax-sheltered pension benefits advantage that the incorporated had enjoyed. But the enactment in 1982 of the Tax Equity and Fiscal Responsibility Act (TEFRA), which created virtual pension parity between the unincorporated and incorporated self-employed, reduced the incentive to incorporate. Lowering the highest individual income tax rates below the highest corporate rate in 1986 virtually eliminated any tax advantages accruing from incorporation. Tax lawyers predicted at the time that incorporations would fall off, and by 1991 new incorporations did in fact decline to the level they had reached in 1983.

The story, however, is not yet told. In order to understand why it is misleading, without more, to impute socioeconomic solidity to the incorporated self-employed, it is necessary to trace the legal and economic background of one-person incorporations since World War II. In 1942, Congress amended the Internal Revenue Code (IRC) to authorize employers to establish pension plans for their employees (and themselves insofar as they were employees of the corporation) by providing a tax shelter for part of their wages or salaries (and the accruing interest) until they
The Incorporated Self-Employed

retired. This favorable tax treatment of corporate employers and employees in tandem with the advent of steeply progressive individual income tax rates in 1942 created a powerful incentive to incorporate. This corporate privilege prompted a forty-year campaign by the excluded sole proprietors and partners to secure similar tax-sheltered retirement plans.

Led by the American Bar Association and American Medical Association, those in the professions began orchestrating a public relations crusade on behalf of their financially embattled group:

Excluded from the benefits of social security coverage and precluded (by reason of the unavailability of the corporate form of carrying on his practice) from participation in employees' pension and profit-sharing plans which enjoy special income tax benefits, a lawyer or other professional man who is self-employed, even one with a large income, simply cannot accumulate a competence for himself and his family.

This facially implausible claim of penury was tirelessly embellished during the 1940s and 1950s in professional journals and, especially, at congressional hearings. Repeated lobbying efforts kept the issue before Congress and gained a number of staunch advocates, chief of whom was Representative Keogh.

The argument pressed by the professional associations ran as follows. Because "a member of a partnership is not an employee of the partnership [and a] sole proprietor is not his own employee...he is left out in the cold." And because lawyers also considered the denial to partners of employee status to be "arbitrary," the ideological notion of being one's own employer and employee made a noteworthy rhetorical contribution to the campaign for extension of tax-sheltered pension rights. The professions deemed social security inadequate because "lawyers and doctors and architects and most self-employed people do not want to retire and stop earning money. We like to die with our boots on." As a result, "[m]ost physicians, dentists, and lawyers...would make substantial payments all their lives, only to find at age 65 that..."
they are disqualified to receive benefits because they earn more than $1,000 per year."^{45}

Although opposition by the Treasury Department to various bills^{46} blocked enactment of tax-sheltered pensions for the self-employed through the 1950s, the long-time lobbying came to a first fruition with the enactment of the Keogh bill amendment to the IRC in 1962,^{47} which cut the Gordian knot by treating the self-employed "for retirement purposes as the employers of themselves."^{48} The relatively weak opposition to the bill^{49} by liberals, populists, and labor unions^{50} focused on the bipolar distribution of income among the self-employed:^{51}

The bill singles out for assistance a class of people, the self-employed, who as a group are, generally speaking, least in need or deserving of assistance. ... The most active proponents of the legislation include organized groups of doctors, lawyers, and accountants. It is said that there are more than 6 million self-employed individuals in this country who might benefit by the legislation. However, in fact, according to the estimates of the Treasury Department, about 80 percent of the tax reductions...would be received by self-employed people with an annual income in excess of $10,000, and about 50 percent...by self-employed people with an annual income in excess of $20,000. Now there are about 379,000 self-employed people in the United States with an annual income in excess of $20,000. These people constitute only about 6 percent of the self-employed people subject to this tax.^{52}

At the other end of the spectrum,

there are several million self-employed individuals who are unable to set aside substantial sums of money out of current earnings. These people must spend all of their current earnings to maintain themselves and their families. These are the self-employed who are most in need of assistance in providing for their nonproductive years but this bill is of no assistance whatsoever to this large group.^{53}

The Keogh Bill did not create closure. As an Assistant Secretary of the Treasury astutely remarked at the time, the fact that corporate owner-managers still retained certain advantages in terms of the amount of income they were
permitted to shelter from taxes created "an artificial tax incentive" for the self-employed to incorporate. And they did in large numbers during the next two decades. Between 1962 and 1975 the number of new business incorporations rose by seventy-nine per cent; during the following six years alone, the figure increased a further seventy-eight per cent. There then followed the aforementioned slackening in the rate of growth, so that new incorporations rose by only twelve per cent from 1981 to 1990.

The proliferation of so-called personal service corporations (PSCs) is particularly relevant to evaluating claims about the disproportionate increase in the incorporated self-employed and their comparative economic solidity. Before the passage of TEFRA in 1982 and the reduction of tax rates in 1986, a number of basic advantages inured to incorporated service providers. First, they could shift the taxation of income from higher individual tax rates to lower corporate tax rates. Second, they could avail themselves of the fringe benefits available to employees—but not to self-employees—such as term life insurance, medical reimbursement plans, and death benefits, the expense of which could be deducted. And third, they benefited from timing differences governing the recognition of income by postponing tax payment through the choice of a corporate fiscal year.

In order to suppress frivolous incorporations, the IRS finally prevailed upon Congress to authorize it to adopt countermeasures designed to eliminate the incentive attaching to the formation of PSCs. Thus TEFRA, in defining a PSC as an entity "the principal activity of which is the performance of personal services [which] are substantially performed by employee-owners," who in turn must own more than ten per cent of the outstanding stock, provides that if

(1) substantially all of the services of a personal service corporation are performed for (or on behalf of) 1 other...entity, and
(2) the principal purpose of forming...such personal service corporation is the
avoidance or evasion of Federal income tax by reducing the income of...any employee-owner which would not otherwise be available, then the Secretary may allocate all income...between such personal service corporation and its employee-owners, if such allocation is necessary to prevent avoidance or evasion of Federal income tax or clearly to reflect the income of the personal service corporation or any of its employee-owners.59

It was Congress's express purpose in enacting this provision to overturn the results triggered by permissive judicial decisions in cases in which "the corporation served no meaningful business purpose other than to secure tax benefits which would not otherwise be available."60 In the wake of this congressional action, the IRS has taken the principled interpretive position that if an employee (as opposed to already self-employed person) incorporates a PSC, the IRS will ignore that intermediate layer and tax the common-law employer.61

A case that antedates TEFRA will illustrate the point. Two professional hockey players, who had previously been employees of their team, each formed a PSC in which he was the sole shareholder, officer, director, and employee, in order to shelter income in a pension plan. The PSC then entered into an employment contract with the team. At issue was the disallowance by the IRS of pension deductions. Based on the "smallest details" to which the team's control over the players extended, the tax court found that the players were the team's employees; it therefore held against the taxpayers.62 The dissent stated that the majority had afforded a logical basis for the IRS position "that only 'traditional' independent contractors (i.e., those over whom service-recipients do not exercise 'control') can avail themselves of PSC's while 'traditional' employees cannot."63 By condoning self-incorporation by those who even under the strict standard of the control test64 are acknowledged employees, the dissent clearly demonstrated its willingness to dismantle a categorical distinction between employees and self-employees. In reversing the tax court, the court of appeals not only supported this act of conceptual dissolution, but noted in
dictum that it would have decided the case the same way had it arisen under § 269A. Although the practical point may nevertheless have become moot by virtue of the fact that few athletes have incorporated in the past few years because the tax advantages have been reduced, the theoretical point subsists: there can be no presumption that incorporators of one-person PSCs "are likely to be the most fully petty bourgeois." The refutation of this claim in this context is particularly ironic in light of the high incomes received by these conceded employees.

NOTES

1. Delno v. Celebrezze, 347 F.2d 159, 163 n.10 (9th Cir. 1965).
3. See supra ch. 2.
4. Steinmetz & Wright, The Fall and Rise of the Petty Bourgeoisie tab. 2 at 979.
5. Id. at 979.
6. In 1916, when the Commissioner of Internal Revenue published occupational data for federal personal income tax returns, the rubric "Capitalists: Investors and speculators" accounted for approximately one-fifth of all returns, one-quarter of all net income, and one-third of all income tax. See Statistics of Income for 1916: Compiled from the Returns for 1916 Under the Direction of the Commissioner of Internal Revenue, H. Doc. No. 1169, 65th Cong., 2d Sess. tab. 6 at 31 (1918).
7. Assuming that she is not economically and personally subordinated to some larger entity.
9. Although Marx was referring to artisans and farmers, the unstable state of solo practice also appears to apply to doctors and lawyers. See Magali Larson, The Rise of Professionalism: A Sociological Analysis 232-33 (1979 [1977]). The decline of self-employed professionals has been associated with increasing capital costs. See Aronson, Self-Employment at 87.
Farewell to the Self-Employed

10. MARX, ZUR KRITIK DER Politischen ÖKONOMIE (MANUSKRIPT 1861-1863) at 2179.

11. Id. at 2181. Earlier Marx had one-sidedly emphasized the falling of the "small Mittelstände...down into the proletariat." KARL MARX AND FRIEDRICH ENGELS, MANIFEST DER KOMMUNISTISCHEN PARTEI, in 4 idem, MARX-ENGELS WERKE 469 (1959 [1848]). For a discussion of the applicability of the model to nineteenth-century Germany, see SHULAMIT VOLKOV, THE RISE OF POPULAR ANTiMODERNISM IN GERMANY: THE URBAN MASTER ARTISANS, 1873-1896, at 32-94 (1978). The other extreme of Marx's model is reflected in the characterization of the one-man shop as an "embryo employer." WILLIAM WEYFORTH, THE ORGANIZABILITY OF LABOR 183 (1917).

12. ILO, THE PROMOTION OF SELF-EMPLOYMENT tab. 1 at 8.

13. In this context, one author has charged that "[c]oncepts and statistical measures regarding employment...are conceptual artifacts which...have no reality in and of themselves." Stanley Moses, LABOR SUPPLY CONCEPT: POLITICAL ECONOMY OF CONCEPTUAL CHANGE, in 3 COUNTING THE LABOR FORCE: READINGS IN LABOR FORCE STATISTICS, App. 96, 103 (Diane Wernke ed., Nat'l Comm'n on Employment & Unemployment Statistics, 1979) (reprinted from ANNALS of the Am. Ass'n of Pol. Soc. Sci., March 1975, at 36).

14. PRESIDENT'S COMMITTEE TO APPRAISE EMPLOYMENT AND UNEMPLOYMENT STATISTICS, MEASURING EMPLOYMENT AND UNEMPLOYMENT 42 (1962).

15. Id. at 43.

16. Id. at 57-58.

17. Id. at 57. In other words, the committee one-sidedly focused on underemployment.

18. Id. at 368.

19. Id. at 370.


21. Id. at 7-8.

22. Id. at 10.

The Incorporated Self-Employed

24. Steinmetz & Wright, The Fall and Rise of the Petty Bourgeoisie at 988-90. It is unclear why they use 850,000 for 1967 since BLS estimated at the time that the reclassification reduced the number of self-employed by about 750,000. See Stein, New Definitions for Employment and Unemployment at 10.

25. See supra ch. 2. The Small Business Administration, using unpublished data from the CPS, has published data offering greater detail about the incorporated self-employed. Apart from the unreliability resulting from nonsampling errors, the small numbers of respondents who would both be incorporated self-employed and fall under other (e.g., occupational) rubrics cast doubt on the accuracy of cross-tabulations. According to these data, the incorporated self-employed rose 33.3 per cent from 1979 to 1983 compared to 6.9 per cent for the unincorporated, accounting for twenty per cent of all self-employed (including employees with self-employment) in May 1983. U.S. SMALL BUSINESS ADMINISTRATION, THE STATE OF SMALL BUSINESS: A REPORT TO THE PRESIDENT tab. 4.2 at 112, tab. 4.3 at 114 (1986). Those with four or more years of college represented 28.3 per cent of full-time unincorporated self-employed but 44.0 per cent of the incorporated. Id., tab. 4.6 at 118. The incorporated were more concentrated in manufacturing and wholesale trade and less so in services than the unincorporated, more in executive, administrative, and managerial, but equally in professional specialty occupations. Id., tab. A4.17 at 146-47.

26. For both years, 133,000 incorporated self-employed were reported in agriculture. The seasonally unadjusted figures for March 1991 are 3,257,000 and 117,000, respectively. Unpublished CPS data, BLS, furnished by John Stinson, Apr. 18, 1991.

27. On their assumption that incorporation continued on its path steep even after 1983, see Steinmetz & Wright, Reply to Linder and Houghton at 737.


30. During the Reagan administration, the highest corporate tax rate was reduced from forty-six per cent to thirty-four per cent, while the highest personal income tax rate fell from seventy per cent to twenty-eight per cent. See 26 U.S.C. §§ 1, 11 (1976, 1982, and 1988).

31. On the other hand:

[T]he watchwords of savvy owners of privately held concerns, especially after the 1986 tax revision cut personal rates below those on business income, have been "zero out the corporation." Rent to your company, lend to your company, be an employee or contractor for your company—do what you can to put the expenses on the company's books and the pay-outs on yours.
Farewell to the Self-Employed


33. Survey of Current Bus., Feb. 1991, chart at C-2; Bus. Conditions Dig., July 1989, Tab. C at 98. These data, collected by Dun & Bradstreet from filings with the state secretaries of state, are independent of the CPS data, although they corroborate the trend. These data are consistent with other findings, based on unpublished CPS data, that the rate of incorporated self-employment for white men peaked in 1982. See Evans & Leighton, *Self-Employment Selection and Earnings over the Life Cycle* tab. 3.3 at 29.


The Incorporated Self-Employed


43. Significantly, part of the bar opposed simple integration of partnerships into § 165 on the ground that the statutory prohibition of discrimination in favor of owner-employees would seriously curtail the benefits to any but the largest law partnerships. See Rudick, *More about Pensions for Partners* at 1002.

44. *Postponement of Income Tax Set Aside for Retirement* at 26 (testimony of George Roberts).


46. The Treasury opposed these schemes inter alia because, by distributing "relief more in proportion to the saving abilities of taxpayers than in proportion to their earned income," they undermined the principle of ability to pay. *Postponement of Income Tax on Income Set Aside for Retirement* at 46, 49 (statement of Treasury Dep't).


51. This general bipolarity was not inconsistent with further heterogeneity within highly paid professional groups. For data on self-employed doctors and lawyers, see 108 *Cong. Rec.* 18840 (1962) (Sen. Douglas).


53. 108 *Cong. Rec.* at 18801 (Sen. Gore).


55. Calculated according to data in U.S. Bureau of Economic Analysis, *Business Statistics*, 1961-88, at 21 (26th ed. 1989); *Survey of Current Business*, Feb. 1991, at tab. C-2. By the same token, it was not the case that the increase in incorporations in the 1960s and 1970s was merely a reflection of growing business formation. Thus, according to IRS tax return data, from 1960 to 1970, proprietorship (including farm) returns rose only three per cent.
Farewell to the Self-Employed

compared to forty-six per cent for corporation returns. Calculated according to data in U.S. BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES, COLONIAL TIMES TO 1970, part 2, series V-4 and V-10 at 911 (bicentennial ed. 1975). During the same period, the number of new incorporations rose by forty-five per cent. Calculated according to id., series V-21 at 912. From 1970 to 1980, nonfarm proprietorships (i.e., businesses, not tax returns) rose fifty per cent compared to sixty-three per cent for corporations. Calculated according to data in U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1990, tab. 858 at 521 (110th ed. 1990). But according to other IRS data, the number of proprietorship returns rose 107 per cent from 1970 to 1980. Calculated according to SOI BULL., Fall 1990, tab. 10 at 113. From 1980 to 1987, the number of proprietorships rose by ten per cent compared to thirty-three per cent for corporations. Calculated according to data in SOI BULL., Fall 1990, tab. 10 at 113, tab. 13 at 115. See also IRS, STATISTICS OF INCOME: SOURCE BOOK: SOLE PROPRIETORSHIP RETURNS 1957-1984, at iii (chart) (1986). Moreover, the number of S corporation returns increased by 112 per cent from 1970 to 1980 and by 107 per cent from 1980 to 1987. Calculated according to id., tab. 13 at 115.

56. In 1982 the rates were forty-one per cent and 26.5 per cent on the first $100,000. This shift, however, benefited only those who caused the PSC to retain and to accumulate some of its earnings instead of distributing all of its income as deductible expenses.


63. 93 T.C. at 588.


The Incorporated Self-Employed


67. Steinmetz & Wright, Reply to Linder and Houghton at 738.

68. One tax-evasive action that has not been affected by changes in the tax code during the 1980s has been incorporation calculated to relieve taxpayers of social security tax liability by having the corporation pay out their compensation in the form of "dividends," which as unearned income are not subject to the Federal Insurance Contributions Act, 26 U.S.C. §§ 3101-3128 (1989), Self-Employment Contributions Act, 26 U.S.C. §§ 1401-1403 (1988), or the Federal Unemployment Tax Act, 26 U.S.C. §§ 3301-3311 (1989). This maneuver is also designed to avoid the reduction or elimination of benefits that is triggered when social security old-age insurance recipients report earned income in excess of certain threshold amounts before the age of seventy. 42 U.S.C. § 403(b) (Supp. 1991); MERTON BERNSTEIN & JOAN BERNSTEIN, SOCIAL SECURITY: THE SYSTEM THAT WORKS 24-26, 292 (1989 [1988]). Although the courts have by and large dealt rudely with such incorporations, reported litigation suggests that lawyers continue to advise clients to engage in them. See, e.g., Ludeking v. Finch, 421 F.2d 499 (8th Cir. 1970) (HEW empowered to reclassify S corporation dividends as wages); Joseph Radtke, S.C. v. United States, 712 F. Supp. 143 (E.D. Wis. 1989), aff'd, 895 F.2d 1196 (7th Cir. 1990) (where lawyer is sole incorporator, director, shareholder, and full-time employee of S corporation and takes all his compensation as "dividends," they are FICA-taxable wages); accord, Spicer Accounting, Inc. v. United States, 66 A.F.T.R.2d 90-5806 (9th Cir. 1990). The position of the IRS is enunciated at Rev. Rul. 74-44, 1974-1 C.B. 287 (two shareholders in an electing small business corporation paying themselves "dividends" in lieu of reasonable compensation for their services actually received wages to which FICA tax liability attached). Even in one case where the court ruled for the taxpayer by finding that his income was not earned income, that ruling may have boomeranged on the taxpayer when the court remanded for a determination as to whether his preretirement and preincorporation income were earned income; if they were then found not to be, his retirement benefits would be subject to reduction because his credited earnings in covered employed would be lower. Bunch v. Schweiker, 681 F.2d 249, 250-52 (4th Cir. 1982). Although it is unclear how evading the social security tax pays off when the price is double taxation of the "dividends"--of the corporation as profits and of the individual as personal income--perhaps the mind-set is the same animating ('irrational') people who self-convert to self-employment because they believe that the effective FICA tax is higher than the Self Employment Contributions Act tax. See Robert Moore, Self-Employment and the Incidence of the Payroll Tax, 36 NAT'L TAX J. 491, 499 (1983). See also EVANS & LEIGHTON, SELF-EMPLOYMENT SELECTION AND EARNINGS OVER THE LIFE CYCLE at 41 (according to
Farewell to the Self-Employed

econometric model, FICA tax increases lower the rate of unincorporated self­employment while raising that of the incorporated).

In fact, relatively few incorporated entities appear to be trying to represent all their profits as dividends since the vast majority have at least some payroll. Corporations without payroll as a percentage of all establishments without payroll developed as follows: 1987: retail—5.5; services—3.5; construction—3.1; 1977: retail—2.5; services—2.2; 1972: retail—2.3; services—1.8; construction industry—1.5. Calculated according to data in U.S. BUREAU OF THE CENSUS, 1972 CENSUS OF CONSTRUCTION INDUSTRIES, 1 INDUSTRY AND SPECIAL STATISTICS, tab. 1 at 4 (1976); idem, 1972 CENSUS OF SELECTED SERVICE INDUSTRIES, 1 SUMMARY AND SUBJECT STATISTICS, tab. 3 at 1-129 (1976); idem, 1977 CENSUS OF SERVICE INDUSTRIES, 1 SUBJECT STATISTICS, tab. 7 at 1-141 (1981); idem, 1 1972 CENSUS OF RETAIL TRADE: SUMMARY AND SUBJECT STATISTICS, tab. 3 at 1-118 (Establishment and Firm Size (Including Legal Form of Organization)) (1976); idem, 1977 CENSUS OF RETAIL TRADE, 1 SUBJECT STATISTICS, tab. 7 at 1-127 (1981); idem, 1987 CENSUS OF CONSTRUCTION INDUSTRIES, SUBJECT SERIES: LEGAL FORM OF ORGANIZATION AND TYPE OF OPERATION tab. 1 at 5 (1990); idem, 1987 CENSUS OF RETAIL TRADE, NONEMPLOYER STATISTICS SERIES: NORTHEAST tab. 1 at 1-3 (1990); idem, 1987 CENSUS OF SERVICE INDUSTRIES, NONEMPLOYER STATISTICS SERIES: NORTHWEST tab. 1 at 2-3 (1990). Data for 1982 are omitted because "[d]ata for most establishments without payroll were extracted from information reported by businesses on...(IRS) Form 1040, Schedule C. These data could not be published as planned because many businesses were miscoded by IRS into miscellaneous categories rather than being classified in the specific kind of business." U.S. BUREAU OF THE CENSUS, 1982 CENSUS OF SERVICE INDUSTRIES, GEOGRAPHIC AREA SERIES: UNITED STATES VI (1984). See also U.S. BUREAU OF THE CENSUS, 1987 CENSUS OF SERVICE INDUSTRIES, GEOGRAPHIC AREA SERIES: UNITED STATES A-2 (1989) ("In 1982, data for nonemployer firms...were published at the United States level only").
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 employee.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 debates^6 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
Conclusion

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,59 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. To be sure, the debate flared up again briefly over the admission of farmers, lawyers, and physicians 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, 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). 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 time (whether spent at the agency or at home)? Indeed, as "the temporary help industry" has come to "provide[] an alternative to traditional
Conclusion

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. 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, 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 costs—rose, it became increasingly implausible that any solo worker could both accumulate that amount of capital and set in motion and valorize it alone. 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. 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.
Conclusion

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.  

Doubtless workers do exist who are "remote from the classic social predicament to which Marx, outstandingly, had drawn attention." 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 payments 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 em­
ployment. 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
Conclusion

Even abstracting from the issue, for example, of how many doctors and lawyers in "solo" practice really work without exploiting nurses, 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 industry 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: shopkeepers 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," 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," the "isolated" (or "proletaroid"), who merely sell their labor power because they do not own the means of production, have no autonomy with regard to the labor process, and receive very low incomes, which make a mockery of any sense of independence. Socioeconomic class analysis would be furthered if the BOC collected data on whether the alleged self-employed employ others. If the West German definitional guideline--"decisive is the economic independence"--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." These are the "independents," the only content of whose "independence consist[s] in the necessity or bearing the misery independently."

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." 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." Relatively few such workers have health insurance, and some earn less than the minimum wage--in part because they are not compensated for work-related tasks "which would fall within regular on-site work hours." 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. "[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." 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." Such workers, who are characterized by unstable earnings and lack of job security, autonomy, or independence, 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, 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. 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"--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 temporarily, spatially, and/or organizationally atomized workers. These contingent workers are estimated to make up as much as a quarter of the work force in the United States. Part-time workers alone now account for almost one-fifth of national employment. 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. These figures do not include temporary workers hired directly by firms or so-called leased employees.

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" 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." 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. 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. The rise in nominal self-employment then emerges as an epiphenomenon of the contingent work force. Consistent with this overall pattern, even the increase in the self-employed was fueled by part timers.

Whether the contingent workers' isolation results from the part-time or temporary nature of the relationship or from performing the work in the workers' homes or in the interstices between a labor supplier and labor employer, 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. 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. 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."

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

was much less obsessed than sociologists today with the niceties of taxonomy. 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.

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

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. 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 class and the concomitant proliferation of a largely "on-demand," "at-risk," and contingent work force only marginally integrated into the social wage may contribute to the assimilation of all these working-class strata. If, in addition, the latter mobilize to consolidate and to intensify the trend toward parity of state protective programs for the self-employed, the distinction between employees and self-employees may eventually become moot. Finally, adoption of a guaranteed social income decoupled from the employment relationship would virtually eliminate the distinctive socioeconomic character of self-employment altogether.

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," political-economic conflict that once focused on the place of production shifts its locus in part to the state. 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. 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


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).
Conclusion

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).


16. See supra ch. 3.

17. See supra ch. 2.


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 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
Farewell to the Self-Employed

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]).


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 defense des intéresses des classes moyennes"); Recueil des lois et arrêtés royaux, June 15, 1954, No. 494, at 2818-21 (creation of Ministère des Classes moyennes/Ministrie 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 INDEPENDANTS, 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...
Conclusion

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.


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. Twyffort, 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, sweatshop workers, and those whose wages and hours were governmentally prescribed.


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]).


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.


40. On the splintering of the Mittelstand, see Grünberg, Der Mittelstand in der Kapitalistischen Gesellschaft at 167.
Conclusion

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 Age Hansen & Ingrid Henriksen, Dansk Social Historie: Velfærdstaten 1940-78, at 201-205 (1980) (analyzing self-employed [selvstændige] in Denmark in the postwar period).


47. See Wagner, The Proletarianization of Nursing in the United States.


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).
Farewell to the Self-Employed

50. "Pour 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: AGIBUSINESS 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.


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 NEUNZEHNTEN JAHRHUNDERT 455-58 (1954 [1903]).


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.


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


67. Id. at 2.

68. Id. at 89, 157.


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).
Farewell to the Self-Employed


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]).


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


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.
Conclusion

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.

Farewell to the Self-Employed

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工業 AGE (1985).

90. See Arno Mayer, The Lower Middle Class as Historical Problem, 47 J. MOD. HIST. 409, 425, 432 (1975); GRÜNBÉRG, 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).


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


94. Marx, Questionnaire for Workers at 200.

95. For an example of modern legislation protecting homeworkers regardless of whether they are "an employee, 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 'thraldom 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.


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).


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).


106. ROBERT DAHL, AFTER THE REVOLUTION: AUTHORITY IN A GOOD SOCIETY 120, 123 (1971 [1970]).
Farewell to the Self-Employed

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 1:10 KARL MARX [&] FRIEDRICH ENGELS, GESAMTAUSGABE (MEGA) 119, 187 (1977 [1850]).