

**LABOR STRUGGLE  
A Free Market Model**

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## A. The Effects of Government Policy

Commentators on the libertarian Right frequently assert that the effectiveness of organized labor depends on the use of force—either direct force by pickets or the indirect force of government labor regulations—to exclude scabs from the work force. Murray Rothbard, for example, in *Man, Economy, and State*, wrote from the assumption that the only function of unions was to exclude non-union workers and thereby enable union workers to extract a monopoly price for labor.<sup>1</sup> A corollary assumption is that the conventional strike is the primary weapon of labor struggle. Thomas DiLorenzo of Mises.Org states both these assumptions explicitly:

Historically, the main "weapon" that unions have employed to try to push wages above the levels that employees could get by bargaining for themselves on the free market without a union has been the strike. But in order for the strike to work, and for unions to have any significance at all, some form of coercion or violence must be used to keep competing workers out of the labor market.<sup>2</sup>

Such arguments reflect considerable ignorance of the actual history of labor relations in the United States.

The predominance of the conventional strike as we know it, as the primary weapon of labor struggle, is in fact a byproduct of the labor relations regime created under the Wagner Act. The primary purpose of Wagner, in making the conventional strike the normal method of settling labor disputes, was to create stability and predictability in the workplace *in between* strikes, and thereby secure management's control of production.

And making strikes the only normal form of labor action made them less effective when they *were* used. In the system of labor relations extant before Wagner, strikes were only one part of the total range of available tactics. Unionism, and the methods it normally employed, was less about strikes or excluding non-union workers from the workplace than about what workers did *inside* the workplace to strengthen their bargaining power against the boss. Although what we would call conventional strikes were sometimes used, it was at least as common to engage in labor struggle of the sort the Industrial Workers of the World (Wobblies) call "direct action on the job."

The Knights of Labor, in their day the most successful American labor union that had so far existed, downplayed the use of strikes against particular employers. Their efforts focused mainly on organizing producer cooperatives, boycotting offending employers, and engaging in public information campaigns.<sup>3</sup> Of course it was quite common, given the Knights' status as dominant labor federation, for workers to establish a K. of L. local as a prelude to going on strike. But this was not the strategic focus of the union as envisioned by Grand Master Workman Clarence Powderly.

Where conventional strikes were used, they were much more effective without the strictures later imposed by Taft-Hartley. The great CIO organizing strikes of the early '30s were planned the way a general staff might plan a military campaign. They achieved strategic depth by organizing sympathy and boycott strikes all the way up and down the production chain, from raw material suppliers to retail outlets, as well as by teamsters who refused to carry scab cargo.

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1 Murray Rothbard, *Man, Economy, and State: A Treatise on Economic Principles* (Los Angeles: Nash Publishing, 1962, 1970), pp. 620-632.

2 Thomas DiLorenzo, "The Myth of Voluntary Unions," Mises.Org, September 14, 2004 <<http://www.mises.org/story/1604>>.

3 Sidney Lens, *The Labor Wars: From the Molly Maguires to the Sitdowns* (Garden City, N.Y.: Anchor Books, 1974), p. 65.

Regarding the latter, the Railway Labor Relations Act was passed precisely because of the tendency of large-scale strikes to turn into regional or national general strikes when backed by transport workers. The two closest approaches the United States ever had to a full-scale nationwide general strike, the Great Upheaval of 1877 and the Pullman Strike of 1894, both began with railroad strikes subsequently backed up by industrial walkouts across the country. In 1934 the longshoremen's strike on the West coast became a regional general strike, enlisting the support of marine workers and teamsters. Eventually thirteen other unions in San Francisco and Oakland walked out, including machinists, welders, butchers and laundry workers. The result was that 250 ships sat in dock, from San Diego to Seattle.<sup>4</sup> Taft-Hartley extended protections against such general strikes outside the railroad industry not only by prohibiting boycott and sympathy strikes, but by creating the ability to impose "cooling off periods" on industries like trucking and shipping.

When an entire production and distribution chain could be brought into a strike, the resulting strategic depth made the cumulative effect of even minority walkouts much more effective than a modern conventional strike confined to a single plant. In addition, strike organizers frequently built strategic alliances with local organizations of the unemployed (e.g., the alliance between the UAW and A. J. Muste's Unemployed League in the Auto-Lite strike at Dayton<sup>5</sup>), in order to increase the difficulty of recruiting scabs.

Absent the restrictions of the Wagner and Taft-Hartley labor regime, today's "just-in-time" economy would likely be far more vulnerable to such disruption than that of the 1930s. Prominent labor journalist Jane Slaughter argued as much:

"Just-in-time"... has made the union potentially more powerful than ever. The lack of buffer stocks makes quickie stoppages or slowdowns in support of an immediate demand extremely effective. The same is true with labor power—if workers in a department refuse to work, management has no extras to replace them. Action by even a few members could affect production drastically.<sup>6</sup>

A British management consultant warned, in similar terms, about the vulnerability of just-in-time to disruption:

Without buffer stocks between production each process is entirely dependent on the upstream one to deliver. Hence JIT bestows upon those who work it the capacity to create disruptions which, intentionally or otherwise are likely to be extremely pervasive....

A mere refusal to work overtime or to be flexible about tea breaks and working practices could cause severe problems, and a work-to-rule or stoppage could be disastrous....

The ideal JIT system has no inventories, no buffer stock, and no stocks of finished goods. If the supplier fails to deliver, production stops; if any one process fails to deliver, production stops; and if transport fails, production stops.<sup>7</sup>

By the way: It's interesting, in this regard, to consider that the highest paces of work and highest

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4 *Ibid.*, pp. 290-300.

5 *Ibid.*, pp. 307-308.

6 Jane Slaughter, "Management by Stress," *The Multinational Monitor*, January/February 1990 <<http://www.multinationalmonitor.org/hyper/issues/1990/01/slaughter.html>>.

7 Barry Wilkinson and Nick Oliver, "Power, Control and the Kanban," *New Manufacturing* No. 3. (1989), in "Management Schemes--Part 1 (UE's Information for Workers)" <[http://www.ranknfile-ue.org/stwd\\_mgtsch.html](http://www.ranknfile-ue.org/stwd_mgtsch.html)>.

levels of stress in the workplace tend to coincide not only with the highest likelihood that workers will get fed up and walk out, but with management's greatest vulnerability to a walkout. It is at the very times when workers are closest to the breaking point that management is most dependent on them, and they can do the most damage by a walkout. In the hospital ward where I work, I've personally seen half the nurses—nurses who would never dream of signing union cards in cold blood for fear of losing their jobs—ready to walk out when they had nine patients apiece and half the patients were on their call lights at once. It's also interesting to consider the significance of strike-delaying and “cooling off” legislation in the same light, along with the labor establishment's central focus on preventing or punishing wildcat strikes. One of the most important bits of leverage workers have comes from the difficulty of quickly hiring replacements, and the costly delay in their acquiring the tacit (“job-specific”) knowledge already possessed by those they are replacing—especially when the product needs to ship *today*.

I would guess that, with workers' clear foreknowledge of the harassment and punitive firings that have become standard operating procedure during organizing drives, it was probably easier in the early '30s to unofficially organize a workplace in the heat of the moment when everyone was at their breaking point—and to get immediate management concessions *right then*—than it is today to convince people to jump through all the Wagner certification hoops. Revolutions tend to come, not by persuading majorities of the population to join radical parties and initiate resistance at a carefully planned moment, but when some grievance unexpectedly becomes the last straw and a spontaneous mob decides to storm the Bastille. An important function of the Wagner regime is to prevent “last straws” from provoking spontaneous action.

The Wagner Act put an end to the asymmetric warfare model of direct action on the job, and imposed social discipline in the workplace by turning union bureaucrats into enforcers of contracts against their own rank-and-file. The Wagner regime aimed to divert labor resistance away from the successful asymmetric warfare model, and toward a formalized, bureaucratic system centered on labor contracts enforced by the state and the union hierarchies. The “crucial similarity” between the “two fascists” FDR and Hitler, as noted by Karl Hess, was that

both successfully destroyed the trade unions. Roosevelt did it by passing exactly the reforms that would ensure the creation of a trade-union bureaucracy. Since F.D.R., the unions have become the protectors of contracts rather than the spearhead of worker demands. And the Roosevelt era brought the “no strike” clause, the notion that your rights are limited by the needs of the state.<sup>8</sup>

This is true of all regimes serving the needs of industrial managers: one of the most important parts of Lenin's Thermidorian Reaction in the USSR was to emasculate the workers' committees and restore “one man management” in the factories.

Wagner came about because the *bosses* were begging for a regime of enforceable contract, with the unions as enforcers. If this seems like an exaggeration for rhetorical effect, consider Sam Dolgoff's account:

In 1937 Lewis assured the employers that “... a CIO contract is adequate protection against sit-downs, lie-downs, or any other kind of strike .... ”

According to the organ of big business (*Business Week*—June 7, 1958) the corporations accepted the

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8 “More From Hess,” *freeman, libertarian critter*, June 9, 2005 <<http://freemanlc.blogspot.com/2005/06/more-from-hess.html>>.

CIO brand of "industrial unionism" because as a matter of policy, the mass-production industries prefer to bargain with a strong international union able to dominate its locals and keep them from disrupting production.

As far back as 1926, Gerald Swope, President of General Electric Corporation, tried to persuade the AFL to organize a nation-wide union of electrical workers on an industrial basis. Swope believed that an industrial union " ... would mean the difference between an organization which we can work with on a business basis, and one that was an endless source of difficulties.... " The difficulties Swope had in mind were negotiating separate contracts with different local unions in the same plant or vicinity, whose contracts expire and must be renegotiated at different times which could prolong strikes and halt production indefinitely.

The implementation of the CIO brand of "industrial unionism" necessitated the creation of a highly centralized bureaucratic organizational structure which practically emasculated control of the union by the membership.<sup>9</sup>

And almost as soon as the Wagner Act was passed, the primary focus of CIO unions' leadership shifted from fighting employers to enforcing contracts on their own rank and file.

The evangelical fervor of the CIO... cooled with surprising suddenness.... One union after another established machinery to discipline workers engaged in strikes not specifically authorized by the union leadership. Even the UAW, the most dynamic of the CIO organizations, voted at its board meeting of September 1937 to permit General Motors to fire any worker participating in an "unauthorized" stoppage. In the Steel Workers Organizing committee, Phil Murray yielded a heavy hand, banning not only wildcat strikes by the formation of opposition factions.<sup>10</sup>

As Dolgoff's remarks above suggest, there was a large area of commonality between the American Plan, with its company unions, and the CIO model of industrial unionism.

The industrial union, by offering a single contract for each bargaining unit, achieved the same purpose that Swope had sought through his attempted entente with the AFL. Swope complained to AFL head William Greene of the confusion and inconvenience of having workers in a single plant organized by fifteen different craft unions. It was in his interest to have a stable contract with a single bargaining agent. Although Greene refused Swope's request for a single industrial union, the CIO offered the same benefit.<sup>11</sup>

After the adoption of the Wagner regime the strike became something that happened only at contract renewal time, at most. The rest of the time labor issues were settled by the bureaucratic grievance process, and union leaders were generally hell on wildcat strikes. And when strikes did occur, their methods were heavily circumscribed in ways that almost eviscerated their effectiveness compared to the great strikes of the 1930s.

In short, the labor regime created by Wagner and Taft-Hartley compelled labor to fight by management's rules. It was the moral equivalent of telling the farmer militiamen at Lexington and Concord to come out from behind those rocks, put on red uniforms, and march in formation—in return for a promise that they wouldn't lose *all* the time. Unfortunately, management has since decided it wants labor to lose all the time after all—and when management decides that peace with organized

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<sup>9</sup> Sam Dolgoff, "Ethics and the Unions--Part 2," in *The American Labor Movement: A New Beginning*. Originally published in 1980 in *Resurgence*. <<http://www.iww.org/culture/library/dolgoff/labor2.shtml>>  
<sup>10</sup> Lens, *The Labor Wars*, p. 380.

<sup>11</sup> *Ibid.*, p. 282.

labor no longer suits its interest, and is of a mind to exploit the possibilities in the Wagner and Taft-Hartley rules, they make it a lot easier to do so. But workers are still playing by the bosses' rules, just the same.

## B. Minority Unionism

If workers are to regain some of the power that they've lost in recent decades under the Wagner regime, what former I.W.W. General Secretary-Treasurer Alexis Buss calls "minority unionism" will play a large role in that process.

...[W]e need to break out of the current model, one that has come to rely on a recipe increasingly difficult to prepare: a majority of workers vote a union in, a contract is bargained. We need to return to the sort of rank-and-file on-the-job agitating that won the 8-hour day and built unions as a vital force....

Minority unionism happens on our own terms, regardless of legal recognition....

The labor movement was not built through majority unionism—it couldn't have been.<sup>12</sup>

How are we going to get off of this road? We must stop making gaining legal recognition and a contract the point of our organizing....

We have to bring about a situation where the bosses, not the union, want the contract. We need to create situations where bosses will offer us concessions to get our cooperation. Make them beg for it.<sup>13</sup>

As a matter of fact, a strike may well be as effective when carried out by an unofficial union without government certification, on the networked/community organization model we discuss later in this chapter. Workers without officially recognized unions have successfully won strikes, walking off the job and attracting negative press by picketing with signs. For example, immigrant workers at the Cygnus soap factory in Chicago persuaded teamsters not to cross their picket line, despite the fact that their walkout was a spontaneous action and they belonged to no NLRB-sanctioned union. It took two or three untrained replacement workers to do the work of the strikers, and with many more accidents. Corporate management sent a negotiator and quickly caved in to their demands, owing in part to the negative publicity.<sup>14</sup> Other, similar actions are described in the section below on networked unionism.

Unions existed before the NLRB was even a gleam in FDR's eye, and can function in the workplace as bargaining agents exactly the same way they did then without NLRB certification. Sam Dolgoff quoted *Black Cat*, a periodical of the Boston I.W.W. branch, from April 1980:

. . . The nurses should say: "To hell with the election, to hell with Board certification, to hell with the whole NLRB union-busting trap." They should begin to act union on the job. If they have enough support to win a representation election, they have enough support to go ahead and make their demands to management and get them. This would require a different kind of unionism than the one that relies on the NLRB procedure. This would require direct action and solidarity....<sup>15</sup>

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12 Alexis Buss, "Minority Report," *Industrial Worker*, October 2002 <<http://www.iww.org/organize/strategy/AlexisBuss102002.shtml>>.

13 Buss, "Minority Report," *Industrial Worker*, December 2002 <<http://www.iww.org/organize/strategy/AlexisBuss122002.shtml>>.

14 Kari Lydersen, "On Strike Without a Union," *In These Times*, September 12, 2007 <[http://www.inthesetimes.com/article/3327/on\\_strike\\_without\\_a\\_union/](http://www.inthesetimes.com/article/3327/on_strike_without_a_union/)>.

15 Dolgoff, "Discussion on Regeneration of the American Labor Movement," in *The American Labor Movement: A New Beginning*. <<http://www.iww.org/culture/library/dolgoff/labor6.shtml>>

According to David M. Gordon, the percentage of "discouraged union workers" (workers who say they would join a union in their workplace if one were available) is around a third of private sector, non-supervisory workers—that's the same percentage who actually belong to unions in Canada, where union membership is based on a simple card-check system.<sup>16</sup> Roughly the same proportion of workers belong to unions in the American public sector—not because of any artificial encouragement, but simply because public sector management is officially neutral on union certification and does not harass or threaten organizers. So it seems the number of people looking for a way to fight back and who would like to join unions, if it were widely seen as carrying no risk of punitive firing, is about the same as it always was. If it were possible to form a union when a simple majority of a bargaining unit wished to do so, with absolutely no danger of punitive firing, the levels of union membership today would likely be the same as in 1950. It's just that the avenues of fighting back seem to have been closed off, from the perspective of most private sector workers. We need to show them they're wrong.

### C. The Social Services Model

Another idea, "associate membership," tends to appear clustered together with minority unionism. "Associate membership"

is a mechanism for delivering some services to workers who are not in a bargaining unit represented by a union. It has been made available to prounion workers in a failed election, former union members who want to continue their affiliation with the union, and workers in antiunion settings who want some "personal affiliation with organized labor."<sup>17</sup>

Organized labor, under this model, would shift from seeing the dwindling and increasingly marginalized industrial workforce (those in formal, full-time paid employment) as its primary constituency, to including the so-called "precariat" in its membership and offering services that are valuable to workers whether they are currently employed or unemployed. Under the present conventional model, unionism pursues a model of retreat and encirclement, defending an ever-shrinking portion of the workforce in the face of continued downsizings and plant closings. A model of unionism that served the much larger constituency of unemployed and members in non-unionized workplaces, on the other hand, might credibly threaten employers with encirclement. Some novel approaches in this direction might include organizing unions of freelance workers and the self-employed, as well as using direct-marketing techniques to appeal directly to workers outside of existing certified locals.<sup>18</sup>

When combined with the networked or socially-based organization model discussed in the next section, associate membership encourages workers "to think of labor as a social support movement or a citizens' movement..." It is also "a step back toward a preindustrial concept of unions as fraternal and benefit organizations."<sup>19</sup>

The labor movement might take a page from the Owenites' book, offering cheap mutual health insurance not only to job-based union members, but to individual, socially-based members in

<sup>16</sup> David M. Gordon, *Fat and Mean: The Corporate Squeeze of Working Americans and the Myth of Management Downsizing* (New York: The Free Press, 1996), p. 243.

<sup>17</sup> Hoyt Wheeler, *The Future of the American Labor Movement* (Cambridge University Press, 2002), pp. 76-77.

<sup>18</sup> Peter Hall-Jones, "Precariat meet'n'greet," *New Unionism Blog*, November 22, 2009<<http://newunionism.wordpress.com/2009/11/22/precariat/>>.

<sup>19</sup> Wheeler, *The Future of the American Labor Movement*, p.. 77.



workplaces without certified union locals.

It's almost impossible to draw a clear line between the history of mutuals and the early history of organized labor. Through most of the nineteenth century, even in the face of the economic privilege that existed then, a large portion of help for the sick and unemployed came from the laboring classes' self-organized mutual aid associations. According to Colin Ward,

in the nineteenth century the newly-created British working class built up from nothing a vast network of social and economic initiatives based on self-help and mutual aid. The list is endless: friendly societies, building societies, sick clubs, coffin clubs, clothing clubs, up to enormous federated enterprises like the trade union movement and the Co-operative movement.<sup>20</sup>

As E. P. Thompson described the voluntary welfare state in Great Britain, "Small tradesmen, artisans, labourers—all sought to insure themselves against sickness, unemployment, or funeral expenses through membership of 'box clubs' or friendly societies."<sup>21</sup> The friendly societies, between 1790 and 1830, were part of a greater whole: an emerging, distinctively working class culture with its own institutions.

By 1832 there were strongly-based and self-conscious working-class institutions--trade unions, friendly societies, educational and religious movements, political organizations, periodicals--working-class intellectual traditions, working-class community-patterns, and a working-class structure of feeling.<sup>22</sup>

...In the simple cellular structure of the friendly society, with its workaday ethos of mutual aid, we can see many features which were reproduced in more sophisticated and complex forms in trade unions, co-operatives, Hampden Clubs, Political Unions, and Chartist lodges.<sup>23</sup>

Unlike the modern welfare state, whose relief of poverty is simply another way the capitalists' state cleans up their potentially destabilizing messes for them, the workers' welfare state served as a basis for working class independence from capital and wage labor, and as a leverage for increased bargaining power against it.

The friendly societies often functioned as a base for political and economic resistance on a broader scale. The societies themselves were the soil out of which the trade unions later grew. With their secrecy of ritual, their organizational form naturally lent itself to covert political and economic action. Union procedural rules, as well as their often deliberate ceremonial, were a direct outgrowth of those of sick clubs, Masonic lodges, and the like.<sup>24</sup>

And when the friendly societies' functions extended to support for the unemployed, the practical distinction from an outright strike fund was hazy, to say the least. The potential of benefit societies to improve the bargaining position of workers was very real. For example the Clerk's Society (founded Newcastle, 1807) paid unemployment benefits of ten shillings a week for the first 26 weeks, extendable for another 26 weeks at the Society's discretion.<sup>25</sup> It's easy to see why the state was so zealous to

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20 Colin Ward, "The welfare road we failed to take," in *Social Policy: An Anarchist Response* (London: Freedom Press, 1996), pp. 10-11.

21 E. P. Thompson, *The Making of the English Working Class* (New York: Vintage Books, 1963, 1966), p. 419.

22 Thompson, *Making of the English Working Class*, p. 194.

23 *Ibid.*, p. 423.

24 *Ibid.*, p. 421.

25 Peter Gray, "A Brief History of Friendly Societies," at *The Association of Friendly Societies* website <<http://www.afs.org.uk/research/researchpgrayhistorypage.htm>> (Link defunct—retrieved via Internet Archive).

suppress such activity under the Combination Acts and legislation regulating the benefit societies. By providing an alternative to the dilemma of "accept work on the terms offered, or starve," they seriously undermined labor discipline and increased the independence of working people. As even a cursory review of the Enclosure movement shows us, capitalism—despite its official ideology of free markets and freedom of association—is ever willing to resort to coercion when the property and associations of ordinary people give them too much power.

The very distinction between the trade unions and other friendly or benefit societies is an artificial one, argues Bob James.

...[I]t makes much more historical sense to see the core of Labour History as a range of benefit societies, and to see what are called "trade unions" as just one culturally-determined response within a group and along a time-line....

What we now call "trade unions" were and are benefit societies, just like the Grand United Oddfellow and Freemason Lodges.... Concern about working conditions and the strategy of withdrawing labour, "going on strike", developed naturally out of the lodge habit of insuring against all sorts of other future dangers. Strike pay was just another benefit covered by contributions....<sup>26</sup>

In the United States, labor unions often started out as benevolent associations providing for the wives and children of deceased or incapacitated members. This was true, in particular, of the early railroad unions.

The industry was so injury-prone that the early rail unions were much less concerned with collective bargaining than with insurance against mishap. The twelve locomotive engineers who met secretly in Detroit in 1863 to form the Brotherhood of the Footboard (later changed to the Grand International Brotherhood of Locomotive Engineers), called "post-mortem security" their main problem. The handful of conductors of the Illinois Central who formed a union later known as the Order of Railway Conductors in 1868 proclaimed as their object "material aid... from a fund attained upon the assessment plan, to disabled members... and their widows, children, and heirs." The Brotherhood of Firemen originated in 1873 when eleven men met to take a collection for an associate killed in a boiler explosion on the Erie the day before.<sup>27</sup>

More generally, Sam Dolgoff observed:

The labor movement grew naturally into a vast interwoven network of local communities throughout the country, exercising a growing influence in their respective areas. And this early movement did not confine itself solely to immediate economic issues.... The mutual-aid functions of the unions expanded to keep abreast of the growing needs of the members....

They created a network of cooperative institutions of all kinds: schools, summer camps for children and adults, homes for the aged, health and cultural centers, insurance plans, technical education, housing, credit associations, et cetera. All these, and many other essential services were provided by the people themselves, long before the government monopolized social services wasting untold billions on a top-heavy bureaucratic parasitical apparatus; long before the labor movement was corrupted by "business" unionism.<sup>28</sup>

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26 Bob James, "The Tragedy of Labour History in Australia." According to Takver's Radical Tradition: An Australian History Page, where the article is hosted, the text is based on James' notes for a lecture given in several different venues. <<http://www.takver.com/history/tragedy.htm>>.

27 Lens, *The Labor Wars*, p. 45.

28 Sam Dolgoff, "Revolutionary Tendencies in American Labor--Part 1," in *The American Labor Movement: A New Beginning*. Originally published in 1980 in *Resurgence* <<http://www.iww.org/culture/library/dolgoff/labor4.shtml>>.

Charles Johnson stresses the importance, from the standpoint of worker independence and bargaining strength, of such self-organized mutual aid:

It's likely also that networks of voluntary aid organizations would be *strategically* important to individual flourishing in a free society, in which there would be no expropriative welfare bureaucracy for people living with poverty or precarity to fall back on. Projects reviving the bottom-up, solidaritarian spirit of the independent unions and mutual aid societies that flourished in the late 19th and early 20th centuries, before the rise of the welfare bureaucracy, may be essential for a flourishing free society, and one of the primary means by which workers could take control of their own lives, without depending on either bosses or bureaucrats.<sup>29</sup>

One possibility is the resurrection of the guild as a basis for organizing mutual aid. Some writers on labor issues have argued that unions should shift their focus to attracting memberships on an individual basis, whether it be in bargaining units with no certified union or among the unemployed; they would do so by offering insurance and other services.

A good example is the Healthy Workers medical plan, organized by Working Partnerships USA and the Santa Clara Valley Health and Hospital System, which provides health insurance with no deductible at half the price of competing commercial plans.<sup>30</sup>

Somewhat more outside the mainstream is Guy Standing's example of sex workers in Vancouver, BC, who

set up social protection funds, for emergencies and for scholarships for children of dead or sick workers; they developed a group medical plan, drew up occupational safety guidelines, provided an information service for potential entrants to the profession, and developed courses to teach 'life skills'.<sup>31</sup>

Thomas Malone discusses such possibilities at considerable length in *The Future of Work*, in exploring the implications of a free-agency economy of independent contractors. Like many popularizing writers on networked enterprise in the new economy (Tom Peters most notorious among them), Malone can come across as a bit glib in celebrating the new era of freedom. But unlike Peters, he acknowledges the real problems faced by workers in such an economy: the lack of job security and job-based benefits chief among them. And his proposals are intriguing:

Rather than relying on employers and governments to provide the benefits traditionally associated with a job, a new set of organizations might emerge to provide stable "homes" for mobile workers and to look after their needs as they move from job to job and project to project.

These organizations might be called societies, associations, fraternities, or clubs. But the word I like best is *guilds*, a term that conjures up images of the craft associations of the Middle Ages. Growing out of tradesmen's fraternities and mutual assistance clubs, medieval guilds served a number of functions. They trained apprentices and helped them find work.... They offered loans and schooling. And if misfortune struck, they provided an income for members' families....

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29 Charles Johnson, "Liberty, Equality, Solidarity: Toward a Dialectical Anarchism," in Roderick T. Long and Tibor R. Machan, eds., *Anarchism/Minarchism: Is a Government Part of a Free Country?* (Hampshire, UK, and Burlington, Vt.: Ashgate Publishing Limited, 2008). Quoted from textfile provided by author.

30 "WPUSA launches Healthy Workers medical plan" (March 5, 2010), Recent Win Archive <<http://www.wpusa.org/About-Us/recentwinarchive.html>>

31 Guy Standing, *Work After Globalization: Building Occupational Citizenship* (Cheltenham, UK; Northampton, Mass.: Edward Elgar, 2009), p. 315.

Existing organizations already perform some of these functions today. Take the Screen Actors Guild. As much as 30 percent of the base pay of Screen Actors Guild members goes to the guild's benefits fund. In return, members get full health benefits (even in years when they have no work), generous pensions, and professional development programs.

Imagine an extended version of this arrangement, in which members pay a fraction of their income to a guild in good times in return for a guaranteed minimum income in bad times. Unlike conventional unemployment insurance, provided through a distant, impersonal bureaucracy, the unemployment benefits provided by a guild could go well beyond temporary cash payments. For instance, other guild members would have an incentive—and often the opportunity—to help fellow members find work. A guild would also have the means and the motivation to help its members gain new skills to remain economically productive as times change. Finally, the members would likely exert social pressure on unemployed colleagues who they felt weren't really trying to find work....

Companies have also traditionally helped their employees learn skills and, by assigning job titles and other kinds of credentials, signify to the world the capabilities of their workers. These kinds of services could also be provided by guilds. Lawyers and doctors, for instance, have professional societies that establish and monitor the credentials of practitioners and provide continuing educational opportunities. Unions have also had similar functions for years, helping craft workers progress from apprentice to journeyman to master craftsman.<sup>32</sup>

Malone sees the modern-day guilds arising from professional societies, labor unions, temp agencies, and alumni associations, among other existing organizations.<sup>33</sup>

Although the educational and certifying functions of craft unions or guilds are a service to the members from one perspective, they are also of interest to employers in ways that dovetail with our discussion later on of the hiring hall or temp agency model of unionism. Hoyt Wheeler writes:

A further advantage of the craft form of organization is its ability to provide a stream of trained, competent workers to employers. In the building trades, and in some other fields as well, individual employers have no incentive to train workers who may soon move on to work for someone else. The long-term interests of employers as a group require a trained workforce. Yet the interests of individual employers militate against this coming about. A good solution to this dilemma is a union of workers who train one another and spread the costs of training across the industry. The United Brotherhood of Carpenters and Joiners... recognizes this rationale, and is utilizing it in an attempt to encourage employers to move away from their traditional aversion to the union.<sup>34</sup>

Bill Luddy, onetime Administrative Assistant to the President of UBCJ, argued that the construction industry was suffering from a critical shortage of skilled trades workers. The contractors, “having weakened the unions, are finding that they have no good alternative source of labor.” Nonunion contractor associations have tried to overcome the prisoner's dilemma problem caused by training costs in a fluid labor market, creating common training funds, but couldn't get enough contractors to participate. Union training, Luddy said, was the only practical solution.<sup>35</sup>

The kinds of income-pooling and risk-pooling functions that Malone proposes for guilds are likely to take on growing importance in a time of increasing unemployment and underemployment, as we

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32 Thomas W. Malone, *The Future of Work: How the New Order of Business Will Shape Your Organization, Your Management Style, and Your Life* (Boston: Harvard Business School Press, 2004), pp. 84-87.

33 *Ibid.*, pp. 87-88.

34 Wheeler, *The Future of the American Labor Movement*, p. 50.

35 *Ibid.*, pp. 80-81.

shall see in the section below on worker cooperatives.

#### **D. Networked and Community-Based Organization**

Another useful change in strategic direction might be toward the French model of unionism, which is at least as much socially-based as workplace-based. Charles Derber wrote, over a decade ago:

The real constituency of the new labor movement [AFL-CIO chief John] Sweeney envisions is the American public as a whole, as well as workers throughout the world. As the old social contract unravels, the great majority of those in jeopardy are not American union members but unrepresented American workers, as well as workers in the third world. Beyond organizing new members, labor must transform itself into a voice speaking mainly for these expansive constituencies who are not already American union members. Ironically, this will be the most effective way to service its own dues-paying members. In France, for example, less than 10 percent of the workforce is in unions, but the French people as a whole support union work stoppages to protect wages or benefits. In 1997, a majority of the French population virtually closed down the country in support of transportation workers' efforts to protect retirement and vacation benefits.<sup>36</sup>

Parallel to the social services model of serving members who are not part of a certified union in their workplace, unions can organize outside the workplace and network with other organizations in society at large in order to bring pressure to bear on employers. In this model, the union uses the community as a whole as its power base.<sup>37</sup>

Wheeler, in *The Future of the American Labor Movement*, treats the Knights of Labor as the paradigmatic case of this form of organization. If a union is a collection of local bodies comprising the majority of workers in their workplaces, and having as their main purpose collective bargaining with their employers, then the Knights were less than a union. But they were also more. Their Local Assemblies served as umbrella organizations for social justice and reform movements in each community.<sup>38</sup> Their motto, “An injury to one is the concern of all,” is especially meaningful in this light.

Although the Wobblies, who borrowed the K. of L. motto, put more emphasis on workplace organizing, they also began as an umbrella organization of labor and social justice groups. When Big Bill Haywood gavelled the I.W.W. founding convention to order in 1905, he referred to it with some justification as “the Continental Congress of the working class.” It included representatives of the American Railway Union, the Western Federation of Miners, the Socialist Party USA, the Socialist Labor Party, the radical priest Fr. Haggerty, and the all-around moral authority Mary “Mother” Jones.

Today, unions might augment their power within the workplace—or exert power which they altogether lack within workplaces with no certified bargaining agent—by making putting together a coalition of civil rights and social justice organizations, clergy, the larger labor movement, etc., in the employer's community.<sup>39</sup> At a time when only a small fraction of private sector workers still belong to certified workplace unions, the mutual moral support of a number of high-profile community organizations may be of inestimable value.

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<sup>36</sup> Charles Derber, *Corporation Nation: How Corporations are Taking Over Our Lives and What We Can Do About It* (New York: St. Martin's Griffin, 1998), p. 291.

<sup>37</sup> *Ibid.*, p. 59.

<sup>38</sup> *Ibid.*, p. 101.

<sup>39</sup> *Ibid.*, pp. 60-61.

Internationally, networked unions can promote the bargaining power of American workers through solidarity with foreign workers. This includes making common cause with anti-sweatshop campaigns like those of Charles Kernaghan (about which more below), and aiding foreign workers in their own organizing struggles against sweatshop employers. Advice and fraternal assistance from radical unions like the Wobblies, which favor models of labor struggle based on direct action and asymmetric warfare, may be more relevance to workers in countries like China than would be attempts at extending the conventional American business union model.

The kinds of open mouth sabotage we consider later on in this paper are especially well suited to networked organization. For example, although Wal-Mart workers are not represented by NLRB-certified unions, in any bargaining unit in the United States, the "associates" have been quite successful at organized open-mouth sabotage through Wake Up Wal-Mart and similar activist organizations. We will see below, for instance, how effective the public information campaign was against Wal-Mart's "open availability" policy.

This is sometimes referred to as the "corporate campaign." It was used by the Amalgamated Clothing and Textile Workers Union in their 1976 campaign against J.P. Stevens. Corporate campaigns can be used in conjunction with an organizing campaign, in support of a strike, or in place of a strike.<sup>40</sup> The third item is of special relevance to us today, when organizing a conventional union is more difficult than it's been in decades.

Like the isolated individual worker or group of workers within the workplace planning a campaign of open-mouth sabotage against their employer, the corporate campaign is "based upon extensive research on a company to identify fruitful pressure points." Directors, lenders, and other business associates are targeted with a view to inflicting maximum public embarrassment.<sup>41</sup>

Ironically, Wheeler wrote in 2002 that the corporate campaign had declined in importance.<sup>42</sup> This was at a time when campaigns like Charles Kernaghan's were in their early ascendancy, before the Wal-Mart Workers' Association, and before the Imolakee Indian Workers conducted one of the most effective corporate campaigns in history.

Workers' main bargaining agent may not be a certified union in their own workplace at all, but what Wheeler calls a "workers' rights group."<sup>43</sup> Such labor advocacy groups, while they may not meet the standards for an NLRB-certified union, are for all intents and purposes unions if one defines a union as an organization of wage-earners who seek to improve their working lives.

However, they do not do what we usually think of unions as doing—engage in collective bargaining. Neither do they ordinarily strike. Their weapons are much more likely to be political pressure, social protest, and publicity.<sup>44</sup>

Although the Wal-Mart Workers' Association was not in existence at the time he wrote, Wheeler might as well have had them specifically in mind.

The Wal-Mart Workers' Association acts as an unofficial union, and has repeatedly obtained

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40 *Ibid.*, pp. 78-79.

41 *Ibid.*, p. 79.

42 *Ibid.*, p. 79.

43 *Ibid.*, p. 63.

44 *Ibid.*, p. 64.

concessions from store management teams in several publicity campaigns designed to embarrass and pressure the company.<sup>45</sup> Although it doesn't have an NLRB-certified local in a single Wal-Mart store, it's a *de facto* labor union. And it has achieved victories through "associates" picketing and pamphleting stores on their own time, through swarming via the strategic use of press releases and networking, and through the same sort of support network the pro-Zapatista movement built in the 1990s (see below). By using negative publicity to embarrass the company, the Association has repeatedly obtained concessions from Wal-Mart. As Ezra Klein noted,

This is, of course, entirely a function of the pressure unions have exerted on Wal-Mart—pressure exerted despite the unions having almost no hope of actually unionizing Wal-Mart. Organized Labor has expended tens of millions of dollars over the past few years on this campaign, and while it hasn't increased union density one iota, it has given a hundred thousand Wal-Mart workers health insurance, spurred Wal-Mart to launch an effort to drive down prescription drug prices, drove them into the "Divided We Fail" health reform coalition, and contributed to the company's focus on greening their stores (they needed good press to counteract all the bad).<sup>46</sup>

Charles Johnson points to the Coalition of Imolakee Workers as an example of an organizing campaign outside the Wagner framework, relying heavily on "the open mouth":

They are mostly immigrants from Mexico, Central America, and the Caribbean; many of them have no legal immigration papers; they are pretty near all mestizo, Indian, or Black; they have to speak at least four different languages amongst themselves; they are often heavily in debt to coyotes or labor sharks for the cost of their travel to the U.S.; they get no benefits and no overtime; they have no fixed place of employment and get work from day to day only at the pleasure of the growers; they work at many different sites spread out anywhere from 10–100 miles from their homes; they often have to move to follow work over the course of the year; and they are extremely poor (most tomato pickers live on about \$7,500–\$10,000 per year, and spend months with little or no work when the harvesting season ends). But in the face of all that, and across lines of race, culture, nationality, and language, the C.I.W. have organized themselves anyway, through efforts that are nothing short of heroic, and *they have done it as a wildcat union with no recognition from the federal labor bureaucracy and little outside help from the organized labor establishment*. By using creative nonviolent tactics that would be *completely illegal* if they were subject to the bureaucratic discipline of the Taft-Hartley Act, the C.I.W. has won major victories on wages and conditions over the past two years. They have bypassed the approved channels of collective bargaining between select union reps and the boss, and gone up the supply chain to pressure the tomato buyers, because they realized that they can exercise a lot more leverage against highly visible corporations with brands to protect than they can in dealing with a cartel of government-subsidized vegetable growers that most people outside of southern Florida wouldn't know from Adam.

The C.I.W.'s creative use of moral suasion and secondary boycott tactics have already won them agreements with Taco Bell (in 2005) and then McDonald's (this past spring), which almost doubled the effective piece rate for tomatoes picked for these restaurants. They established a system for pass-through payments, under which participating restaurants agreed to pay a bonus of an additional penny per pound of tomatoes bought, which an independent accountant distributed to the pickers at the farm that the restaurant bought from. Each individual agreement makes a significant but relatively small increase in the worker's effective wages...[,] but each victory won means a concrete increase in wages, and an easier road to getting the pass-through system adopted industry-wide, which would in the end nearly double tomato-pickers' annual income.

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45 Nick Robinson, "Even Without a Union, Florida Wal-Mart Workers Use Collective Action to Enforce Rights," *Labor Notes*, January 2006. Reproduced at Infoshop, January 3, 2006 <<http://www.infoshop.org/inews/article.php?story=20060103065054461>>.

46 Ezra Klein, "Why Labor Matters," *The American Prospect*, November 14, 2007 <[http://www.prospect.org/csnc/blogs/ezraklein\\_archive?month=11&year=2007&base\\_name=why\\_labor\\_matters](http://www.prospect.org/csnc/blogs/ezraklein_archive?month=11&year=2007&base_name=why_labor_matters)>.

Burger King held out for a while after this, following Taco Bell's earlier successive strategies of ignoring, stonewalling, slick PR, slander (denouncing farm workers as "richer than most minimum-wage workers," consumer boycotts as extortion, and the C.I.W. as scam artists), and finally even attempt at federal prosecution for racketeering.<sup>47</sup>

As Johnson predicted, the dirty tricks were of no avail. He followed up on this story in May 2008, when Burger King caved in. Especially entertaining, after the smear campaign and other dirty tricks carried out by the Burger King management team, was this public statement by BK CEO John Chidsey:

We are pleased to now be working together with the CIW to further the common goal of improving Florida tomato farmworkers' wages, working conditions and lives. The CIW has been at the forefront of efforts to improve farm labor conditions, exposing abuses and driving socially responsible purchasing and work practices in the Florida tomato fields. We apologize for any negative statements about the CIW or its motives previously attributed to BKC or its employees and now realize that those statements were wrong.<sup>48</sup>

What Hoyt Wheeler calls the "associative" model of unionism among white collar workers is another possible form of this network organization. As much a professional association as a conventional union, it focuses on providing benefits to members as much as a collective voice against the employer. As a bargaining unit it is loose and relatively non-bureaucratic, and tends to negotiate minimum standards with the employer while leaving members free to negotiate better terms individually. When it is necessary to promote the members' collective interests against the employer, the hybrid white collar union/association does so more through negative publicity to pressure the employer than through conventional strikes.<sup>49</sup>

## E. Worker Cooperatives

The mainstream organized labor model, which emerged from the Wagner regime and the Consensus Capitalism of the mid-20<sup>th</sup> century, was focused on "jobs" as the normal means of support, with the establishment unions and the progressive state together guaranteeing universal employment, productivity-based wage increases, and an employer-based welfare state. But increasing trends toward permanent structural unemployment, underemployment and a two-tier labor force cast doubt on the continuing relevance of this model. The labor movement needs to broaden its focus beyond jobs to encompass all means of strengthening labor's bargaining power against capital—especially increasing the share of subsistence needs labor can meet independently of wage employment.

One possible means of doing this is for radical networked unions to organize worker cooperatives, and to encourage production for barter networks among unemployed workers.

The use of the social economy as a base for independence from wage employment has a venerable history. According to E. P. Thompson, "[n]ot only did the benefit societies on occasion extend their activities to the building of social clubs or alms-houses; there are also a number of instances of pre-

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47 Charles Johnson, "Coalition of Imolakee Workers marches in Miami," *Rad Geek People's Daily*, November 30, 2007 <[http://radgeek.com/gt/2007/11/30/coalition\\_of/](http://radgeek.com/gt/2007/11/30/coalition_of/)>.

48 Coalition of Immokalee Workers. "Burger King Corp. and Coalition of Immokalee Workers to Work Together," May 23, 2008 <[http://www.ciw-online.org/BK\\_CIW\\_joint\\_release.html](http://www.ciw-online.org/BK_CIW_joint_release.html)>. Charles Johnson, "¡Sí, Se Puede! Victory for the Coalition of Imolakee Workers in the Burger King penny-per-pound campaign," *Rad Geek People's Daily*, May 23, 2008 <[http://radgeek.com/gt/2008/05/23/si\\_se/](http://radgeek.com/gt/2008/05/23/si_se/)>.

49 Wheeler, *The Future of the American Labor Movement*, p. 57.



Owenite trade unions when on strike, employing their own members and marketing the product."<sup>50</sup> G. D. H. Cole describes the same phenomenon:

As the Trade Unions grew after 1825, Owenism began to appeal to them, and especially to the skilled handicraftsmen.... Groups of workers belonging to a particular craft began to set up Co-operative Societies of a different type—societies of producers which offered their products for sale through the Co-operative Stores. Individual Craftsmen, who were Socialists, or who saw a way of escape from the exactions of the middlemen, also brought their products to the stores to sell."<sup>51</sup>

...[This pattern of organization was characterized by] societies of producers, aiming at co-operative production of goods and looking to the Stores to provide them with a market. These naturally arose first in trades requiring comparatively little capital or plant. They appealed especially to craftsmen whose independence was being threatened by the rise of factory production or sub-contracting through capitalist middlemen.

The most significant feature of the years we are discussing was the rapid rise of this... type of Co-operative Society and the direct entry of the Trades Unions into Co-operative production. Most of these Societies were based directly upon or at least very closely connected with the Unions of their trades, ...which took up production as a part of their Union activity—especially for giving employment to their members who were out of work or involved in trade disputes....<sup>52</sup>

Cooperative producers' need for an outlet led to Labour Exchanges, where workmen and cooperatives could directly exchange their product so as "to dispense altogether with either capitalist employers or capitalist merchants." Exchange was based on labor time. "Owen's Labour Notes for a time not only passed current among members of the movement, but were widely accepted by private shopkeepers in payment for goods."<sup>53</sup>

The principle of labor-based exchange was employed on a large-scale. In 1830 the London Society opened an Exchange Bazaar for exchange of products between cooperative societies and individuals.<sup>54</sup> The Co-operative Congress, held at Liverpool in 1832, included a long list of trades among its participants (the b's alone had eleven). The National Equitable Labour Exchange, organized in 1832-33 in Birmingham and London, was a venue for the direct exchange of products between craftsmen, using labor-notes as a medium of exchange.<sup>55</sup>

The first major wave of worker cooperatives in the United States, according to John Curl, was under the auspices of the National Trades' Union in the 1830s.<sup>56</sup> Like the Owenite trade union cooperatives in Britain, they were mostly undertaken in craft employments for which the basic tools of the trade were relatively inexpensive. From the beginning, worker cooperatives were a frequent resort of striking workers. In 1768 twenty striking journeyman tailors in New York, the first striking wage-workers in American history, set up their own cooperative shop. Journeyman carpenters striking for a ten-hour day in Philadelphia, in 1761, formed a cooperative (with the ten-hour day they sought) and undercut their master's price by 25%; they disbanded the cooperative when they went back to work.

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50 Thompson, *Making of the English Working Class*, p. 790.

51 G.D.H. Cole. *A Short History of the British Working Class Movement (1789-1947)* (London: George Allen & Unwin, 1948), p. 76.

52 *Ibid.* p. 78.

53 *Ibid.*, pp. 78-79.

54 *Ibid.*, p. 76.

55 Thompson, *Making of the English Working Class*, p. 791.

56 John Curl, *For All the People: Uncovering the Hidden History of Cooperation, Cooperative Movements, and Communalism in America* (Oakland, CA: PM Press, 2009), p. 4

The same was done by shoemakers in Baltimore, 1794, and Philadelphia, 1806.<sup>57</sup>

This was a common pattern in early labor history, and the organization of cooperatives moved from being purely a strike tactic to providing an alternative to wage labor.<sup>58</sup> It was feasible because most forms of production were done by groups of artisan laborers using hand tools. By the 1840s, the rise of factory production with expensive machinery had largely put an end to this possibility. As the prerequisites of production became increasingly unaffordable, the majority of the population was relegated to wage labor with machinery owned by someone else.<sup>59</sup>

Most attempts at worker-organized manufacturing, after the rise of the factory system, failed on account of the capital outlays required. For example, when manufacturers refused to sell farm machinery to the Grangers at wholesale prices, the Nebraska Grange undertook its own design and manufacturing of machinery. (How's that for a parallel to modern P2P ideas?) Its first attempt, a wheat head reaper, sold at half the price of comparable models and drove down prices on farm machinery in Nebraska. The National Grange planned a complete line of farm machinery, but most Grange manufacturing enterprises failed to raise the large sums of capital needed.<sup>60</sup>

The Knights of Labor, in the 1880s, undertook a large-scale effort at organizing worker cooperatives. Their fate is an illustration of the central role of capital outlay requirements in determining the feasibility of self-employment and cooperative employment. The K. of L. cooperatives were on shaky ground in the best of times. Many of them were founded during strikes, started with “little capital and obsolescent machinery,” and lacked the capital to invest in modern machinery. Subjected to economic warfare by organized capital, the network of cooperatives disintegrated during the post-Haymarket repression.<sup>61</sup>

The defeat of the Knights of Labor cooperatives, resulting from the high capitalization requirements for production, is a useful contrast not only to the artisan production of earlier worker co-ops, but to the potential for small-scale production today. The economy today is experiencing a revolution as profound as the corporate transformation of the late 19th century, but in the opposite direction. This time around the original shift which brought about large-scale factory production and the wage system—the shift from individually affordable artisan tools to expensive machinery that only the rich could afford to buy and hire others to work—is being reversed. We are experiencing a shift from expensive specialized machinery back to inexpensive, general-purpose artisan tools. And the monopolies on which corporate rule depends, like so-called “intellectual property” law, are becoming less and less enforceable. Another revolution, based on P2P and micromanufacturing, is sweeping society on the same scale as did the corporate revolution of 150 years ago. But the large corporations today are in the same position that the Grange and Knights of Labor were in the Great Upheaval back then: fighting a desperate, futile rearguard action, and doomed to be swept under by the tidal wave of history.

The worker cooperatives organized in the era of artisan labor paralleled, in many ways, the forms of work organization that are arising today. Networked organization, crowdsourced credit and the implosion of capital outlays required for physical production, taken together, are recreating the same conditions that made artisan cooperatives feasible in the days before the factory system.

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57 *Ibid.*, p. 33.

58 *Ibid.*, p. 34.

59 *Ibid.*, pp. 35, 47.

60 *Ibid.*, p. 77.

61 *Ibid.*, p. 107.

In the artisan manufactories that prevailed into the early 19th century, most of the physical capital required for production was owned by the work force; artisan laborers could walk out and essentially take the firm with them in all but name. Likewise, today, the collapse of capital outlay requirements for production in the cultural and information fields (software, desktop publishing, music, etc.) has created a situation in which human capital is the source of most book value for many firms; consequently, workers are able to walk out with their human capital and form “breakaway firms,” leaving their former employers as little more than hollow shells.

The shift from physical capital to human capital as the main source of equity and profit, another effect of the implosion of material outlays and overhead for production, is also creating governability problems for the standard absentee-owned, hierarchical corporate enterprise. There is a growing inability to enforce corporate boundaries on human capital because of the enforceability of “intellectual property.” Fifty years ago, enormous outlays on physical capital were the main structural basis for the corporation as a locus of control over physical assets. Today, for a growing number of industries, the physical capital requirements for entering the market have imploded.

As a result, “intellectual property” is the main structural support to corporate boundaries. Ownership of “intellectual property” becomes the new basis for the power of institutional hierarchies, and the primary structural bulwark for corporate boundaries. Without it, in any industry where the basic production equipment is affordable to all, and bottom-up networking renders management obsolete, it is likely that self-managed, cooperative production will replace the old managerial hierarchies. The network revolution, if its full potential is realized,

will lead to substantial redistribution of power and money from the twentieth century industrial producers of information, culture, and communications—like Hollywood, the recording industry, and perhaps the broadcasters and some of the telecommunications giants—to a combination of widely diffuse populations around the globe, and the market actors that will build the tools that make this population better able to produce its own information environment rather than buying it ready-made.”<sup>62</sup>

The same thing is true in the physical realm, of course. The revolution in cheap CNC machine tools and the rise of cheap garage manufacturing machinery (a Fab Lab with homebrew CNC tools costing a few months' wages for a semi-skilled worker) is having almost as radical an effect on the capital outlays required for physical production as the desktop revolution had on the immaterial production. And the approach of the old corporate dinosaurs—trying to maintain artificial scarcity and avoid having to compete with falling production costs—is exactly the same in the physical as in the immaterial realm. What we're experiencing is, in its essence, a return to the days when low physical capital costs made worker cooperatives a viable alternative to wage labor.

The growing importance of human capital relative to physical capital as a source of equity and revenue streams, and the shift from expensive machinery back to affordable general-purpose tools as the primary form of physical capital, open possibilities for reviving worker cooperatives as a tool of labor resistance that existed before the triumph of the factory system.

The first uprising against corporate power, in the late 19th century, was defeated by the need for capital. The present one will destroy the old system by making capital superfluous.

Current technological changes amount to a singularity in which it is becoming impossible for

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<sup>62</sup> James C. Bennett, "The End of Capitalism and the Triumph of the Market Economy," from *Network Commonwealth: The Future of Nations in the Internet Era* (1998, 1999) <<http://www.pattern.com/bennettj-endcap.html>>.

capital to prevent a shift in the supply of an increasing proportion of the necessities of life from mass produced goods purchased with wages, to small-scale production in the informal and household sector and in low-overhead microenterprises of all kinds.

In the information and culture industries, the initial outlay for entering the market was in the hundreds of thousands of dollars or more. According to Yochai Benkler the old electronic mass media, for instance, were "typified by high-cost hubs and cheap, ubiquitous, reception-only systems at the end. This led to a limited range of organizational models for production: those that could collect sufficient funds to set up a hub."<sup>63</sup> The same was true of print periodicals, with the increasing cost of printing equipment required for a newspaper startup from the mid-nineteenth century on (from the equivalent of \$10,000 to \$2.38 million in 2005 dollars from 1835 to 1850) serving as the main entry barrier for organizing the hubs.<sup>64</sup>

The networked economy, in contrast, is distinguished by "network architecture and the [low] cost of becoming a speaker."

The first element is the shift from a hub-and-spoke architecture with unidirectional links to the end points in the mass media, to distributed architecture with multidirectional connections among all nodes in the networked information environment. The second is the practical elimination of communications costs as a barrier to speaking across associational boundaries.<sup>65</sup>

The central change that makes this possible is that "the basic physical capital necessary to express and communicate human meaning is the connected personal computer."

The core functionalities of processing, storage, and communications are widely owned throughout the population of users.... The high capital costs that were a prerequisite to gathering, working, and communicating information, knowledge, and culture, have now been widely distributed in the society. The entry barrier they posed no longer offers a condensation point for the large organizations that once dominated the information environment.<sup>66</sup>

The desktop revolution and the Internet mean that the minimum capital outlay for entering most of the entertainment and information industry has fallen to a few thousand dollars, and the marginal cost of reproduction is zero. The networked environment, combined with endless varieties of cheap software for creating and editing content, makes it possible for the amateur to produce output of a quality once associated with giant publishing houses and recording companies.<sup>67</sup> As Tom Coates put it, "the gap between what can be accomplished at home and what can be accomplished in a work environment has narrowed dramatically over the last ten to fifteen years."<sup>68</sup>

The same is true of productivity software. As Niall Cook describes it, enterprise software vendors are experiencing similar deflationary pressure.

"The design of business applications is more important than ever, says Joe Kraus, CEO of JobSpot. 'If I'm a

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63 Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (New Haven and London: Yale University Press, 2006), p. 179.

64 *Ibid.*, p. 188.

65 *Ibid.*, pp. 212-13.

66 *Ibid.*, pp. 32-33.

67 *Ibid.*, p. 54.

68 Tom Coates, "(Weblogs and) The Mass Amateurisation of (Nearly) Everything..." *Plasticbag.org*, September 3, 2003 <[http://www.plasticbag.org/archives/2003/09/weblogs\\_and\\_the\\_mass\\_amateurisation\\_of\\_nearly\\_everything](http://www.plasticbag.org/archives/2003/09/weblogs_and_the_mass_amateurisation_of_nearly_everything)>.

buyer at a manufacturing company and I'm using Google Earth to look at the plants of my competition, and the Siebel sales rep asks me to spend \$2 million on glorified database software, that causes a real disconnect.'

In the 1990s some enterprise software vendors were busy telling customers that even the simplest problems needed large, complex systems to solve them. Following the dot-com crash at the start of the millennium few of these vendors survived, usurped by cheap—if not free—alternatives. This trend continues unabated in the form of social software. As Peter Merholz..., president and founder of user experience firm Adaptive Path, put it, 'enterprise software is being eaten away from below'.<sup>69</sup>

Cook describes the comparative efficiencies of social software outside the enterprise and the “enterprise software” in common use by employers. Self-managed peer networks, and individuals meeting their own needs in the outside economy, organize their efforts through social software chosen by the users themselves based on its superior usability for their purposes. And they are free to do so without corporate bureaucracies and their officially defined procedural rules acting as a ball and chain. Enterprise software, in contrast, is typical of a product designed by one bureaucracy and purchased by another bureaucracy, for the use of third parties to whom neither bureaucracy is accountable and of whose needs the bureaucrats know little (at best). Hence enterprise software is frequently the kind of gold-plated turd that was so howlingly funny in the movie *Brazil*.

Blogs and wikis, and the free browser-based platforms offered by Google and Mozilla, are a quantum improvement on the proprietary enterprise software that management typically forces on its employees. The kinds of productivity software and social software freely available to individuals in their private lives is far better than the enterprise software that corporate bureaucrats buy for a captive clientele of users—consumer software capabilities amount to “a fully functioning, alternative IT department.”<sup>70</sup> Corporate IT departments, in contrast, “prefer to invest in a suite of tools 'offered by a major incumbent vendor like Microsoft or IBM'.” System specs are driven by management's top-down requirements rather than by user needs.

...a small group of people at the top of the organization identify a problem, spend 12 months identifying and implementing a solution, and a huge amount of resources launching it, only then to find that employees don't or won't use it because they don't buy in to the original problem.<sup>71</sup>

Management is inclined “to conduct a detailed requirements analysis with the gestation period of an elephant simply in order to choose a \$1,000 social software application.”<sup>72</sup> Employees often wind up using their company credit cards to purchase needed tools online rather than “wait for [the] IT department to build a business case and secure funding.”<sup>73</sup> This is the direct opposite of agility.

As a result of all this, people are more productive away from work than they are at work.

The central characteristic of information and culture production, in the networked digital age, is “nonrivalry” and zero marginal reproduction cost. “Nonrival” means that possession of an information good does not make it less available for consumption by others. And digitized information can be reproduced indefinitely at virtually no cost whatever.<sup>74</sup>

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69 Niall Cook, *Enterprise 2.0: How Social Software Will Change the Future of Work* (Burlington, Vt.: Gower, 2008), p. 24.

70 *Ibid.*, p. 91.

71 *Ibid.*, p. 93.

72 *Ibid.*, p. 95.

73 *Ibid.*, p. 96.

74 Benkler, *The Wealth of Networks*, pp. 35-36.

James Bennett describes this as "the end of capitalism" (in the sense of absentee ownership and wage labor) "and the triumph of the market economy."

...[F]or the first time since the beginning of the Industrial Revolution, the ownership of the most critical tool of production of the most critical industry of the world's leading economy [is] readily affordable by the individual worker. Throughout the first three decades of the Information Age, the individual worker was still as dependent on his employer for his means of production as was any textile worker in Manchester or Lawrence in 1840. Suddenly, this changed. Now, it is as if a steelworker could afford his own blast-furnace or rolling-mill; an automobile worker his own assembly line....

The second thing which has changed is the rise of the Internet. This is taking the control of the communication networks, and ultimately of the communications media, out of the hands of the large corporations which have always controlled them.... Just as the individually-owned computer capable of producing first-rate software is revolutionizing the work relations of software, the individually-owned Webcasting facility will change the nature of the media.

It is also changing the dynamics of production. Even though the tools of production can now be owned by the workers, individually and severally, there still seemed to be a need to bring programmers together in one place and put them under the control of management. Although this is still the case in most instances, the rise of Linux and other open-source products has provided another paradigm, and one which will soon grow to become the principal model of production in the principal industry of the leading economies of the planet.<sup>75</sup>

But the really revolutionary implication is that, as the value of human capital increases, and the cost of physical capital investments needed for independent production by human capital decreases, the power of corporate hierarchies becomes less and less relevant. As the value of human relative to physical capital increases, the entry barriers become progressively lower for workers to take their human capital outside the firm and start new firms under their own control. Luigi Zingales gives the example of the Saatchi and Saatchi advertising agency. The largest block of shareholders, U.S. fund managers who controlled 30% of stock, thought that gave them effective control of the firm. They attempted to exercise this perceived control by voting down Maurice Saatchi's proposed increased option package for himself. In response, the Saatchi brothers took their human capital (in actuality the lion's share of the firm's value) elsewhere to start a new firm, and left a hollow shell owned by the shareholders.<sup>76</sup>

Interestingly, in 1994 a firm like Saatchi and Saatchi, with few physical assets and a lot of human capital, could have been considered an exception. Not any more. The wave of initial public offerings of purely human capital firms, such as consultant firms, and even technology firms whose main assets are the key employees, is changing the very nature of the firm. Employees are not merely automata in charge of operating valuable assets but valuable assets themselves, operating with commodity-like physical assets.<sup>77</sup>

In another, similar example, the former head of Salomon Brothers' bond trading group formed a new group with former Salomon traders responsible for 87% of the firm's profits.

...if we take the standpoint that the boundary of the firm is the point up to which top management has the ability to exercise power..., the group was not an integral part of Salomon. It merely rented space, Salomon's

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75 Bennett, "The End of Capitalism and the Triumph of the Market Economy."

76 Luigi Zingales. "In Search of New Foundations." *The Journal of Finance*, vol. lv, no. 4 (August 2000), p. 1641.

77 *Ibid.*, p. 1641.

name, and capital, and turned over some share of its profits as rent.<sup>78</sup>

Marjorie Kelly gave the breakup of the Chiat/Day ad agency, in 1995, as an example of the same phenomenon.

...What is a corporation worth without its employees?

This question was acted out... in London, with the revolutionary birth of St. Luke's ad agency, which was formerly the London office of Chiat/Day. In 1995, the owners of Chiat/Day decided to sell the company to Omnicom—which meant layoffs were looming and Andy Law in the London office wanted none of it. He and his fellow employees decided to rebel. They phoned clients and found them happy to join the rebellion. And so at one blow, London employees and clients were leaving.

Thus arose a fascinating question: What exactly did the "owners" of the London office now own? A few desks and files? Without employees and clients, what was the London branch worth? One dollar, it turned out. That was the purchase price—plus a percentage of profits for seven years—when Omnicom sold the London branch to Law and his cohorts after the merger. They renamed it St. Luke's.... All employees became equal owners... Every year now the company is re-valued, with new shares awarded equally to all.<sup>79</sup>

If these examples all seem a bit yuppified, the same principle applies to the more meat-and-potatoes situation of tech workers as well as the entire spectrum of service workers.

David Prychitko remarked on the phenomenon of break-away firms in the tech industry, as far back as 1991:

Old firms act as embryos for new firms. If a worker or group of workers is not satisfied with the existing firm, each has a skill which he or she controls, and can leave the firm with those skills and establish a new one. In the information age it is becoming more evident that a boss cannot control the workers as one did in the days when the assembly line was dominant. People cannot be treated as workhorses any longer, for the value of the production process is becoming increasingly embodied in the intellectual skills of the worker. This poses a new threat to the traditional firm if it denies participatory organization.

The appearance of break-away computer firms leads one to question the extent to which our existing system of property rights in ideas and information actually protects bosses in other industries against the countervailing power of workers. Perhaps our current system of patents, copyrights, and other intellectual property rights not only impedes competition and fosters monopoly, as some Austrians argue. Intellectual property rights may also reduce the likelihood of break-away firms in general, and discourage the shift to more participatory, cooperative formats.<sup>80</sup>

Zingales writes at length on the ways in which the new-model firms comprising much of the contemporary economy differ from the traditional capital-intensive firm.

First, the traditional firm, which according to Chandler... emerged during the second industrial revolution to exploit economies of scale and scope, was very asset intensive and highly vertically integrated.... As a result, the realm of transactions governed by power rather than by prices tended to

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78 Raghuram Rajan and Luigi Zingales, "The Governance of the New Enterprise," in Xavier Vives, ed., *Corporate Governance: Theoretical and Empirical Perspectives* (Cambridge: Cambridge University Press, 2000), pp. 211-212.

79 Marjorie Kelly, "The Corporation as Feudal Estate." (an excerpt from *The Divine Right of Capital*) *Business Ethics*, Summer 2001. Quoted in *GreenMoney Journal*, Fall 2008 <<http://greenmoneyjournal.com/article.mpl?articleid=60&newsletterid=15>>.

80 David L Prychitko, *Marxism and Workers' Self-Management: The Essential Tension* (New York; London; Westport, Conn.: Greenwood Press, 1991), p. 121n.

coincide with the legal boundaries of the corporation.

Today, in contrast, it tends to coincide with intangible property rights of various sorts (e.g., the music and software industry's reliance on "intellectual property," and Nike's ownership of trademarks on goods produced for contract by sweatshops) that act as artificial barriers restricting human capital's independent access to the market.

Zingales continues, describing the traditional firm's control over its workers based on ownership of expensive capital assets:

Second, the traditional firm had a high degree of control over its employees.... The scarcity of competitors, both in the intermediate and in the output market, implied a thin outside labor market able to use (and pay for) the skills that employees acquired on the job. Through its control of the firm's assets, the headquarters effectively controlled the main source of employment open to its specialized employees, giving to top management enormous power.<sup>81</sup>

Thorstein Veblen described this power based on ownership of capital assets from the standpoint of a contemporary. Intangible assets, he wrote, arise from the fact that ownership of the community's physical equipment makes the capitalist the "*de facto* owner of the community's aggregate knowledge of ways and means," particularly the capabilities of engineers and workers—and hence the right to restrict the use of such knowledge and capabilities, and thereby draw monopoly rents from them.<sup>82</sup> But, as Zingales observes, the declining importance of physical assets relative to human capital has changed this. Physical assets, "which used to be the major source of rents, have become less unique and are not commanding large rents anymore." And "the demand for process innovation and quality improvement... can only be generated by talented employees," which increases the importance of human capital.<sup>83</sup> This is even more true since Zingales wrote, with the rise of what has been variously called the Wikified firm, the hyperlinked organization, Enterprise 2.0, etc.

Tom Peters remarked in quite similar language, some six years earlier in *The Tom Peters Seminar*, on the changing balance of physical and human capital. Of *Inc.* magazine's 500 top-growth companies, which include a good number of information, computer technology and biotech firms, 34% were launched on initial capital of less than \$10,000, 59% on less than \$50,000, and 75% on less than \$100,000.<sup>84</sup> Clearly, in such an environment, established firms' ownership of copyrights and patents is the main entry barrier for competing firms.

Johan Soderberg suggests that the current model of outsourcing and networked production makes capital vulnerable to being cut out of the production process by labor. He begins with an anecdote that seems to cast doubt on our earlier remarks on the vulnerability of just-in-time production to disruption by strikes. He refers to Toyota subcontractor Aisin Seiki, "the only manufacturer of a component critical to the whole Toyota network," whose factory was destroyed in a fire:

The whole conglomerate was in jeopardy of grinding to a halt. In two months Toyota would run out of supplies of the parts produced by Aisin Seiki [and, note, it would have been far sooner had the supply chain been leaner]. Faced with looming disaster, the network of subcontractors fervently cooperated and created provisory means for substituting the factory. In a stunningly short time, Toyota subsidiaries had restructured

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81 Zingales, "In Search of New Foundations," pp. 1641-1642.

82 Veblen, *The Theory of Business Enterprise*, in Commons, *Institutional Economics* pp. 663-664.

83 Zingales, pp. 1641-1642.

84 Tom Peters. *The Tom Peters Seminar: Crazy Times Call for Crazy Organizations* (New York: Vintage Books, 1994), p. 35.



themselves and could carry on unaffected by the incident. Duncan Watt attributes the swift response by the Toyota conglomerate to its networked mode of organisation. The relevance of this story for labour theory becomes apparent if we stipulate that the factory was not destroyed in an accident but was held-up in a labour conflict. Networked capital turns every point of production, from the firm down to the individual work assignment, into a node subject to circumvention. ...[I]t is capital's ambition to route around labour strongholds that has brought capitalism into network production.... Nations, factories, natural resources, and positions within the social and technical division of labour, are all made subject to redundancy. Thus has capital annulled the threat of blockages against necks in the capitalist production chain, upon which the negotiating power of unions is based.

But Soderberg goes on to describe how, pursuant to the law of unintended consequences, this redundancy created by capital as a way of routing around blockages threatens to make capital itself redundant:

The fading strength of unions will continue for as long as organised labour is entrenched in past victories and outdated forms of resistance. But the networked mode of production opens up a "window of opportunity" for a renewed cycle of struggle, this time, however, of a different kind. *Since all points of production have been transformed into potentially redundant nodes of a network, capital as a factor of production in the network has itself become a node subject to redundancy.*<sup>85</sup>

Soderberg sees the growing importance of human relative to physical capital, and the rise of peer production in the informational realm, as reason for hope that independent and self-managed networks of laborers can route around capital. Hence the importance he attaches to the increasingly draconian "intellectual property" regime as a way of suppressing the open-source movement and maintaining control over the conditions of production.<sup>86</sup>

In the absence of high-value physical assets to which the managers and workers are held hostage, the main rationale for the firm structure—to govern those assets—is gone. The real solution may be simply to dissolve the firm's boundaries, in industries with low capital outlays, and replace the formal organization with loose peer networks. The abolition of the artificial property rights (copyrights, patents, and trademarks) which are currently the main bulwark of the corporation as locus of control, will cause most firms to wither away in industries centered on human capital. For many industries, an organizational model similar to that of the construction and movie industries, based on projects rather than firms, may make more sense: rather than discrete firms being started and going out of business, individuals will move freely between projects; peer groups with extremely porous boundaries will constantly federate and divide, gaining and losing members, for specific projects.

The miniscule capital outlays and overhead required for production mean that the boundary between being "in work" and "out of work," or "in business" and "out of business," becomes very porous. Because the worker owns his tools and acquired them at relatively low cost, he can ride out long periods of slow or no business in his self-employed trade with no debt servicing payments to push him deeper in the hole. In good times, most revenues are his free and clear. So it's possible, with little or no capital outlay and virtually no risk, to incrementally shift one's source of income to self-employment without completely giving up the "day job."

And the same model of organization can be extended to fields of employment outside the information and entertainment industries—particularly labor-intensive service industries, where human capital likewise outweighs physical capital in importance. The basic model is applicable in any

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85 Soderberg, *Hacking Capitalism*, pp. 141-142.

86 *Ibid.*, pp. 142-142

industry with low requirements for initial capitalization and minimal overhead.

Perhaps the most revolutionary possibilities are in the temp industry. In my own work experience, I've seen that hospitals using agency nursing staff typically pay the staffing agency about three times what the agency nurse receives in pay. Cutting out the middleman, perhaps with some sort of cross between a workers' co-op and a longshoremen's hiring hall, seems like a no-brainer. The requirements for a cooperative temp agency are pretty minimal: a phone number, a mailing address, a fax machine and photocopier, a list of available workers and someone to keep track of the openings and who's scheduled.

Hoyt Wheeler suggests, first, that the temp agency amounts to an imitation of the classic hiring hall; and second, that craft unions could perform the same function as a temp agency more efficiently.<sup>87</sup> And Amy Dean, an AFL-CIO organizer with the San Francisco Bay area Labor Council, has in fact attempted just such a project, as recounted by Daniel Levine in *Disgruntled*.

"In many respects we are returning back to the future to a kind of occupational version of the guild society where the goal in this kind of new, fluid labor market is to create some level of permanence in the new environment," she said, adding that unions will in many ways overlap today's temporary agencies. "Temporary agencies essentially control the supply of labor. The next generation of labor organizations will function very similarly. They will supply labor, but instead of being a for-profit organization that takes 45 percent off the top, they are going to be an organization that reinvests back in skill training and other kinds of professional and occupational needs and social needs that people have. Employee-owned and employee-run: That's what a labor union is."

The first experiment in this direction that Dean is working on involves a collaboration between Working Partnership USA, West Valley Community College District and SEIU Local 715 to create a representation structure within that union for temporary workers. The goal is to create a working model of a union that establishes multi-employer relationships, can dispatch workers out of a hiring hall or through a registry and provides a secure benefits structure for its members.<sup>88</sup>

Contemporary newspaper coverage described the project and its model of organization in greater detail:

The project, scheduled to kick off in late October [1998], is the first of its kind: a nonprofit temporary-work organization designed to establish economic security, if not job security, for its employees. Features include reasonably priced portable benefits sponsored by the organization that follow an employee from assignment to assignment; a clerical certification program through Mission and West Valley colleges that will endow graduates with skills and credibility; and a higher rate of pay to employees, who sometimes see only half the money temp agencies charge for their services....

It's a classic example of labor molding itself to the organization of the new economy, in which employer/employee relationships are commonly short-lived.<sup>89</sup>

The Working Partnerships Membership Association, another project of Dean's South Bay Labor Council, operates something like a temp agency based on the building trades union model. "The whole point is to provide affordable health care, training and job placement to anybody who walks in our door," explains Dean. The effort focuses on temporary workers, in particular those working in high tech Silicon Valley

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87 Wheeler, *The Future of the American Labor Movement*, p. 50.

88 Levine, *Disgruntled*, pp. 160-161.

89 Traci Hukill, "Labor's New Face: South Bay Labor Leader Amy Dean," *Metroactive*, October 15, 1998 <<http://www.metroactive.com/papers/metro/10.15.98/cover/sobaylabor1-9841.html>>.

industries not targeted by the traditional labor movement.<sup>90</sup>

More accurately, the Working Partnerships Membership Association actually provided membership benefits like health insurance, on the social services union model described earlier in this paper. It was the Working Partnerships Staffing Service that functioned as a staffing agency: “a staffing agency operating in San Jose from 1998 to 2003, demonstrated that a temp agency could be both competitive and fair to its workers. The Staffing Service provided a model for a profitable high road employment staffing agency. At the end of 2003, we completed this demonstration project and turned our focus to policy advocacy, developing industry standards, and supporting contingent workers’ organizing efforts.”<sup>91</sup>

Hoyt Wheeler, in *The Future of the American Labor Movement*, argued that this model is a good one for the Silicon Valley software community, and points out that Dean's experiments are part of a larger phenomenon:

There is a good model for organization of employees in very similar circumstances—skilled construction-trades workers. The union hiring hall and training systems that have worked so well for carpenters and bricklayers might work equally well for software designers. The innovative California labor movement is trying this out in Silicon Valley. Under the leadership of Amy Dean, the South Bay AFL-CIO Labor Council in San Jose “has taken a leaf from the old guild model and offers training, benefits, and a hiring hall to the high-tech temps so beloved by new-economy employers.”

WashTech is also working to establish a cooperative temp agency to be owned by the workers. There is also an organization called Working Today, which is an amalgam of twenty-five associations of workers, that follows the craft union model to some degree.<sup>92</sup>

The WashTech project (Washington Alliance of Technical Workers), affiliated with United Communications Workers, is still going strong as of 2010 and has negotiated several collective bargaining agreements.<sup>93</sup>

In the case of skilled professionals like information technology workers, the guild/hiring hall/staffing agency might

send out teams to solve problems. These teams would report to work at client companies when called upon. They would be self-managed temporary work groups. This differs from workers being supplied by a temporary agency in that the professionals themselves would control the guild.<sup>94</sup>

The chief obstacle to this model is non-competition agreements signed by temp workers at their previous places of employment. Typically, a temp worker signs an agreement not to work independently for any of the firm's clients, or work for them through another agency, for some period (usually three to six months) after quitting. Of course, this can be evaded fairly easily, if the new cooperative firm has enough workers to direct particular assignments to those who aren't covered by the non-competition clause in relation to that particular client.

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90 “Amy Dean: Build Smarter, Innovative Movement,” *South Central Federation of Labor*, May 2002 <<http://www.scfl.org/?ulnid=427>>.

91 “The Contingent Workers Project,” EcoAccomplishments, Working Partnerships USA <<http://www.wpusa.org/Focus-Areas/ecoAccomplishments.htm>>.

92 Wheeler, *The Future of the American Labor Movement*, p. 75.

93 <<http://www.washtech.org>>

94 Wheeler, *The Future of the American Labor Movement*, p. 74.

Associations of freelance editors in Canada, as described by Guy Standing, are an example that owes something both to the hiring hall model and to the social services model described earlier.

As freelance editors were deemed to be independent contractors, they were excluded from labour and social protection. So a group formed an association. As with any new profession, they set out to establish standards and criteria for membership, and soon created an internal hierarchy, with 'associate membership' for inexperienced editors and 'voting membership' for editors who had done at least 500 hours of editing in the year preceding the application to join. They also set up a mechanism for matching editors with clients, that is, an 'employment agency' function although better described as a 'work agency' function. And they developed standard contract forms and gave information on appropriate fee scales to members.<sup>95</sup>

Standing points to the guild as a model for modern-day occupational associations (in a way that also draws on the social services model). "Merchant guilds," he writes,

offered insurance for their members and enforced contracts and codes of behaviour. In their way, they enforced an ethical community. They could also impose a boycott if action were taken against one of their members. One could imagine a modern equivalent in which an occupational association would act on behalf of a member against an employer or purchaser, where going through a lengthy legal process would be prohibitively expensive....<sup>96</sup>

Organization of production for barter by the unemployed or underemployed, perhaps within union-sponsored networks, is another idea that falls under the headings of both social services and worker cooperatives.

A good example is Depression-era experiments like the Unemployed Cooperative Relief Organization and the Unemployed Exchange Association, both of which reached memberships in the hundreds of thousands. They searched surrounding areas for discarded consumer goods and machinery that could be salvaged and repaired, and organized repair work using the skills of unemployed members. Members also traded their skills for unsalable surplus agricultural commodities and other goods, essentially turning surpluses with no outlet in the conventional capitalist economy directly into a source of use-value.<sup>97</sup>

Unions might sponsor small, independent workshops, equipped with affordable tools, in which laid-off or unemployed workers could reduce their dependence on wage labor by producing directly for consumption or barter.

Colin Ward suggested that small neighborhood workshops could bridge the gap between the worlds of work and leisure.

Could [the unemployed] make a livelihood for themselves today in the community workshop? ....[I]f the workshop were conceived on more imaginative lines than any existing venture of this kind, its potentialities could become a source of livelihood in the truest sense. In several of the New Towns in Britain, for example, it has been found necessary and desirable to build groups of small workshops for individuals and small businesses engaged in such work as repairing electrical equipment or car bodies, woodworking and the manufacture of small components. The Community Workshop would be enhanced by its cluster of separate workplaces for 'gainful' work. Couldn't the workshop become the community *factory*, providing work or a place for work for anyone in the locality who wanted to work that way, not as an optional extra to the

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95 Standing, *Work After Globalization*, p. 271.

96 *Ibid.*, p. 274.

97 See Carson, *The Homebrew Industrial Revolution: A Low-Overhead Manifesto* (Booksurge, 2010), Chapter Six.

economy of the affluent society which rejects an increasing proportion of its members, but as one of the prerequisites of the worker-controlled economy of the future?

Keith Paton..., in a far-sighted pamphlet addressed to members of the Claimants' Union, urged them not to compete for meaningless jobs in the economy which has thrown them out as redundant, but to use their skills to serve their own community. (One of the characteristics of the affluent world is that it denies its poor the opportunity to feed, clothe, or house *themselves*, or to meet their own and their families' needs, except from grudgingly doled-out welfare payments). He explains that:

*...[E]lectrical power and 'affluence' have brought a spread of intermediate machines, some of them very sophisticated, to ordinary working class communities. Even if they do not own them (as many claimants do not) the possibility exists of borrowing them from neighbours, relatives, ex-workmates. Knitting and sewing machines, power tools and other do-it-yourself equipment comes in this category. Garages can be converted into little workshops, home-brew kits are popular, parts and machinery can be taken from old cars and other gadgets. If they saw their opportunity, trained metallurgists and mechanics could get into advanced scrap technology, recycling the metal wastes of the consumer society for things which could be used again regardless of whether they would fetch anything in a shop. Many hobby enthusiasts could begin to see their interests in a new light.*

'We do,' he affirms, 'need each other and the enormous pool of energy and morale that lies untapped in every ghetto, city district and estate.'<sup>98</sup>

As James O'Connor described the phenomenon in the 1980s, "the accumulation of stocks of means and objects of reproduction within the household and community took the edge off the need for alienated labor."

Labor-power was hoarded through absenteeism, sick leaves, early retirement, the struggle to reduce days worked per year, among other ways. Conserved labor-power was then expended in subsistence production.... The living economy based on non- and anti-capitalist concepts of time and space went underground: in the reconstituted household; the commune; cooperatives; the single-issue organization; the self-help clinic; the solidarity group. Hurrying along the development of the alternative and underground economies was the growth of underemployment... and mass unemployment associated with the crisis of the 1980s. "Regular" employment and union-scale work contracted, which became an incentive to develop alternative, localized modes of production....

...New social relationships of production and alternative employment, including the informal and underground economies, threatened not only labor discipline, but also capitalist markets.... Alternative technologies threatened capital's monopoly on technological development... Hoarding of labor-power threatened capital's domination of production. Withdrawal of labor-power undermined basic social disciplinary mechanisms....<sup>99</sup>

Most households possess producer goods like kitchen appliances, garage power tools, sewing machines, rototillers and gardening implements, and cars which might provide transportation to neighbors, as well as members with cooking, sewing, babysitting, hairdressing, woodworking or metal shop skills. And the productive capacity of such machinery and skills is typically far beyond the consumption needs of the individual household. If the spare capacity of such machinery and skills were used for production for barter with other households, a major part of what we consume could be produced using the spare capacity of producer goods and skills already possessed in the households of the unemployed and underemployed. So the network effects of association for barter would increase

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98 Keith Paton, *The Right to Work or the Fight to Live?* (Stoke-on-Trent, 1972), in Ward, *Anarchy in Action*, pp. 108-109.

99 James O'Connor, *Accumulation Crisis* (New York: Basil Blackwell, 1984), pp. 184-186.

the total value of household production capability. And labor unions are a promising platform for organizing such network effects.

The effect on the bargaining power of workers vis-a-vis wage employers should be obvious. Workers who barter babysitting time with the neighbor need a lot less work time than those who spend half their paychecks on daycare.

Capital, historically, relied on its superior bargaining power to set the boundaries between the money and social economies to its own advantage. The household and informal economies were allowed to function to the extent that they bear reproduction costs that would otherwise have to be internalized in wages; but they have been suppressed (as in the Enclosures) when they threaten to increase in size and importance to the point of offering a basis for independence *from* wage labor.

"The household as an income-pooling unit," Wallerstein writes, "can be seen as a fortress both of accommodation to and resistance to the patterns of labor-force allocation favored by accumulators." Capital has tended to favor severing the nuclear family household from the larger territorial community or extended kin network, and to promote an intermediate-sized income-pooling household. The reason is that too small a household falls so far short as a basis for income pooling that the capitalist is forced to commodify too large a portion of the means of subsistence, i.e. to internalize the cost in wages.<sup>100</sup> It is in the interest of the employer not to render the worker *totally* dependent on wage income, because without the ability to carry out some reproduction functions through the production of use value within the household subsistence economy, the worker will be "compelled to demand higher real wages...."<sup>101</sup> On the other hand, too large a household meant that "the level of work output required to ensure survival was too low," and "diminished pressure to enter the wage-labor market."<sup>102</sup>

It's only common sense that when there are multiple wage-earners in a household, their dependence on any one job is reduced, and the ability of each member to walk away from especially onerous conditions is increased: "While a family with two or more wage-earners is no less dependent on the sale of labor power in general," write Sam Bowles and Herb Gintis, "it is significantly shielded from the effects of particular unemployment..."<sup>103</sup> And in fact it is less dependent on the sale of labor power in general, to the extent that the per capita overhead of fixed expenses to be serviced falls as household size increases. And the absolute level of fixed expenses can also be reduced by substituting the household economy for wage employment, in part, as the locus of value creation.

But the rapid decline in capital costs for undertaking forms of production that once required enormous capital outlays, and the exploding portion of total consumption needs that can be produced in the informal sector or with modest capital outlays in the small business sector, has shifted this boundary to the capitalists' disadvantage. The more of its consumption needs a household can meet by bartering its members' own effort and skills with those of others in the informal sector, and the more money it can bring in from low-capital, low-overhead microenterprise based in the household, it follows that the smaller the sum of money from wage labor it absolutely requires to subsist on, the more of its members

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100 Immanuel Wallerstein, "Household Structures and Labor-Force Formation in the Capitalist World Economy," in Joan Smith, Immanuel Wallerstein, Hans-Dieter Evers, eds., *Households and the World Economy* (Beverly Hills, London, New Delhi: Sage Publications, 1984), pp. 20-21.

101 Wallerstein and Joan Smith, "Households as an institution of the world-economy," in Smith and Wallerstein, eds., *Creating and Transforming Households: The constraints of the world-economy* (Cambridge; New York; Oakleigh, Victoria; Paris: Cambridge University Press, 1992), p. 16.

102 Wallerstein, "Household Structures," p. 20.

103 Samuel Bowles and Herbert Gintis. "The Crisis of Liberal Democratic Capitalism: The Case of the United States," *Politics and Society* 11:1 (1982), p. 83.

can be without wage employment, and the longer it can ride out periods of unemployment by even more of its members.

The same applies to the social economy as a whole, as well as to the household. The larger the share of goods and services that can be obtained within local exchange networks with other producers, in which our demand for each other's services is fairly stable and predictable, the larger the total share of our consumption needs we can be confident of meeting on a secure basis without any danger of disruption by a job loss.

Guy Standing uses the concept of “social income,” breaking it down into its component parts with this formula:

$$SI = SP + W + CB + EB + SB + PB$$

W and EB are wages and employer benefits, SB is state benefits, and PB is income from private investments. SP is “self-production (whether self-consumed, bartered or sold)” and CB is support from the family and local community. The important point is that the “composition of social income indicates the degree to which an individual is subject to market forces” (“market forces” in Standing’s usage referring specifically to the cash nexus). The larger the share of social income made up of W + EB, the more commodified the individual’s labor and the more dependent he is on wage labor as his primary source of subsistence.<sup>104</sup> And for our purposes, the larger the share of social income encompassed by SP and CB, the less dependent the individual becomes on employment; hence the less dependent he is on an employer’s whims, and the greater his day-to-day bargaining power against the employer.

Increasing opportunities for production in the informal sector are a partial answer to the reduced bargaining power of labor in what Standing calls “a labour surplus society,”<sup>105</sup> since it makes it possible for workers to withdraw some of their labor from the market.

A good example of organization for increasing labor’s ability to produce directly for subsistence outside the wage system, and thereby to increase the bargaining power of labor by reducing its need for employment, is the Triple Alliance proposed by Dougald Hine and Nathan Cravens. And there is no reason such an organization could not be set up under the auspices of a union.

The idea was originally stated in a blog post by Hine: “Social Media vs the Recession,” in which he proposed using online social networks as a survival tool for the unemployed.

...[T]he conversations I’ve been having keep coming back to this central question: is there a way we can constructively mobilise to respond to this situation in the days and weeks ahead?...

- Information sharing for dealing with practical consequences of redundancy or job insecurity. You can see this happening already on a site like the Sheffield Forum.
- Indexes of local resources of use to the newly-unemployed—including educational and training opportunities—built up in a user-generated style.
- Tools for reducing the cost of living. These already exist—LiftShare, Freecycle, etc.—so it’s a

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104 Standing, *Work After Globalization*, pp. 9-10.

105 *Ibid.*, p. 279.

question of more effective access and whether there are quick ways to signpost people towards these, or link together existing services better.

- An identification of skills, not just for potential employers but so people can find each other and organise, both around each other and emergent initiatives that grow in a fertile, socially-networked context.

If the aim is to avoid this recession creating a new tranche of long-term unemployed (as happened in the 1980s), then softening the distinction between the employed and unemployed is vital. In social media, we've already seen considerable softening of the line between producer and consumer in all kinds of areas, and there must be lessons to draw from this in how we view any large-scale initiative.

As I see it, such a softening would involve not only the kind of online tools and spaces suggested above, but the spread of real world spaces which reflect the collaborative values of social media. Examples of such spaces already exist:

- Media labs on the model of Access Space or the Brazilian Pontos de Cultura programme, which has applied this approach on a national scale
- Fab Labs for manufacturing, as already exist from Iceland to Afghanistan
- studio spaces like TenantSpin, the micro-TV station in Liverpool based in a flat in a towerblock—and like many other examples in the world of Community Media

Again, if these spaces are to work, access to them should be open, not restricted to the unemployed. (If, as some are predicting, we see the return of the three day week, the value of spaces like this open to all becomes even more obvious!)<sup>106</sup>

This was the direct inspiration for Cravens' Triple Alliance, “a network of three community supported organizations necessary to meet basic needs and comforts.”

- The Open Cafe, a place to have a meal in good company without a price tag
- The CSA or community supported farm
  - The Fab Lab, a digitally assisted manufacturing facility to make almost anything<sup>107</sup>

Considering the basic life support needs of the unemployed, and the goal of creating a safety net in the social economy, Cravens' three-legged stool would benefit from a fourth leg: housing. Open-source housing would fill a big gap in the overall resiliency strategy. It might be some kind of cheap, bare bones cohousing project associated with the Cafe (cots, communal water taps, hotplates, etc) that would house people at minimal cost on the YMCA model. It might be an intentional community or urban commune, with cheap rental housing adapted to a large number of lodgers (probably in violation of laws restricting the number of unrelated persons living under one roof). Another model might be the commercial campground, with space for tents, water taps, etc., on cheap land outside the city, in connection with a ride-sharing arrangement of some sort to get to Alliance facilities in town. The government-run migrant worker camps, as depicted in *The Grapes of Wrath*, are an example of the kind of cheap and efficient, yet comfortable, bare bones projects that are possible based on a combination of prefab housing with common bathrooms. And finally, Vinay Gupta's work in the Hexayurt project on

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106 Dougal Hine, “Social Media vs the Recession,” *Changing the World*, January 28, 2009 <<http://otherexcuses.blogspot.com/2009/01/social-media-vs-recession.html>>.

107 Nathan Cravens, “The Triple Alliance,” *Appropedia: The sustainability wiki* <[http://www.appropedia.org/The\\_Triple\\_Alliance](http://www.appropedia.org/The_Triple_Alliance)> (accessed July 3, 2009).



emergency life-support technology for refugees is also relevant to the housing problem: offering cheap LED lighting, solar cookers, water purifiers, etc., to those living in tent cities and Hooverilles.

### **F. Asymmetric Warfare as a Model for Labor Struggle**

An alternative model of labor struggle, and one much closer to the overall spirit of organized labor before Wagner, would include the kinds of activity mentioned in the old Wobbly pamphlet "How to Fire Your Boss." As that pamphlet argues, the conventional strike in its current form is about the least effective form of action available to organized labor.

The bosses, with their large financial reserves, are better able to withstand a long drawn-out strike than the workers.... And worst of all, a long walk-out only gives the boss a chance to replace striking workers with a scab (replacement) workforce.

Workers are far more effective when they take direct action while still on the job. By deliberately reducing the boss' profits while continuing to collect wages, you can cripple the boss without giving some scab the opportunity to take your job. Direct action, by definition, means those tactics workers can undertake themselves, without the help of government agencies, union bureaucrats, or high-priced lawyers.<sup>108</sup>

Instead of conventional strikes, "How to Fire Your Boss" recommends such forms of direct action as the slowdown, the "work to rule" strike, the "good work" strike, selective strikes (brief, unannounced strikes at random intervals), whistleblowing, and sick-ins. These are all ways of raising costs on the job, without giving the boss a chance to hire scabs.

P.J. Passmore, London organizer for the Industrial Syndicalist Education League, addressed a branch meeting of the Amalgamated Society of Railroad Servants: "How foolish it is to go on strike, thus placing ourselves in the power of the companies, who can starve us into subjection, when, by a little intelligent use of sabotage, &c., on the job, we could obtain our ends."<sup>109</sup> A radical British workers' daily, the *Daily Herald*, coined the apt phrase "Staying in on Strike" as an alternative to going out on strike to be starved.<sup>110</sup>

### **G. Asymmetric Warfare: Slowdowns**

The slowdown, or "going canny," has a venerable place in the history of labor struggle. It's usually noted as a component of organized struggle, but as an uncoordinated individual practice it fades into what Oliver Williamson called "perfunctory cooperation" (see below). As Pierre Dubois pointed out, "working without enthusiasm," absenteeism and high turnover are forms of "sabotage" that probably do more damage than strikes.<sup>111</sup>

Those who object morally to on-the-job direct actions like slowdowns and working-to-rule (see

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108 "How to Fire Your Boss: A Worker's Guide to Direct Action" <<http://home.interlog.com/~gilgames/boss.htm>>. It should be noted that the I.W.W. no longer endorses this pamphlet in its original form, and reproduces only a heavily toned down version at its website. It has disavowed portions of the pamphlet—particularly, perhaps understandably given the potential use of "counter-terrorism" powers against radical unions, the section on industrial sabotage—in recent years.  
109 Quoted in Geoff Brown, *Sabotage: A Study of Industrial Conflict* (Nottingham, England: Spokesman Books, 1977), p. 28.

110 *Ibid.*, p. 36. Here "sabotage" is used in the broad sense of "deliberate withdrawal of efficiency."

111 Pierre Dubois, *Sabotage in Industry*, pp. 51-59.

below) fail to consider the logical implications of a free contract in labor.

The possibilities for such forms of resistance result from the fact, from which Murray Rothbard argued against even voluntary, contractual slavery, that human will and moral agency are inalienable:

a person cannot alienate his will, more particularly his control over his own mind and body.... Since his will and control over his own person are inalienable, then so also are his rights to control that person and will....

Hence, the unenforceability, in libertarian theory, of voluntary slave contracts. Suppose that Smith makes the following agreement with the Jones Corporation: Smith, for the rest of his life, will obey all orders, under whatever conditions, that the Jones Corporation wishes to lay down.... Our contention... is that Smith's promise was not a valid (i.e., not an enforceable) contract. There is no transfer of title in Smith's agreement, because Smith's control over his own body and will are inalienable. Since that control cannot be alienated, the agreement was not a valid contract, and therefore should not be enforceable. Smith's agreement was a mere promise, which it might be held he is morally obligated to keep, but which should not be legally obligatory.<sup>112</sup>

...[A] man may not agree to permanent bondage by contracting to work for another man for the rest of his life. He might change his mind at a later date, and then he cannot, in a free market, be compelled to continue an arrangement whereby he submits his will to the orders of another, even though he might have agreed to this arrangement previously.<sup>113</sup>

"Voluntarily" selling oneself into slavery, as a commenter on the LeftLibertarian2 yahoogroup put it, is a lot like selling a car and then remaining in the driver's seat.<sup>114</sup> It is impossible to alienate moral agency.

But the same is true of the wage labor contract. Unlike sellers of capital equipment and land, the seller of labor-power remains in the driver's seat at all times.

The agency problems of labor follow directly from the incompleteness of the labor contract, and its enforcement by "endogenous" means (or "private ordering"). Michael Reich and James Devine describe it this way:

Conflict is inherent in the employment relation because the employer does not purchase a specified quantity of performed labor, but rather control over the worker's capacity to work over a given time period, and because the workers' goals differ from those of the employer. The amount of labor actually done is determined by a struggle between workers and capitalists.<sup>115</sup>

From the incompleteness of the contract, Bowles and Gintis argue, endogenous bargaining necessarily follows:

The classical theory of contract implicit in most of neo-classical economics holds that the enforcement of claims is performed by the judicial system at negligible cost to the exchanging parties. We refer to this... as *exogenous enforcement*. Where, by contrast, enforcement of claims arising from an exchange by third

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112 Murray N. Rothbard, *The Ethics of Liberty* (New York and London: New York University Press, 1998), pp. 134-136.

113 Rothbard, *Man, Economy, and State: A Treatise on Economic Principles* (Auburn, Ala.: The Ludwig von Mises Institute, 1962, 1970, 1993), p. 142.

114 Trevor Acorn, "RE: Self-ownership/was RE: [LeftLibertarian2] Re: How is mutualism different than an anarcho-capitalism?" *LeftLibertarian2*, October 4, 2007 <<http://groups.yahoo.com/group/LeftLibertarian2/message/13005>>.

115 Michael Reich and James Devine, "The Microeconomics of Conflict and Hierarchy in Capitalist Production," *The Review of Radical Political Economics* vol. 12 no. 4 (Winter 1981), pp. 27-28.

parties is infeasible or excessively costly, the exchanging agents must themselves seek to enforce their claims. Endogenous enforcement in labour markets was analysed by Marx--he termed it the extraction of labour from labour power--and has recently become the more or less standard model among microeconomic theorists.

Because exogenous enforcement is unavailable for many issues under the labor contract, employers must rely on private ordering for enforcement:

...when there is no relevant third party..., when the contested attribute can be measured only imperfectly or at considerable cost (work effort, for example...), when the relevant evidence is not admissible in a court of law...[,] when there is no possible means of redress..., or when the nature of the contingencies concerning future states of the world relevant to the exchange precludes writing a fully specified contract.

In such cases the ex post terms of exchange are determined by the structure of the interaction between A and B, and in particular on the strategies A is able to adopt to induce B to provide the desired level of the contested attribute, and the counter strategies available to B...

An employment relationship is established when, in return for a wage, the worker B agrees to submit to the authority of the employer A for a specified period of time in return for a wage  $w$ . While the employer's promise to pay the wage is legally enforceable, the worker's promise to bestow an adequate level of effort and care upon the tasks assigned, even if offered, is not. Work is subjectively costly for the worker to provide, valuable to the employer, and costly to measure. The manager-worker relationship is thus a contested exchange.<sup>116</sup>

In other words, the labor contract is an *incomplete contract*. That means that all its terms cannot be established *ex ante*, or ahead of time. From this, Oliver Williamson argues, "bargaining is pervasive" in hierarchies.<sup>117</sup>

The very term "adequate effort" is meaningless, aside from whatever way its definition is worked out in practice based on the comparative bargaining power of worker and employer. Since it's impossible to design a contract that specifies exact levels of effort and standards of performance ahead of time, or for employers to reliably monitor performance after the fact, the workplace is contested terrain. Workers are justified entirely as much as employers in attempting to maximize their own interests within the leeway left by an incomplete contract. How much effort is "normal" to expend is determined by the informal outcome of the social contest within the workplace, given the *de facto* balance of power at any given time. And that includes slowdowns, "going canny," and the like. The "normal" effort that an employer is entitled to, when he buys labor-power, is entirely a matter of convention—much like the "reasonable man" standards for implied warranties and fraud in a given community. If libertarians like to think of "a fair day's wage" as an open-ended concept, they should bear in mind that "a fair day's work" is equally open-ended.<sup>118</sup>

The employer and employee, under free market principles, are equal parties to the employment contract. As things normally work now, and as mainstream libertarianism unfortunately take for granted, the employer is expected as a normal matter of course to take advantage of the incomplete

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116 "Is the Demand for Workplace Democracy Redundant in a Liberal Economy?" in Ugo Pagano and Robert Rowthorn, eds., *Democracy and Efficiency in the Economic Enterprise*. A study prepared for the World Institute for Development Economics Research (WIDER) of the United Nations University (London and New York: Routledge, 1994, 1996), pp. 69-70.

117 Oliver Williamson, *The Economic Institutions of Capitalism* (New York: The Free Press, 1985), p. 29.

118 "A fair day's work" is as much an issue for bargaining, as is the 'fair day's pay.'" Richard Edwards, *Contested Terrain: The Transformation of the Workplace in the Twentieth Century* (New York: Basic Books, 1979), p. 15.

nature of the employment contract. One can hardly go to Cato or Mises.Org on any given day without stumbling across an article lionizing the employer's right to extract maximum effort in return for minimum pay, if he can get away with it. His rights to change the terms of the employment relation, to speed up the work process, to maximize work per dollar of wages, are his by the grace of God.

Well, if the worker and employer really are equal parties to a voluntary contract, as free market theory says they are, then it works both ways. The worker's attempts to maximize his own utility, under the contested terms of an incomplete contract, are every bit as morally legitimate as those of the boss. The worker has every bit as much of a right to attempt to minimize his effort per dollar of wages as the boss has to attempt to maximize it. What constitutes a fair level of effort is entirely a subjective cultural norm, that can only be determined by the real-world bargaining strength of bosses and workers in a particular workplace.

If you stop to think about it, it's just common sense. I doubt that very many people, even right-leaning professed libertarians, believe that a worker is obligated to expend the maximum possible effort that he's physically capable of every single minute on the job. Work intensity is subject to a standard of reasonableness that, like "reasonable person" standards involved in implied contracts, depend heavily on community norms.

According to Reg Theriault, the practice known as "working on and off" is as old as wage labor. "It takes some kind of real mental case to do all the work he can all day long. No one expects it. Certainly not management. Managers might want it, but they do not expect it, and workers do not disappoint them."<sup>119</sup> He recounts one example from his work as a longshoreman: He and his partner, after a strenuous burst of exertion, flopped down "wet with sweat and panting" on some empty rice sacks to let their respiration and heart rates recover. A new superintendent, gung ho to eliminate working on and off and impress his superiors, demanded (hands on hips) to know why they weren't working, and warned in progressively angrier and louder tones that they'd be fired if they didn't get up. The walking boss, a veteran dockworker, clued the super into the facts of life: if Theriault and his partner walked off the job and went back to the hiring hall, the rest of the gang would walk off with them—leaving a ship with a tight deadline, unloaded cargo, and the need to pay premium wages to get replacement longshoremen to do the work at short notice—if they were available at all. Finally the walking boss raged at the super: "Goddammit, get up that ladder and leave this gang alone!"<sup>120</sup>

In many strenuous physical jobs (Theriault relies heavily on his experience on the West Coast docks), literally engaging in continuous effort during all the time one was paid to work would have been impossible for all but the youngest and burliest workers, and would have resulted in even their being worn out and replaced periodically. The preservation of the worker's ability to do the job through the end of the shift, let alone their health, depended on incorporating many more intervals of rest into the work itself than the specified break times allowed for.

The actual amount of rest allowed within the work process has always depended on the relative bargaining power of management and labor.

Working on and off has its limits, however. The rules are infinitely varied, subtle, and flexible, and of course they are always changing. In spite of this, they are at any given moment usually very well defined. Management, up to a certain level, at least, is aware of the practice and in some industries employs entire

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119 Reg Theriault, *How to Tell When You're Tired: A Brief Examination of Work* (New York and London: W.W. Norton & Co., 1995), p. 93.

120 *Ibid.*, p. 115.

cadres of people to curtail or put an end to it. Simultaneously, the workers are subtly doing all that is possible to keep it going and extend it wherever possible.

Every worker knows to a pretty fine degree how much work is expected of him. When he feels that the expectation is excessive, he tries to do something about it....

There are exceptions to this rule, extreme conditions. Historically, management has at times enjoyed situations where it had everything its own way. When the alternative is starvation you can make a person do anything you want him or her to do, as the Nazis demonstrated in their concentration camps.<sup>121</sup>

The on and off system used by longshoremen on the West Coast was pretty close to the other end of the spectrum. But historically management has done everything in its power to control the pace of work, and to approach the ideal of enforcing the maximum pace of continuous effort they can extract in a shift. In every case where the employing classes have had the upper hand in terms of bargaining power, their first order of business has been a concerted attack on what they regard as laziness or excessive idleness on the part of the working class, and the extraction of more labor with less rest in return for the same level of subsistence. The enclosure of the open fields and other land expropriations of early modern times was followed by the Puritan assault on holy days and peasant festivals. Parliamentary Enclosures of commons were undertaken, avowedly and in deliberate response, to the “idleness” that resulted from insufficient dependence on wage labor. Taylorism was largely an attempt to identify and eliminate “unproductive” intervals of rest in the work process, and to remove workers' discretion by gearing the pace of work to the pace of machinery.<sup>122</sup>

But in the growing share of the economy—especially the service sector—where the pace of production cannot be controlled by machines, attempts at Taylorist control over output have required drastic increases in the amount of authoritarian surveillance, and hence also in the number of supervisory personnel.<sup>123</sup> The practical effect (as Theriault points out) has been a perversion of “working on and off,” in which for each worker who's “on” all the time, there's another person paid to be “off” standing and watching him all the time—but on a management salary.<sup>124</sup> How that's an improvement in productivity over a situation in which two people making workmen's wages to take turns being off, from the standpoint of anyone but the managers themselves, is anybody's guess.

It's actually a considerable pessimization of productivity, since by increasing the adversarial nature of the labor-management relationship it increases labor's creativity in looking for ways to minimize effort and fight back, and reduces labor's willingness to share tacit or hidden knowledge that might contribute to increased productivity. And no matter how authoritarian the workplace, and no matter how confident management is in its systems of surveillance, workers can circumvent such authoritarian surveillance a lot more easily and cheaply than management can institute it.

Recently white-collar office workers have come under criticism for robbing their bosses of their full-time services. Too much time is being spent around the Mr. Coffee machine, and some people, would you believe it, have even been having personal conversations on company time. In fact, one office-systems expert recently said that he had yet to encounter a business workplace that was functioning at more than about 60 percent efficiency. Well, all I have to say to him is, Good luck, Jack, but I don't think you're going

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121 *Ibid.*, pp. 93-95.

122 *Ibid.*, pp. 102-103.

123 This authoritarian, adversarial and management-heavy workplace was the subject of David M. Gordon's *Fat and Mean: The Corporate Squeeze of Working Americans and the Myth of Managerial “Downsizing”* (New York: The Free Press, 1996).

124 Theriault, p. 103.

to find mentally retarded workers who can type very well, much less run a computer.<sup>125</sup>

Even if there were some way of objectively specifying expected levels of effort by *ex ante* contract, the costs of monitoring would likely be very high in practice. I suspect most market anarchists would reject, in principle, exogenous systems to enforce intra-workplace contract that are not paid for entirely by those who rely on the service: in a market anarchy, those contractual arrangements which cost more to enforce than the benefits would justify would simply "wither away," regardless of whether the contractual violations incurred the moral disapproval of some.

If things ever progress to the point where most workers see themselves as engaged in a zero-sum contest with management, the war will be over before it is fairly begun—because the comparative costs of monitoring and evasion are heavily stacked against management. Assuming a workforce that is bent on evading monitoring, I would venture to guess that there is no internal monitoring or surveillance system in existence that cannot be circumvented at a fraction of the cost of putting it in place. In the offensive-defensive arms race between management and labor, labor will always have the edge. As McGregor put it, "The ingenuity of the average worker is sufficient to outwit any system of controls devised by management."<sup>126</sup>

The cumulative effect of these kinds of worker resistance, even when practiced only on an uncoordinated individual basis, can be overwhelming. James C. Scott refers to "the small arsenal of relatively powerless groups," including among other things "such acts as foot dragging, dissimulation, false compliance, feigned ignorance, desertion, pilfering," and the like.

These techniques, for the most part quite prosaic, are the ordinary means of class struggle.... When they are practiced widely by members of an entire class against elites or the state, they may have aggregate consequences out of all proportion to their banality when considered singly.<sup>127</sup>

Oliver Williamson uses the term "perfunctory cooperation" for what was traditionally called slowing down or going canny:

...[E]xploited incumbent employees are not totally without recourse. Incumbent employees who are "forced" to accept inferior terms can adjust quality to the disadvantage of a predatory employer. The issues here have been addressed previously in distinguishing between consummate and perfunctory cooperation.... Of necessity, the employment contract is an incomplete agreement, and performance varies with the way in which it is executed.<sup>128</sup>

Labor has the ability to exploit its skills and idiosyncratic knowledge in ways not subject to effective control. Such exploitation includes the extraction of rents from information impactedness and from the ineffectiveness of monitoring systems, and the potential of worker opportunism to impede the production process.

Williamson's distinction between "consummate" and "perfunctory" cooperation originally appeared in *Markets and Hierarchies*:

Consummate cooperation is an affirmative job attitude—to include the use of judgment, filling gaps, and

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125 *Ibid.*, p. 103.

126 Edwards, *Contested Terrain*, p. 9.

127 J.C. Scott, "Everyday Forms of Resistance," in F.D. Colburn, ed., *Everyday Forms of Peasant Resistance* (Armonk, N.Y. M.E. Sharpe, 1989), p. 5.

128 Oliver Williamson, *The Economic Institutions of Capitalism* (New York: The Free Press, 1985), p. 262.

taking initiative in an instrumental way. Perfunctory cooperation, by contrast, involves job performance of a minimally acceptable sort.... The upshot is that workers, by shifting to a perfunctory performance mode, are in a position to "destroy" idiosyncratic efficiency gains.<sup>129</sup>

He also quoted Peter Blau and Richard Scott on the difficulty of contractually enforcing anything beyond perfunctory cooperation:

...[T]he contract obligates employees to perform only a set of duties in accordance with minimum standards and does not assure their striving to achieve optimum performance.... [L]egal authority does not and cannot command the employee's willingness to devote his ingenuity and energy to performing his tasks to the best of his ability.... It promotes compliance with directives and discipline, but does not encourage employees to exert effort, to accept responsibilities, or to exercise initiative.<sup>130</sup>

Williamson suggests elsewhere that disgruntled workers will follow a passive-aggressive strategy of compliance in areas where effective metering is possible, while shifting their perfunctory compliance (or worse) into areas where verification is impossible.<sup>131</sup> Williamson also argues that it's impossible, "for information impactedness reasons, [to] determine whether workers put their energies and inventiveness into the job in a way which permits task-specific cost-savings to be fully realized...." Workers are able to thwart management policy by "withholding effort."<sup>132</sup>

A classic example is this remark by a worker at an Indiana gypsum mine: "O.K., I'll punch in just so, and I'll punch out on the nose. But you know you can lead a horse to water and you can lead him away, but it's awful hard to tell how much water he drinks while he's at it."<sup>133</sup>

When it comes to questions of moral legitimacy, it's difficult to see how a wing of libertarianism that agrees with Walter Block on the moral defensibility of blackmail can consistently get all squeamish when workers pursue the exact same interest-maximizing behavior. That's no exaggeration, by the way. Contrast libertarian commentary on the virtuous function of price gouging after Katrina with this message board reaction at Libertarian Underground to the idea of workers doing *exactly the same thing*:

**Fisticuffs:** Economically speaking, why should [workers] do more than the minimum possible for their pay?

**Charles M.:** Why not just rob people if you can get away with it? Economically speaking?

**Fisticuffs:** If a person does a certain amount of work and gets paid for that amount of work, is the person really pricing himself efficiently if he does more work without getting paid more??<sup>134</sup>

Here's a little thought experiment: try imagining Charles M.'s reaction if Fisticuffs had complained that *employers* were "robbing people" by trying to get the most work possible for an hour's wages. You can also do an experiment in real life: go to any mainstream libertarian discussion forum and complain

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129 Williamson, *Markets and Hierarchies*, p. 69.

130 Peter Blau and Richard Scott, *Formal Organizations* (San Francisco: Chandler, 1962), p. 140, in Williamson, *The Economic Institutions of Capitalism*, p. 263.

131 Williamson, *Markets and Hierarchies*, pp. 55-56.

132 *Ibid.*, p. 69.

133 Gary J. Miller, *Managerial Dilemmas: The Political Economy of Hierarchy* (New York: Cambridge University Press, 1992), pp. 207-210.

134 "Proud to be a Replacement Worker," *Libertarian Underground*, March 2, 2004  
<<http://www.libertarianunderground.com/Forum/index.php/topic,865.0.html>>.

about the bad behavior of the typical worker. The responses will range from commiseration over "how hard it is to get good help nowadays," to visceral outrage at the ingratitude and perversity of such uppity workers. Then go to a comparable forum and complain in exactly the same tone about your boss's behavior. The predictable response will be a terse and pissy "if you don't like it, look for another job." Try it for yourself. The sympathies are precisely those mocked by Cool Hand Luke: "Them pore ole bosses need all the help they can get."

Charles M., in the same discussion, wrung his hands about what blackguards union workers were for "extorting" higher wages when their labor is most needed: "Unions go on strike always at critical moments when a company is desperate." But wait a minute: aren't these the same circles that—to repeat—generally defend "price gouging" by the oil companies? It's not very consistent to have a philosophy of "every man for himself and the devil take the hindmost" in every realm *except* labor relations. The hostility is quite odd, assuming the person feeling it is motivated by genuine free market principle rather than an authoritarian identification with the employer as such. Their implicit model of employer-employee relations, in fact, seems to be a cultural holdover from the old master-servant relationship.

Whatever the case, corporate management seems to be preoccupied with the threat of such forms of resistance. As downsizing, speedups and stress continue, workers' definitions of a fair level of effort and of the legitimate ways to slow down are likely to undergo a drastic shift. Kevin Depew writes:

- \* Productivity, like most "financial virtues," is the products of positive social mood trends.
- \* As social mood transitions to negative, we can expect to see less and less "virtue" in hard work.
- \* Think about it: real wages are virtually stagnant, so it's not as if people have experienced real reward for their work....
- \* If social mood has, in fact, peaked, we can expect to see a different attitude toward work and productivity emerge.<sup>135</sup>

Rick, at *Flip Chart Fairy Tales*, finds disengagement and perfunctory cooperation to be a normal reaction from a work force with no financial stake in increased profit and no control over their work:

Pay consultants Towers Perrin have just published some research which found that 38% of employees around the world feel partly to fully disengaged from their companies--engagement being defined as 'willing to go the extra mile'. In plain English, then, that means that 38% go to work to do their jobs and nothing much more....

Could lack of engagement be due to alienation? Given that a person's lack of control over his or her work is one of the major causes of stress, there's a pretty good chance that alienation and disengagement are linked.

What I find interesting, though, is that so many managers are surprised by this general level of disengagement among their workforces....

Bosses tend to assume that everyone in the company has, or should have, the same levels of motivation and commitment as the management. They forget that, without the position power and the share options,

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135 Kevin Depew, "Five Things You Need to Know," *Minyanville Financial Infotainment*, September 13, 2007 <<http://www.minyanville.com/articles/KKR-FDC-Bernanke-Credit+Suisse-CFC/index/a/14090>>.



most workers are, as [Harry] Braverman would have put it, alienated from the means of production. This lack of awareness explains why managers can impose a minor cost-cutting exercise, such as taking away free coffee and newspapers in the staff canteen, then be completely surprised that this causes uproar. However, if those managers had understood that employees lack a sense of control over their working environment, they could have predicted that stopping free newspapers would simply emphasise that lack of control and cause an inevitable backlash.

The number of times that executives are caught out by the negative reaction to their crass initiatives never ceases to amaze me. If they stopped to think about it, though, it should not come as a great surprise that people with less of a financial stake in the company might just be that bit less willing to go along with every company initiative.<sup>136</sup>

Apparently there is serious concern, in management circles, with perfunctory compliance and passive-aggressive "change resistance."

In addition to overt sabotage, there's other misconduct that's just as deadly to a company's operations. "In today's workplace, there's a lot of covert, subtle sabotage that's happening daily," says Nancy Probst, manager and organizational development consultant of management advisory services for Dixon Odom PLLC, a certified public accounting and management advisory firm based in High Point, North Carolina. Examples include intentional reductions in productivity, especially at large organizations in which management has flattened and spans of control have greatly expanded. Then there are managers who agree to whatever is being planned, but have no intention of actually doing it and sabotage those final plans in subtle ways. Employees who actively resist change efforts also could be considered saboteurs.<sup>137</sup>

Employer concern over growing employee disgruntlement in recent years is probably the reason so many dollars are blown by HR departments on agitprop like *Who Moved My Cheese?*, *Fish! Philosophy*, and the Studer Group's Kool-Aid.

## H. Asymmetric Warfare: Working to Rule

Idiosyncratic knowledge, or hidden knowledge, is a source of agency problems, and the possessors of such knowledge are able to extract rents from it. This is especially true of workers' knowledge of the production process.

The organization's dependence on workers' idiosyncratic knowledge, and their active "use of judgment, filling gaps, and taking initiative," should make it clear just why the passive-aggressive technique of "working to rule" is so diabolically effective. Since the CEOs get paid the big bucks to think, and our job is to shut up and do what we're told, we'll do just that—and see what happens. It's pretty hard for a boss to fire a worker for not disregarding policy, eh?

We may go so far as to say that some factories are only kept going by the workers disregarding the instructions they are given for doing their jobs....

....The workers are the "underground" of industrial efficiency, breaking the company's regulations to get the job done. This can be demonstrated... by the effect of "working to rule"....

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136 Rick, "Is a Bit of Marxism Good for Managers?" *Flip Chart Fairy Tales*, October 31, 2007 <<http://flipchartfairytales.wordpress.com/2007/10/31/is-a-bit-of-marxism-good-for-managers/>>.

137 Jennifer Kock, "Employee Sabotage: Don't Be a Target!" <<http://www.workforce.com/archive/features/22/20/88/mdex-printer.php>>.

Medical officers and ergonomics experts have constantly pointed out that between 50 and 80 per cent of all working behavior departs from the official norms.... [E]ven assembly work is not purely automatic.... Even in the most repetitive jobs..., workers are far from being robots, if the desired production level is to be achieved they have to show continual initiative for the benefit of their firm. Were they to rest content with obeying orders to the letter, their factory would grind to a halt.<sup>138</sup>

A good example is management's dependence on call center workers' specialized knowledge in a privatized utility:

As successive problems with the systems emerged, it became clear to the staff that the people who had designed the systems had an inadequate knowledge of the content of clerical work, and assumed it to be far less complex than it was in reality. Somewhat ironically, the introduction of systems intended to simplify and standardize clerical work actually drew the clerks' attention to the fact that they provided the company with a kind of expertise that cannot easily be written into a computer programme. As one clerk noted, "Each section involves knowledge that has to be picked up, that can't be built into the systems" .... A supply clerk explained:

*...I don't think we realized before just how much management depends on us knowing about the job.... They thought they knew all what we did, they said, "We know the procedures, we've got it written down." I think it's been a bit of a shock to them to find out they didn't know, that procedure is not necessarily how you do the job, job descriptions can't cover everything.*<sup>139</sup>

For libertarians who are over-scrupulous on such matters, I point to the fact that hidden knowledge, at the softest end of the spectrum, fades into the general category of moral hazard or opportunism. And doesn't the whole Austrian concept of "entrepreneurship" presuppose rents from asymmetrical information?

## **I. Asymmetric Warfare: Open Mouth Sabotage**

The potential for one form of direct action in particular, "open mouth sabotage," has grown enormously in the Internet era. As described in "How to Fire Your Boss":

Sometimes simply telling people the truth about what goes on at work can put a lot of pressure on the boss. Consumer industries like restaurants and packing plants are the most vulnerable. And again, as in the case of the Good Work Strike, you'll be gaining the support of the public, whose patronage can make or break a business.

Whistle Blowing can be as simple as a face-to-face conversation with a customer, or it can be as dramatic as the P.G.&E. engineer who revealed that the blueprints to the Diablo Canyon nuclear reactor had been reversed. ...

Waiters can tell their restaurant clients about the various shortcuts and substitutions that go into creating the faux-haute cuisine being served to them. Just as Work to Rule puts an end to the usual relaxation of standards, Whistle Blowing reveals it for all to know.

In an age when unions have virtually disappeared from the private sector workforce, and downsizings and speedups have become a normal expectation of working life, the vulnerability of

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138 P. Dubois, *Sabotage in Industry* (Hammondsworth, England: Penguin Books, 1979), pp. 14-16.

139 Julia O'Connell Davidson., "The Sources and Limits of Resistance in a Privatized Utility," in J. Jermier and D. Knight, eds., *Resistance and Power in Organizations* (London: Routledge, 1994), pp. 82-83.

employer's public image may be the one bit of real leverage workers have over him. If they go after that image relentlessly and systematically, they've got the boss pretty much at their mercy. The worst nightmare of corporate management is for disgruntled workers to see the customer as a potential ally against a common enemy.

Thanks to the Internet, the potential for this form of struggle has grown exponentially. The “swarming” tactics used by networked activist organizations, as described by David Ronfeldt and John Arquilla in their body of literature on “netwar” at Rand, seem tailor-made for modern-day open mouth saboteurs. In “Swarming & the Future of Conflict,” Ronfeldt and Arquilla focused on swarming, in particular, as a technique that served the entire spectrum of networked conflict—including “civic-oriented actions.”<sup>140</sup> Despite the primary concern with swarming as a military phenomenon, they also gave some attention to networked global civil society—and the Zapatista support network in particular—as examples of peaceful swarming with which states were ill-equipped to deal:

Briefly, we see the Zapatista movement... as an effort to mobilize global civil society to exert pressure on the government of Mexico to accede to the demands of the Zapatista guerrilla army (EZLN) for land reform and more equitable treatment under the law. The EZLN has been successful in engaging the interest of hundreds of NGOs, who have repeatedly swarmed their media-oriented “fire” (i.e., sharp messages of reproach) against the government.<sup>141</sup>

At present, our best understanding of swarming—as an optimal way for myriad, small, dispersed, autonomous but internetted maneuver units to coordinate and conduct repeated pulsing attacks, by fire or force—is best exemplified in practice by the latest generation of activist NGOs, which assemble into transnational networks and use information operations to assail government actors over policy issues. These NGOs work comfortably within a context of autonomy from each other; they also take advantage of their high connectivity to interact in the fluid, flexible ways called for by swarm theory...

Social swarming is especially on the rise among activists that oppose global trade and investment policies.... Most recently, with J18 as a partial blueprint, several tens of thousands of activists, most of them Americans but many also from Canada and Europe, swarmed into Seattle to shut down a major meeting of the World Trade Organization (WTO) on opening day, November 30, 1999—in an operation known to militant activists and anarchists as N30, whose planning began right after J18. The vigor of [such] movements and the effectiveness of the activists’ obstructionism came as a surprise to the authorities.

The violent street demonstrations in Seattle manifested all the conflict formations discussed earlier—the melee, massing, maneuver, and swarming. Moreover, the demonstrations showed that information-age networks (the NGOs) can prevail against hierarchies (the WTO and the Seattle police), at least for a while...

In these social networks—from the Zapatistas in 1994, through the N30 activists and anarchists in 1999—swarming appears not only in real-life actions but also through measures in cyberspace. Swarms of email sent to government figures are an example. But some “hacktivists” aim to be more disruptive—pursuing “electronic civil disobedience.” One notable recent effort associated with a collectivity called the Electronic Disturbance Theater is actually named SWARM. It seeks to move “digital Zapatismo” beyond the initial emphasis of its creators on their “FloodNet” computer system, which has been used to mount massive “ping” attacks on government and corporate web sites, including as part of J18. The aim of its proponents is to come up with new kinds of “electronic pulse systems” for supporting militant activism. This is clearly meant to enable swarming in cyberspace by myriad people against government, military, and corporate targets.<sup>142</sup>

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140 Arquilla and Ronfeldt, *Swarming & the Future of Conflict* DB-311 (Santa Monica, CA: RAND, 2000), iii <[http://www.rand.org/pubs/documented\\_briefings/DB311/](http://www.rand.org/pubs/documented_briefings/DB311/)>.

141 *Ibid.*, p. 39.

142 *Ibid.*, pp. 50-52.

Swarming—in particular the swarming of public pressure through letters, phone calls, emails, and public demonstrations, and the paralysis of communications networks by such swarms—is the direct descendant of the “overload of demands” Samuel P. Huntington complained of in his essay on the “crisis of governability” the 1970s.<sup>143</sup>

Governments and corporations, hierarchies of all kinds, are learning to their dismay that, in a networked age, it's impossible to suppress negative publicity. As Cory Doctorow put it, “Paris Hilton, the Church of Scientology, and the King of Thailand have discovered... [that] taking a piece of information off the Internet is like getting food coloring out of a swimming pool. Good luck with that.”<sup>144</sup> Hacque's Law is more succinct: “In a hyperconnected world, the costs of evil explode.”

What's different, immediately, about a hyperconnected world is that information flows much faster and more freely. So it's less costly to ascertain who's really evil — and who's really good. So the first force is information.

Cheap information lays the foundations for more collective action. It's less costly to punish those who are evil.<sup>145</sup>

So if you think your employer is evil—as more and more of us do—take heart.

One of the earliest examples of the phenomenon was the McLibel case in Britain, in which McDonald's attempt to suppress a couple of embarrassing pamphleteers with a SLAPP lawsuit wound up bringing them far worse publicity as a direct result. The pamphleteers were indigent and represented themselves in court much of the time, and repeatedly lost appeals in the British court system throughout the nineties (eventually they won an appeal in the European Court of Human Rights). But widespread coverage of the case on the Internet, coupled with the defendants' deliberate use of the courtroom as a bully pulpit to examine the factual issues, caused McDonald's one of the worst embarrassments in its history.<sup>146</sup> (Naomi Klein called it “the corporate equivalent of a colonoscopy.”)<sup>147</sup>

Two important examples in 2004, the Sinclair Media boycott and the Diebold corporate emails, both decisively demonstrated the impossibility of suppressing online information in an age of mirror sites. A number of left-wing websites and liberal bloggers organized a boycott of Sinclair Media after its stations aired an anti-Kerry documentary by the Swift Boat campaign.

In the ensuing boycott campaign, advertisers were deluged with more mail and phone calls than they could handle. By October 13, some sponsors were threatening litigation, viewing unsolicited boycott emails as illegal SPAM. Nick Davis, creator of one of the boycott sites, posted legal information explaining that anti-SPAM legislation applied only to commercial messages, and directed threatening sponsors to that information. At the same time, some Sinclair affiliates threatened litigation against sponsors who withdrew support in response to the boycott. Davis organized a legal support effort for those sponsors. By October 15, sponsors were pulling ads in droves. The price of Sinclair stock crashed, recovering only after Sinclair

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143 Samuel P. Huntington, Michael J. Crozier, and Joji Watanuki. *The Crisis of Democracy*. Report on the Governability of Democracies to the Trilateral Commission: Triangle Paper 8 (New York: New York University Press, 1975).

144 Doctorow, “It's the Information Economy, Stupid,” p. 60.

145 Umair Hacque, “The Case for Being Disruptively Good,” *Harvard Business Review*, April 12, 2010 <[http://blogs.hbr.org/haque/2010/04/the\\_case\\_for\\_being\\_disruptivel.html](http://blogs.hbr.org/haque/2010/04/the_case_for_being_disruptivel.html)>.

146 “McDonald's Restaurants v Morris & Steele,” *Wikipedia* <[http://en.wikipedia.org/wiki/McLibel\\_case](http://en.wikipedia.org/wiki/McLibel_case)> (accessed December 26, 2009).

147 Klein, *No Logo*, p. 330.

reversed its decision to air the documentary.<sup>148</sup>

Diebold, similarly, attempted to shut down websites which hosted leaked corporate emails questioning the security of the company's electronic voting machines. But the data was widely distributed among student and other activist databases, and the hosting sites were mirrored in jurisdictions all over the world.

In August, someone provided a cache of thousands of Diebold internal emails to *Wired* magazine and to Bev Harris. Harris posted the emails on her site. Diebold threatened litigation, demanding that Harris, her ISP, and other sites reproducing the emails take them down. Although the threatened parties complied, the emails had been so widely replicated and stored in so many varied settings that Diebold was unable to suppress them. Among others, university students at numerous campuses around the U.S. stored the emails and scrutinized them for evidence. Threatened by Diebold with provisions of the DMCA that required Web-hosting companies to remove infringing materials, the universities ordered the students to remove the materials from their sites. The students responded with a campaign of civil disobedience, moving files between students' machines, duplicating them on FreeNet (an "anti-censorship peer-to-peer publication network") and other peer-to-peer file-sharing systems.... They remained publicly available at all times.<sup>149</sup>

An attempt to suppress information on the Wikileaks hosting site, in 2007, resulted in a similar disaster.

Associated Press (via the first amendment center) reports that "an effort at (online) damage control has snowballed into a public relations disaster for a Swiss bank seeking to crack down on Wikileaks for posting classified information about some of its wealthy clients. While Bank Julius Baer claimed it just wanted stolen and forged documents removed from the site (rather than close it down), **instead of the information disappearing, it rocketed through cyberspace**, landing on other Web sites and Wikileaks' own "mirror" sites outside the U.S....

The digerati call the online phenomenon of a censorship attempt backfiring into more unwanted publicity the "**Streisand effect**." Techdirt Inc. chief executive Mike Masnick coined the term on his popular technology blog after the actress Barbra Streisand's 2003 lawsuit seeking to remove satellite photos of her Malibu house. Those photos are now easily accessible, just like the bank documents. "It's a perfect example of the Streisand effect," Masnick said. "This was a really small thing that no one heard about and now it's everywhere and everyone's talking about it."<sup>150</sup>

The so-called DeCSS uprising, in which corporate attempts to suppress publication of a code for cracking the DRM on DVDs failed in the face of widespread defiance, is one of the most inspiring episodes in the history of the free culture movement.

Journalist Eric Corley—better known as Emmanuel Goldstein, a nom de plume borrowed from Orwell's 1984—posted the code for DeCSS (so called because it decrypts the Content Scrambling System that encrypts DVDs) as a part of a story he wrote in November for the well-known hacker journal 2600. The Motion Picture Association of America (MPAA) claims that Corley defied anticircumvention provisions of the Digital Millennium Copyright Act (DMCA) by posting the offending code....

The judge in the case, the honorable Lewis Kaplan of the US District Court in southern New York, issued a preliminary injunction against posting DeCSS. Corley duly took down the code, but did not help his

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148 Benkler, *The Wealth of Networks*, pp. 220-223.

149 *Ibid.*, pp. 227-231.

150 "PR disaster, Wikileaks and the Streisand Effect" PRdisasters.com, March 3, 2007 <<http://prdisasters.com/pr-disaster-via-wikileaks-and-the-streisand-effect/>>.

defense by defiantly linking to myriad sites which post DeCSS....

True to their hacker beliefs, Corley supporters came to the trial wearing the DeCSS code on t-shirts. There are also over 300 Websites that still link to the decryption code, many beyond the reach of the MPAA.<sup>151</sup>

In the Usmanov case of the same year, attempts to suppress embarrassing information led to similar Internet-wide resistance.

The Register, UK: Political websites have lined up in defence of a former diplomat whose blog was deleted by hosting firm Fasthosts after threats from lawyers acting for billionaire Arsenal investor Alisher Usmanov.

Four days after Fasthosts pulled the plug on the website run by former UK ambassador to Uzbekistan Craig Murray it remains offline. Several other political and freedom of speech blogs in the UK and abroad have picked up the gauntlet however, and reposted the article that originally drew the takedown demand.

The complaints against Murray's site arose after a series of allegations he made against Usmanov....

After being released from prison, and pardoned, Usmanov became one of a small group of oligarchs to make hay in the former USSR's post-communist asset carve-up....

On his behalf, libel law firm Schillings has moved against a number of Arsenal fan sites and political bloggers repeating the allegations....<sup>152</sup>

That reference to "[s]everal other political and freedom of speech blogs," by the way, is the understatement of the century. An article at *Chicken Yoghurt* blog listed all the venues that republished Murray's original allegations, recovered from Google's caches of the sites or from the Internet Archive. It is a very, very long list<sup>153</sup>—so long, in fact, that *Chicken Yoghurt* helpfully provided html code with URLs already embedded in the text, so it could be easily cut and pasted into a blog post. In addition, *Chicken Yoghurt* published the IP addresses of Usmanov's lawyers as a heads-up to all bloggers who might have been visited by those august personages.

A badly edited photo of a waif in a Ralph Lauren ad, which made the model appear not just emaciated but deformed, was highlighted on the Photoshop Disasters website. Lauren sent the site legal notices of DMCA infringement, and got the site's ISP to take it down. In the process, though, the photo—and story—got circulated all over the Internet. Doctorow issued his defiance at *BoingBoing*:

So, instead of responding to their legal threat by suppressing our criticism of their marketing images, we're gonna mock them. Hence this post....

...And every time you threaten to sue us over stuff like this, we will:

a) Reproduce the original criticism, making damned sure that all our readers get a good, long look at it, and;

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151 Deborah Durham-Vichr. "Focus on the DeCSS trial," CNN.Com, July 27, 2000 <<http://archives.cnn.com/2000/TECH/computing/07/27/decss.trial.p1.idg/index.html>>.

152 Chris Williams, "Blogosphere shouts 'I'm Spartacus' in Usmanov-Murray case: Uzbek billionaire prompts Blog solidarity," *The Register*, September 24, 2007 <[http://www.theregister.co.uk/2007/09/24/usmanov\\_vs\\_the\\_internet/](http://www.theregister.co.uk/2007/09/24/usmanov_vs_the_internet/)>.

153 "Public Service Announcement—Craig Murray, Tim Ireland, Boris Johnson, Bob Piper and Alisher Usmanov..." *Chicken Yoghurt*, September 20, 2007 <<http://www.chickyog.net/2007/09/20/public-service-announcement/>>.

b) Publish your spurious legal threat along with copious mockery, so that it becomes highly ranked in search engines where other people you threaten can find it and take heart; and

c) Offer nourishing soup and sandwiches to your models.<sup>154</sup>

The Trafigura case probably represents a new speed record, in terms of the duration between initial thuggish attempts to silence criticism and the company lawyers' final decision to cave. The Trafigura corporation actually secured a court injunction against *The Guardian*, prohibiting it from reporting a question by an MP on the floor of Parliament about the company's alleged dumping of toxic waste in Africa. Without specifically naming either Trafigura or the MP, reporter Alan Rusbridger was able to comply with the terms of the injunction and still include enough hints in his cryptic story for readers to scour the Parliamentary reports and figure it out for themselves. By the time he finished work that day, "Trafigura" was already the most-searched-for term on Twitter; by the next morning Trafigura's criminal acts—plus their attempt at suppressing the story—had become front-page news, and by noon the lawyers had thrown in the towel.<sup>155</sup>

With the Bradley Manning incident, Wikileaks emerged as the premier weapon of open-mouth sabotage. The U.S. national security state and allied intelligence apparatuses around the world, despite their public humiliation, found themselves impotent against the site's publication of classified information on a scale greater than the *Pentagon Papers*. Wikileaks' global network of servers and mirror sites means it cannot be shut down by any one national government.<sup>156</sup>

All this is especially relevant to labor.

Given the ease of setting up anonymous blogs and websites (just think of any company and then look up the URL employernamesucks.com), the potential for other features of the writeable web like comment threads and message boards, the possibility of anonymous saturation emailing of the company's major suppliers and customers and advocacy groups concerned with that industry... well, let's just say the potential for "swarming" and "netwar" is corporate management's worst nightmare. Just as one example, check out Former and Current Employees of Intel (FACE Intel) at <http://www.faceintel.com/>

It's already become apparent that corporations are quite vulnerable to bad publicity from dissident shareholders and consumers. For example, Luigi Zingales writes,

shareholders' activist Robert Monks succeeded [in 1995] in initiating some major changes at Sears, not by means of the norms of the corporate code (his proxy fight failed miserably) but through the pressure of public opinion. He paid for a full-page announcement in the *Wall Street Journal* where he exposed the identities of Sears' directors, labeling them the "non-performing assets" of Sears.... The embarrassment for the directors was so great that they implemented all the changes proposed by Monks.<sup>157</sup>

John Robb describes the technical potential for information warfare against a corporation,

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154 Doctorow, "The criticism that Ralph Lauren doesn't want you to see!" *BoingBoing*, October 6, 2009 <http://www.boingboing.net/2009/10/06/the-criticism-that-r.html>.

155 Alan Rusbridger, "First Read: The Mutualized Future is Bright," *Columbia Journalism Review*, October 19, 2009 [http://www.cjr.org/reconstruction/the\\_mutualized\\_future\\_is\\_bright.php](http://www.cjr.org/reconstruction/the_mutualized_future_is_bright.php).

156 Carson, "Wikileaks: Our Weapons Shop of Isher," *Center for a Stateless Society*, July 30, 2010 <http://c4ss.org/content/3332>.

157 Zingales, "In Search of New Foundations," pp. 1627-1628.

swarming customers, employees, and management with propaganda and disinformation, and in the process demoralizing management.

As we move forward in this epochal many to many global conflict, and given many early examples from wide variety of hacking attacks and conflicts, we are likely to see global guerrillas come to routinely use information warfare against corporations. These information offensives will use network leverage to isolate corporations morally, mentally, and physically.... Network leverage comes in three forms:

- \* Highly accurate lists of targets from hacking "black" marketplaces. These lists include all corporate employee e-mail addresses and phone numbers -- both at work and at home. ~<\$0.25 a dossier (for accurate lists).

- \* Low cost e-mail spam. Messages can be range from informational to phishing attacks. <\$0.1 a message.

- \* Low cost phone spam. Use the same voice-text messaging systems and call centers that can blanket target lists with perpetual calls. Pennies a call....

In short, the same mechanisms that make spamming/direct marketing so easy and inexpensive to accomplish, can be used to bring the conflict directly to the employees of a target corporation or its partner companies (in the supply chain). Executives and employees that are typically divorced/removed from the full range of their corporation's activities would find themselves immediately enmeshed in the conflict. The objective of this infowar would be to increase...:

- \* Uncertainty. An inability to be certain about future outcomes. If they can do this, what's next? For example: a false/troll e-mail or phone campaign from the CEO that informs employees at work and at home that it will divest from the target area or admits to heinous crimes.

- \* Menace. An increase [sic] personal/familial risk. The very act of connecting to directly to employee [sic] generates menace. The questions it should evoke: should I stay employed here given the potential threat?

- \* Mistrust. A mistrust of the corporations moral and legal status. For example: The dissemination of information on a corporations actions, particularly if they are morally egregious or criminal in nature, through a NGO charity fund raising drive.

With an increase in uncertainty, menace, and mistrust within the target corporation's ranks and across the supply chain partner companies, the target's connectivity (moral, physical, and mental) is likely to suffer a precipitous fall. This reduction in connectivity has the potential to create non-cooperative centers of gravity within the targets as cohesion fails. Some of these centers of gravity would opt to leave the problem (quit or annul contractual relationships) and some would fight internally to divest themselves of this problem.<sup>158</sup>

Although what Robb describes in the quote concerns mainly the "dark side" of swarming—morally dubious tactics ranging from DOS attacks to terroristic threatening—what he says of the effect on morale is also true of the most potent weapon of all: the truth.

The last section of Naomi Klein's *No Logo* discusses in depth the vulnerability of large corporations and brand name images to netwar campaigns.<sup>159</sup> She pays special attention to "culture jamming," which involves riffing off of corporate logos and thereby "tapping into the vast resources spent to make

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158 John Robb, "INFOWAR vs. CORPORATIONS," *Global Guerrillas*, October 1, 2009

<<http://globalguerrillas.typepad.com/globalguerrillas/2009/10/infowar-vs-corporations.html>>.

159 Klein, *No Logo*, pp. 279-437.



[a] logo meaningful."<sup>160</sup> A good example is the anti-sweatshop campaign by the National Labor Committee, headed by Charles Kernaghan.

Kernaghan's formula is simple enough. First, select America's most cartoonish icons, from literal ones like Mickey Mouse to virtual ones like Kathie Lee Gifford. Next, create head-on collisions between image and reality. "They live by their image," Kernaghan says of his corporate adversaries. "That gives you a certain power over them... these companies are sitting ducks."<sup>161</sup>

Culture jamming was a natural outgrowth of trends just getting underway at the time Klein was writing. Digital design and photo editing technology made it possible to make incredibly sophisticated parodies of corporate logos and advertisements.<sup>162</sup> And the rise of the Internet had a lot to do with the cultural background against which culture jamming emerged. Although corporate imagery is still created by people thinking in terms of one-way broadcast communication, the culture jammers have grown up in an age where audiences can talk back to the advertisement or mock it to one another. The content of advertising becomes just another bit of raw material for mashups, as products once transmitted on a one-way conveyor belt from giant factory to giant retailer to consumer have now become raw material for hacking and reverse-engineering.<sup>163</sup>

Klein riffed off of Saul Alinsky's term "political jujitsu" to describe "using one part of the power structure against another part." Culture jamming is a form of political jujitsu that uses the power of corporate symbols—symbols deliberately developed to tap into subconscious drives and channel them in directions desired by the corporation—against their corporate owners.<sup>164</sup>

Anticorporate activism enjoys the priceless benefits of borrowed hipness and celebrity—borrowed, ironically enough, from the brands themselves. Logos that have been burned into our brains by the finest image campaigns money can buy, ...are bathed in a glow...

...Like a good ad bust, anticorporate campaigns draw energy from the power and mass appeal of marketing, at the same time as they hurl that energy right back at the brands that have so successfully colonized our everyday lives.

You can see this jujitsu strategy in action in what has become a staple of many anticorporate campaigns: inviting a worker from a Third World country to come visit a First World superstore—with plenty of cameras rolling. Few newscasts can resist the made-for-TV moment when an Indonesian Nike worker gasps as she learns that the sneakers she churned out for \$2 a day sell for \$120 at San Francisco Nike Town.<sup>165</sup>

As Phil Knight said, "it's not about the sneakers." Nike doesn't make sneakers—it sells the brand.<sup>166</sup> And culture jammers have been devilishly effective in going after what Nike's really about—the brand.

Kernaghan's "sully[ing] some of the most polished logos on the brandscape"<sup>167</sup> operates on much the same principle as Serrano's "Piss Christ." He plays on the appeal of the dogs in *101 Dalmatians* by comparing the living conditions of the animals on the set to those of the human sweatshop workers who

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160 *Ibid.*, p. 281.

161 *Ibid.*, p. 351.

162 *Ibid.* p. 285.

163 *Ibid.*, p. 294.

164 *Ibid.*, p. 281.

165 *Ibid.*, pp. 349-350.

166 *Ibid.*, p. 203.

167 *Ibid.*, p. 351.

produce the tie-in products. He shows up for public appearances with “his signature shopping bag brimming with Disney clothes, Kathie Lee Gifford pants and other logo gear,” along with pay slips and price tags used as props to illustrate the discrepancy between worker pay and retail price. In El Salvador, he pulls items out of the bag with price tags attached to show workers what their products fetch in the U.S. After a similar demonstration of Disney products in Haiti, “workers screamed with shock, disbelief, anger, and a mixture of pain and sadness, as their eyes fixed on the Pocahontas shirt”—a reaction captured in the film *Mickey Mouse Goes to Haiti*.<sup>168</sup>

As described by Klein, there's a direct parallel between the large corporation's experience of networked open mouth sabotage, and the “swarming” described by Ronfeldt and Arquilla in their work on netwar. The interesting thing about the Zapatista netwar, according to Ronfeldt and Arquilla, is that to all appearances it started out as a run-of-the-mill Third World army's suppression of a run-of-the-mill local insurgency. Right up until Mexican troops entered Chiapas, there was every indication the uprising would be suppressed quickly, and that the world outside Mexico would “little note nor long remember” it. It looked that way until Subcommandante Marcos and the Zapatistas made their appeal to global civil society and became the center of a networked movement that stirred activists the world over. The Mexican government was blindsided by the global reaction.<sup>169</sup>

Similarly, global corporations have been caught off guard when what once would have been isolated and easily managed conflicts become global political causes.

Natural-resource companies had grown accustomed to dealing with activists who could not escape the confines of their nationhood: a pipeline or mine could spark a peasants' revolt in the Philippines or the Congo, but it would remain contained, reported only by the local media and known only to people in the area. But today, every time Shell sneezes, a report goes out on the hyperactive “shell-nigeria-action” listserve, bouncing into the in-boxes of all the far-flung organizers involved in the campaign, from Nigerian leaders living in exile to student activists around the world. And when a group of activists occupied part of Shell's U.K. Headquarters in January 1999, they made sure to bring a digital camera with a cellular linkup, allowing them to broadcast their sit-in on the Web, even after Shell officials turned off the electricity and phones....

The Internet played a similar role during the McLibel Trial, catapulting London's grassroots anti-McDonald's movement into an arena as global as the one in which its multinational opponent operates. “We had so much information about McDonald's, we thought we should start a library,” Dave Morris explains, and with this in mind, a group of Internet activists launched the McSpotlight Web site. The site not only has the controversial pamphlet online, it contains the complete 20,000-page transcript of the trial, and offers a debating room where McDonald's workers can exchange horror stories about McWork under the Golden Arches. The site, one of the most popular destinations on the Web, has been accessed approximately sixty-five million times.

...[This medium is] less vulnerable to libel suits than more traditional media. [McSpotlight programmer] Ben explains that while McSpotlight's server is located in the Netherlands, it has “mirror sites” in Finland, the U.S. New Zealand and Australia. That means that if a server in one country is targeted by McDonald's lawyers, the site will still be available around the world from the other mirrors.<sup>170</sup>

Corporations typically react like a deer in the headlights to such exposure and swarming.

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168 *Ibid.*, p. 353.

169 David Ronfeldt and Armando Martinez, “A Comment on the Zapatista Netwar,” in Ronfeldt and Arquilla, *In Athena's Camp: Preparing for Conflict in the Information Age* (Santa Monica: Rand, 1997), pp. 369-371.

170 Klein, *No Logo*, pp. 393-395.

Jon Husband, of *Wirearchy* blog, writes of the potential threat network culture and the free flow of information pose to traditional hierarchies.

Smart, interested, engaged and articulate people exchange information with each other via the Web, using hyperlinks and web services. Often this information... is about something that someone in a position of power would prefer that other people (citizens, constituents, clients, colleagues) not know....

The exchanged-via-hyperlinks-and-web-services information is retrievable, re-usable and when combined with other information (let's play connect-the-dots here) often shows the person in a position of power to be a liar or a spinner, or irresponsible in ways that are not appropriate. This is the basic notion of transparency (which describes a key facet of the growing awareness of the power of the Web)....

Hyperlinks, the digital infrastructure of the Web, the lasting retrievability of the information posted to the Web, and the pervasive use of the Web to publish, distribute and transport information combine to suggest that there are large shifts in power ahead of us. We have already seen some of that .. we will see much more unless the powers that be manage to find ways to control the toings-and-froings on the Web.

....[T]he hoarding and protection of sensitive information by hierarchical institutions and powerful people in those institutions is under siege....<sup>171</sup>

Most of Klein's examples of networked resistance and media swarming involve consumer action against corporate bad actors. But there's no reason to doubt that management would be equally vulnerable to embarrassment by such tactics from disgruntled production workers, in today's networked world. Everything described above, as an attack from outside by consumers, can be done just as well from within by workers. Corporations are immensely vulnerable to informational warfare by their own workers.

Consider the public relations battle over Wal-Mart "open availability" policy. Corporate headquarters in Bentonville quickly moved, in the face of organized public criticism, to overturn the harsher local policy announced by management in Nitro, West Virginia.

A corporate spokesperson says the company reversed the store's decision because Wal-Mart has no policy that calls for the termination of employees who are unable to work certain shifts, the Gazette reports.

"It is unfortunate that our store manager incorrectly communicated a message that was not only inaccurate but also disruptive to our associates at the store," Dan Fogleman tells the Gazette. "We do not have any policy that mandates termination."<sup>172</sup>

Another example is the IWW-affiliated Starbucks union, which publicly embarrassed Starbucks Chairman Howard Schultz. It organized a mass email campaign, notifying the Co-op Board of a co-op apartment he was seeking to buy into of his union-busting activities.<sup>173</sup>

From the perspective of an individual employee, it's pretty easy to compile a damning textfile just by keeping your ears open, copying every incriminating document, and keeping a diary of every instance of management self-dealing, asset-stripping, gutting human capital, and hollowing out productive capacity, in order to massage the quarterly earnings figures and game their own bonuses.

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171 Jon Husband, "How Hard is This to Understand?" *Wirearchy*, June 22, 2007 <[http://blog.wirearchy.com/blog/\\_archives/2007/6/22/3040833.html](http://blog.wirearchy.com/blog/_archives/2007/6/22/3040833.html)>.

172 "Wal-Mart Nixes 'Open Availability' Policy," *Business & Labor Reports* (Human Resources section), June 16, 2005 <<http://hr.blr.com/news.aspx?id=15666>>.

173 "Say No to Schultz Mansion Purchase," Starbucks Union <<http://www.starbucksunion.org/node/1903>>.

You probably see examples of stupidity and incompetence—MBA Disease—every single day. And you can put together a devastating email distribution list with a little Internet legwork. You might include the management of your company’s suppliers, outlets, and other business clients, reporters who specialize in your industry, mainstream media outlets, alternative news outlets, worker and consumer advocacy groups, corporate watchdog organizations specializing in your industry, and the major bloggers who specialize in such news. If your problem is with the management of a local branch of a corporate chain, you might add to the distribution list all the community service organizations your bosses belong to, and CC it to corporate headquarters to let them know just how much embarrassment your bosses have caused them. If you work for a hospital, pay special attention to the offices of physicians with admitting privileges, your CEO's buddies in the Chamber of Commerce and City Council, the United Way and Red Cross, the local nursing schools, etc. The next step is to set up an anonymous web-based email account accessed from someplace secure. Just click “Attach” to upload your textfile full of all the dirt on their corruption and mismanagement, and the poor quality of customer service (with management contact info, of course). The only thing left is to click “Send.” The barrage of emails, phone calls and faxes should hit the management suite like an A-bomb.

The corporate world is beginning to perceive the danger of open-mouth sabotage. For example, one Pinkerton thug almost directly equates sabotage to the open mouth, to the near exclusion of all other forms of direct action. According to Darren Donovan, a vice president of Pinkerton's eastern consulting and investigations division,

[w]ith sabotage, there's definitely an attempt to undermine or disrupt the operation in some way or slander the company.... There's a special nature to sabotage because of the overtness of it--and it can be violent.... Companies can replace windows and equipment, but it's harder to replace their reputation.... I think that's what HR execs need to be aware of because it is a crime, but it can be different from stealing or fraud.<sup>174</sup>

As suggested by both the interest of a Pinkerton thug and his references to "crime," there is a major focus in the corporate world on identifying whistleblowers and leakers through surveillance technology, and on the criminalization of free speech to combat negative publicity.

And if Birmingham Wragge is any indication, there's a market for corporations that seek to do a Big Brother on anonymous detractors.

Birmingham’s largest law firm has launched a new team to track down people who make anonymous comments about companies online.

The Cyber Tracing team at Wragge & Co was set up to deal with what the law firm said was a rising problem with people making anonymous statements that defamed companies, and people sharing confidential information online.

And Wragge boasted the new team would ensure there was “nowhere to hide in cyberspace”.

The four-strong team at the Colmore Row firm is a combination of IT litigation and employment law specialists.

One of the members of the team said redundancies and other reorganisations caused by the recession meant the numbers of disgruntled employees looking to get their own back on employers or former employers was also on the rise.

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174 Kock, "Employee Sabotage: Don't Be a Target!"

Adam Fisher said: “Organisations are suffering quite a lot from rogue employees at the moment, partly because of redundancies or general troubles.

“We have had a number of problematic cases where people have chosen to put things online or have shared information on their company email access.”

He said much of the job involved trying to get Internet Service Providers to give out details of customers who had made comments online....

A spokeswoman for Wragge said: “Courts can compel Internet Service Providers or telephone service providers to make information available regarding registered names, email addresses and other key account holder information.”<sup>175</sup>

But if corporate managers think this will actually work, they're even stupider than I thought they were. Such efforts, like RIAA lawsuits and “three strikes” cutoffs of ISPs, will have only one significant effect: the rapid mainstreaming of proxy servers and encryption.

The problem with such authoritarianism, from the standpoint of the bosses and their state, is that before you can waterboard open-mouth saboteurs at Gitmo you've got to catch them first. If the litigation over Diebold's corporate files and emails teaches anything, it's that court injunctions and similar expedients are virtually useless against guerrilla netwar. The era of the SLAPP lawsuit is over, except for those cases where the offender is considerate enough to volunteer his home address to the target. Even in the early days of the Internet, the *McLibel* case (a McDonald's SLAPP suit against some small-time pamphleteers) turned into “the most expensive and most disastrous public-relations exercise ever mounted by a multinational company.”<sup>176</sup> As we already noted, the easy availability of web anonymity, the “writeable web” in its various forms, the feasibility of mirroring shut-down websites, and the ability to replicate, transfer, and store huge volumes of digital information at zero marginal cost, means that it is simply impossible to shut people up. The would-be corporate information police will just wear themselves out playing whack-a-mole. They will be exhausted and destroyed in exactly the same way that the most technically advanced army in the world was defeated by a guerrilla force in black pajamas.

What's more, when open mouth sabotage is prosecuted, it's potentially a source of added embarrassment. As described by Klein, a lot of corporate targets have shied away from taking culture jammers to court for fear a public might side with the jammers against the corporate plaintiffs. The more intelligent corporate bosses understand that “legal battles... will clearly be fought less on legal than on political grounds.” In the words of one advertising executive, “No one wants to be in the limelight because they are the target of community protests or boycotts.”<sup>177</sup> Likewise, no company wants to be in the limelight because of their punitive action against an employee who exposed their corruption—especially when the employee disseminates news of their punitive action, and the reason for it, as far and wide as he did the original embarrassing information.

Media treatment of “Dooing” (the firing of bloggers for negative commentary on their workplace, or for the expression of other non-approved opinions on their blogs—the term comes from Dooce, the

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175 Tom Scotney, “Birmingham Wragge team to focus on online comment defamation,” *Birmingham Post*, October 28, 2009 <<http://www.birminghampost.net/birmingham-business/birmingham-business-news/legal-business/2009/10/28/birmingham-wragge-team-to-focus-on-online-comment-defamation-65233-25030203/>>.

176 “270-day libel case goes on and on...,” 28th June 1996, *Daily Telegraph* (UK) <<http://www.mcspotlight.org/media/thisweek/jul3.html>>.

177 *Ibid.*, p. 288.

name of a blog whose owner was fired) is a good example of the PR nightmare that can result from attempts to suppress open mouth sabotage. In late 2004 and 2005, the phenomenon of Doocing began to attract mainstream media attention. Employers, who fired disgruntled workers out of fear for the bad publicity their blogs might attract, were blindsided by the far worse publicity—far, far worse—that resulted from news of the firing. Rather than an insular blog audience of a few hundred reading that “it sucks to work at Employer X,” or “Employer X gets away with treating its customers like shit,” it became a case of tens of millions of readers of the major newspapers of record and wire services reading that “Employer X fires blogger for revealing how bad it sucks to work at Employer X.”

Again, the bosses are learning that, for the first time since the rise of the giant corporation and the broadcast culture, workers and consumers can talk back—and not only is there absolutely no way to shut us up, but we actually just keep making more and more noise the more they try to do so.<sup>178</sup>

Some people raise the question whether, if such networked open-mouth sabotage is widely adopted as a tool of labor resistance by rank and file workers in every company, society won't just succumb to information overload and not pay attention to any of it. There might have been some validity to this concern back in the broadcast age, when there was just one mainstream media for everyone. But the beauty of open-mouth sabotage in the network age is that it can be done retail, with a very, very “long tail.” Open-mouth sabotage can be targeted at the specific customers, suppliers and other business associates of the companies in question, as well as the local media markets of the towns where they're headquartered. No matter how widespread open-mouth sabotage becomes, you can be sure that “dirty laundry” complaints about the Podunk Widget Company targeted to the Podunk Chamber of Commerce or to widget consumers message boards won't be lost in the swarm.

The important thing to remember, in planning any whistleblowing, is to do it anonymously. Whatever you do, don't “follow the chain of command” in good faith. I'm sure your company has a policy forbidding reprisals against those who report malfeasance. But then, your company also has a policy forbidding the kinds of malfeasance you're reporting, doesn't it? The Wal-Marts that lost those class action suits for making their “associates” work through their lunch breaks and keep working off the clock had written policies against working off the clock. So what? Auschwitz probably had a written policy against killing Jews. If you take such guarantees at face value, you deserve what you get.

In the real world, over half of whistleblowers who “did it by the rules” have been harassed on the job, 20% were fired, 15% got divorced, 17% lost their homes, and 10% attempted suicide.<sup>179</sup>

On the other hand, if you're the likely first suspect in regard to anonymous whistleblowing—if you're already well-known in your workplace as someone who mocks “one big team” agitprop and thinks the pointy-haired bosses are idiots—your best bet may be to do it publicly, and make as much noise as you possibly can. Make your accusations as visible as possible, and make it clear that any reprisals will be publicized to the best of your ability—the “company harasses whistleblower” narrative will become a bigger story than the original malfeasance.<sup>180</sup>

Open-mouth sabotage is especially well-suited to campaigns by the kind of networked, socially-based unionism we discussed earlier. The Wal-Mart Workers' Association, the Imolakee Indian

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178 Todd Wallack, “Beware if your blog is related to work,” San Francisco Chronicle, January 25, 2005 <<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/01/24/BIGCEAT1101.DTL>>.

179 Levine, *Disgruntled*, p. 215.

180 *Ibid.*, pp. 215-216.

Workers, and the UFW campaign against Giumarra are all wonderful examples of networked unions, operating primarily outside the workplace, bringing corporations to their knees.

## J. The Usefulness of Unions

The standard right-wing libertarian position on unions is that they are superfluous, because wages in a free market reflect the marginal productivity of labor. As Henry Hazlitt put it, “wages are basically determined by labor productivity,” or “labor productivity is the fundamental determinant of wages.”<sup>181</sup> Any wage increase achieved by unions, over and above the productivity-based level which would prevail in a free market, can come only at the expense of workers excluded from the market.

But in the real world, we've seen real wages which have in fact remained stagnant since the 1970s, despite enormous increases in the productivity of labor—while corporate profits and senior management salaries have gone through the roof. How do we explain the discrepancy between official free market dogma, as stated by Hazlitt, and the evidence of our own lying eyes? A quote from Ludwig von Mises is useful here:

If a contradiction appears between a theory and experience, we always have to assume that a condition presupposed by the theory was not present, or else that there is some error in our observation.... The disagreement between the theory and the facts of experience consequently forces us to think through the problems of the theory again. But so long as a re-examination of the theory uncovers no errors in our thinking, we are not entitled to doubt its truth.<sup>182</sup>

Perhaps there are some unstated conditions implicit in Hazlitt's statement of general law. Let's go back and parse his language more carefully. Note he says “wages *are* determined by productivity” and “productivity *is* the fundamental determinant of wages.” And elsewhere he challenges the idea “that labor is being 'underpaid' *generally*,” equating it in its speciousness to “the notion that in a free market prices in general are chronically too low.”<sup>183</sup> Look carefully at the false parallelism between the two statements: “labor *is* being underpaid” (with no qualifier) versus “*in a free market* prices are too low.” The implication of the parallelism is that a free market is assumed to be the normal state of affairs, and that any criticism of relative wages and profits, or any other aspects of economic activity under the present system, can be refuted by an appeal to the normal functioning of the laws of the free market.

So perhaps what Hazlitt meant to say was that “*in a free market*, the fundamental determinant of wages is productivity.” That leaves the question of whether this is, in fact, a free market—a question that would appear to be vitally important in evaluating the real-world effects of labor union activity, but one that Hazlitt completely ignores. In attempting to refute the aims of organized labor by appealing to the laws of the free market, Hazlitt seemingly assumes—without warrant—that what we have now is, in fact, a free market. In so doing, he dismisses out of hand the possibility that not only do we not have anything even approaching a free market in actual fact, but that the existing economy deviates from a free market primarily in ways that benefit capital at the expense of labor.

In the state capitalist market we actually live in—as opposed to the idealized free market Hazlitt assumes—where some component of employer profits are rents extracted from the employee because

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181 Henry Hazlitt, *Economics in One Lesson* (New York and London: Harper & Brothers Publishers, 1946), p. 143.

182 Ludwig von Mises, *Epistemological Problems of Economics*. Translated by George Reisman (Princeton, New York, Toronto, London: D. Van Nostrand, Inc., 1960), p. 30.

183 Hazlitt, *Economics in One Lesson*, p. 147.

of state-enforced unequal exchange, organized labor action may provide the bargaining leverage to reduce those ill-gotten gains.

In any case, even in a free market, hard bargaining is frequently part of the discovery process by which market prices are arrived at. Brad Spangler, in the comments under Jeffrey Tucker's article at Mises.org on the Hollywood writers' strike, pointed out the right-wing libertarian double standard when it comes to collective bargaining:

Negotiation of terms is part of the transaction process and, hence, the market.

Are you implying that sellers ought only passively accept or decline deals and never assertively negotiate with a potential buyer, merely so long as more than one potential buyer exists?...

1) If so, do you apply that dictum universally, or just in the case of labor deals?

2) If so, AND if you limit that view solely to the labor market, then I must ask what (in economic terms) is so special about labor?

If so, AND if you apply it universally, then I must say you're really doing yourself a disservice when it comes to selling a home or car....

That statement [that there is no way to sell anything for a higher price than the highest bidder is willing to pay] sort of misses the point—namely, that rhetorical efforts to systematically discourage assertive negotiation by one subset of transaction participants (under color of economic thought) are a misguided effort to cripple the market's own discovery process for determining what "the highest bidder is willing to pay".<sup>184</sup>

And even stipulating that in a free market wages would tend toward marginal productivity in the long run, it's odd that the Rothbardians see so little advantage in the stability afforded by contracts—or rather, that they see the advantage for every area of life except for labor. Thomas L. Knapp, a left-Rothbardian who joined the Wobblies, remarked on the contrast between mainstream libertarians' attitudes toward labor contracts and their attitudes toward contracts in all other economic realms:

Contract is the basis of the free market; yet the non-union laborer's "contract" is an unenforceable, malleable verbal agreement which can be rescinded or modified at any time, called "at will employment." There's nothing philosophically repugnant about "at will employment," but I find it odd that Pacificus does not likewise decry written, enforceable, binding contracts between other entities -- suppliers and purchasers, for example.

Far from putting employers and employees at odds with each other, dealing on the basis of explicit contract minimizes misunderstandings. Each party knows what he or she is required to do to execute the contract, and each party knows what he or she can expect as a benefit under it.<sup>185</sup>

Contracts introduce long-term stability and predictability for everyone: something free-market libertarians consider to be a fairly non-controversial benefit, when anything but labor supply is involved. Had Rothbard held down a blue collar job, he might have understood the incredible feeling

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184 Comments under Jeffrey Tucker, "Hollywood's Workers and Peasants," Mises Blog, November 3, 2007 <<http://blog.mises.org/archives/007391.asp>>.

185 The original exchange between Knapp and Pacificus has disappeared, unfortunately. The quote above is taken from a post of mine, "Thomas L. Knapp Joins the One Big Union," *Mutualist Blog*, April 6, 2005 <<http://mutualist.blogspot.com/2005/04/thomas-l-knapp-joins-one-big-union.html>>.



of relief in knowing you're protected by a union contract against arbitrary dismissal and all the associated uncertainty and insecurity, that comes with being an "at-will" employee.

It might be true, in a free market, that cheating business associates or terminating one's dealings with them without cause would be against the long-term rational self-interest of market actors in all sorts of areas of economic life. It would be against the interest of a landlord to evict tenants arbitrary and without advance notice, for example. But who doesn't prefer to have a lease contract? While such unpleasant behavior may be costly in the long run, as someone said, in the long run we're all dead. And in the short run, while the dumber and more capricious market actors are still learning the ill consequences of their own misbehavior, it's nice in the meantime to have some contractual stability in our dealings with them.

Any time you see a right-wing libertarian throwing a hissy fit over something they approve in principle under other circumstances, it's a pretty safe bet it must be benefiting workers.

Even Hazlitt, while denying that unions can raise the general wage rate in the long run (on the assumption that what we have right now is a free market), is fairly friendly to unions as a tool for workers in the price discovery process. Individual workers and employers, in the short term, may be fairly inefficient at discovering what the current productivity-based market wage rate actually is. But the "individual worker, without the help of a union or a knowledge of 'union rates,' may not know the true market value of his services to an employer. And he is, individually, in a much weaker bargaining position. Mistakes of judgment are far more costly to him than to an employer." The worker, as an individual, has every incentive to err on the side of conservatism and take the risk of asking for a wage substantially below his actual productivity, lest he find himself out of a job and unable to find a new one quickly. The employer, however, risks only the marginal profits from one worker if insufficient pay drives him away. "When an employer's workers deal with him as a body, however, and set a known 'standard wage' for a given class of work, they may help equalize bargaining power and the risks involved in mistakes."<sup>186</sup>

Hazlitt also admitted that unions enabled workers as a body to demand part of their productivity increase in the form of shorter hours much more effectively than could individual workers faced with a "take it or leave it" alternative. In shortening the work week from seventy to sixty hours and then from sixty to forty-eight hours, he wrote, unions not only promoted the health and welfare of workers but the productivity of the enterprise. Subsequent reductions to forty-four or forty hours, he continued, had little or no effect on productivity and hence reduced total output, and union proposals for future reductions to thirty-five or thirty-hours would reduce output still more.<sup>187</sup> (Hazlitt seemed to be unaware of empirical evidence that work-sharing programs to reduce the work week to thirty hours during the Depression did, in fact, increase average productivity during the hours actually worked and therefore did not reduce output proportionally to the reduction in hours if at all.)

Herbert Spencer made a similar argument decades before, pointing out a weakness in the standard right-wing libertarian position that unions accomplish nothing that would not be accomplished by the market price system raising wages along with productivity. Even if the market produces that effect in the long run, the organized bargaining power of a union is itself a market actor that speeds up the process. And even when wages are fully equal to the marginal productivity of labor, a union reduces the uncertainty of employment for an individual.

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<sup>186</sup> Hazlitt, *Economics in One Lesson*, pp. 154-155.

<sup>187</sup> *Ibid.*, p. 156.

Judging from their harsh and cruel conduct in the past, it is tolerably certain that employers are now prevented from doing unfair things which they would else do. Conscious that trade-unions are ever ready to act, they are more prompt to raise wages when trade is flourishing than they would otherwise be; and when there come times of depression, they lower wages only when they cannot otherwise carry on their businesses.

Knowing the power which unions can exert, masters are led to treat the individual members of them with more respect than they would otherwise do: the status of the workman is almost necessarily raised. Moreover, having a strong motive for keeping on good terms with the union, a master is more likely than he would else be to study the general convenience of his men, and to carry on his works in ways conducive to their health. There is an ultimate gain in moral and physical treatment if there is no ultimate gain in wages.<sup>188</sup>

Another point, on the same subject: Rothbard's hostility toward the "economic illiteracy" of workers who voluntarily refrained from crossing picket lines, and consumers who boycott scab goods, is quite uncharacteristic for a subjectivist. Rothbard conceded—with very bad grace—in *Man, Economy, and State* that unions could “achieve restrictionist wage rates on the free market.” How could they do this, he asked?

The answer can be found by considering the displaced workers. The key problem is: Why do the workers *let themselves* be displaced by the union's *WW* minimum? Since they were willing to work for less before, why do they now meekly agree to being fired and looking for a poorer-paying job? Why do some remain content to continue in a quasi-permanent pocket of unemployment in an industry, waiting to be hire at the excessively high rate? The only answer, in the absence of coercion, is that they have adopted on a commandingly high place on their value scales the goal of *not undercutting union wage rates*. Unions, naturally, are most anxious to persuade workers, both union and nonunion, as well as the general public, to believe strongly in the sinfulness of undercutting union wage rates. This is shown most clearly in those situations where union members refuse to continue working for a firm at a wage rate below a certain minimum.... This situation is known as a *strike*.... The natural answer of the employer, of course, is to turn somewhere else and to hire laborers who *are* willing to work on the terms offered. Yet unions have been remarkably successful in spreading the idea through society that anyone who accepts such an offer—the “strikebreaker”—is the lowest form of human life.

To the extent, then, that nonunion workers feel ashamed or guilty about “strike-breaking” or other forms of undercutting union-proclaimed wage scales, the displaced or unemployed workers agree to their own fate.... It is voluntary because that is the consequence of their voluntary acceptance of the *mystique* of “not crossing the picket line” or not being a strikebreaker.<sup>189</sup>

It's certainly odd, for adherents of an ideology that normally accepts no second-guessing of "revealed preference," to get their noses so out of joint when that preference is for respecting a picket line or buying "fair trade" coffee. Rothbard conceded, grudgingly, that the economist *qua* economist has no concern with ethical judgments. But he asserted, nevertheless, that an ethical judgment—to be rational—must be based on an accurate knowledge of the effect of one's actions. And the effect of honoring picket lines, as a social norm, is to exclude the portion of the labor-force whose productivity falls below the market wage-rate.<sup>190</sup>

This assumes, of course, that a free market exists and that market wage-rates do in fact reflect the marginal productivity of labor. That's really not very relevant to the existing state-capitalist labor

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188 Herbert Spencer, *Principles of Sociology* Book VIII Chapter 20. Quoted in Roderick Long, "Herbert Spencer, Laborarian," *Austro-Athenian Empire*, April 10, 2007 <<http://praxeology.net/blog/2007/04/10/herbert-spencer-laborarian>>.  
189 Rothbard, *Man, Economy, and State*, pp. 625-626.

190 *Ibid.*, pp. 626-627.

market, in which the primary function of the state is to enforce artificial scarcity of land and capital and reduce the bargaining power of labor. Under the conditions of actually existing corporate capitalism, increased bargaining strength of labor may cause increased wages to come at the expense of the landlords' and capitalists' monopoly rents, rather than at the expense of non-union workers.

Rothbard also took the existing level of labor productivity as a given, along with conventional MBA-driven standards of “efficiency”: “efficiency in organization comes from management hired for the task...”<sup>191</sup> The implication is that management is simply a hired servant of the entrepreneur, as in the standard Misesian model, that wages offered reflect the interests of the entrepreneur as unitary controller of the firm, and that the balance of power between management and labor within the workplace does not affect overall efficiency. But if the MBA culture does, in fact, represent vested interests that are at odds with efficiency (as I have argued elsewhere<sup>192</sup>), then labor action to challenge the balance of power within the workplace may actually improve efficiency at the expense of management. Rothbard contended, as a self-evident matter, that “unions are not *producing* organizations”;<sup>193</sup> but if unions do, in fact, represent the interests of workers in part as producers, then to the extent that they counter the power of management when the latter's interests are at odds with the productivity of the firm, then increased bargaining power of labor may increase overall efficiency.

Note, also: in acknowledging that enough potential "replacement workers" so honored picket lines as to constitute a "problem," from his perspective, Rothbard also gave the lie to arguments like those of DiLorenzo and his ilk that the success of strikes depends on forcible exclusion of scabs. A strike does not have to achieve 100% participation of the workforce, or exclude 100% of potential replacements. It only has to persuade enough of both groups to inconvenience the employer beyond his threshold of tolerance. And that a general moral culture which encourages labor solidarity and respect for picket lines, alone, may be enough to achieve this, is suggested by the very fact that Rothbard and his right-wing followers have regarded that kind of moral culture as such a threat. It's interesting to note, in this connection, that during the labor wars of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries employers were forced to wage a constant struggle against defection by scabs. For example, at Coeur d'Alene in 1892 the union managed to win over more than half of scab workers, mostly farmers recruited from the surrounding Idaho countryside, for the strike.<sup>194</sup>

## Conclusion

The AFL-CIO's Lane Kirkland, at one point, half-heartedly suggested that things would be easier if Congress repealed all labor laws, and let labor and management go at it "mano a mano."<sup>195</sup>

It's time to take up Kirkland's half-hearted suggestion, not just as a throwaway line, but as a challenge to the bosses:

We'll gladly forgo federal certification of unions, and legal protections against punitive firing of union organizers, if you'll forgo the court injunctions and cooling-off periods and arbitration. We'll leave you free to fire organizers at will, to bring back the yellow dog contract, if you leave us free to engage in sympathy and boycott strikes all the way up and down the production chain, to boycott

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191 *Ibid.*, p. 620.

192 “Calculation,” OT Ch. 7, 8.

193 Rothbard, *Man, Economy, and State*, p. 627.

194 Lens, *The Labor Wars*, p. 130.

195 Tom Geoghegan, *Which Side Are You On?* (New York: Farrar, Strauss & Giroux, 1991), p. 251.

retailers, and to strike against the hauling of scab cargo, etc., effectively turning every strike into a general strike. We give up Wagner (such as it is), and you give up Taft-Hartley and the Railway Labor Relations Act. Instead of hiding behind the skirts of state bureaucrats, we'll embrace the potential of on-the-job direct action, and exploit all the possibilities of the Internet in exposing the filth of you cockroaches to the light of day.

You people who have whined about “class warfare” for so long will get a taste of what class war is really all about, when the other side starts fighting back for a change.