Chapter Nine
Special Agency Problems of Labor (Internal Crisis Tendencies of the Large Organization)

Introduction.

We already examined, in Part II, the *systemic* crises that result from the state's promotion of economic centralization and excessive organizational size. Ultimately, the growth of demand for subsidized inputs, faster than it can be met by the state, will lead to input and fiscal crises that will make the state capitalist economy unsustainable. In this chapter, we will examine the parallel *internal* crises of the large organization.

As Barry Stein observed, the larger the organization, the lower the average level of mental health of its employees, and the greater the levels of absenteeism, disgruntlement, and sabotage.[1] We have already seen that the larger the organization, the more top management's authority is constrained by agency and information problems. And as we saw in Chapter Eight, labor presents unique agency problems owing to the nature of incomplete contracting and endogenous enforcement, and to its asymmetric information about the work process. And the situation is exacerbated by the prevailing stagnant pay and increasing authoritarianism, by which management promotes a perceived adversarial relationship with labor. Putting all these things together, we find that as the organization grows larger, it becomes increasingly vulnerable to asymmetric warfare from within at the very same time the workforce is becoming increasingly disgruntled.

A. The Special Agency Problems of Labor

It's a common observation among institutional economists that the best way to minimize agency costs is to vest residual claimancy in the "limiting" factor--the factor whose control presents the most agency problems for another party. Ugo Pagano and Robert Rowthorn, for example, raise the question of which factor should control the firm organization and have the power to design the production process. The answer, they suggest, is that

> if governance arises to save on agency costs, organizations should be controlled by the most specific or difficult-to-monitor factors: they will be able to save the most on the risk-premium due to resource specificity or on the monitoring expenses that would have to be paid if they were employed in other people's organizations.

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[1] Barry Stein, *Size, Efficiency, and Community Enterprise* (Cambridge: Center for Community Economic Development, 1974), p. 47.

On the other hand, if residual claimancy is not vested in the hardest to monitor factor, the owning factors will have to resort to special expedients to overcome the monitoring problem:

> ...each type of owner will tend to develop a technology that saves on the agency costs of employing the remaining non-owning factors....
>
> ...Owning factors have to pay high agency costs in order to employ difficult-to-monitor and specific factors. Thus they will try to replace these factors by easy to monitor or non-specific factors: an attempt will be made to change the nature of the non-owning factors and to make them "easy to monitor" and "general purpose".... Thus, owning factors choose a technology that tends to make themselves more difficult-to-monitor than would be the case if they did not own the organization.[2]

And in fact, as we shall see below, these latter unsatisfactory expedients have been chosen, for the most part, as a *substitute* for vesting firm ownership in the factor with the highest monitoring costs: labor.

It's hard to imagine circumstances under which the agency and monitoring problems of any other factor could exceed those of labor. As "Lenin," of Lenin's Tomb blog, observed:

> Henry Ford once asked "how come, when I just want a pair of hands, I get a human being too?" The answer is that the only other animal that comes with a pair of hands is a monkey, and monkeys aren't generally very efficient. The other answer is that what Ford was looking for is a disposable commodity that wouldn't have needs, grudges or grievances, one that wouldn't answer back, try to change the terms of its use or renegotiate its price. The problem with purchasing labour is that it is a distinctly unusual commodity, imbued with intentionality.[3]

Labor-power is the one factor of production that is not subject to ownership by a residual claimant other than the worker.

Murray Rothbard argued against even voluntary, contractual slavery on the grounds that human will and moral agency are inalienable.

> Let us pursue more deeply our argument that mere promises or expectations should not be enforceable. The basic reason is that the only valid transfer of title of ownership in the free society is the case where the property is, in fact and in the nature

[2] Ugo Pagano and Robert Rowthorn, "The Competitive Selection of Democratic Firms in a World of Self-Sustaining Institutions," in Pagano and 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, 1996), pp. 117-118.

[3] "Lenin", "Dead Zone Revisited," Lenin's Tomb blog, June 7, 2005 <http://leninology.blogspot.com/2005/06/dead-zone-revisited.html>.

of man, *alienable* by man. All physical property owned by a person is alienable, i.e., in natural fact it can be given or transferred to the ownership and control of another party. I can give away or sell to another person my shoes, my house, my car, my money, etc. But there are certain vital things which, in natural fact and in the nature of man, are inalienable, i.e., they *cannot* in fact be alienated, even voluntarily. Specifically, a person cannot alienate his *will*, more particularly his control over his own mind and body. Each man has control over his own mind and body. Each man has control over his own will and person, and he is, if you wish, "stuck" with that inherent and inalienable ownership. Since his will and control over his own person are inalienable, then so also are his *rights* to control that person and will. That is the ground for the famous position of the Declaration of Independence that man's natural rights are inalienable; that is, they cannot be surrendered, *even* if the person wishes to do so....

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. Now, in libertarian theory there is nothing to prevent Smith from making this agreement, and from serving the Jones Corporation and from obeying the latter's orders indefinitely. The problem comes when, at some later date, Smith changes his mind and decides to leave. Shall he be held to his former voluntary promise? Our contention—and one that is fortunately upheld under present law—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.

In fact, to enforce the promise would be just as much compulsory slavery as the compulsory marriage considered above. But should Smith at least be required to pay damages to the Jones Corporation, measured by the expectations of his lifelong service which the Jones Corporation had acquired? Again, the answer must be no. Smith is not an implicit thief; he has retained no just property of the Jones Corporation, for he *always* retains title to his own body and person.[4]

...[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.[5]

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[4] Murray Rothbard, *The Ethics of Liberty*, "19. Property Rights and the Theory of Contracts"
[5] Rothbard, *Man, Economy, and State: A Treatise on Economic Principles* (Auburn, Ala.: The Ludwig von Mises Institute, 1962, 1970, 1993), p. 142.

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

But the same is true of the wage labor contract. The agency problems embedded in the sale of labor-power are similar in kind to those entailed in selling oneself into permanent slavery. Unlike sellers of capital equipment and land, the seller of labor-power remains in the driver's seat at all times.

David Ellerman used a moral agency argument much like Rothbard's, but arguing instead that human moral agency was inalienable even in the case of selling labor-power for short periods of time. It was, he said, a "rather implausible assertion that a person can vacate his or her will for eight or so hours a day for weeks, months, or years on end but cannot do so for a working lifetime."[6] He argued that, like the voluntary slavery contract,

> the contract to voluntarily rent oneself out, i.e., the employment contract, should also be considered a juridically invalid contract. The immediate retort is that the abolition of renting people would violate the "freedom of contract." When one thus hears the rhetoric of liberal capitalism, it is important to remember the invalidity of the self-sale contract.[7]
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> Here is the core of the theory of inalienability. A person cannot in fact by consent transform himself or herself into a thing, so any contract to that legal effect is juridically invalid—even though it might be "validated" by a system of positive law (e.g., the antebellum South). A right is *inalienable* (even with consent) if the contract to alienate the right is inherently invalid. The self-enslavement or self-sale contract is an old example of such a contract, while the self-rental or employment contract is a current example.
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> In general, any contract to take on the legal role of a thing or non-person is inherently invalid because a person cannot **in fact** voluntarily give up and alienate his or her factual status as a person. I can in fact give up and transfer my use of this pen (or computer) to another person, but I cannot do the same with my own human actions—not for a lifetime and not for eight hours a day.[8]

Because labor is the only factor with a mind of its own, and whose employment cannot be separated from its ownership and moral agency, it is necessarily the factor with the highest agency costs from idiosyncratic knowledge and opportunism.

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[6] David Ellerman, *Property and Contract in Economics: The Case for Economic Democracy* (pdf version online), p. 37.
[7] Ibid., p. 63.
[8] Ibid., p. 84.

The agency problems of labor follow directly from the implications of the labor contract, as an incomplete contract enforced 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.[9]

Harvey Leibenstein, the father of "X-Efficiency," had anticipated much of this argument, in criticizing the neoclassical treatment of labor:

> The standard theory of production treats human and non-human inputs in the same way. Our theory drops this assumption. One distinction is obvious. Human capital, the source of human inputs, cannot be purchased outright by firms. Usually what is purchased are units of labor time. But these are not the units critical for production. What is critical is directed effort, at or beyond some level of skill. Directed effort, however, involves choice and motivation, and these are critical variables left out of the standard theory....
>
> Since the labor contract is almost always incomplete, and since occupational roles have to be interpreted from various behavioral acts and incomplete information, the dimensions of these are rarely completely specified.[10]

From the incomplete nature of the contract, as Samuel Bowles and Herbert 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 classical third-party enforcement assumption as *exogenous enforcement*. Where, by contrast, enforcement of claims arising from an exchange by third 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.

But exogenous enforcement is absent under a variety of quite common conditions, forcing employers to rely on private ordering for enforcement:

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[9] 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.
[10] Harvey Leibenstein, "Organizational or Frictional Equilibria, X-Efficiency, and the Rate of Innovation," *Quarterly Journal of Economics* pp. 601, 603. [600-623]

> ...when there is no relevant third party..., when the contested attribute can be measured only imperfectly or at considerable cost (work effort, for example, or the degree of risk assumed by a firm's management), 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.
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> 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*....
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> Consider agent *A* who purchases a good or service from agent *B*. We call the exchange *contested* when *B*'s good or service possesses an attribute which is valuable to *A*, is costly for *B* to provide, yet is not fully specified in an enforceable contract....
>
> 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.
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> Faced with the problem of labour discipline the employer may adopt the strategy on contingent renewal, that is, promise to renew the contract of the employee if satisfied with her or his level of work, and to dismiss the worker otherwise. In order to be effective such a strategy requires two things: the employer must adopt a system of monitoring to determine with some degree of accuracy the work effort levels of the employees, and must be able to deploy a costly sanction against those whose effort levels are found wanting.[11]

Or as organization theorists often describe it, the labor contract is an *incomplete contract*. That means, as Bowles and Gintis wrote above, that all its terms cannot be established *ex ante*, or ahead of time. As Oliver Williamson puts it, "bargaining is pervasive" in hierarchies:

> Transaction cost economics maintains that it is impossible to concentrate all of the relevant bargaining power at the *ex ante* contracting stage. Instead, *bargaining is*

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[11] "Is the Demand for Workplace Democracy Redundant in a Liberal Economy?" in Ugo Pagano and Robert Rowthorn, eds., *Democracy and Effciency 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.

pervasive--on which account the institutions of private ordering... take on critical economic significance.[12]

It is ordinarily in the interest of employers to avoid defining workers' duties too closely by contract, because it runs contrary to their need for a free hand in safeguarding authority (under a "general clause") to redefine duties as the need arises, and to take advantage of management authority to extract the maximum value from labor-power. The more the work process is defined by contract, moreover, the more vulnerable management is to the literal interpretation of such constraints by workers "working to rule."

But the converse problem is, in Oliver Williamson's phrase, "the unenforceability of general clauses"[13] when opportunism is present.

We saw in Chapter Six that idiosyncratic knowledge is a source of agency problems, and that the possessors of such knowledge are able to extract rents from it. This is especially true of workers' knowledge of the production process.

A good example of this 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:
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> *....As well as the routine stuff, I have to sort out problems and emergencies.... today, I had a woman on the phone who was absolutely hysterical.... the real difficulty was in getting the information out of her, and you need to understand the function to know what questions to ask....*
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> The computer technology involved could only deal cheaply with standard, predictable work.... [T]o design a system capable of responding to *all* possible variations and emergencies would have been enormously costly....
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> *...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*

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[12] Oliver Williamson, *The Economic Institutions of Capitalism* (New York: The Free Press, 1985), p. 29.
[13] Ibid., p. 63.

> *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.*[14]

This is often true even in cases of "deskilling" technology, when management's objective was to reduce its dependence on workers' idiosyncratic knowledge of the work process, and thereby also to reduce worker rents resulting from the cost of replacing a skilled workforce.

Given these special agency problems, there are two alternative ways of dealing with them:

1) Increase hierarchy and substitute factors with lower agency costs (like capital) for labor as much as possible. The problem is that administrative overhead and capital outlays are likely to be very high, with unit costs higher than would be the case if organization and production methods were chosen with regard solely to productive efficiency.

2) Make labor, the factor with the highest agency costs, the residual claimant, thereby reducing conflict of interest and internalizing the costs and benefits of decisions in the same actors, and substituting strong market incentives for extrinsic and administrative incentives.

Residual claimancy by labor would normally be the most efficient form of organization. But the very structure of the system, the legacy of a primitive accumulation process by which labor was separated from the means of production and investment capital was concentrated in the hands of a small number of absentee owners, rules out such an approach at the outset. Therefore, since the overall structure of the system is organized around the interests of absentee owners, it is necessary to resort to second-best expedients to make residual claimancy by absentee owners as efficient as possible: hierarchy, deskilling, and capital-substitution.

All the various forms of hierarchy, and the management fads for coping with the inherent inefficiencies of hierarchy, are intended to deal with the basic problem that the workforce has no intrinsic motivation to share knowledge or to maximize efficiency or output. They are, in other words, the most efficient way of managing an inherently inefficient form of organization. Hierarchy is, as we saw in Chapter Six, a primitive mechanism for getting people to perform tasks which they have no rational interest in performing.

It's interesting that most conventional explanations of hierarchy take agency problems

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[14] 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.

of labor and associated monitoring costs as a fact of nature, given the unquestioned starting assumptions of absentee ownership and wage labor. Winfried Vogt, for example, sums up the conventional argument for hierarchy. The hierarchical organization of the firm is

> an efficient device to secure a high productivity of labour. Without hierarchy, it would be impossible to extract an efficient amount and quality of labour. The basic argument is that contractual enforcement of an efficient solution is impossible, either because complete contracts cannot be designed, or because the amount and quality of labour agreed upon cannot be observed or verified....
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> In the first case, a potential employer who would be willing to enter a long-run relationship with an employee cannot secure a high productivity of labour by an *ex ante* agreement on this item, if contracts cannot be completely specified, either because future contingencies are unknown or because it is too expensive to write them down in detail.... In this case, a mutually beneficial relationship requires some safeguards for the employer. They can be provided by an employment contract which delegates authority to him to direct the employee's actions. Hierarchy is then an optimal response to imperfect commitments due to incomplete contracts.
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> A different problem arises when the desired amount and quality of labour could be contractually specified, but deviations cannot be observed or verified without costs. A hierarchical organization may then be regarded as a rational device to monitor the behaviour of employees. In this case, hierarchical supervision and control serve to enforce a high productivity of labour because they allow the detection and sanction of deviations from efficient solutions.
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> However, monitoring is usually not costless. It can be supplemented or sometimes even replaced by suitable work incentive mechanisms. This offers a further explanation of hierarchical structures. A hierarchy can also serve as an incentive structure which induces employees to behave in the interest of the firm, if adequate performance is likely to be rewarded by a favourable position in the hierarchy.
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> All these explanations regard the hierarchical structure of the firm as an optimal response to credibility problems, which are caused by the opportunistic behaviour of employees. *It seems also possible, however, to understand this behaviour as a reaction to hierarchical structures and command relationships rather than as their primary cause* [emphasis added].[15]

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[15] Winfried Vogt, "Capitalist Versus Liberal Firm and Economy," in Ugo Pagano and Robert Rowthorn, eds., *Democracy and Efficiency in the Economic Enterprise.* A study prepared for the World Institute for Development Economic Research (WIDER) of the United Nations University (London and New York: Routledge, 1996), p. 40.

At the risk of bowdlerizing Ursula LeGuin and Peter Drucker, hierarchy is the most efficient means for carrying out an inherently inefficient task.

The strategy of substituting capital for labor is not nearly as effective as it sounds. Consider, for example, one of the most expensive experiments in labor discipline ever made, the introduction of automated control systems for machine tools (described by David Noble in *Forces of Production*). The roots of numeric control systems lay in management's reaction to the labor disputes of the 1930s and 1940s. During WWII and the early Cold War, military contractors using USAAC/USAAF/USAF money carried out intensive R&D in cybernetics, servomechanisms and remote control. Digital control systems for machine tools were one of the civilian spin-offs, first introduced in the Air Force's civilian contractors. Management adopted the new technology, with encouragement from the Pentagon, as a way of deskilling labor--that is, reducing the control of master machinists over the production process, and shifting control upward to white collar engineers and managers. The goal was to reduce labor's asset specificity and its rents from idiosyncratic knowledge of the production process, so that it could be easily replaced--thus ultimately reducing the bargaining power of labor. The problem was, it didn't pan out quite as expected. As it turned out, management was heavily dependent on the "consummate cooperation" of labor to keep the extremely expensive machines from breaking down. It required considerable worker initiative and interest just to keep the machines from breaking down, let alone keep the scrap rate to manageable levels. But management attempted to treat workers as extensions of the machines, and lowered the skill ratings on which their pay was based. Predictably,

> ...[t]he workers increasingly refused to take any initiative--to do minor maintenance (like cleaning lint out of the tape reader), help in diagnosing malfunctions, repair broken tools, or even prevent a smash-up. The scrap rate soared... along with machine downtime, and low morale produced the highest absenteeism and turnover rates in the plant. Walkouts were common and, under constant harassment from supervisors, the operators developed ingenious covert methods of retaining some measure of control over their work, including clever use of the machine overrides.
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> ....The part of the plant with the most sophisticated equipment had become the part of the plant with the highest scrap rate, highest turnover, and lowest productivity....[16]

So the workers were much better at reasserting their control over the production process than management was at circumventing it. The agency costs of labor are virtually insurmountable, even with capital-substitution and deskilling. These latter methods may deprive workers of direct positive control of the production process; but under any circumstances they are likely to maintain a negative veto power, the ability to impose

[16] David F. Noble, *Forces of Production: A Social History of Industrial Automation* (New York: Alfred A. Knopf, 1984), p. 277.

costs on the job with virtually no risk or inconvenience to themselves.

And hierarchy and monitoring are unsatisfactory solutions. In the quote above, for example, Vogt seems oblivious to some of the implications of his own remarks. If, as he says, contractual specifications of "the amount and quality of labour... cannot be observed or verified," why is the hierarchy a preferable means for securing "a high productivity of labour"? Are workers more subject to exact monitoring of their efforts and quality of work in a hierarchy? And if so, then why is it necessary to use work incentives to overcome the costs of monitoring? Doesn't the effectiveness of work incentives depend on management's ability to make accurate assessments of individual worker performance? And if there are limits to the feasibility of doing so *within* a hierarchy, then don't work incentives carry the same practical difficulties within the hierarchy as without? The new institutionalists, who tend to underestimate agency costs within a hierarchy, provide no satisfactory answer to these questions.

There is no obvious reason for a standard corporate form in which, at least in theory, shareholder equity is the only basis for residual claimancy and other factors are contractual claimants. Or rather, the only obvious reason, as we saw in our discussion of the corporate form in Chapter Three, is that the state's general incorporation laws, by setting up shareholder ownership as the standard basis for corporate organization, crowded out a variety of possible other models.

The real explanation for the choice of this particular model is obvious. The state acts within a historically limited set of circumstances, following from the primitive accumulation process (enclosures and other expropriations at the outset, followed by ongoing accumulation from unequal exchange). The result is that it makes policy in an environment in which wealth is polarized and large absentee owners provide most investment capital, and those with large-scale capital to invest are viscerally hostile to the worker-managed enterprise. And the state, of course, makes policy from the perspective of these absentee capitalists' perceived self-interest. So under the ready-made corporate form made available under the state's general incorporation laws, it is standard for the owners of capital to organize a firm and hire labor, rather than for associated labor to organize a firm and hire capital. This sets up, at the outset, an artificial structural presumption against the worker-controlled firm.

But aside from these historical accidents, the rationale for the shareholder-owned organization, as opposed to other possible corporate forms, is far from self-evident in principle. Luigi Zingales' treatment of this issue is one of the best I have found.

> If we accept the view that decision rights should be allocated to the party that can benefit and lose the most from these decisions, then this view of the firm has very sharp implications for the allocation of voting rights. Looking just at explicit contracts, the only residual claim is equity. Thus, shareholders deserve the right to make decisions. Hence, we have the basis for shareholder supremacy.

To accept this view at face value, one has to take a very legalistic view of contracts.[17]

It requires, specifically, the assumption that the particular explicit contracts included in the corporate nexus of contracts effectively protects the rights of *all* contractual claimants. If, in fact, there is a conflict of interest by which the party in power can adversely affect the interests of contractual claimants in ways that they are not protected against, and "other contracting parties besides equity holders are not fully protected by the explicit contracts," then the basic premise of shareholder supremacy is undermined.[18]

Arguably the management and workers are both de facto residual claimants, but with rights not protected by explicit contract, so that management has the power to expropriate the de facto residual claimancy rights of the rest of the human capital in the organization.

Zingales argues that "a firm is not simply the sum of components readily available on the market but rather is a unique combination, which can be worth more or less than the sum of its parts." The difference reflects the value of organizational and human capital.[19] An event that destroys the organizational capital of the firm may result in the firm being worth less than before, despite having "the same set of objective characteristics as before."[20] This means that a significant portion of shareholder equity may in fact be a positive externality of the firm's organizational capital, which has not been appropriated by the rightful parties because corporate property rights have been so badly defined under the state's legal form of incorporation. The expropriated parties may also include suppliers and customers, to the extent that the de facto equity of parties to implicit contracts is not recognized.[21]

As John Kay argues, the principal-agent model of corporate governance, which treats salaried executives as hired agents of the shareholders, is a fiction.

> You cannot own a structure of relationships between people, or own their shared knowledge, or own the routines and modes of behaviour they have established.[22]
>
> ...[The] organic model of corporate behaviour--which gives to the corporation life independent from its shareholders or stakeholders--describes the actual behaviour of large companies and their managers far better than the principal-agent perspective....[23]

I would also add that, to the extent that the organizational capital reflects mainly the human capital of production workers, the shareholders and management might together

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[17] Luigi Zingales, "In Search of New Foundations," *The Journal of Finance*, vol. lv, no. 4 (August 2000), p. 1631.
[18] Ibid., p. 1632.
[19] Ibid., p. 1633.
[20] Ibid., pp. 1633-1634.
[21] Ibid., p. 1634.
[22] John Kay, *The Business of Economics* (Oxford: Oxford University Press, 1996), p. 81.
[23] Ibid., p. 108.

be sharing the misappropriated returns on the workers' human capital. The value of corporate stock may gain because human capital, deprived by the corporate legal form of effective property rights, is stiffed. When human capital is not reflected in residual rights of control, the shareholders' residual rights "allow the owner to extract the surplus out of the worker. If workers expect to be exploited, they will not make valuable investments." If this is true of shareholders, who are residual claimants in legal theory but have questionable real control over management, then it applies doubly to the senior managers who are in direct control of exploiting human capital and able to appropriate the organization's resources for their own consumption.

On the other hand, shareholders and workers are the injured parties to the extent that they could have shared the additional efficiency gains accruing in the absence of management self-dealing.

Zingales identifies the human capital of the firm as owners of "growth options." Because ownership of such growth options is not effectively represented by property rights and exercises no effective influence on the governance of the firm, a conflict of interest is created in which management benefits from foregoing opportunities for growth and instead starving the organization of resources that might increase its long-term productivity.[24]

So residual claimancy by the labor force is the optimal solution to the agency problems of labor. Like a sword through the Gordian knot, it overcomes at a single stroke most of the knowledge and agency problems of the hierarchical, absentee-owned corporation.

But the structural biases of the present system, toward the concentration of investment capital in a few hands, and toward absentee ownership, rule out the most efficient solution to the agency problem--worker ownership--from the outset. As a result, hierarchy must be adopted as a sort of Rube Goldberg contraption to extract effort from those with no intrinsic motivation.

But these second-best expedients are becoming less and less effective over time, as the agency problems of labor and the costs of monitoring it increase. As we saw in Chapter Eight, David M. Gordon has described the increasing costs incurred for supervisory personnel to monitor the increasingly disgruntled work force. As we will below, however, such devices are rapidly losing their effectiveness.

B. Labor Struggle as Asymmetric Warfare.

Vulgar libertarian critiques of organized labor commonly assert that unions depend

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[24] Zingales, "In Search of New Foundations," p. 1636.

entirely on force (or the implicit threat of force), backed by the state, against non-union laborers; they assume, in so arguing, that the strike as it is known today has always been the primary method of labor struggle.

Jeffrey Tucker exemplified the prevailing view at Mises.Org in his comments on the Hollywood writers' strike:

> ...[Unions] are large groups of workers seeking to cartelize themselves against competition from other workers. Exclusion is their goal....
>
> ...[O]rganizing the form of a union, and extracting money through what is essentially a forced blackmail, is incompatible with the peaceful and contractual relations that characterize market relations....
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> The peak [in union membership] was 1945, a result of wartime economic planning that had followed a New Deal policy giving unions special privileges in law. It was not lost on people after the war that the unions were wrecking the prospects for economic recovery, so a few rights were granted back to companies, though unions retained the upper hand. The decline has been steady ever since, falling to a mere 7.5 percent in the private sector (the public sector is a different animal entirely), which is almost but not quite as low as it was in the pre-New Deal period of free markets. [sic]
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> What percentage of the workforce would be unionized in an economy in which free association truly reigned? Maybe 1 percent, or maybe none. That's because unions only benefit themselves at others' expense.[25]

Thomas DiLorenzo, also of Mises.Org, is probably their foremost writer on labor issues. Any of his articles on the subject can be taken as a proxy for the vulgar libertarian view. I quote the following as an example:

> 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.[26]

It's interesting that such writers are willing to use the functioning of labor unions under state capitalism as a basis for extrapolating to the fundamental nature of labor unions *as such*. Charles Johnson remarked on this:

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[25] Jeffrey Tucker, "Hollywood's Workers and Peasants," *InsideCatholic.Com*, November 3, 2007 <http://insidecatholic.com/Joomla/index.php?option=com_content&task=view&id=1354&Itemid=48>.
[26] Thomas DiLorenzo, "The Myth of Voluntary Unions," Mises.Org, September 14, 2004 <http://www.mises.org/story/1604>.

General Motors has benefited *at least* as much from government patronage as the UAW, yet libertarian criticism of the magnates of state capitalism is hardly extended to business as such in the way that criticism of existing unions is routinely extended to any form of organized labor.[27]

In any case, such comments betray both a profound ignorance of the history of the labor movement outside the sterile bubble of the Wagner Act, and of the purposes of the Wagner Act itself.[28]

First of all, when the strike *was* chosen as a weapon, it relied more on the threat of imposing costs on the employer than on the forcible exclusion of scabs. You wouldn't think it so hard for the Misoids to understand that the replacement of a major portion of the workforce, especially when the supply of replacement workers is limited by moral sympathy with the strike, might entail considerable transaction costs and disruption of production. The idiosyncratic knowledge of the existing workforce, the time and cost of bringing replacement workers to an equivalent level of productivity, and the damage short-term disruption of production may do to customer relations, together constitute a rent that invests the threat of walking out with a considerable deterrent value.

And the cost and disruption is greatly intensified when the strike is backed by sympathy strikes at other stages of production. Wagner and Taft-Hartley greatly reduced the effectiveness of strikes at individual plants by transforming them into declared wars fought by Queensbury rules, and likewise reduced their effectiveness by prohibiting the coordination of actions across multiple plants or industries. Taft-Hartley's cooling off periods, in addition, gave employers time to prepare ahead of time for such disruptions and greatly reduced the informational rents embodied in the training of the existing workforce. Were not such restrictions in place, today's "just-in-time" economy would likely be far more vulnerable to such disruption than that of the 1930s. Jane Slaughter argues as much:

> It should be obvious that the potential weakness of the management by stress system is collective action by the workers. "Just-in-time," in particular, 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. Even the team meetings could be used as an organizing tool rather than a management forum; team members could agree to elect their staunchest union member as team leader rather than the person who is bucking for

[27] Charles Johnson, "Liberty, Equality, Solidarity: Toward a Dialectical Anarchism"

[28] It also displays, as much as it would pain Dilorenzo to admit it, a neoclassical understanding of unions, to the extent that it matches Oliver Williamson's description of the neoclassical approach: "Labor union organization was treated almost entirely as a matter of monopoly, there being little or no reference to efficient governance and the attenuation of opportunism." Williamson, *The Economic Institutions of Capitalism* (New York: Free Press, 1985), p. 65.

foreman.[29]

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.
>
> The problem for management is thus to retain control in a situation where the power capacity of workers is heightened, implying that measures must be sought which will prevent the utilization of this power capacity.[30]

More importantly, though, unionism was historically 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. For example, 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."[31] 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.[32]

The Wagner Act, along with the rest of the corporate liberal legal regime, had as its central goal the redirection of labor resistance away from the successful asymmetric warfare model, toward a formalized, bureaucratic system centered on labor contracts enforced by the state and the union hierarchies. As Karl Hess suggested in a 1976 *Playboy* interview,

> one crucial similarity between those two fascists [Hitler and FDR] is that both successfully destroyed the trade unions. Roosevelt did it by passing exactly the

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

[30] 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>.

[31] Quoted in Geoff Brown, *Sabotage: A Study of Industrial Conflict* (Nottingham, England: Spokesman Books, 1977), p. 28.

[32] Ibid., p. 36. Here "sabotage" is used in the broad sense of "deliberate withdrawal of efficiency."

> reforms [sic] 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.[33]

Incidentally, one of the recurring themes in the early part of Geoff Brown's book on sabotage, which we cited a few paragraphs up, is the hostility of much of the union leadership to direct action on the job--particularly "going canny"--as early as the turn of the twentieth century. Even then, the nascent labor establishment favored a regime in which the primary function of unions was collective bargaining and the enforcement of contracts, with the workers as a passive clientele, and with bargaining power centralized in the labor establishment. The most important service of the Wagner regime, to the leadership of both big business and big labor, was to strengthen the labor establishment at the expense of the rank and file. The effect, desired by both the union bureaucrats and by corporate management, was to transform unions from instruments of struggle by the rank and file into centralized, hierarchical organizations whose leaders could make comfortable backroom deals with the corporate bosses, without any disruptive interference from below.

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 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 than 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.[34]

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33 I'm indebted to the blogger freeman, libertarian critter for scanning it in online: "More From Hess," freeman, libertarian critter, June 9, 2005 <http://freemanlc.blogspot.com/2005/06/more-from-hess.html>.

34 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>

Before Wagner, industrial unions saw even conventional strikes as requiring strategic depth. But the federal labor law regime criminalizes many forms of resistance, like sympathy and boycott strikes up and down the production chain from raw materials to retail, that made the mass and general strikes of the early 1930s so formidable. The Railway Labor Relations Act was specifically designed to prevent transport workers from turning local strikes into general strikes. Taft-Hartley's cooling off period can be used for similar purposes in other strategic sectors, as demonstrated by Bush's invocation of it against the longshoremen's union.

The vulgar libertarian analysis is therefore quite disingenuous. Yes, *if* sympathy and boycott strikes are legally prohibited, and *if* transportation workers are legally prohibited from expanding a wave of sympathy strikes into a general strike, *then* it is impossible to win a conventional strike without state help. And *if* your aunt had testicles....

The extent to which state labor policy serves the interests of employers is suggested by the old (pre-Milsted) Libertarian Party Platform, a considerable deviation from the stereotypical libertarian position on organized labor. It expressly called for a repeal, not only of Wagner, but also of Taft-Hartley's prohibitions on sympathy and boycott strikes and of state right-to-work prohibitions on union shop contracts. It also condemned any federal right to impose "cooling off" periods or issue back-to-work orders.[35]

Wagner was originally passed, as Alexis Buss suggests below, because the *bosses* were begging for a regime of enforceable contract, with the unions as enforcers. This only confirms Adam Smith's observation that when the state regulates relations between workmen and masters, it usually has the masters for its counselors.

Far from being a labor charter that empowered unions for the first time, FDR's labor regime had the same practical effect as telling the irregulars of Lexington and Concord "Look, you guys come out from behind those rocks, put on these bright red uniforms, and march in parade ground formation, and in return we'll set up a system of arbitration to guarantee you don't lose *all* the time." Unfortunately, the Wagner regime left organized labor massively vulnerable to liquidation in the event that ruling elites decided they *wanted* labor to lose all the time, after all. And Taft-Hartley was passed because they decided, in fact, that unions *were* still winning too much of the time. Since the late '60s, corporate America has moved to exploit the full union-busting potential of Taft-Hartley. And guess what? Labor is prevented by law, for the most part, from abandoning the limits of Wagner and Taft-Hartley and returning to the successful unilateral techniques of the early '30s.

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[35] The original plank, "Unions and Collective Bargaining," is preserved by the Web Archive at <http://web.archive.org/web/20050305053450/http://www.lp.org/issues/platform/uniocoll.html>. Regrettably, it has otherwise vanished down the memory hole. Nothing resembling it is included in the new LP platform (which can be found at <http://www.lp.org/issues/platform_all.shtml>, in the unlikely event anyone wants to bother reading it).

Admittedly, Wagner wasn't all bad for workers, so long as big business saw organized labor as a useful tool for imposing order on the workplace. If workers lost control of how their job was performed, at least their pay increased with productivity and they had the security of a union contract. Life as a wage-slave was certainly better under the corporate liberal variant of state capitalism than under the kind of right-to-work banana republic Reagan and Thatcher replaced it with.

Note well: I'm far from defending the statism of the FDR labor regime in principle. I'd prefer not to have my face stamped by a jackboot in Oceania, *or* be smothered with kindness by Huxley's World Controller. I'd prefer a legal regime where labor is free to obtain its full product by bargaining in a free labor market, without the state's thumb on the scale on behalf of the owning classes. But if I'm forced to choose between forms of statism, there's no doubt which one I'll pick: the one whose yoke weighs less heavily on my own shoulders.

As Larry Gambone says, welfare statism and corporate liberalism are the price the owning classes pay for state capitalism:

> ...as I repeat ad nauseam, "social democracy is the price you pay for corporate capitalism." There Aint No Sech Thing As A Free Lunch – if you are going to strip the majority of their property and independence and turn them into wage slaves – you have to provide for them.[36]

Dan Sullivan once suggested, along similar lines, that redistribution isn't a matter for debate under state capitalism: the owning classes have no choice in the matter. The distortions, the maldistributions of purchasing power, are built into the very structure of privilege and subsidy; if the distortions are not corrected, they result, though a process of feedback, in wealth growing on itself and further aggravating the maldistribution of purchasing power. So long as the distorting privileges are in place, the state capitalist ruling class will simply have no choice but to intervene to counteract the tendency toward overproduction and underconsumption. The only alternatives are 1) to eliminate the original distortion so that purchasing power is tied directly to effort, and labor is able to purchase its full product; or 2) to add new layers of distortion to counteract the original distortion.[37]

In any event, the Wagner regime worked for labor only so long as capital *wanted* it to work for labor. It was originally intended as one of the "humane" measures like those the kindly farmer provided for his cattle in Tolstoy's parable (the better to milk them, of

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[36] From a post to the Salon Liberty yahoogroup, Nov. 26, 2006 <http://groups.yahoo com/group/ Salon_Liberty/ message/2954>.

[37] This is a paraphrase from memory of his argument. Unfortunately, I can't track down the original. I'm pretty sure it was on one of the Georgist yahoogroups in mid-2006. And although the general lines of the argument are Sullivan's, the specific language--much of which he will find objectionable--is my own.

course).[38] If we're going to be livestock, that sort of thing beats the hell out of the alternative: a farmer who decides it's more profitable to work us to death and then replace us.

But that's all moot now; when the corporate elite decided the "labor accord" had outlived its usefulness, and began exploiting the available loopholes in Wagner (and the full-blown breach in Taft-Hartley), labor began its long retreat. Whatever value the Wagner regime had for us in the past, it has outlived. We are getting kicked in the teeth under the old rules. If labor is to fight a successful counteroffensive, it has to stop playing by the bosses' rules. We need to fight completely outside the structure of Wagner and the NLRB's system of certification and contracts, or at least treat them as a secondary tactic in a strategy based on direct action.

In the neoliberal age, they've apparently decided that we need the contracts more than they do, and that "at-will" is the best thing for them. But I think if we took off the gloves, they might be the ones begging for a new Wagner act and contracts, all over again.

That may seem counterintuitive. The technofascists, with Echelon, RFID chips, public surveillance cameras, and the like, have us under tighter surveillance at home than we could have imagined a generation ago; they also have the globe under the closest thing to an unchallenged hegemony that's ever existed in history. In their wildest dreams for the near future, the PNAC types probably imagine something like Ken Macleod's US/UN Hegemony in *The Star Fraction*, enforced by a network of orbital laser battle stations capable of incinerating ships and armored formations anywhere on the Earth's surface.[39]

Nevertheless, I suspect that all these high-tech lines of defense, against would-be military rivals and against subversion at home, are a modern-day version of the Maginot Line. In Macleod's story, that Hegemony was overthrown in the end by asymmetric warfare, fought by a loose coalition of insurgencies around the world. Their fluid guerrilla tactics never presented a target for the orbital lasers; and they kept coming back with one offensive after another against the New World Order, until the cost of the constant counter-insurgency wars bled the U.S. economy dry and a general strike finally broke the back of the corporate state.

Bin Laden, murderous bastard though he is, has a pretty good sense of strategy. Expensive, high tech weapons are great for winning battles, he says, but not for winning wars. The destitute hill people of Afghanistan already brought one superpower to its knees. Perhaps the remaining superpower will be similarly humbled by its own people right here at home. If so, America will be the graveyard of state capitalist Empire. Perhaps, as in Macleod's vision, the disintegrated remnants of the post-collapse United States will be referred to as the Second Former Union (colorfully abbreviated FU2).

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[38] Leo Tolstoy, " Parable," reproduced at www.geocities.com/glasgowbranch/parable.html
[39] Tor Books, 2001.

In the military realm, the age-old methods of decentralized and networked resistance have most recently appeared in public discussion under the buzzword "Fourth Generation Warfare."[40]

But networked resistance against the Empire goes far beyond guerrilla warfare in the military realm. The same advantages of asymmetric warfare accrue equally to domestic political opposition. Consider this passage in Harry Boyte's *The Backyard Revolution*, written almost thirty years ago:

> Citizen activists in the 1970s often developed sophisticated understanding of the importance of organizational space, the need to form networks among the different spaces, and the process of transformation involved within them.... Ralph Nader saw the development of different citizen groups as, potentially, "an alternative communications system to the main public information systems which are so corporate dominated. If you're dealing with nuclear power, for example, you can't rely on the news to get the real facts. You have to have direct citizen contact between groups. And eventually citizen groups have to get access to satellite systems, to the new technologies."[41]

That sounds almost like the design specs for the Internet, doesn't it? It's directly analogous to Illich's vision of decentralized learning networks in *Deschooling Society*, at a time when the only technology available for supporting such networks was telephones and tape recorders. The Internet couldn't have been better suited to the organizational needs Nader (or Illich) described if it had been specifically designed for it. And in fact, the Internet resulted in a quantum leap in the potential for networked resistance.

There is a wide range of ruling elite literature on the dangers of "netwar" to the existing system of power, along with an equal volume of literature by the Empire's enemies celebrating such networked resistance. Most notable among them are probably the Rand studies, from the late 1990s on, by David Ronfeldt *et al*. In *The Zapatista "Social Netwar" in Mexico*[42], those authors expressed grave concern over the possibilities of decentralized "netwar" techniques for undermining elite control. They saw ominous signs of such a movement in the global political support network for the Zapatistas. Loose, ad hoc coalitions of affinity groups, organizing through the Internet, could throw together large demonstrations at short notice, and "swarm" the government and mainstream media with phone calls, letters, and emails far beyond their capacity to absorb. Ronfeldt noted a parallel between such techniques and the "leaderless resistance"

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[40] William S. Lind's archives on the subject at Lew Rockwell.Com <http://www.lewrockwell.com/lind/lind-arch.html> are a good starting place for study, along with John Robb's *Global Guerrillas* blog <http://globalguerrillas.typepad.com/>

[41] Harry C. Boyte, *The Backyard Revolution: Understanding the New Citizen Movement* (Philadelphia: Temple University Press, 1980), pp. 37-38.

[42] David Ronfeldt, John Arquilla, Graham Fuller, Melissa Fuller. *The Zapatista "Social Netwar" in Mexico* MR-994-A (Santa Monica: Rand, 1998) <http://www.rand.org/pubs/monograph_reports/MR994/index.html>.

advocated by right-wing white supremacist Louis Beam, circulating in some Constitutionalist/militia circles. These were, in fact, the very methods later used at Seattle and afterward. Decentralized "netwar," the stuff of elite nightmares, was essentially the "crisis of governability" Samuel Huntington had warned of in the 1970s--but potentially several orders of magnitude greater.

The post-Seattle movement confirmed such elite fears, and resulted in a full-scale backlash. Paul Rosenberg recounted in horrifying detail the illegal repression and political dirty tricks used by local police forces against anti-globalization activists at protests in 1999 and 2000.[43] There have even been some reports that Garden Plot[44] was activated on a local basis at Seattle, and that Delta Force units provided intelligence and advice to local police.[45] The U.S. government also seems to have taken advantage of the upward ratcheting of the police state after the 9-11 attacks to pursue its preexisting war on the anti-globalization movement. The intersection of the career of onetime Philadelphia Police Commissioner John Timoney, a fanatical enemy of the post-Seattle movement, with the highest levels of Homeland Security (in the meantime supervising the police riot against the FTAA protesters in Miami) is especially interesting in this regard.[46]

The same netwar techniques are discussed in Jeff Vail's *A Theory of Power* blog, in a much more sympathetic manner, as "Rhizome."[47] Vail predicts that the political struggles of the 21st century will be defined by the structural conflict between rhizome and hierarchy.

> Rhizome structures, media and asymmetric politics will not be a means to support or improve a centralized, hierarchical democracy--they will be an alternative to it.
>
> Many groups that seek change have yet to identify hierarchy itself as the root cause of their problem..., but are already beginning to realize that rhizome is the solution.

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43 "The Empire Strikes Back: Police Repression of Protest from Seattle to L.A." (L.A. Independent Media Center, August 13, 2000). The original online file is now defunct, unfortunately, but is preserved for the time being at <http://web.archive.org/web/20030803220613/http://www.r2kphilly.org/pdf/empire-strikes.pdf>.

44 Frank Morales, "U.S. Military Civil Disturbance Planning: The War at Home" *Covert Action Quarterly*, Spring-Summer 2000; this article, likewise, is no longer available on the Web, but is preserved at <http://web.archive.org/web/20000818175231/http://infowar.net/warathome/warathome.html>.

45 Alexander Cockburn, "The Jackboot State: The War Came Home and We're Losing It" *Counterpunch* May 10, 2000 <http://www.counterpunch.org/jackboot.html>; "US Army Intel Units Spying on Activists" *Intelligence Newsletter* #381 April 5, 2000 <http://web.archive.org/web/20000816182951/http://www.infoshop.org/news5/army_intel.html>.

46 I put together much of the relevant information in these blog posts: "Fighting the Domestic Enemy: You," Mutualist Blog, August 11, 2005 <http://mutualist.blogspot.com/2005/08/fighting-domestic-enemy-you.html>; and "Filthy Pig Timoney in the News," Mutualist Blog, December 2, 2005 <http://mutualist.blogspot.com/2005/12/filthy-pig-timoney-in-news.html>.

47 <http://www.jeffvail.net/> The book *A Theory of Power* is available as a free pdf file at <http://www.jeffvail.net/atheoryofpower.pdf>.

As an example of rhizome politics, he gives the examples of the antiglobalization protests beginning in Seattle in 1999, along with similarly organized protests like the 2004 RNC convention in Philadelphia. The network of political blogs is organized on the same principle.

> ...Rhizome networks are better able to process information than hierarchies, with their numerous layers that information must relay between, ... [resulting] in an information processing burden that significantly slows the ability of hierarchy to execute the OODA [Observe, Orient, Decide, Act[48]] loop....
>
> [Rhizome action is] beginning to coalesce into an effective system..., founded upon the information processing capability of rhizome...

In my opinion the comparative performance in 2004 of Democratic bloggers and of the Kerry campaign is definitive evidence of the superiority of rhizome techniques. Had Kerry fired his opposition research staff and put Kos or Atrios in charge of his war room, he'd probably be president today. For example, consider the humorous ad the Bush campaign ran, with ragtime music and footage of jalopies, about Kerry's "funny ideas" on energy (it concerned his proposal for increasing the fuel tax to discourage consumption). Within a couple of days, the liberal bloggers had links to Congressman Dick Cheney's bill, in a time of historic low petroleum prices, to impose a tax on imported petroleum whenever the price fell below a certain level; it was, pure and simple, a price support tax for the domestic oil industry. Another example was the so-called Swiftboat campaign to smear Kerry's war record. The leading figure in that group, as the Democratic bloggers pointed out, had also smeared George Bush senior, accusing him of personal malfeasance during his plane crash in the Pacific Theater during WWII. In other words, George W. Bush was willing to embrace a political operative who had smeared his own father, in order to further his interests in the 2004 election. Had Kerry simply led with these facts at a few press conferences, he'd have wiped the floor with Bush.

Returning to Jeff Vail: in the economic realm, he refers to "rural communities using localization policies, increasing distributed power generation, the spread of farmers' markets and an increased focus on "slow foods" and regional cuisine."

Finally, perhaps most intriguing, is Vail's application of rhizome to the realm of national security (Open Source Warfare):

> Without the centralized command structure of hierarchy, actions and tactics are proposed by the network and adapted by constituent nodes via a process similar in many ways to a clinical trial. Some node devises a tactic or selects a target and makes this theory publicly available--Open Source. One or several trials of this theory are

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[48] The concept originated with Col. Frank Boyd, USAF.

> conducted, and the tactic is then adopted and improved upon by the network as a whole based on its success.

As the leading example of a distributed warfare network, he gives Al Qaeda.

Vail speculates that many groups engaged in rhizome political or military action will come to see the conflict with hierarchy as the root of their various causes, and consciously adopt a rhizome structure.

> The interconnectivity between anti-globalization, economic localization, human rights, freedoms, environmental concerns, and equal opportunity policies will become clear, and the combined power of each of these policies will, working together, be far greater than the sum of their parts.[49]

One question that's been less looked into is the extent to which the ideas of networked resistance and asymmetric warfare are applicable to labor relations. It's rather odd labor relations aren't considered more in this context, since the Wobbly idea of "direct action on the job" is a classic example of asymmetric warfare.

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," and discussed by the I.W.W.'s Alexis Buss in her articles on "minority unionism" for *Industrial Worker*.

If labor is to return to a pre-Wagner way of doing things, what Buss calls "minority unionism" will be the new organizing principle.

> If unionism is to become a movement again, we 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....
>
> U.S. & Canadian labor relations regimes are set up on the premise that you need a majority of workers to have a union, generally government-certified in a worldwide context[;] this is a relatively rare set-up. And even in North America, the notion that a union needs official recognition or majority status to have the right to represent its members is of relatively recent origin, thanks mostly to the choice of business unions to trade rank-and-file strength for legal maintenance of membership guarantees.

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[49] Jeff Vail, "Rhizome: Guerrilla Media, Swarming and Asymmetric Politics in the 21st Century," *A Theory of Power: Jeff Vail's Critique of Hierarchy and Empire*, July 21, 2005 <http://www.jeffvail.net/2005/07/rhizome-guerrilla-media-swarming-and.html>.

> The labor movement was not built through majority unionism-it couldn't have been.[50]
>
> 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.[51]

As a matter of fact, a strike may well be as effective when carried out by an unofficial union without government certification. 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 striking workers, with a much higher rate of accidents. Corporate management sent a negotiator and quickly caved in to their demands, owing in part to the negative publicity.[52]

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.... But if the nurses were to choose this alternative, they would wind up with a much stronger and more vital union, one that would truly represent them, because it WOULD BE THEM....[53]

As the Wobbly pamphlet "How to Fire Your Boss"[54] argues, the strike in its current form, according to NLRB rules, is about the least effective form of action available to organized labor.

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[50] "Minority Report," *Industrial Worker*, October 2002 <http://www.iww.org/organize/strategy/AlexisBuss102002.shtml>.
[51] "Minority Report," *Industrial Worker*, December 2002 <http://www.iww.org/organize/strategy/AlexisBuss122002.shtml>.
[52] Kari Lydersen, "On Strike Without a Union," *In These Times*, September 12, 2007 <http://www.inthesetimes.com/article/3327/on_strike_without_a_union/>.
[53] 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>
[54] The I.W.W. has, in fact, 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.

> The bosses, with their large financial reserves, are better able to withstand a long drawn-out strike than the workers. In many cases, court injunctions will freeze or confiscate the union's strike funds. 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. Running to the National Labor Relations Board (N.L.R.B.) for help may be appropriate in some cases, but it is NOT a form of direct action.[55]

Thomas DiLorenzo, ironically, said almost the same thing in the article quoted earlier:

> It took decades of dwindling union membership (currently 8.2% of the private-sector labor force in the U.S. according to the U.S. Dept. of Labor) to convince union leaders to scale back the strike as their major "weapon" and resort to other tactics. Despite all the efforts at violence and intimidation, the fact remains that striking union members are harmed by lower incomes during strikes, and in many cases have lost their jobs to replacement workers. To these workers, strikes have created heavy financial burdens for little or no gain. Consequently, some unions have now resorted to what they call "in-plant actions," a euphemism for sabotage.
>
> Damaging the equipment in an oil refinery or slashing the tires of the trucks belonging to a trucking company, for example, is a way for unions to "send a message" to employers that they should give in to union demands, or else. Meanwhile, no unionized employees, including the ones engaged in the acts of sabotage, lose a day’s work.

DiLorenzo is wrong, of course, in limiting on-the-job action solely to physical sabotage of the employer's property. As we shall see below, an on-the-job struggle over the pace and intensity of work is inherent in the incomplete nature of the employment contract, the impossibility of defining such particulars ahead of time, and the agency costs involved in monitoring performance after the fact. But what is truly comical is DiLorenzo's ignorance of the role employers and the employers' state played in establishment unions making the strike a "major 'weapon'" *in the first place*.

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), whisteblowing, and sick-ins. These are all ways of raising costs on the job, without giving the boss a chance to hire

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[55] "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.

scabs.

The pamphlet also recommends two other tactics that are likely to be problematic for many free market libertarians: the sitdown and monkey-wrenching (the idea behind the latter being that there's no point hiring scabs when the machines are also on strike).

It was probably easier to build unions by means of organizing strikes, getting workers to "down tools" and strike in hot blood when a flying squadron entered the shop floor, than it is today to get workers to jump through the NLRB's hoops (and likely resign themselves to punitive action) in cold blood. And it certainly was easier to win a strike before Taft-Hartley outlawed secondary and boycott strikes up and down the production chain. The classic CIO strikes of the early '30s involved multiple steps in the chain--not only production plants, but also their suppliers of raw materials, their retail outlets, and the teamsters who hauled finished and unfinished goods. They were planned strategically, as a general staff might plan a campaign. Some strikes turned into what amounted to regional general strikes. Even a minority of workers striking, at each step in the chain, can be far more effective than a conventional strike limited to one plant.

If nothing else, all of this should demonstrate the sheer nonsensicality of the Misoid idea that strikes are ineffectual unless they involve 100% of the workforce and are backed up by the threat of violence against scabs. Even a sizeable minority of workers walking off the job, if they're backed up by similar minorities at other stages of the production and distribution process on early CIO lines, could utterly paralyze a company.

It seems clear, from a common sense standpoint, that the Wobbly approach to labor struggle is potentially far more effective than the current business union model of collective bargaining under the Wagner regime. The question remains, though, what should be the libertarian ethical stance on such tactics.

As I already mentioned, sitdowns and monkey-wrenching would appear at first glance to be obvious transgressions of libertarian principle. Regarding these, I can only say that the morality of trespassing and vandalism against someone else's property hinges on the just character of their property rights.

Murray Rothbard raised the question, at the height of his attempted alliance with the New Left, of what ought to be done with state property. His answer was quite different from that of today's vulgar libertarians ("Why, sell it to a giant corporation, of course, on terms most advantageous to the corporation!"). According to Rothbard, since state ownership of property is in principle illegitimate, all property currently "owned" by the government is really unowned. And since the rightful owner of any piece of unowned property is, in keeping with radical Lockean principles, the first person to occupy it and mix his or her labor with it, it follows that government property is rightfully the property of whoever is currently occupying and using it. That means, for example, that state universities are the rightful property of either the students or faculties, and should either be turned into student consumer co-ops, or placed under the control of scholars' guilds.

More provocative still, Rothbard tentatively applied the same principle to the (theatrical gasp) private sector! First he raised the question of nominally "private" universities that got most of their funding from the state, like Columbia. Surely it was only a "private" college "in the most ironic sense." And therefore, it deserved "a similar fate of virtuous homesteading confiscation."

> But if Columbia University, what of General Dynamics? What of the myriad of corporations which are integral parts of the military-industrial complex, which not only get over half or sometimes virtually all their revenue from the government but also participate in mass murder? What are their credentials to "private" property? Surely less than zero. As eager lobbyists for these contracts and subsidies, as co-founders of the garrison stare, they deserve confiscation and reversion of their property to the genuine private sector as rapidly as possible. To say that their "private" property must be respected is to say that the property stolen by the horsethief and the murderer must be "respected."
>
> But how then do we go about destatizing the entire mass of government property, as well as the "private property" of General Dynamics? All this needs detailed thought and inquiry on the part of libertarians. One method would be to turn over ownership to the homesteading workers in the particular plants; another to turn over pro-rata ownership to the individual taxpayers. But we must face the fact that it might prove the most practical route to first nationalize the property as a prelude to redistribution. Thus, how could the ownership of General Dynamics be transferred to the deserving taxpayers without first being nationalized enroute? And, further more, even if the government should decide to nationalize General Dynamics--without compensation, of course-- per se and not as a prelude to redistribution to the taxpayers, this is not immoral or something to be combatted. For it would only mean that one gang of thieves--the government--would be confiscating property from another previously cooperating gang, the corporation that has lived off the government. I do not often agree with John Kenneth Galbraith, but his recent suggestion to nationalize businesses which get more than 75% of their revenue from government, or from the military, has considerable merit. Certainly it does not mean aggression against private property.... But why stop at 75%? Fifty per cent seems to be a reasonable cutoff point on whether an organization is largely public or largely private.[56]

In my opinion, it is a mistake to use direct state subsidies alone as a criterion for "public" status. If a corporation gets the bulk of its profits from state intervention of any kind (including patents, copyrights, and other forms of anti-competitive privilege), it is an arm of the state. Also in my opinion, the Fortune 500 is a pretty good proxy for the sector of the economy whose profits come almost entirely from state intervention--what James O'Connor called the "monopoly capital sector."

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[56] "Confiscation and the Homestead Principle," *The Libertarian Forum*, June 15, 1969 <http://www.mises.org/ journals/lf/1969/1969_06_15.pdf>.

Brad Spangler observed that when a man is robbed, it's a mistake to limit the term "robber" to the man holding the gun. The bagman who collects the loot is just as much a robber, if he's a willing part of the team. Likewise, a corporation whose profits result mainly from state action, and whose CEOs, directors, and vice presidents constantly rotate back and forth from the "private sector" to political appointments in the regulatory state, is in reality a part of the state.[57] Organized corporate capital, as it exists in the heavily subsidized oligopoly sector, is as much a part of the state as the great landlords were under the Old Regime.

At any rate, if corporations that get the bulk of their profits from state intervention are essentially part of the state, rightfully subject to being treated as the property of the workers actually occupying them, then sitdowns and sabotage should certainly be legitimate means for bringing this about.

As for the other, less extreme tactics, those who object morally to such on-the-job direct action fail to consider the logical implications of a free contract in labor that we described above. 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. It's virtually impossible to design a contract that specifies ahead of time the exact levels of effort and standards of performance for a wage-laborer, and likewise impossible for employers to reliably monitor performance after the fact. Therefore, the workplace is contested terrain, and 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. It's directly analogous to the local cultural standards that would determine the nature of "reasonable expectations," in a libertarian common law of implied contract. 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.

In a very real sense, management is placed in a double-bind by the incomplete labor contract. Management refrains from defining job duties too specifically *ex ante* because it conflicts with their need for a free hand in extracting the maximum value from labor-power. As a result, however, the worker can, by exercising his discretion in matters *not* defined by contract, make management *beg* for extending the area covered by contract o*n the workers' terms*. On the other hand, if management attempts to limit worker discretion by hemming the worker in with detailed and draconian rules, the worker can in turn sabotage management by following the rules to the letter.

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[57] Brad Spangler, "Recognizing faux private interests that are actually part of the state," *BradSpangler.Com*, April 29, 2005 <http://www.bradspangler.com/blog/archives/54>.

Oliver Williamson quotes Arthur Okun to the effect that what "the firm wants when it hires an employee is productive performance.... It wishes to buy quality of work rather than merely time on the job." Williamson continues:

> ...Accordingly, exploited 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.[58]

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 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.[59]

He also quotes 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.[60]

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 it is impossible.[61] 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."[62]

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[58] Oliver Williamson, *The Economic Institutions of Capitalism* (New York: The Free Press, 1985), p. 262.
[59] Oliver Williamson, *Markets and Hierarchies, Analysis and Antitrust Implications: A Study in the Economics of Internal Organization* (New York: Free Press, 1975), p. 69.
[60] Peter Blau and Richard Scott, *Formal Organizations* (San Francisco: Chandler, 1962), p. 140, in Williamson, *The Economic Institutions of Capitalism*, p. 263.
[61] Williamson, *Markets and Hierarchies*, pp. 55-56.
[62] Ibid., p. 69.

A classic example is the quote from a worker at the Indiana gypsum mine we saw in Chapter Eight:

> 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.[63]

The organization's dependence on workers' idiosyncratic knowledge, and their active "use of judgment, filling gaps, and taking initiative," by the way, should make it clear just why the passive-aggressive technique of "working to rule" is so diabolically effective. Since the brains of the operation are the Welches and Nardellis who get paid the big bucks to think, and our job is just 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?

> But as well as worker sabotage, there can be management sabotage. 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.... Almost all non-productive time can be blamed on the administration and how things are run, and in this sense it really is sabotage: errors in the conception and specification of the product, poor manufacturing methods, time wasted, machines out of use or out of order, workers taken from their normal role in the production process to be put on to other jobs, trying to make too many different products, changing models too often, poor planning, shortage of raw materials, plant not properly maintained, inadequate consideration of the siting of machinery, a failure to understand production patterns.... These are just some of the possible forms of management sabotage in industry.
>
> But there are others.... The management believe their decisions to be completely rational, whereas the workers can see the irrationality in action: machines function more or less well--some standing idle for days on end--equipment is inadequate, supplies are ordered without regard to need, periods of intense activity alternate with periods of virtual inactivity, the burden of work is divided quite unfairly as between one position and another, further investment seems to be made quite arbitrarily and made without proper planning, wages are not related to productivity and promotion goes to the submissive rather than those who produce most. In other words, the workers recognize that the firm exists more to protect a power-system than to foster efficient production.
>
> ....All this sabotage by management is undoubtedly far more significant than any sabotage by workers.
>
> In the teeth of management sabotage, the workers manage to keep the factories

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

> running.... 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"....
>
> 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.[64]

At the "softest" end of the spectrum, direct action methods fade into the general category of moral hazard or opportunism. (For that matter, the whole Austrian concept of "entrepreneurship" arguably presupposes to a large extent rents from asymmetrical information).

The average worker can probably think of hundreds of ways to raise costs on the job, with little or no risk of getting caught, if he puts his mind to it. The giant corporation, arguably, has become so hypertrophied and centralized under the influence of state subsidies, that it's vulnerable to the very same kinds of "asymmetrical warfare" from within that threaten the world's sole remaining superpower from without. In Jeremy Weiland's words,

> Their need for us to behave in an orderly, predictable manner is a vulnerability of theirs; it can be exploited. *You have the ability to transform from a replaceable part into a monkey wrench.*[65]

Now, it's almost impossible to outlaw these things *ex ante* through a legally enforceable contract. Every time I go to work it strikes me even more how much of what the Wobblies considered "direct action" couldn't possibly be defined by any feasible contractual or legal regime, and are therefore restrained entirely by the workers' perception of what they can get away with in the contested social space of the job. 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 owners and workers in a particular workplace--it's a lot like the local, contextual definitions that the common law of fraud would depend on in a free marketplace.

Further, 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:

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[64] P. Dubois, *Sabotage in Industry* (Hammondsworth, England: Penguin Books, 1979), pp. 14-16.
[65] Jeremy Weiland, "You are the monkey wrench," *Social Memory Complex*, March 7, 2008. <http://blog.6thdensity.net/?p=918>

- 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.
- What has been experienced is an unconscious and shared herding impulse trending upward; a shared optimistic mood finding "joy" and "happiness" in work and denigrating the sole pursuit of leisure, idleness.
- If social mood has, in fact, peaked, we can expect to see a different attitude toward work and productivity emerge.[66]

Rick, at *Flip Chart Fairy Tales*, finds disengagement and perfunctory performance 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.
>
> It gets worse. A couple of years ago, Watson Wyatt found that only 12 per cent of British workers could be described as fully engaged with their businesses. In 2003 a survey from Gallup came up with a similar result.
>
> 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. A few months ago, when I gave a presentation on managing change in organisations, I put up a graph which indicated that, when you announce a change, the reactions of most of your workforce will be somewhere between lukewarm and actively hostile. Only a few will be up for the change from the start. I was accused of painting a negative picture but I responded by pointing out that if at least a third of your workforce is already disengaged, getting support for change will be an uphill struggle.
>
> 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, 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

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[66] 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>

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.[67]

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 Williamson called "perfunctory cooperation." As Dubois pointed out, "working without enthusiasm," absenteeism and high turnover are forms of "sabotage" that probably do more damage than strikes.[68]

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 expended. 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.[69]

The popularity of *Fish!* in management circles may in part be a response to perceived employee disgruntlement, an attempt to counter perfunctory cooperation and other forms of "deliberate withdrawals of efficiency" through motivational propaganda. Consider this passage:

> She had overheard Martha describing how she handled those in the company who "hassled" her to do her processing faster--she put their file under the out-basket "by mistake."[70]

It's telling that there's absolutely no consideration of whether Martha might in fact be burdened by an increasingly heavy workload, as a result of deliberate understaffing and a conscious management policy of squeezing more work out of fewer people. Slowing down, going canny, and soldiering are perfectly rational strategies, on the part of workers

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[67] 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/>
[68] Dubois, *Sabotage in Industry*, pp. 51-59.
[69] Jennifer Kock, "Employee Sabotage: Don't Be a Target!" <http://www.workforce.com/archive/features/22/20/88/mdex-printer.php>.
[70] *Fish! A Remarkable Way*

in an asymmetric power relationship and suffering deteriorating work conditions, to pressure management to change *its* attitude. Management's goal, as evidenced by the frantic promotion of Fish! Philosophy, is to stamp out worker perceptions of self-interest and motivate them to adopt management's interests as their own.

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

> 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. Upton Sinclair's novel *The Jungle* blew the lid off the scandalous health standards and working conditions of the meatpacking industry when it was published earlier this century.
>
> 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.

The authors of *The Cluetrain Manifesto* are quite expansive on the potential for frank, unmediated conversations between employees and customers as a way of building customer relationships and circumventing the consumer's ingrained habit of blocking out canned corporate messages.[71] They characterize the typical corporate voice as "sterile happytalk that insults the intelligence," "the soothing, humorless monotone of the mission statement, marketing brochure, and your-call-is-important-to-us busy signal."[72]

When employees engage customers frankly about the problems they experience with the company's product, and offer useful information, they usually respond positively.

> 84. We know some people from your company. They're pretty cool online. Do you have any more like that you're hiding? Can they come out and play?
>
> 85. When we have questions we turn to each other for answers. If you didn't have such a tight rein on "your people" maybe they'd be among the people we'd turn to.
>
> 86. When we're not busy being your "target market," many of us *are* your people. We'd rather be talking to friends online than watching the clock. That would get your name

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[71] "Markets are Conversations," in Rick Levine, Christopher Locke, Doc Searls and David Weinberger, *The Cluetrain Manifesto: The End of Business as Usual* (Perseus Books Group, 2001) <http://www.cluetrain.com/book/index.html>.
[72] "95 theses," in Ibid.

> around better than your entire million dollar web site. But you tell us speaking to the market is Marketing's job.[73]

Christopher Locke recounts his experiences as director of communications for "an AI software outfit." He soon figured out that that translated, more or less, into their "PR guy," and that the press perceived public relations people as thinly disguised hucksters. Locke didn't have much taste for that role, and so he started engaging in unscripted, off-message conversations with editors and reporters.

> We talked about manufacturing and how it evolved, about shop rats and managers, command and control. We talked about language and literature, about literacy. We talked about software too of course — what it could and couldn't do. We talked about the foibles of the industry itself, laughed about empty buzzwords and pompous posturing, swapped war stories about trade shows and writing on deadline. We talked about our own work. But these conversations weren't work. They were interesting and engaging. They were exciting. They were fun. I couldn't wait to get back to work on Monday morning.
>
> Then something even more amazing happened. The company started "getting ink." Lots of it. And not in the lowly trade rags it had been used to, but in places like The New York Times and The Wall Street Journal and Business Week. One day the CEO called the VP of Marketing into my office.
>
> "What has Chris been doing for you lately?" the CEO asked him.
>
> "I'm glad you brought that up," said the marketing veep. "In the whole time he's been here, he hasn't done a single thing I've asked him to."
>
> "Well..." said the CEO looking down at his shoes — here it comes, I thought, this is what it feels like to get sacked — "whatever it is he's doing, leave him alone. From now on, he reports to me."
>
> That's how I discovered PR doesn't work and that markets are conversations.[74]

A Saturn mechanic joined a conversation in a newsgroup sparked by a customer who posted a message titled "Am I Getting F-'ed By My Saturn Dealer???" (the dealership had done a lot of extra servicing, despite the fact that the owner's manual called only for an oil change at that mileage, and charged him for it). Other customers began recounting their experiences with dealers, comparing prices, and discussing what the company's policy was on such matters. The mechanic who showed up, rather than robotically spouting official happy talk with a permasmile (as an official spokesman would do), provided frank and useful information about the variation in dealership policies and quality of service, and what the customer's options were for handling the situation.

The Saturn mechanic was speaking for his company in a new way: honestly, openly,

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[73] "95 theses."
[74] "Chapter One. Internet Apocalypso," in *The Cluetrain Manifesto*.

> probably without his boss's explicit sanction--and he greatly served the interests of Saturn. He and others like him are changing the way Saturn supports its customers. And Saturn corporate might not even know it's happening.[75]

Symantec officially encouraged a similar approach when it launched CafE, "a suite of programming tools for Java developers."

> They had one person virtually living in the public support newsgroups. He responded to questions, fielded tech support requests, and generally got himself known as a very straight shooter about Symantec's products. He was only one person, but he was almost single-handedly responsible for the developer community's positive take on Symantec. He wasn't there to promote, but strictly to assist. He gave honest answers to hard questions, acknowledged product shortcomings, and painted an honest, open picture of the product's strengths and weaknesses. The developer community's collective opinion of Symantec soared.
>
> Another anecdote from the public relations history of Sun's Java team paints an anti-example. In the first year and a half that Sun's Java group existed, members of the engineering team spoke directly with customers and the press. Java grew from a glimmer, a possibility, to a platform with thousands of curious, turned-on early adopters. There was a general perception that Sun's Java team listened, answered questions, and was actively engaged with the community of Java developers.
>
> After about eighteen months, the workload grew to such a point that we started shutting down our channels to the outside world. PR and marketing took over much of our contact with the outside world, and we put our heads down to deal with the increasing demands on the engineering team. The reaction from our developers was stated in these precise words many times over: "you disappeared." As we went underground, the perception of the Java group in the marketplace changed from "a small team of great engineers producing neat stuff" to "a hype engine to push Sun's stock."[76]

What the *Cluetrain* authors *don't* mention is the potential for disaster, from the company's perspective, when disgruntled workers see the customer as a potential ally against a common enemy. What would have happened if Chris Locke, or the Saturn mechanic, or the Symantec rep had decided, not that their company's management was somewhat clueless, not that management was its own worst enemy and needed to be gently pushed to do a better job for its own good, not that they wanted to help *their* company by rescuing it from the tyranny of PR and the official line and winning over customers with a little straight talk--but that they hated the company and that its management was evil? What if, rather than simply responding to a specific problem with what the customer had needed to know, they'd aired all the dirty laundry about management's asset stripping, gutting of human capital, hollowing out of long-term productive capability, gaming of its own bonuses and stock options, self-dealing on the job, and logrolling with directors?

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[75] "Chapter Three. Talk is Cheap," in *The Cluetrain Manifesto*.
[76] "Chapter Three. Talk is Cheap," *The Cluetrain Manifesto*.

What if hospital workers told customers (as in my case) that management had cancelled employee PTOs in December because of the supposedly dire financial situation, and then turned around in April and rented themselves a corporate skybox suite at the local baseball stadium? Or that the same management that paid consultants megabucks to write a mission statement about "extraordinary patient care" and "enriching the lives in the communities we serve" had hired an HR consultant to ruthlessly downsize nursing staff until the hospital was a squalid, understaffed shithole with Third World quality of care on some wards?

Corporate America, for the most part, still views the Internet as "just an extension of preceding mass media, primarily television." Corporate websites are designed on the same model as the old broadcast media: a one-to-many, one-directional communications flow, in which the audience couldn't talk back. But now the audience *can* talk back.

> Imagine for a moment: millions of people sitting in their shuttered homes at night, bathed in that ghostly blue television aura. They're passive, yeah, but more than that: they're isolated from each other.
>
> Now imagine another magic wire strung from house to house, hooking all these poor bastards up. They're still watching the same old crap. Then, during the touching love scene, some joker lobs an off-color aside — and everybody hears it. Whoa! What was that? People are rolling on the floor laughing. And it begins to happen so often, it gets abbreviated: ROTFL. The audience is suddenly connected to itself.
>
> What was once The Show, the hypnotic focus and tee-vee advertising carrier wave, becomes in the context of the Internet a sort of reverse new-media McGuffin — an excuse to get together rather than an excuse not to. Think of Joel and the 'bots on Mystery Science Theater 3000. The point is not to watch the film, but to outdo each other making fun of it.
>
> And for such radically realigned purposes, some bloated corporate Web site can serve as a target every bit as well as Godzilla, King of the Monsters....
>
> So here's a little story problem for ya, class. If the Internet has 50 million people on it, and they're not all as dumb as they look, but the corporations trying to make a fast buck off their asses are as dumb as they look, how long before Joe is laughing as hard as everyone else?
>
> The correct answer of course: not long at all. And as soon as he starts laughing, he's not Joe Six-Pack anymore. He's no longer part of some passive couch-potato target demographic. Because the Net connects people to each other, and impassions and empowers through those connections, the media dream of the Web as another acquiescent mass-consumer market is a figment and a fantasy.
>
> The Internet is inherently seditious. It undermines unthinking respect for centralized authority, whether that "authority" is the neatly homogenized voice of broadcast advertising

> or the smarmy rhetoric of the corporate annual report.[77]
>
> There's no denying that a saturation ad campaign that puts your company's name in tens of millions of banner ads will buy you some name recognition. But that recognition counts for little against the tidal wave of word-of-Web. Look at how this already works in today's Web conversation. You want to buy a new camera. You go to the sites of the three camera makers you're considering. You hastily click through the brochureware the vendors paid thousands to have designed, and you finally find a page that actually gives straightforward factual information. Now you go to a Usenet discussion group, or you find an e-mail list on the topic. You read what real customers have to say. You see what questions are being asked and you're impressed with how well other buyers -- strangers from around the world -- have answered them. You learn that the model you're interested in doesn't really work as well in low light as the manufacturer's page says. You make a decision. A year later, some stranger in a discussion group asks how reliable the model you bought is. You answer. You tell the truth.
>
> Compare that to the feeble sputtering of an ad. "SuperDooper Glue -- Holds Anything!" says your ad. "Unless you flick it sideways -- as I found out with the handle of my favorite cup," says a little voice in the market. "BigDisk Hard Drives -- Lifetime Guarantee!" says the ad. "As long as you can prove you oiled it three times a week," says another little voice in the market. What these little voices used to say to a single friend is now accessible to the world. No number of ads will undo the words of the market. How long does it take until the market conversation punctures the exaggerations made in an ad? An hour? A day? The speed of word of mouth is now limited only by how fast people can type. Word of Web will trump word of hype, every time.[78]
>
> ...Marketing has been training its practitioners for decades in the art of impersonating sincerity and warmth. But marketing can no longer keep up appearances. People talk.[79]

Even more important for our purposes, employees talk. It's just as feasible for the corporation's workers to talk directly to its customers, and for workers and customers together to engage in joint mockery of the company.

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 employer's public image may be the one bit of real leverage the worker has over him--and it's a doozy. If they go after that image relentlessly and systematically, they've got the boss by the short hairs. 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 limitless.

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[77] "Chapter One. Internet Apocalypso," in Locke, et al, *Cluetrain Manifesto*.
[78] "Chapter Four. Markets Are Conversations," *The Cluetrain Manifesto*.
[79] Ibid.

[Paul du Gay. *Consumption and Identity at Work* (London: Sage, 1995).

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.[80]

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.

The corporate world is beginning to perceive the danger of open-mouth sabotage, as well. 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.[81]

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. A good example is the SLAPP lawsuit and assorted food libel laws. Even more ominous, at first glance, is the virtual reenactment of the old "criminal syndicalism" legislation of the early 20th century under cover of the "economic terrorism" provisions of USA PATRIOT.

But 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

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[80] Luigi Zingales, "In Search of New Foundations," *The Journal of Finance*, vol. 14, no. 4 (August 2000), pp. 1627-1628.

[81] Jennifer Kock, "Employee Sabotage: Don't Be a Target!"

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."[82] 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 worn out and destroyed in exactly the same way that the most technically advanced army in the world was defeated by a guerrilla force starting out with captured Japanese and French weapons, using bicycles to organize logistical support, and pitting pungi sticks against M-16s.

The last section of Naomi Klein's *No Logo* discusses in depth the vulnerability of large corporations and brand name images to netwar campaigns.[83] She pays special attention to "culture jamming," which involves riffing off of corporate logos and thereby "tapping into the vast resources spent to make [a] logo meaningful."[84] 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."[85]

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.

Consider the public relations battle over Wal-Mart "open availability" policy, discussed in Chapter Eight. 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.

> The Nitro, West Virginia, store announced its "open availability" policy to employees earlier this week, drawing criticism from employees and worker advocates.

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[82] "270-day libel case goes on and on...," 28th June 1996, Daily Telegraph (UK) <http://www.mcspotlight.org/media/thisweek/jul3.html>.
[83] Naomi Klein, *No Logo* (New York: Picador, 2000, 2002), pp. 279-437.
[84] Ibid., p. 281.
[85] Ibid., p. 351.

> 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."[86]

The Wal-Mart Workers' Association acts as an unofficial union, and has repeatedly obtained concessions from store management teams in several publicity campaigns designed to embarrass and pressure the company.[87] 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). This is why we need Organized Labor. They act as a countervailing force to make corporations think seriously about their roles in our society. No other powerful actors do that. But it needs to be done.[88]

Another good 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.[89]

Charles Johnson points to the Coalition of Imolakee Workers as another good 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

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

[87] 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>.

[88] 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>.

[89] http://www.starbucksunion.org/node/1903

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 — about $100 more per worker per year in the case of the Taco Bell agreement — 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.

Since the victory in the McDonald's campaign, the C.I.W. have turned their attention from the Clown to the Crown, and Burger King Inc. has mostly followed the same path as Yum! Brands and McDonald's did. First they ignored them. Then they stonewalled them. Then they tried to make up some excuses, and had a P.R. flack make an ill-considered little funny about how distressed farmworkers should apply for a job at their stores. (If I recall correctly, that same exact joke was recycled from Taco Bell.) Unfortunately, before moving on to the inevitable last step — in which they cave, the C.I.W. wins, the farm workers get a bonus, and the fast food chain gets to issue a press release patting themselves on the back for their humanitarian buying standards — Burger King has decided to make a detour through some dirty anti-labor joint maneuvers with the Florida tomato growers' cartel.

...Burger King and the [Florida Tomato Growers' Exchange] cartel recently teamed up on a joint P.R. campaign intended to convince the eating public that farm workers are actually richer than most minimum-wage workers, and besides which the farm bosses pay for charity houses and scholarships for their poor kids....

Meanwhile, the F.T.G.E. and Burger King have endorsed the cartel's yellow-dog auditing agency, S.A.F.E. Reps from Burger King and the tomato cartel have also teamed up with a Republican state congressman to discredit the C.I.W., by claiming that the set-up looks fishy, denouncing nonviolent protest and consumer boycotts as extortion, and then insinuating that the pass-through system is little more than a channel for graft, and that

C.I.W. is pocketing a skim....

Meanwhile, Reggie Brown, the tomato cartel's professional spokesdick, has invoked the spectre of *federal prosecution*, claiming that the C.I.W.'s voluntary pass-through system somehow violates federal antitrust and racketeering laws.[90]

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. Today we turn a new page in our relationship and begin a new chapter of real progress for Florida farmworkers.[91]

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 (papers, articles, documents, videos, recordings) 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

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[90] 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/>.

[91] 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>. 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/>.

> powerful people in those institutions is under siege, and... the accumulating impact of transparency and the decentralized distribution of information will lead to new forms of (smaller, more flexible, more nimble and more accountable) institutional structure and new types of dynamics by and between customers, colleagues and citizens. I've called the organizing principle that supports this wirearchy .. the "archy" that stems from being wired, interconnected and engaged in the distribution and consumption of information leading to new knowledge, which in turn can and may lead to shifts in power ... less top-down, more interactive, aggregated and focused on truth, trust and accountability.[92]

Chris Dillow, of *Stumbling and Mumbling* blog, argues we're now at the stage where the leadership of large, hierarchical organizations has achieved "negative credibility."

> 1. Gordon Brown says there's little interest in a petition calling for an early election, leading thousands of people to sign the petition they had previously ignored.
>
> 2. When Schillings try to stop Craig Murray making allegations against Alisher Usmanov, hundreds of bloggers and MEP Tom Wise refer to those allegations, giving them far more publicity than they'd have got if Schillings had done nothing.
>
> 3. After the FSA, Chancellor and British Bankers Association say Northern Rock is solvent, despositers rush to withdraw their money from the bank.
>
> These are examples of statements by the ruling class - politicians, lawyers, bosses - being wholly counter-productive, leading to events that would probably not have happened had they stayed quiet.
>
> These might just be examples of counter-suggestion--and our rulers' ignorance of this shows how little they understand of human nature.
>
> But might something else be happening? Could it be that the ruling class now has *negative* credibility? Maybe people are now taking seriously the old *Yes, Minister* joke - that one should never believe anything until it's officially denied.
>
> If so, doesn't this have serious implications? It means not merely that the managerial class has lost one of the weapons it can use to control us, but that the weapon, when used, actually fires upon its user.

Ah, "negative credibility"--what a beautiful expression! Every shift I finish at the hospital where I work, if I've managed to reduce the credibility of management (whether in the eyes of patients or of my coworkers), I feel I've accomplished my mission. My ultimate goal is for the hospital's senior management to feel engulfed by an almost tangible wave of hatred every time they enter the building. I want them to look into a sea of sullen or expressionless faces, afraid to turn their backs on any of them--like an American G.I. in Saigon ca. 1968.

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

We have probably already passed a "singularity," a point of no return, in the use of networked information warfare. It took some time for employers to reach a consensus that the old corporate liberal labor regime no longer served their interests, to take note of the union-busting potential of Taft-Hartley, and to exploit that potential whole-heartedly. But once they began to do so, the implosion of Wagner-style unionism was preordained. Likewise, it will take time for the realization to dawn on workers that things are only getting worse, that there's no hope in traditional unionism, and that in a Cluetrain world they have the power to bring the employer to his knees by their own direct action. But when they do, the outcome is also probably preordained. The twentieth century was the era of the giant organization. By the end of the twenty-first, there probably won't be enough of them left to bury.

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.

As long ago as the 1930s, Douglas McGregor concluded that internal authoritarianism was counter-productive: any "efficiency" gains from greater work discipline were outweighed by costs resulting from passive sabotage.

> The assumptions of Theory Y imply that unless integration [of goals] is achieved *the organization will suffer*. The objectives of the organization are *not* achieved best by the unilateral administration of promotions, because this form of management by direction and control will not create the commitment which would make available the full resources of those affected. The lesser motivation, the lesser resulting degree of self-direction and self-control are costs which, when added up for many instances over time, will more than offset the gains obtained by unilateral decisions for the good of the organization.[93]

The worst part is, management is completely aware of this. As we saw in Chapter Eight, they resort to expedients like Fish! to elicit consummate cooperation and simulate intrinsic motivation without giving workers anything in return, because from their standpoint they cannot afford to provide genuine motivation. It would require devoting greater resources to rewarding worker productivity, which stands in a direct zero-sum relationship to management's goal of feathering its own nest. The real goal of the organization is not increased efficiency or output, but supporting management in the

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[93] Douglas McGregor, *The Human Side of Enterprise* (New York, London, Toronto: McGraw-Hill Book Company, Inc., 1960), p. 52.

lifestyle to which it is entitled by divine right.

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."[94]

The cumulative effect of these kinds of worker resistance, even when practiced only on an uncoordinated individual basis, can be overwhelming. J.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.[95]

We already saw, in Chapter Eight, the ways in which corporate hierarchies have turned to increasing internal authoritarianism in response to the perceived rise in worker disgruntlement and the associated threat of sabotage. There is a wide array of evidence that this perception on management's part is entirely accurate. The stagnant wages, downsizings, and speedups of the past thirty years have been associated with a dramatic increase in sabotage.

> Jeff Zakaryan, president of Global Strategies, an executive coaching firm based in Dana Point, California, says he's seen a dramatic increase in bitterness from people in many types of workplaces over the past decade. He adds: "Sabotage seems to be just one more way for [workers] to kick the big corporation in the shins.[96]

In 1998 there was an estimated $400 billion loss, or 6% of annual corporate revenue, from "employee fraud and abuse" (for some reason, I doubt the kinds of management featherbedding described in Chapter Eight are included in this category). But such sabotage is actually under-reported, because negative publicity compounds the cost of the original sabotage. The news media, in effect, do our open-mouth sabotage for us:

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[94] Ibid., p. 9.
[95] 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.
[96] Jennifer Kock, "Employee Sabotage: Don't Be a Target!"

"Companies fear public scrutiny about what they did to cause an employee to get so angry or feel so desperate."[97] According to Naomi Klein, rates of employee theft have risen dramatically in retail, and management has become much more frankly adversarial in searching the bags and purses of their "associates" at the end of the shift.[98]

The disconnect between management's rhetoric of "empowerment" and the reality of downsizing, speedups and stagnant pay, probably adds fuel to the fire. Workers are not stupid, after all. The Solidarity workers in Poland, and the assorted insurgencies in East Germany (1953), Hungary (1956) and Czechoslovakia (1968) adopted as their first order of business the creation of organs of workers' control in the factories. In other words, they took the Leninists' rhetoric about "workers' power" at face value, and used the regime's own official ideology as a weapon against it. American workers, likewise, are more than willing to use the master's tools to tear down the master's house.

> ...[C]ompanies that continue to assault their workers with degradation, poor wages and mistreatment run the risk of finding themselves the victims of the workplace equivalent of guerrilla warfare. At a time when management gurus like to talk about "empowering" employees by flattening out the organizational chart, introducing total quality management and team workgroups, employees embrace sabotage as a way to accomplish instant empowerment without the hefty consulting fees and nauseating jargon. Certainly there is nothing more empowering than pouring a cup of coffee into the back of a computer, intentionally misfiling an important document or putting a little Krazy Glue into the back of a critical file cabinet. Only the boss might be able to crack the whip, but anyone can pull a plug.[99]

The perception of powerlessness and the resort to destructive behavior are intimately connected. As workers feel increasingly powerless (and Fish!'s mantra that "we can't control what happens to us" doesn't exactly help, does it?), the cumulative cost from petty and sporadic acts of destruction will continue to climb. One study, for example, found a close correlation between "employee deviance" (theft or destruction of property, or deviance from expected quantity or quality of production) and dissatisfaction with the work environment.[100] Another correlated destruction directly to the perceived lack of control. For example one high school student who smashed a locker "recalled passing it for the next three years and each time thinking proudly, 'there's my little destruction to this brand new school.'"[101] This, apparently, was one student who didn't fully internalize all the administration happy talk about "spirit" and "his" school. And I suspect very few

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[97] Ibid.
[98] Naomi Klein, *No Logo*, pp. 268-69.
[99] Daniel S. Levine, *Disgruntled: The Darker Side of the World of Work* (New York: Berkley Boulevard Books, 1998), p. 192.
[100] R. C. Hollinger and J. P. Clark, "Employee Deviance: a Perceived Quality of the Work Experience," *Work and Occupations* Vol. 9 No. 1 (February 1982).
[101] V. L. Allen and D. B. Greenberger, "Destruction and Perceived Control," in A. Baum and J.E. Singer, eds., *Advances in Environmental Psychology* (Hillsdale, N.J.: Earlbaum, 1980).

workers are stupid or brainwashed enough to buy into management's official happy talk about "our workplace," either.

The HR Nazis' reactions to the threat are almost comical--especially their ham-handed attempts at personality profiling to identify potential saboteurs (any worker who can't figure out what answers HR is looking for probably shouldn't be around heavy machinery anyway). One example of the genre refers to "negative attitudes toward authority" and a sense of being "alienated from authority" as self-evidently pathological. This is reminiscent, in an earlier stage of human resource-processing, of the publik skools' attempts to treat such attitudes toward authority as symptoms of an actual disease: "Oppositional Defiance Disorder." The possibility that negative attitudes toward authority might be a reasonable and justified response to objective changes in the environment, it seems, never occurs to these people. In an incredible display of mirror-imaging, the authors identify these feelings with a "sense of entitlement."[102]

For some reason, this sense of entitlement on the part of management reminds me of an old cartoon in the *New Yorker*. A couple of Egyptian overseers with whips casually lean against the shady side of a pyramid, as slaves drag a granite block past them. "Oh, I believe there's plenty of jobs available," one overseer intones. "It's just that nobody wants to work."

Getting back to the issue 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??[103]

Here's a little thought experiment: try imagining Charles M.'s reaction if Fisticuffs had complained that *employers* are "robbing people" when they try to get the most work

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[102] Eric D. Shaw, Jerold M. Post, Keven G. Ruby, "Inside the Mind of the Insider" <http://www.securitymanagement.com/library/000762.html>.
[103] "Proud to be a Replacement Worker," *Libertarian Underground*, March 2, 2004 <http://www.libertarianunderground.com/Forum/index.php/topic,865.0.html>.

they can for an hour's wages. You can also do an experiment in real life: go to any mainstream libertarian discussion forum and complain 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' behavior. The predictable response will be a terse and pissy "if you don't like it, look for another job." Try it for yourself.

I also recall seeing a lot of tsk-tsking from Paul Birch and others of like mind in some discussion forum several months back, about what blackguards union workers were for demanding higher wages when their labor was most needed. Golly, aren't these the same people who defend "price gouging" by the oil companies? It's not very consistent to go from "caveat emptor" and "fooled me twice, shame on me!" in every realm *except* labor relations, to spelling "God" E-M-P-L-O-Y-E-R within the workplace. The hostility is quite odd, assuming the person feeling it is motivated by free market principle rather than a zeal for the aggrieved interests of big business. They seem, in fact, to implicitly assume a model of employer-employee relations based on a cultural holdover from the old master-servant relationship.

Brad Spangler, in the comment thread to a Mises Blog post linking Jeffrey Tucker's article on the Hollywood writers' strike, pointed out this 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".[104]

The culture-bound reactions of the bluenose authoritarians at Mises.Org and Libertarian Underground are, indeed, holdovers from the older cultural atmosphere of master-servant relations. And despite all the libertarian rhetoric of "free contract," (as Paul Graham put it) "[o]ur employer-employee relationship still retains a big chunk of master-servant DNA."[105] This was recognized by no less of a free market libertarian than Herbert Spencer.

> ....So long as the worker remains a wage-earner, the marks of *status* do not wholly disappear. For so many hours daily he makes over his faculties to a master..., and is for the time owned by him.... He is temporarily in the position of a slave, and his overlooker stands in the position of a slave-driver. Further, a remnant of the *régime* of *status* is seen in the fact that he and other workers are placed in ranks, receiving different rates of pay....

David Ellerman pointed out that the modern terms "employer" and "employee" were coined to avoid the awkwardness of the previous terms, which are still used in employment law: master and servant. To avoid the unpleasant fact that human beings are rented, it is necessary to resort to "the usual linguistic sugar-coating involved in saying employees are 'hired,' 'employed,' 'given a job,' or 'invited to join the firm.'"[106]

> This preliminary analysis of the employment relation must include consideration of the language of employment because "words tell a story." We previously noted that a good many people are not even aware that they live in a society based on the renting of human beings. But before we suggest that "The Big Lie" or ideological false consciousness may also exist on this side of the erstwhile Iron Curtain, we should check if people at least know the traditional legal name of the employment relation. Slaves knew they were slaves, but do employees know their legal name? "Employer-employee" is not the traditional name; it is newspeak which has only come into English usage within the last century. Society seems to have "covered up" in the popular consciousness the fact that the traditional name is "master and servant." Without special legal or historical education, one would think "servant" refers only to domestics. But domestic servants are only *domestic* servants, while all employees are servants in the technical legal sense of the word.
>
> The master-servant language was used by the 18th century Blackstone, but in the 19th century it had acquired such negative connotations that it had passed out of common usage. For instance, John Stuart Mill has no standard name for

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[104] Comments under Jeffrey Tucker, "Hollywood's Workers and Peasants," Mises Blog, November 3, 2007. http://blog.mises.org/archives/007391.asp
[105] Paul Graham, "What Business Can Learn from Open-Source," August 2005 <http://www.paulgraham.com/opensource.html>.
[106] Ellerman, op. cit., p. 64.

employee/servants in his classic *Principles of Political Econ*omy (1848) since the oldspeak of "servants" was unacceptable but the newspeak of "employees" had not yet been imported from the French. Mill referred to employees as hired "operatives," "workpeople," "labourers," or even "the employed." Even around the turn of this century, the English version "employee" of the French "employŽ" was not fully accepted. In 1890, *Webster's Unabridged Dictionary* notes:

The English form of this word, viz., employee, though perfectly conformable to analogy, and therefore perfectly legitimate, is not sanctioned by the usage of good writers.

The traditional language of master and servant is still used today in the area of agency law, the law governing the relationships between principal and agent, and any involved third parties. The relevant distinction is between a servant (i.e., an employee) and an independent contractor. A lawyer or plumber in independent practice is an independent contractor while a lawyer or plumber on the staff of a corporation would be a servant or employee. The Chicago economist, Ronald Coase, quoted from a lawbook to describe the "legal relationship normally called that of 'master and servant' or 'employer and employee'" [Coase 1937, 403].

The master must have the right to control the servant's work, either personally or by another servant or agent. It is this right of control or interference, of being entitled to tell the servant when to work (within the hours of service) or when not to work, and what work to do and how to do it (within the terms of such service), which is the dominant characteristic in this relation and marks off the servant from an independent contractor, or from one employed merely to give to his employer the fruits or results of his labor. [Batt 1967, 8; quoted in Coase 1937, 403]

In addition to not being independent (e.g., not paying for one's inputs), the servant is marked off from the independent contractor by the employer's control over the execution of the work.

An agent could be either a servant or an independent contractor. In agency law, the distinction is quite important for the imputation of legal liability when a third part is injured within the scope of the agent's work....

Modern labor legislation uses the newspeak of "employer-employee." The continuing use of the traditional "master-servant" language in agency law is not without controversy. Some writers consider the "master-servant" language to be so archaic that it can be used as technical terminology without any undue negative connotations. Other writers disagree.

Another interesting variation in the literature of vicarious liability relates to the language in which the subject is discussed. Justice Holt spoke of "masters" and "servants," which were current coin in 17th century speech. These terms are *perpetuated today in many judicial decisions, and in the Restatement of Agency. Students should be familiar with them but should not, we think, acquire the habit of using them. Defenders of the Restatement contend that these words, precisely because they are archaic, are neutral tokens of communication. It is clear, however, that the terms are still alive enough to be offensive to laborers and labor representatives.* [Conrad, et.al. 1972, 104]

For our purposes it suffices to highlight the social adjustment mechanism involved in the evolution from "master-servant" to "employer-employee." When the social role of being rented acquired excessive negative connotations, society changed the name rather than change the relationship itself....

The etymology of the word "servant" is of interest. Western history has seen three general types of economic systems: slavery in ancient times, feudalism in the Middle Ages, and capitalism (private and public) in modern times. The worker's role in this evolution can be traced in the evolution of his name. The Latin word for slave "servus" evolved into the French "serf" (and Italian "servo") under feudalism, which in turn became "servant" under capitalism. If the three word version of Economics is "Supply and Demand," the three word version of Labor History is "Servus, Serf, Servant."...

In the course of its career, the word "servant" has denoted workers from the slave to the modern employee as if its own ontogeny had to recapitulate the servus-serf-servant phylogeny. Although servants are never called "slaves" (except as hyperbole), slaves were often called "servants" in premodern times. Even within recent decades, some dictionaries such as the 1959 *Webster's New Collegiate* lists "A slave" as a second definition of "servant." At the same time, lawbooks use "servant" as the technical legal term for the modern employee. Thus the three word version of Labor History could be shortened to one word, "Servant."...

Most people who work, work as employees. Yet they do not know employment is the rental relation applied to persons and they do not know the traditional name of the relationship. The system of social indoctrination has been so successful that the employer-employee relation is not even perceived as something that could be different. "To be employed" has become synonymous with "having a job," to be "unemployed" is to be without work so "employment" has become the same as work. The employment relationship is accepted as part of the furniture of the social universe. We have even described the opposite system without the employment relationship as "universal self-employment" [which is akin to describing the opposite of the slavery system as universal self-ownership]....[107]

[107] Ibid., pp. 66-68. Kenneth Cloke and Joan Goldsmith present a similar historical perspective in *The End of Management and the Rise of Organizational Democracy* (New York: John Wiley & Sons, 2002), pp. 21-30.

Returning to Spencer: he also, by the way, pointed out that the Misoid position--that unions accomplish nothing that would not be accomplished by the market price system raising wages along with productivity--is (as Lionel Hutz put it) "the best kind of true--technically true." Even if the market produces that effect in the long run, "in the long run we are all dead." 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.

> Must we say that though one set of artisans may succeed for a time in getting more pay for the same work, yet this advantage is eventually at the expense of the public (including the mass of wage-earners), and that when all other groups of artisans, following the example, have raised their wages, the result is a mutual cancelling of benefits? Must we say that while ultimately failing in their proposed ends, trade-unions do nothing else than inflict grave mischiefs in trying to achieve them?
>
> This is too sweeping a conclusion. They seem natural to the passing phase of social evolution, and may have beneficial functions under existing conditions. Everywhere aggression begets resistance and counter-aggression; and in our present transitional state, semi-militant and semi-industrial, trespasses have to be kept in check by the fear of retaliatory trespasses.
>
> 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.[108]

And before we put the sainted "employer" on too high a pedestal, let's consider this quote from a vice president of PR at General Motors (in David M. Gordon's *Fat and Mean*):

> ....We are not yet a classless society.... [F]undamentally the mission of [workers']

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[108] Herbert Spencer, *Principles of Sociology* Book VIII Chapter 20. I first read this passage thanks to Roderick Long, in "Herbert Spencer, Labortarian," Austro-Athenian Empire, April 10, 2007 <http://praxeology.net/blog/2007/04/10/herbert-spencer-labortarian/>.

elected representatives is to get the most compensation for the least amount of labor. Our responsibility to our shareholders is to get the most production for the least amount of compensation.[109]

And here, from the same source, is an advertising blurb from a union-busting consulting firm:

> We will show you how to screw your employees (before they screw you)--how to keep them smiling on low pay--how to maneuver them into low-pay jobs they are afraid to walk away from--how to hire and fire so you always make money.[110]

That kind of honesty is quite refreshing, after all the smarmy Fish! Philosophy shit I've been wading through lately.

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."[111]

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 forego legal protections against punitive firing of union organizers, and federal certification of unions, if you'll forego 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 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. And then we'll mop the floor with your ass.

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-union workers--that's the same percentage who actually belong to unions in Canada, where union membership is based on a simple card-check system.[112] So the number of people looking for a way to fight back is about the same as it always was. The avenues of fighting back just seem to have been closed off, from their perspective. We need to show them they're wrong.

Another useful change in strategic direction might be toward the French model of unions, which are at least as much socially-based as workplace-based. Charles Derber

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[109] David M. Gordon, *Fat and Mean: The Corporate Squeeze of Working Americans and the Myth of Management "Downsizing"* (New York: The Free Press, 1996).
[110] Ibid.
[111] Tom Geoghegan, *Which Side Are You On?* (New York: Farrar, Strauss & Giroux, 1991), p. 251.
[112] David M. Gordon, *Fat and Mean*, p. 243.

wrote, ten years ago:

> The real constituency of the new labor movement 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.[113]

Since Derber wrote this, we've seen the developments mentioned above, like the unofficial unionism of Wal-Mart workers and Imolakee farm laborers, aimed more at creating pressure through negative publicity and boycotts than at conventional collective bargaining in the Wagner framework. We've seen the exponential growth of open mouth sabotage on the web, which has still not reached its full flowering. The model of socially-based organizing Derber talked about has already succeeded as well as he could have imagined ten years ago, and it's just getting started.

In addition, a socially-based union movement might take a page from the Owenites' book, offering cheap mutual health insurance not only to job-based union members, but to society-based members in non-union workplaces. It might try organizing production for exchange by unemployed workers, as well as setting up worker cooperatives on the model attempted by the Knights of Labor. During the great CIO organizing strikes of the early 1930s, one of A. L. Muste's great innovations was to ally the industrial unions with local organizations of the unemployed, to involve the latter in support of the strikes and weaken the social base for scabbing. A broad-based union movement, involved in creating social solidarity both in and out of the workplace, a self-organized workers' welfare state including not only job-based union members but non-union workers and the unemployed, would create a social base of support much like what Derber described in France, and undermine the bosses' divide-and-rule strategy.

And if we're considering ways the labor movement might regain some of its strength, how's this for one small step in the right direction: start sending a big box of "How to Fire Your Boss" pamphlets to the headquarters of every union local that's just lost a conventional strike. The pamphlet describes a Wobbly cell in one restaurant that had lost a strike. Once back on the job, the workers agreed on a strategy of "piling the customer's plates high, and figuring the bill on the low side." Within a short time, the boss was asking for terms. Unions that have just got their teeth kicked in playing by the bosses'

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[113] Charlers 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.

rules might well be open to making the bosses fight by their rules for a change.

C. The Growing Importance of Human Capital: Peer Production vs. the Corporate Gatekeepers

There's also another possibility for labor organizing that's pretty much new. In the article quoted at the outset of this chapter, "In Search of New Foundations," Luigi Zingales argues that as the importance of implicit contracts relative to explicit contracts increases, the rationale for shareholder residual claimancy is further weakened. He raises the potential for external parties like suppliers to hold up production; the examples he gives are Fisher Body's opportunism toward GM, and the options held by the actors in an original movie as an effective veto power over any sequels.

In developing this argument, Zingales puts special emphasis on human capital. To put his argument in context, we must examine the prior arguments of three authors, writing in three articles, that he built on: "The Costs and Benefits of Ownership" by Sanford Grossman and Oliver Hart, and "Property Rights and the Nature of the Firm," by Hart and John Moore[114] (Zingales lumps them together under the portmanteau term GHM).

Grossman and Hart argue that the assignment of property rights in the firm affects productivity, because vesting residual claimancy in one party reduces the incentive of the other to invest in the firm. The party with residual claimancy will "use [its] residual rights of control to obtain a larger share of the ex post surplus," which will cause the party without residual claimancy to underinvest. The optimal allocation of property rights, therefore, is for the party whose investment is most crucial to the enterprise to own the firm.[115] The clear implication is that as human capital becomes decisive to the firm, residual claimancy of labor is necessary to secure a proper level of worker "investment" of their human capital in the firm.

Gary Miller's discussion of incentive systems in *Managerial Dilemmas* reinforces this lesson. Proper compensation not only serves as an efficiency wage for reducing turnover in human capital, but elicits hidden knowledge that otherwise might be exploited for information rents. The problem, he points out:

> Since wages for subordinates are costs for the owner of residual profits, profit maximization by the center is an obstacle to the efficient resolution of both the hidden information and hidden action problem. The desire of owners to maximize revenues less payoffs for team

[114] Sanford J. Grossman and Oliver D. Hart. "The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration" *Journal of Political Economy* vol. 94 no. 4 (1986), pp. 691-719; Oliver Hart and John Moore. "Property Rights and the Nature of the Firm" *Journal of Political Economy* vol. 98 no. 6 (1990) pp. 1119-1158.

[115] Grossman and Hart, pp. 716-717.

> members constantly tempts them to choose incentive schemes that encourage strategic misrepresentation and inefficient production methods by subordinates....
>
> The central dilemma in a hierarchy is thus how to constrain the self-interest of those with a stake in the inevitable residual generated by an efficient incentive system.... There will be a set of managerial alternatives available to the owner that will decrease the overall size of the pie, while increasing the owner's share of that pie.[116]
>
> ...A firm will be better off if it can guarantee its subordinates a secure "property right" in a given incentive plan and a right to control certain aspects of their work environment and work pace.... Security in these property rights can give employees reason to make investments of time, energy, and social relationships that produce economic growth.[117]

Unfortunately, the temptation for the owner (whether shareholders or management) to expropriate the net productivity gains and destroy employee trust in the long run is ever-present. For this reason, once again, the only stable solution to this built-in conflict of interest is to vest residual rights in the workforce itself.

Hart and Moore, in turn, argue further that a primary advantage of hierarchy over contracting in the market is that it enables the firm owners to monitor the performance of individual employees and fire them severally, as opposed to the alternative possibility of being able to monitor and "fire" only the entire contracting firm. The unstated assumption here is that the individual workers actually engaged in production have no ownership stake in either the contracted firm or in the internal organization of the integrated firm, and therefore have no direct market incentive to maximize performance as a result of their own ownership stake in the firm or their share in its market returns. It follows that the only way to maximize their performance is through altering the degree of supervision and the administrative rewards and penalties.[118]

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[116] Gary J. Miller, *Managerial Dilemmas: The Political Economy of Hierarchy* (New York: Cambridge University Press, 1992), pp. 154-155.
[117] Ibid., p. 157.
[118] It's interesting, by the way, that the authors sometimes tip their hats in principle to the possibility that moral hazard problems resulting from imperfect knowledge would exist as much in an internal hierarchy as in outside market contracting:

> *...[G]iven that it is difficult to write a complete contract between a buyer and seller and this creates room for opportunistic behavior, the transactions cost-based arguments for integration do not explain how the scope for such behavior changes when one of the self-interested owners becomes an equally self-interested employee of the other owner.* (Grossman and Hart, p. 692)
>
> *...We... assume that integration in itself does not make any new variable observable to both parties....*
>
> *It may be extremely costly to write a contract that specifies unambiguously the payments and actions of all parties in every observable state of nature. We assume that integration in itself does not change the cost of writing down a particular contractual provision. What it does change is who has control over those provisions not included in the contract.* (Grossman and Hart, p. 695)

But in an economy of producer cooperatives, the choice of contract over hierarchy would be ideal. The incentive to maximize performance would follow directly from the worker-owners' ownership stake in the contracted firm and their share in its returns. Therefore the contracting firm would not *have* to monitor individual performance or fire shirkers. That *burden* could be safely delegated, or outsourced, to the contracted firm; or

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But at other times they dismiss such problems with a hand wave, acting as though the theoretical powers of monitoring and dismissal resulting from firm ownership were automatically translated into reality. Hart and Moore argue that the main benefit of ownership is the ability to exclude others from the use of productive assets. And control over physical assets

can lead indirectly to control over human assets. For example, if a group of workers requires the use of an asset to be productive, then the fact that the owner... has the power to exclude some or all of these workers from the asset later on (i.e., he can fire them selectively) will cause the workers to act partially in [his] interest....

...[B]y working hard or following instructions, an agent may signal... that he is able, that his cost of effort is low, or that he is hardworking, trustworthy, or loyal. (Hart and Moore, pp. 1121-1122).

The problem is that control over the unspecified portion of the contract, and control over access to one's productive physical assets, is relevant only if the owner has a reliable basis for determining whom to exclude. And if monitoring is no more feasible or less costly in a hierarchy than without, then the advantage is theoretical.

Oliver Williamson shifts back and forth in much the same way, at one moment admitting that the same sources of information and agency problems would exist inside the hierarchy as without, while at other times he seems to view hierarchy as a magical solution to such problems.

rather, to the worker-owners of the contracted firm, who would have every incentive to monitor themselves. In a contractual relationship, the contracting firm could simply specify by contract the quality and quantity of output at an agreed-upon price. Internal questions of individual effort or efficiency of input use would not be the contracting firm's problem.

To repeat, hierarchy is only the most efficient solution *given* the agency and incentive problems that necessarily follow from the divorce of labor from ownership. Or to put it in bumper sticker terms, if hierarchy is the answer, it must be a real stupid question.

Zingales, writing with Raghuram Rajan, first built on the work of Grossman, Hart and Moore in a 1998 article: "Power in a Theory of the Firm."[119] They examined the ways in which firms might, by allowing access to their productive resources, encourage investment in human capital by employees. However, they stopped short of arguing for residual claimancy for workers.

It was only in "In Search of New Foundations" (2000) that Zingales developed this line of thought to its logical conclusion. In that article, he argued that as human capital becomes the decisive factor for growth inside the firm, the existing model of shareholder supremacy becomes more and more of an impediment to increasing productivity. Workers' investments in human capital, along with their ability to reduce the value of the firm by withholding it, is a form of equity not represented in the formal ownership mechanism. Labor has the ability to exploit its skills and idiosyncratic knowledge in ways not subject to effective control. Rents from information impactedness and from the ineffectiveness of monitoring systems, and the potential of worker opportunism to impede the production process, mean that representation of human capital as residual claimant is becoming an absolute necessity for the organization to function effectively. To state it even more strongly, the increasing value of human capital relative to physical capital, and the increasing status of human capital as limiting factor because of agency problems, creates a set of problems that can only be solved by vesting residual claimancy *primarily* in the labor force.

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. 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

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[119] Raghuram Rajan and Luigi Zingales. "Power in a Theory of the Firm" *Quarterly Journal of Economics* (May 1998) pp. 387-432.

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.[120]

> 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.[121]

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 name, and capital, and turned over some share of its profits as rent.[122]

David Prychitko remarked on the same phenomenon in the tech industry, as far back as 1991:

> Consider... the recent wave of "break-away" firms in the computer industry. 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.[123]

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[120] Zingales, "In Search of New Foundations," p. 1641.
[121] Ibid., p. 1641.
[122] 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.
[123] David L Prychitko, *Marxism and Workers' Self-Management: The Essential Tension* (New York; London; Westport, Conn.: Greenwood Press, 1991), p. 121n.

The enormously reduced capitalization cost of enterprise, in so many sectors of the economy, also undermines much of the rationale for divorcing ownership and control. For one thing, as the examples of Saatchi and Salomon show, production units in capital-intensive industry need not share a common ownership to function within a firm; therefore "the enterprise need not be commonly owned." Although they don't specifically mention it, this clearly has implications for the networked model of production. And given the far lower levels of investment required to enter the market, "there is no need to have a large number of investors. Thus ownership and operational control in the enterprise can be much more closely associated than in the past."[124]

Rajan's and Zingales' work quoted above predates much of the writing on peer network production by thinkers like Yochai Benkler, so aside from one throwaway line ("even technology") they largely ignore the entertainment and software industries, to which the same principle applies far more forcefully.

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 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") that act as artificial barriers restricting human capital's independent access to the market.

> 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.
>
> Third, the size and the asset specificity of the traditional firm required more investment and more risk taking than were within the capacity of the management. The control conferred by the ownership of crucial assets, however, made outside ownership feasible. Therefore, the traditional firm came to be owned by dispersed investors.
>
> Finally, the concentration of power at the top of the organizational pyramid, together with the separation between ownership and control, made the agency problem between top managers and shareholders the problem....[125]

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[124] Rajan and Zingales, "The Governance of the New Enterprise," p. 219.
[125] Zingales, "In Search of New Foundations," pp. 1641-1642.

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.[126] But, as Zingales observes, the declining importance of physical assets relative to human capital has changed this.

> In the last decade we have witnessed three major changes in the balance of power within firms. First, physical assets, which used to be the major source of rents, have become less unique and are not commanding large rents anymore. Improvements in capital markets, which have made it easier to finance expensive assets, have certainly contributed to this change, as has the drop in communication costs, which reduced the importance of expensive distribution channels, which favors the access to the market of newly formed companies.
>
> Second, increased competition at the worldwide level has increased the demand for process innovation and quality improvement, which can only be generated by talented employees. Thus, the quest for more innovation increases the importance of human capital.[127]

This is even more true today, 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.[128] Clearly, in such an environment, established firms' ownership of copyrights and patents is the main entry barrier for competing firms.

As often as not, "intellectual property" serves as a tollgate to prevent existing technical knowledge from being built and improved on by competing firms in the same industry--as a barrier to progress through the free flow of information--rather than as a spur to progress. In a free market, the normal pattern would be a brief period of entrepreneurial profits from being the first to innovate, with marginal profits falling to zero as competitors adopted the same innovation; after a brief period of entrepreneurial profit, the benefits of increased productivity are quickly transferred to the consumer, and price falls to the newly reduced production cost. But under the kind of corporate

[126] Veblen, *The Theory of Business Enterprise*, in Commons, *Institutional Economics* pp. 663-664.
[127] Zingales, pp. 1641-1642.
[128] Tom Peters. *The Tom Peters Seminar: Crazy Times Call for Crazy Organizations* (New York: Vintage Books, 1994), p. 35.

capitalism which is built on "intellectual property," the typical pattern is rather companies living off the rents of past innovation--"one hit wonders"--and collecting tribute from anyone who wants to further improve on existing proprietary technology. Peters said, "there's a surplus of everything," and success comes only from adding value through quality, service, and innovation.[129] What he failed to add was that success can also come through using the state's "intellectual property" monopoly to *stop* competitors from doing so. "Intellectual property" is as much a barrier to technical progress, as the tolls of assorted German principalities and feudal baronies were a barrier to commerce.

Peters cited former 3M strategic planner George Hegg on the increasing portion of product "value" made up of "intellectual property" (i.e., the amount of final price consisting of tribute to the owners of "intellectual property"): "We are trying to sell more and more intellect and less and less materials." Peters produces a long string of such examples (my comments follow):

> ..."[D]ispersed, ad hoc networks are becoming the new, if ephemeral spine of enterprise based on knowledge--knowledge gathered from whomever, wherever, and instantly packaged to meet customers' fickle demands. Tomorrow's economy will revolve around innovatively assembled brain power, not muscle power.[130]
>
> My new Minolta 9xi is a lumpy object, but I suspect I paid about $10 for its plastic casing, another $50 for the fine-ground optical glass, and the rest, about $640, for its intellect...[131]
>
> It is a soft world. Nike, a "shoe" company, is consigned to *Fortune*'s service 500 list, not the industrial 500 one. Nike contracts for the production of its spiffy footwear in factories around the globe, but it creates the enormous stock value via superb design and, above all, marketing skills. Tom Silverman, founder of upstart Tommy Boy Records, says Nike was the first company to understand that it was in the lifestyle business. How else can you explain the "shoemaker" shelling out a $1 million signing bonus, a guarantee of $375,000 a year for 15 years, and Nike stock options to entice Duke basketball coach Mike Krzyewski to chuck his Adidases and "Just do it." Shoes? Lumps? Forget it! Lifestyle. Image. Speed. Value via intellect and pizazz.[132]
>
> "Microsoft's only factory asset is the human imagination," observed *The New York Times Magazine* writer Fred Moody. In seminars I've used the slide on which those words appear at least a hundred times, yet every time that simple sentence comes into view on the screen I feel the hairs on the back of my neck bristle.[133]
>
> ..."Does anyone here know what it means to 'manage the human imagination?'"[134]

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[129] Ibid., p. 37.
[130] Ibid., p. 10.
[131] Ibid., p. 10.
[132] Ibid., pp. 10-11.
[133] Ibid., p. 11.
[134] Ibid. p. 12.

> A few years back, Philip Morris purchased Kraft for $12.9 billion, a fair price in view of its subsequent performance. When the accountants finished their work, it turned out that Philip Morris had bought $1.3 billion worth of "stuff" (tangible assets) and $11.6 billion of "Other." What's the other, the 116/129?
>
> ....Call it intangibles, good-will (the U.S. accountants' term), brand equity, or the ideas in the heads of thousands of Kraft employees around the world.[135]

Regarding Peters' Minolta example, as Benkler points out the marginal cost of reproducing "its intellect" is virtually zero. So about 90% of the price of that new Minolta comes from tolls to corporate gatekeepers, who have been granted control of that "intellect." In an economy where software and product design were the product of peer networks, unrestricted by the "intellectual property" of old corporate dinosaurs, 90% of the product's price would evaporate overnight. We are working ten times as many hours as necessary to buy the product, in order to pay tribute to the grantees of special privilege. If product design and software were produced on an open source model by peer networks, so that that the main source of product cost were the actual physical inputs, and there were no patent or brand-name markups, we could probably earn enough to pay for our present standard of living in an average workweek of twenty hours. The rest of it is tribute to the owners of the human imagination.

The same goes for Nike's sneakers. I suspect the amortization cost of the physical capital used to manufacture the shoes in those Asian sweatshops, plus the cost of the sweatshop labor, is less than 10% of the price of the shoes. The wages of the workers could be tripled or quadrupled with negligible impact on the retail price. One of these days the actual producers of Nike sneakers will realize that they can disregard Nike's ownership of the swoosh, and dispense with the lifestyle, image, speed and pizazz along with it, and sell just the "lumps" at one-tenth the price to a virtually unlimited domestic market in their own country--while giving themselves a 300% payraise. Nike's brand name markup, like Minolta's software, means that nine-tenths of the product's price is a toll paid by labor (whether the worker or consumer) to privileged corporate gatekeepers with artificial property rights.

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

[135] Ibid. p. 12.

> subcontractors fervently cooperated and created provisory means for substituting the factory. In a stunningly short time, Toyota subsidiaries had restructured 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. The 'network society' and the 'network firm' has for too long been discussed as if it was ad hoc to capitalism, or, even more absurd, antithetical to the hierarchies and bureaucracy of monopoly capital. Quite to the contrary, it 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.

Of course, I would take issue with Soderberg on the significance of this phenomenon as an end-run around labor. No doubt the cost of rerouting around the blockage caused by the Aisin Seiki fire, and retooling other suppliers to produce the component, was considerable, and involved considerable inconvenience. And it is within the power of workers, simply by walking out for a few days at unannounced intervals at a tiny fraction of the nodes in the network, to force capital to resort constantly to such expensive emergency responses.

Nevertheless, Soderberg himself goes on to describe how 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.*[136]

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 rout around capital. Hence the importance he attaches to software patents and other aspects of the increasingly draconian "intellectual property" regime as ways of suppressing the open-source movement and maintaining control over the conditions of production.[137]

Dave Pollard, writing from the imaginary perspective of 2015, made a similar observation about the vulnerability of corporations that follow the Nike model of hollowing themselves out and outsourcing everything:

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[136] Johan Soderberg, *Hacking Capitalism*, pp. 141-142.
[137] Ibid., pp. 142-142

> Let's step back now from the perspective of the knowledge worker and look at how the business environment for corporations has changed in 2015. In the early 2000s, large corporations that were once hierarchical end-to-end business enterprises began shedding everything that was not deemed ‘core competency’, in some cases to the point where the only things left were business acumen, market knowledge, experience, decision-making ability, brand name, and aggregation skills. This 'hollowing out' allowed multinationals to achieve enormous leverage and margin. It also made them enormously vulnerable and potentially dispensable.
>
> As outsourcing accelerated, some small companies discovered how to exploit this very vulnerability. When, for example, they identified North American manufacturers outsourcing domestic production to third world plants in the interest of 'increasing productivity', they went directly to the third world manufacturers, offered them a bit more, and then went directly to the North American retailers, and offered to charge them less. The expensive outsourcers quickly found themselves unnecessary middlemen. Now in 2015, the result is what Doc Searls and Dave Weinberger, two Internet experts, have called a World of Ends -- which in its business application means a disintermediated world where specialized businesses contract directly with each other to bring the benefits of globalization and the free market to consumers. The large corporations, having shed everything they thought was non 'core competency', learned to their chagrin that in the connected, information economy, the value of their core competency was much less than the inflated value of their stock, and they have lost much of their market share to new federations of small entrepreneurial businesses.[138]

Returning to Peters and his exalted reaction to Moody's Microsoft quip, it's a bit odd to hear the "human imagination" described as a "factory asset" in a country that celebrates the abolition of slavery. It may raise Peters' neck hairs, but it makes my stomach turn. Unfortunately, most of the profitable sectors in the corporate economy (software, entertainment, biotech, pharma) are built on the assumption that the human imagination is subject to corporate ownership. And to answer Peters' question about managing the human imagination, Microsoft's Internet Explorer web browser is getting a run for its money from a browser, Firefox, produced entirely by *self-managed* human imagination, and distributed without a patent. Microsoft is able to manage the "human imagination" working on its products because they are unable to freely build on existing knowledge without the permission of the corporate gatekeepers--unlike the developers of new versions of Linux and Firefox, and countless other open-source products. The human networks writing code for Microsoft are quite similar to the human networks outside in the free software movement. The main difference between them is the corporate boundaries enforced by Microsoft's fake "property" rights.

The *Cluetrain Manifesto* makes a similar observation. Today the networked public knows more about the company's product than its own officers do, getting "far better

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[138] David Pollard, "The Future of Business," *How to Save the World*, January 14, 2004 <http://blogs.salon.com/0002007/2004/01/14.html>.

information and support from one another" than from the company's official representatives. The internal workforce of the corporation, in the age of the "hyperlinked organization," is similarly networked through the intranet; although corporations initially install intranets "top-down to distribute HR policies... that workers are doing their best to ignore, before long people are "talking to each other inside the company--and not just about rules and regulations, boardroom directives, bottom lines." Both the work force and the public are networked and engaged in conversations that corporate management can't control. And "[a] metaphysical construct called 'The Company' is the only thing standing between the two."

> However subliminally at the moment, millions of people now online perceive companies as little more than quaint legal fictions that are actively impeding these conversations from intersecting.[139]

> To the outside, the company begins to look like a set of hyperlinked clusters who select themselves based on trust and respect and even their sense of fun. The trust is built through the quality of voice of the participants: that is all that counts in a hyperlinked team.

> The business now consists of a shifting set of hyperlinked groups, self-organizing, inviting in participants based on the quality of their voice, regardless of where -- and whether -- they are on the org chart. Management is simply an impediment to these groups. In fact, rather than employees feeling that they must constantly justify themselves to management, management now needs to give workers a single reason why it should be involved in the life of the business it used to believe it ran.[140]

Of Philip Morris' purchase price for Kraft, Peters mentions that ten percent was the value of the actual production assets, and ninety percent was "other." Most of that "other" was the capitalized value of privilege.

The difference between Benkler and Peters is that, while Peters perceives the decisive shift from physical to human capital just as clearly as Benkler, Peters envisions the shift as occurring in the context of a corporate economy in which a handful of firms continue to *own* the "human imagination" and "intellect," no doubt with the help of the Digital Millennium Copyright Act and the WTO's enforcement of the Uruguay Round's IP accords. And while Peters perceives the importance of "assembled brainpower" and "ad hoc networks" just as clearly as Benkler, he envisions corporate ownership of "intellectual property" as the basis for their control over these human networks. The worst nightmare of Peters' corporate paymasters is that, in an economy where imagination is the main source of value, the people who actually possess the "imagination" might figure out they no longer need the company's permission, and realize its "intellectual property" is unenforceable in an age of encryption and bittorrent. For example, Peters gives the example of Oticon, which got rid of "the entire formal organization" and abolished departments, secretaries, and formal management titles. Employees put their personal

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139 "95 Theses, " in Locke, et al, *The Cluetrain Manifesto.*
140 "Chapter Five. The Hyperlinked Organization," *The Cluetrain Manifesto*.

belongings in "caddies, or personal carts, moving them to appropriate spots in the completely open space as their work with various colleagues requires."[141] The danger for the corporate gatekeepers, in sectors where outlays for physical capital cease to present significant entry barriers, is that one of these days knowledge workers may push their "personal carts" out of the organization altogether, and decide they can do everything just as well without the company. "Intellectual property" is the only thing stopping them, and by the very nature of digital technology, it's becoming increasingly unenforceable--no matter how much draconian copyright legislation is passed.

The same is true of Zingales' emphasis, albeit in a much less egregious way. His primary focus is on finding ways to effectively utilize human capital *within* the firm, to overcome agency problems by giving effective property rights in the firm to human capital. The problem, in the case of employees, is "to create a situation where employees know that their rewards will be greater if they make firm-specific investments."[142] More generally,

> The deintegration of the firm and the growing purpose of human capital are changing the terms of the problem. Power and rents are not concentrated at the top of a steep pyramid; they are sprinkled throughout the organization, even outside the legal boundaries of the firm, as is the case for crucial independent suppliers. Now that power is diffused, the major corporate governance problem becomes how to prevent conflicts among stakeholders from paralyzing or destroying the firm.[143]

This emphasis on the stability of the firm is the chief shortcoming of Zingales' article. At the time he wrote, in 2000, discussion of the possibilities for peer production was confined to far more marginal circles than today. But in the case of forms of production that center almost entirely on human capital and where outlays on physical capital are low, the firm itself (in the conventional sense) is arguably an anachronism that serves no useful purpose. 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.

In industries like manufacturing, which even with general-purpose technologies for decentralized production require comparatively large capital outlays, Zingales' solution--residual claimancy by labor--may be more relevant. In that sector, cooperative ownership by the labor force (supplemented by stakeholder representation), relying mainly either on internal financing or debt as a source of investment capital, may well be the most suitable

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[141] Peters, *The Tom Peters Seminar*, pp. 29-30.
[142] Zingales, pp. 1645-1646.
[143] Ibid., pp. 1647-1648.

model. Even if capital outlays per capita become small enough to be within workers' reach, the aggregate outlay may will be sufficient to require some organizational structure for managing it.

The increasing agency problems of human capital within the corporation, and the resulting change in perceived self-interest of capital as it affects firm ownership, may serve to promote cooperative ownership of capital-intensive industry. For over a century, the principle of shareholder supremacy has reflected the perceived self-interests of large-scale absentee owners of investment capital. But with the increased agency problems entailed in wage labor and absentee ownership, they may well decide that the dangers of expropriation are less when the capitalist is a contractual claimant collecting a fixed payment on debt.

As described in Yochai Benkler in *The Wealth of Networks*, the networked digital world has created an unprecedented state of affairs. In many industries, the initial outlay for entering the market was in the hundreds of thousands of dollars or more. 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."[144] The same was true of print periodicals, with the increasing cost of printing equipment from the mid-nineteenth century on serving as the main entry barrier for organizing the hubs. Between 1835 and 1850, the typical startup cost of a newspaper increased from $500 to $100,000--or from roughly $10,000 to $2.38 million in 2005 dollars.[145]

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. Together, these characteristics have fundamentally altered the capacity of individuals, acting alone or with others, to be active participants in the public sphere as opposed to its passive readers, listeners, or viewers.[146]

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."

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[144] Yochai Benkler, *The Wealth of* Networks, p. 179.
[145] Ibid., p. 188.
[146] Ibid., pp. 212-13.

> 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. Instead, emerging models of information and cultural production, radically decentralized and based on emergent patterns of cooperation and sharing, but also of simple coordinate coexistence, are beginning to take on an ever-larger role in how we produce meaning--information, knowledge, and culture--in the networked information economy.[147]

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. If anything that overstates the cost of entry in many cases, considering how rapidly computer value depreciates and the relatively miniscule cost of buying a five-year-old computer and adding RAM. 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.[148] That is true of the software industry, the music industry (thanks to cheap equipment and software for high quality recording and sound editing), desktop publishing, and to a certain extent even to film (as witnessed by affordable editing technology and the success of *Sky Captain*). Podcasting makes it possible to distribute "radio" and "television" programming, at virtually no cost, to anyone with a broadband connection. A network of amateur contributors have peer-produced an encyclopedia, Wikipedia, which Britannica sees as a rival. 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."[149]

It's also true of news, with ever-expanding networks of amateurs in venues like Indymedia, and natives and American troops reporting news firsthand from places like Iraq, at the very same time the traditional broadcasting networks are shutting down foreign news operations because of the high cost.

> With a digital camera ready-at-hand and an Internet connection close by, the anarchistic mode of news reporting turns any passer-by into a potential journalist for a moment....[150]

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

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[147] Ibid., pp. 32-33.
[148] Ibid., p. 54.
[149] 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>.
[150] Johan Soderberg, *Hacking Capitalism*, p. 126.

others. In addition, information can be reproduced indefinitely at little cost. The work of creating a novel need only be done once, after which the thousandth or millionth reproduction can be made for the labor and material cost of printing, at no further cost to the author. And digitized information can be reproduced at virtually no cost whatever.[151]

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."

> The first thing was that the falling price of computers crossed the line to the point where the average programmer could afford to own a computer capable of producing the code he typically produced. This meant that, for 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 worlds leading economy became 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. By strict Marxist definitions, capitalism ended some time in the early 1990s. I have nowhere seen this fact brought to the attention of the world.
>
> 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. It is creating the basis for a heterogeneous, worldwide, real-time market in which packages of communications capability, and content, will be bought and sold as commodities, and in which small players will likely hold the advantage over big ones. The Internet, the computer, and broadcasting capabilities will just be arbitrary divisions within a wider uniform medium. The cost of a facility for Webcasting is far less than the cost of a facility for television broadcasting; in a few years the quality of the Webcast will be as good, if not better, than that of broadcast television, and the cost of a Webcasting facility for high-quality production will readily be in the range of many individuals. 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.[152]

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[151] Benkler, pp. 35-36.
[152] 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>.

In this environment, the only thing standing between the old information and media dinosaurs and their total collapse is their so-called "intellectual property" rights--at least to the extent they're still enforceable. In any such 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."[153]

The potential for such "worker control of the means of production," in the digital world, has been celebrated by no less of an anarcho-capitalist than Eric Raymond.

> [The Marxists] pick on a guy who has a) successfully challenged the industrial-capitalist system of software production, b) argued, effectively, that the assertion of intellectual-property rights leads to bad outcomes, and c) helped lead the charge to put programming back in the control of programmers. And the ripple effects of my work have gone way beyond programming; it's been cited by insurgent movements in bioinformatics, library science, game design, pharmaceuticals, third-world development economics, and half a dozen other disciplines.
>
> And, you know, it's not like I've made any secret of the fact that I believe open-source thinking has radical political consequences in the longer term. I've said many times that the economic-efficiency arguments for open-source decentralization should sufficient to get people to do it without buying my politics. Then I've turned around and observed that learning how to do without centralization and big management in one area provides people with both working models and efficiency arguments for getting rid of authority hierarchies elsewhere. Yeah, sure, *that's* a conservative prescription!
>
> I've even argued — in front of Wall Street analysts, and had them buy it! — that we're entering an era in which the traditional capital-intensive, management-intensive corporate form is less and less appropriate for managing production in which the main bottleneck is skilled human attention. I don't use the term "workers' cooperative" for what's replacing it, but hello…hello? Can't any of the so-called "progressive" thinkers in the Marxist camp put two and two together?[154]

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

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[153] Ibid., p. 23.
[154] Eric Raymond, "Impotent Radicals," *Armed and Dangerous*, September 8, 2005 <http://esr.ibiblio.org/?p=207>.

basic model is applicable in any industry with low requirements for initial capitalization and low or non-existent 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 union hiring hall, seems like a no-brainer. An AFL-CIO organizer in the San Francisco Bay area has attempted just such a project, as recounted by Daniel Levine.[155]

The chief obstacle to such "break-away firms" (to use Prychitko's term) 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.

One important implication of these phenomena is that the traditional association of capitalization with productivity (especially the predilection of Austrians, as we saw in Chapter One, to view accumulation and "roundaboutness" as the central prerequisites for a high standard of living) has become obsolete. Even the mainstream marginalist tradition, in its Austrian and neoclassical variants, professes to believe that capital is just one factor of production among many; it is therefore a bit odd, as "Jed" notes at Anomalous Presumptions blog, to name the market system for one factor in particular ("capitalism"). And, Jed also argued, technological advances are simultaneously reducing by orders of magnitude the capital outlays needed to set up in many industries, even as human capital replaces physical capital as the critical factor. Given this shift in the relative importance of capital and labor, it makes less sense than ever to treat capital as the primary factor.[156]

D. Austrian Criticism of the Usefulness of Unions

Finally, I want to address the common contention of right-wing libertarians that unions are useless. I've read *Economics in One Lesson*. I'm familiar with the argument that "in a free market" wages are determined by productivity. I'm familiar with Rothbard's argument that unions can't do anything for workers, in a free market, that isn't already accomplished by the operation of the market on an individual basis.

I've also seen, in the real world, real wages that have remained stagnant or even fallen slightly since the 1970s, as labor productivity soared and the real GDP nearly doubled.

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[155] Levine, *Disgruntled*.
[156] Jed, "Capital is Just Another Factor," *Anomalous Presumptions*, March 8, 2007. <http://jed.jive.com/?p=28>

Labor is far more productive than it was thirty years ago; yet virtually the entire increase in GDP in that time has gone to corporate profits, CEO salaries, and exploding land rents. The entire growth of economic output over the past thirty years has gone into mushrooming incomes for the rentier classes, while the majority have kept up their purchasing power by cashing out home equity at Ditech. These facts, seemingly so at odds with Hazlitt's dictum, bring to mind a quote from Mises:

> 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.[157]

When the theory predicts that in a free market wages will be determined by the productivity of labor, and we see that they aren't, what's the obvious conclusion? That this isn't a free market. That we're dealing with power relations, not market relations.

In a state capitalist market, where some component of employer profits are rents extracted from the employee because of state-enforced unequal exchange, organized labor action may provide the bargaining leverage to reduce those ill-gotten gains.

It's also odd that the Rothbardians see so little advantage in contracts, from a worker's perspective. 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.[158]

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

158 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>.

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 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.

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.

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. 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.

More importantly, in acknowledging that enough potential "replacement workers" so honored picket lines as to constitute a "problem," from his perspective, he also gave the lie to arguments by DiLorenzo and his ilk that the success of strikes depends on forcible exclusion of scabs. To see just how ridiculous that assertion is, imagine someone making the analogous claim that "the success of the boycott as a weapon depends entirely on the use of force to exclude customers from the market." 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 regard that kind of moral culture as such a threat.

Conclusion

These remarks by Charles Johnson are probably better than anything I could come up with as a closing summary:

> Disentangling free market economics from the particular market structure of alienated labor reveals some good reasons to think that there are serious *economic* problems with bureaucratic, centralized corporate commerce that rose to dominance in the 19th and 20th centuries under the auspices of “Nationalist” and “Progressive” interventionism. Central planners face the knowledge problems identified by Mises, Hayek, and Rothbard whether those planners are government or corporate bureaucrats. If workers are often deeply unhappy with the regimented, authoritarian structure of corporate workplaces, then there is also reason to believe that many

would happily dump the bosses off their backs in favor of more autonomous forms of work, as those become widespread, successful, and economically reliable. Thus there is reason to think that in a free market less hierarchical, less centralized, more worker-focused forms of production would multiply and bureaucratic big business would wither under the pressure of competition. Since the cooperative, bottom-up model of labor unionism offers one of the best existing models for practically asserting workers' self-interest, and ultimately replacing boss-centric industry with decentralized, worker-centric production, there are good reasons for libertarians to integrate wildcat unionism into their understanding of social power.[159]

Appendix 9A
Sabotage in a London Nightclub: A Case Study

From *Sabotage*, by Farhad Analoui and Andrew Kakabadse.

The authors document, from Analoui's personal observations during an undercover stint as a worker at a large London nightclub, many examples of workers imposing costs or reducing efficiency in response to perceived unfairness by the employer. Worker disgruntlement was expressed actively through wastage of supplies, deliberate destruction, and over-generosity toward the customer (i.e., the "good work strike"); it was also expressed through more passive measures, like withdrawal of enthusiasm and working to rule. As mild as "withdrawal of enthusiasm" may sound, the simple refusal to show initiative or to take timely action based on direct observations in the work process may result in massive losses to the employer. Consider this for example:

> In the early hours of one Saturday morning, the staff discovered that a high voltage electrical transformer had started to smoulder. However, they did not disconnect the appliance from the mains, or inform the managers. It was only when a small, but potentially destructive, fire broke out that one of the group members went to find a manager.
>
> The comments which the staff used to explain away their behaviour on this occasion were typical of those which would follow a case of inaction. For example, Ali said, 'I couldn't give a damn, let the bloody place burn down. It's nothing to do with me.' Sandra's reaction was: 'Oh to hell with it. I'm not going to go running to tell them every time something goes wrong, every time I see a little fire. It's their problem. If the place is really going to burn down, they'll find out soon enough and they can sort it out.'[160]

Compare this to David Noble's account above, in the case of automated machine

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[159] Johnson, "Liberty, Equality, Solidarity,"
[160] Analoui and Kabadse, pp. 84-85.

tools, of the costs imposed by workers through the deliberate lack of initiative.

A disgruntled worker, through deliberate wastage, can cost an employer large sums of money with virtually no chance of getting caught. For example one member of the bar staff, Joe, asked to leave work upon hearing that his wife had checked their son to the hospital. The Catering Manager's response: "If you want to go, go but don't bother coming back if you do. You lot get paid to do a job. I couldn't care less, it's the business I am interested in not your kids. Don't waste my time again." Joe subsequently ruined several hundred pounds worth of spirits by contaminating them with Pernod. "Do you think he's anything like as upset as I was last week?"[161]

Another worker, Chris, described a "nightmare" shift of loud, abusive customers swearing at her. The management's response, predictably: "...you're not being chirpy enough. You've got to smile!" After that manager, the source of the helpful advice, left her station, she dropped a full bottle of Tia Maria in the trash bin.[162]

Even when the overall bargaining power of labor is seemingly too weak to permit significant resistance, it's possible to make one's will felt by timing non-cooperation to coincide with the employer's greatest periods of vulnerability. This has been done time out of mind through sick-outs and other forms of unannounced, one-day wildcats at random intervals. Analoui and Kabadse recount one example at an engineering firm in northeastern England, where union demands for a 9.6% raise were met with a counter-offer of only a 7.6% raise, along with the warning to consider the high rate of unemployment before rejecting it. Not long afterward, the firm received an order for five hundred water pumps, enormously profitable to the firm, but which would require acceptance of overtime to complete by deadline. The shop steward, not surprisingly, announced that the workers weren't in the mood to work the overtime.[163] The employer is enormously vulnerable to the strategic refusal of cooperation when cooperation is most desperately needed.

As we saw earlier this was, predictably, one of the primary objects of outrage at Libertarian Underground--that's right, among the same people who also, predictably, rally to the defense of price gougers.

In another example, the bar at which Analoui worked undercover was selected for a surprise visit by the parent company's directors, with little advance notice. The General Manager, who had recently fired several cleaners, announced to the overworked bar staff (in a lengthy late-night meeting after a long, hellish shift) that they would be expected to come in early the next day to get the place shipshape for the visiting dignitaries. As you might expect, the General Manager wound up being humiliated in front of his own bosses. Typical of worker reactions was that of Ali: "Who's he talking to like that?

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161 Ibid., p. 87.
162 Ibid., p. 88.
163 Ibid., p. 94.

We're not rubbish. Making me late home. He wants the place clean? He can do it himself. He sacked the cleaners, not me."[164]

That last is an especially effective form of "open-mouth sabotage," by the way: exposing the boss's dirt to *his* bosses.

Appendix 9B
Yochai Benkler on Open-Mouth Sabotage: Diebold and Sinclair Media as Case Studies in Media Swarming

On October 9, 2004, the *Los Angeles Times* broke the story of Sinclair Media's plans to air *Stolen Honor*. The official response by the Kerry campaign over the next few days was tepid at best, consisting of a perfunctory FCC complaint that produced no results during the period in question. After MyDD.com, Daily Kos and Talking Points Memo picked up the story on October 9, however, it was a matter of hours before several Sinclair boycott websites had been set up, with links was quickly circulated throughout the Democratic blogosphere. The next day, Daily Kos posted a list of Sinclair sponsors, also widely circulated. 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 reversed its decision to air the documentary.[165]

In January 2003, Bev Harris of blackboxvoting.com discovered Diebold's online archive of over 40,000 files, including specs and code for the voting machines and vote-tallying systems. In February she posted them on her website and invited technical commentary. In July, she published an analysis of the files in Scoop.com, based on discussions on her site, claiming that access to the Diebold open archives could have been used to affect tightly contested races in 2002. The attached Scoop.com editorial included this statement:

> We can now reveal for the first time the location of a complete online copy of the original data set. As we anticipate attempts to prevent the distribution of this information we encourage supporters of democracy to make copies of these files and

[164] Ibid., pp. 96-98.

[165] Benkler, *The Wealth of Networks*, pp. 220-223.

to make them available on websites and file sharing networks: http://users.actrix.co.nz/dolly/. As many of the files are zip password protected you may need some assistance in opening them, we have found that the utility available at the following URL works well: http://www.lostpassword.com. Finally some of the zip files are partially damaged, but these too can be read by using the utility at: http://www.zip-repair.com/. At this stage in this inquiry we do not believe that we have come even remotely close to investigating all aspects of this data; i.e., there is no reason to believe that the security flaws discovered so far are the only ones. Therefore we expect many more discoveries to be made. We want the assistance of the online computing community in this enterprise and we encourage you to file your findings at the forum HERE [providing link to forum].

This declaration of war displayed "a genuinely different mind-set... about how censorship and power are circumvented." Anticipating Diebold's attempt to suppress the information, Scoop.com relied on "widespread distribution of information--about where the files could be found, and about where tools to crack the passwords and repair bad files could be found--matched with a call for action: get these files, copy them, and store them in many places so they cannot be squelched."

Also in July, a group of computer scientists at the Information Security Institute, Johns Hopkins University, released an analysis of Harris' collection of documents, known as the [Aviel] Rubin Report. The ensuing debate among computer scientists had considerable influence on public policy concerning electronic voting machines, including measures requiring some modifications.

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. With the help of the Electronic Frontier Foundation, the students sued Diebold and sought a judicial ruling in their favor. Diebold lost in court (a year later), but in any case found it completely unfeasible to suppress the emails. They remained publicly available at all times.[166]

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[166] Ibid., pp. 227-231.

Appendix 9C
DeCSS as an Example of Media Swarming

Eric Corely, aka Immanuel Goldstein, *2600: The Hacker Quarterly*

Appendix 9D
Open-Mouth Sabotage, Cont.: Alisher Usmanov as a Case Study in Media Swarming

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. Murray also included accusations against Usmanov in his 2006 book *Murder in Samarkland*, which is still available and being made into a film by *Road to Guantanamo* director Michael Winterbottom.

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. The Uzbek, 54, recently swooped to become a major shareholder at Arsenal and is thought to be worth almost £3bn.

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

Murray himself has had no contact with Schillings, and has invited Usmanov to sue him to test his claims in court.[167]

That reference to "[s]everal other political and freedom of speech blogs," by the way, is like saying the ocean is "a bit wet." An article at *Chicken Yogurt* blog provides a list of all the venues that have republished Murray's original allegations, recovered from Google's cache of the site or from the Internet Archive. It is a very, very long list[168]--so

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167 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/>.

168 "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-

long, in fact, that *Chicken Yoghurt* helpfully provides the html code with URLs already embedded in the text, so it can be easily cut and pasted into a blog post. In addition, *Chicken Yoghurt* provided the IP addresses of Usmanov's lawyers as a heads-up to all bloggers who might have been visited by those august personages.

Appendix 9E
Open Mouth Sabotage, Cont.: Wikileaks as a Case Study in Media Swarming

Appendix 9F
Stupid White Men as a Case Study in Media Swarming

According to Michael Moore, the first 50,000 copies of his book *Stupid White Men* were printed and ready to ship on September 11, 2001. Following the 9-11 attacks, Harper-Collins, an imprint controlled by Rupert Murdoch and headed by Fox News' Judith Regan, attempted to suppress the book because it was considered inappropriate for the national mood at the time. Moore was told the book wouldn't be published unless he rewrote half of it--particularly the passages insufficiently respectful to that beady-eyed little turd, the utterly worthless George W. Bush. The publishers said it would be "intellectually dishonest" not to admit that Bush, at least since 9-11, had done "a good job."

> ...we're now known as the "9-11 publishers"--we've got a couple of quickie books on the Twin Towers heroes in the works, we're publishing the autobiography of the police chief, and we're doing a photo book of the tragedy. Your book no longer fits with our new image.

Moore, apparently, gave little thought to the possibility of public protest. He did, however, mention his treatment at the hands of Harper-Collins at a public appearance, where he read a couple of chapters from the suppressed book. Unbeknownst to him, a librarian in the audience was sufficiently outraged to email a large number of her fellow librarians, which quickly led in turn to a public pressure campaign against Harper-Collins. The campaign first came to Moore's attention via an angry phone call from someone in near-hysterics at the publisher:

> WHAT DID YOU TELL THE LIBRARIANS?...

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announcement/>.