

*Liberty, Equality, and Private Government*

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LECTURE I.  
WHEN THE MARKET WAS “LEFT”

TWO IMAGES OF MARKET SOCIETY

The ideal of a free market society used to be a cause of the left. By “the left” I refer to egalitarian thinkers and participants in egalitarian social movements, starting with the Levellers in the mid-seventeenth century, continuing through the Enlightenment, the American and French Revolutions, and pre-Marxist radicals of the late eighteenth and early nineteenth centuries. In the United States, the association of market society with egalitarianism lasted through the Civil War.<sup>1</sup> We need to recover an understanding of why this was so, to better grasp the importance of evaluating ideals in their social context, and the problems with current ways of thinking about ideals of equality and freedom.

Consider two of the most famous passages ever written about market society. The first, by Adam Smith, sketches an image of market society as a free society of equals:

When an animal wants to obtain something either of a man or of another animal, it has no other means of persuasion but to gain the favour of those whose service it requires. A . . . spaniel endeavours by a thousand attractions to engage the attention of its master who is at dinner, when it wants to be fed by him. Man sometimes uses the same arts with his brethren, and . . . endeavours by every servile and fawning attention to obtain their good will . . . . But man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only. He will be more likely to prevail if he can interest their self-love in his favour, and shew them that it is for their own advantage to do for him what he requires of them. Whoever offers to another a bargain of any kind, proposes to do this. Give me that which I want, and you shall have this which you want, is the meaning of every such offer. . . . It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love. . . . Nobody but a beggar chuses to depend chiefly upon the benevolence of his fellow-citizens.<sup>2</sup>

The second passage is by Karl Marx. He recasts Smith’s image of the market as a mere portal into relations of domination and subordination:

[The] sphere . . . within whose boundaries the sale and purchase of labour-power goes on, is in fact a very Eden of the innate rights of man. There alone rule Freedom, Equality, Property and Bentham. Freedom, because both buyer and seller of a commodity, say of labour-power, are constrained only by their own free will. They contract as free agents, and the agreement they come to, is but the form in which they give legal expression to their common will. Equality, because each enters into relation with the other, as with a simple owner of commodities, and they exchange equivalent for equivalent. Property, because each disposes only of what is his own. And Bentham, because each looks only to himself. . . .

On leaving this sphere of simple circulation or of exchange of commodities, which furnishes the “Free-trader *Vulgaris*” with his views and ideas, and with the standard by which he judges a society based on capital and wages, we think we can perceive a change in the physiognomy of our *dramatis personae*. He, who before was the money-owner, now strides in front as capitalist; the possessor of labour-power follows as his labourer. The one with an air of importance, smirking, intent on business; the other, timid and holding back, like one who is bringing his own hide to market and has nothing to expect but—a hiding.<sup>3</sup>

These two passages encapsulate a dramatic change in the egalitarian assessment of market society that took place between the eighteenth and nineteenth centuries. By “egalitarian” I refer to an ideal of social relations. To be an egalitarian is to commend and promote a society in which its members interact as equals. This vague idea gets its shape by contrast with social hierarchy, the object of egalitarian critique. Consider three types or dimensions of social hierarchy: of authority, esteem, and standing. In a hierarchy of authority, occupants of higher rank get to order subordinates around. They exercise arbitrary and unaccountable power over their inferiors. In a hierarchy of esteem, occupants of higher rank despise those of inferior rank and extract tokens of deferential honor from them, such as bowing, scraping, and other rituals of self-abasement that inferiors display in recognition of the other’s superiority. In a hierarchy of standing, the interests of those of higher rank *count* in the eyes of others, whereas the interests of inferiors do not: others are free to neglect them, and, in extreme cases, to trample upon them with impunity. Usually, these three hierarchies are joined.

Smith depicts market relations as egalitarian: the parties to exchange interact on terms of equal authority, esteem, and standing. He implies such egalitarian content by contrasting market exchange with begging, a kind of gift exchange in which the subordinate party offers tokens of asymmetrical esteem—"servile and fawning attention"—in return for something he wants. The resort to servile fawning supposes that one's interests have negligible standing in the eyes of the other. The prospective benefactor may turn away a beggar just as a master may shoo away his spaniel from the dinner table. The transaction is humiliating to the beggar, and may involve his submission to the other's authority: servility is how servants behave toward their masters. Behind every gift exchange, ostensibly an altruistic affair, lurks dependency, contempt, and subordination.<sup>4</sup> By contrast, in market exchanges with the butcher, the brewer, and the baker, each party's interests have standing in the eyes of the other. Each party expresses this recognition by appealing to the other's interests as a reason for him to accept the exchange. The buyer is not an inferior, begging for a favor. Equally importantly, the buyer is not a superior who is entitled to simply order the butcher, the brewer, or the baker to hand over the fruits of his labor. Buyers must address themselves to the *other's* interests. *The parties each undertake the exchange with their dignity, their standing, and their personal independence affirmed by the other.* This is a model of social relations between free and equal persons.

Marx depicts this sunny egalitarian story of market exchange as utterly superficial. The market is a "noisy sphere, where everything takes place on the surface."<sup>5</sup> If this is Eden, it is just before the Fall. The action of real importance takes place once the contract is signed and the time comes to execute it. The worker is now dragged out of Eden into the sphere of production. His employer, like God, curses him to toil by the sweat of his brow. Now it is clear where the parties stand in the order of esteem: the capitalist enjoys an "air of importance," his employee is timid and cringing before him. They stand unequally in the order of authority: the capitalist strides in front, with the employee obligated to follow wherever his employer takes him. And they stand unequally in the order of standing: where the capitalist beams, in expectation of profit from the relationship, his worker "has nothing to expect but—a hiding." The performance of the contract embodies a profound asymmetry in whose interests *count*: henceforth, the worker will be required to toil under conditions that pay no regard to his interests, and every regard for the capitalist's profit.

What happened between Smith and Marx to reverse the egalitarian assessment of market society? It is not, as some have supposed, a revaluation of self-interest as a motive for relating to others. Smith *denies* Marx's claim that in market transactions "each looks only to himself." On his account, a successful bargain requires each to consider how they could bring some advantage *to the other*. Without a sympathetic appreciation for what might interest the other in transacting with oneself, and without acknowledging the independent standing of the other as someone whose property rights must be respected, no bargain will be struck.<sup>6</sup> Smith, no less than Marx, reviled selfishness as a basis for relating to others.<sup>7</sup>

What happened, I shall argue, was the Industrial Revolution. Smith wrote at the mere threshold of the Industrial Revolution, well before its implications for relations of production could be fully grasped. Marx wrote in its midst, at a point when workers were bearing its most frightful costs, and enjoying precious few of its benefits. The Industrial Revolution was a cataclysmic event for egalitarians, a fundamental turning point in egalitarian social thought.<sup>8</sup> It shattered their model of how a free society of equals might be built through market society. The history of egalitarianism in the nineteenth century is a history of extraordinary innovation and experimentation with alternative models, some of which rejected market society wholesale, others of which sought various revisions and supplements to it. Most of these experiments—utopian socialism, anarchism, syndicalism, Georgism, communism, democratic state socialism, workplace democracy, to name a few—either failed, were denied a real trial, or never managed to scale up. The most visible successes—notably, social democracy and labor unions—while still with us, are in decline or under stress in our postindustrial, globalized economy.

Intellectually, public discourse is underequipped to cope with these challenges. The Cold War induced a kind of amnesia over what the nineteenth-century struggles were about, presenting a radically reductionist picture of alternatives, especially in the United States. Images of free market society that made sense prior to the Industrial Revolution continue to circulate today as ideals, blind to the gross mismatch between the background social assumptions reigning in the seventeenth and eighteenth centuries, and today's institutional realities. We are told that our choice is between free markets and state control, when most adults live their working lives under a third thing entirely: *private government*.

My aim is to get a clearer view of what this third thing is, what challenges it poses to the ideal of a free society of equals, and how it might be

reformed to enable that ideal to be realized under contemporary conditions. To gain clarity, we need to recover the intellectual context of egalitarian thought before the Industrial Revolution, when the market was "left."

EGALITARIANISM BEFORE THE INDUSTRIAL REVOLUTION:  
MASTERLESS MEN, LEVELLERS, AND LOCKE

The Levellers undertook one of the first egalitarian social movements of the modern world. Arising in the English Civil War and strongly represented in Cromwell's New Model Army, they are best remembered for their calls for constitutional reform, including a nearly universal male franchise, parliamentary representation of districts in proportion to population, abolition of the House of Lords and the Lords' privileges, and religious toleration.<sup>9</sup> Notwithstanding their name, given to them by Cromwell, who feared that democratization threatened a mass redistribution of property, the Levellers were also firm defenders of rights of private property and free trade. Captain John Clarke, in the Putney debates, affirmed that the law of nature establishes a right to property.<sup>10</sup> The Third Agreement of the People, promulgated by John Lilburne, William Walwyn, Thomas Prince, and Richard Overton, denied the state the power to "level mens Estates, destroy Propriety, or make all things Common," to hinder freedom of foreign trade, to exempt anyone from paying their debts, or to enact permanent customs or excise taxes on goods, as these were "extreme burthensome and oppressive to Trade."<sup>11</sup> Lilburne attacked the state-granted monopolies of printing, preaching, and foreign trade as infringing on "the Common right of all the free-men of England" just as much as the recently barred monopolies of soap, salt, leather, and other goods.<sup>12</sup> He included, with full endorsement, the petition of William Sykes and Thomas Johnson against the licensed monopolies of the Eastland merchants, Merchant Adventurers, and other cartels in *Londons Liberty in Chains Discovered*.<sup>13</sup> Walwyn submitted a systematic argument for free trade to Whitehall.<sup>14</sup>

Given the tendencies of market society to generate inequality in income and wealth, what stake did this egalitarian movement see in promoting private property and free trade? To understand this, we must get beyond a narrow interpretation of egalitarianism in terms of current ideas about distributive justice.<sup>15</sup> Egalitarianism, more fundamentally, is about dismantling or taming social hierarchy. The Levellers' support for free trade formed an essential part of a larger program of liberating individuals from interlocking hierarchies of domination and subordination. They saw in free markets some essential institutional components of a

free society of equals, based on their proliferation of opportunities for individuals to lead lives characterized by personal independence from the domination of others.

To see this, we must consider the social order against which the Levellers were rebelling. Early modern England was characterized by pervasive hierarchies of domination and subordination. Nearly all people but the King had superiors, who claimed nearly unaccountable discretionary authority to rule their lives. Lords governed their tenants and retainers, masters governed their servants, bishops their priests, priests their parishioners, captains their sailors, guilds their members, male heads of households their wives, children, and servants.

Government was everywhere, not just in the hands of the organizations we identify today with the modern state. The Anglican Church ran its own system of courts, censorship, and taxation. Church courts regularly excommunicated and fined parishioners for infractions of church regulations, even when that conduct was lawful. The church censored publications it regarded as heretical or blasphemous. It exacted tithes from parishioners, regardless of their religious beliefs.<sup>16</sup> Excommunication had consequences beyond expulsion from the church: by the Test Act, only those receiving Anglican Communion were eligible for public office. Guilds, too, operated their own court system, under which they routinely tried, fined, and jailed members who violated (or who merely refused to offer an oath that they had obeyed) the guild's minute regulations regarding matters such as the prices and quantities of goods for sale, and the location and days on which trading was permitted.<sup>17</sup> Under the common law of coverture, a wife's legal personhood was subsumed under her husband's: she could not own property, make contracts, sue or be sued in her own name. Her husband was legally entitled to all of her wages, to control her movements, and to inflict corporal punishment for disobedience. Divorce was very difficult to obtain.<sup>18</sup> Wives often acquired more leeway than the law recognized: mainly through contestation of their husbands' authority and appeal to custom, and rarely through prenuptial agreements and use of scattered laws and jurisdictions that limited coverture. Nevertheless, to speak of husbands' governing their wives was no mere metaphor.<sup>19</sup> In an era where production was not yet separated from the household, servants—that is, any employees under contract—lived under the government of their employers as subordinate members of an extended patriarchal family.<sup>20</sup> Apprentices were bound to service without pay. Under the common law of master and servant, regular

employees had to work an entire year from sunup to sundown before acquiring entitlement to wages. Masters (employers) were free to withhold any amount of pay, without prorating, if their servants missed even a single day of work, or if they judged any part of their employees' work substandard. They were entitled to all of their servants' wages from moonlighting. Antienticement laws forbade competing employers to offer contracts to servants under contract to a different master.<sup>21</sup> Again, although custom and market conditions often gave servants more leeway than the law prescribed, they could not be considered free by today's standards.

Various ideologies rationalized these hierarchies.<sup>22</sup> One was the great chain of being. All creatures were linked in a great authoritarian chain of being reaching up to God, it was said, with everyone fixed to their particular link or social rank by birth. Everyone had some creature above and some below their place; even the king and pope were accountable to God; even the lowliest humans had dominion over animals. Breaking ranks would break the chain and unleash catastrophic disorder upon the world, detaching everyone from their connection to God.<sup>23</sup> Another was patriarchalism. The king, as father to his country, stood to his subjects as the father to all the members of his extended family—his wife, children, servants, and slaves. Just as the father enjoyed absolute dominion over the subordinate members of his household, and owned all its property, so the king enjoyed absolute authority over all his subjects, and owned all the land of the realm.<sup>24</sup> A third was the doctrine of original sin. Humanity's inherent proclivities toward sin justified comprehensive external constraint. Every sinner—every person—needed someone with authority over them to keep them in line.<sup>25</sup> Original sin rationalized absolute authority over others, and was the traditional justification for slavery.<sup>26</sup>

In sixteenth-century England, economic and religious changes began to set various individuals loose from traditional lines of authority, creating groups of "masterless men"—people who had no particular individual to whom they owed obedience.<sup>27</sup> The least advantaged were those displaced by agricultural developments, including enclosures and draining of the fens. Some went to London, seeking employment as casual laborers. Some became itinerant entertainers, traders, and cobblers. Some hung on in rural areas as cottagers and squatters in heaths, wastes, and forests, keeping a few animals, taking in knitting, and performing day labor. Some became vagabonds and beggars. Many of these individuals lived outside parishes or were otherwise unchurched. The more advantaged among

masterless men were those who attained self-employment in a fixed establishment—yeoman farmers and long-term leaseholders, shopkeepers, artisans, and printers.

The rise of masterless men undermined the argument for authority based on the great chain of being.<sup>28</sup> That argument could explain why people fixed in a subordinate position should obey whoever was already bossing them around. But it could not identify any particular people to boss those unlinked from the chain of authority. Nor were many masterless men much interested in finding masters. They were making their livings on their own.

When Civil War broke out in the mid-seventeenth century, masterless men formed the core of Cromwell's New Model Army, which selected officers by ability rather than birth, and practiced open discussion among the ranks. Many men and officers were Levellers. Although the Levellers are mostly remembered for their constitutional demands to limit the authority of king, lords, and parliament, and to make the state accountable to the people, their egalitarianism challenged other social hierarchies as well: the authority of the Church of England, and priests more generally, over parishioners; of men over women; of guilds and mercantile monopolies over artisans.

The Levellers arose in a time of religious ferment, the seeds of which had been laid in the Reformation. Martin Luther's doctrine of the priesthood of all believers was taken more literally by various Protestant sects than he intended. With the rise of printing and literacy among the people, laypersons began to read and think for themselves in theological matters. If believers enjoyed direct connection to God, unmediated by intervening links in the chain of being, then why grant authority to bishops or even to priests? The central religious conflict of the English Civil War was over church governance: the Puritans wanted to overthrow the Anglican bishops and universalize the Presbyterian system of governance by elders. Far more radically democratic sects arose during this period, such as Baptists, Quakers, Ranters, and Fifth Monarchists, featuring lay preachers. Leading Levellers came from dissenting sects. They demanded religious toleration, the abolition of tithes, church courts, and church censorship. Millennialism—the doctrine of Christ's imminent return to rule earth directly—was common among the sects. Christ's return implied his redemption of human beings from sin, and hence the demise of the doctrine of original sin and its support for authoritarianism. Individuals were thereby restored to their natural (prelapsarian) state of freedom and equality.<sup>29</sup>

Some dissenting sects drew feminist conclusions from their theologies. "The soul knows no difference of sex."<sup>30</sup> Women participated in church governance. Some became popular preachers. Divorce was liberalized, with men and women having equal rights to divorce their spouses. Quaker marriage vows omitted mention of a wife's duty to obey her husband. Margaret Fell, the wife of Quaker founder George Fox, had a prenuptial agreement denying Fox authority over her estate.<sup>31</sup> Leveller John Lilburne insisted that Adam and Eve, and hence all of their progeny "were, by nature all equal and alike in power, dignity, authority, and majesty, none of them having by nature any authority, dominion, or magisterial power one over or above another." Turning the authoritarian doctrine of original sin on its head, he claimed that Adam's sin and that of all other men acting likewise consisted in the arrogant attempt to rule over anyone else without their consent.<sup>32</sup> Since, in the beginning, Adam had no one to rule over but Eve, the feminist implication of Lilburne's view is evident. Women such as Elizabeth Lilburne and Katherine Chidley were active in the Leveller movement. The *Petition of Women*, believed to be written by Chidley, insisted on the equal right of women to petition Parliament, and claimed for women "an interest in Christ equal unto men, as also of a proportionable share in the freedoms of this commonwealth."<sup>33</sup> Fifth Monarchists even advocated women's suffrage.<sup>34</sup>

In the context of patriarchalist justifications of state power, such feminist ideas served also to undermine monarchy. If husbands had no absolute dominion over their wives, then the king's claim to rule his subjects as the male head of household rules over everyone else in the family could not justify absolutism, or indeed much of any authority. If wives could hold title to property independently of their husbands, then the king's patriarchal claim to own all the property in the realm also came to naught.

In this era, support for private property and free trade went hand in hand with challenges to the monopoly of the Anglican Church over religious matters, as well as the king's patriarchalist claims to authority. The Root and Branch Petition of 1640, which called for the abolition of the episcopacy, complained of monopolies, patents, and tariffs, as well as the church's impositions of fines and excommunication for working and opening shop on holy days. Its persecution of dissenters drove clothiers to Holland, to the ruin of England's wool trade and of the poor workers who depended on that trade. The petition also railed against the church's control of the press, which was used to suppress dissenting religious tracts

and to publish works claiming “that the subjects have no property in their estates, but that the king may take from them what he pleaseth.”<sup>35</sup>

The Levellers’ support for private property and free trade should be read in this context. The personal independence of masterless men and women in matters of thought and religion depended on their independence in matters of property and trade. If the king held title to all property, then subjects with land were reduced to mere copyholders, whose customary property rights could be extinguished by laws made without their participation, such as those calling for enclosures and expulsions of residents from fens.<sup>36</sup> If the church could fine dissenters in its own courts for violations of church decrees in restraint of trade, it would destroy their freedom of religion as well as their ways of making a living.

Monopolies were another form of state-licensed private government that threatened the personal independence of small traders and artisans. Whereas free trade promised economic growth, its principal advantage, from the Levellers’ point of view, was its promotion of opportunities for economic independence. Abolition of guild monopolies would end the arbitrary and oppressive government of guilds over small merchants and artisans who did not care to obey the rules laid down by the larger ones.<sup>37</sup> (William Sykes, whose cause was championed by Lilburne, had been imprisoned in Rotterdam by England’s Merchant Adventurers cartel, for refusing to swear an oath that he had obeyed all of their regulations concerning the cloth trade in Holland.<sup>38</sup>) This was not only a violation of rights to liberty. It was a violation of equality: “Patent societies swelling with a luciferian spirit, in desiring to advance into a higher room than their fellows, did by seruptitious Patents incorporate themselves,” despite the fact that “every subject hath equall freedom with them” by the Magna Carta and other laws of England. Monopolies put the people “in a condition of vassalage,” and reduce their hearts to “servility.”<sup>39</sup>

Abolish the monopolies, and free trade would not merely liberate already existing small artisans from arbitrary private government. It would expand opportunities for many others to create their own businesses—to become self-employed, independent, masterless men. Charters of monopoly limited trade to particular towns. Abolish them, and trade, with its attendant opportunities for attaining independence, would spread across the entire country. Eliminate artificial barriers to trade, and “even servants” could risk investing in it, with the chance of gaining enough profit to become independent taxpayers.<sup>40</sup>

The Levellers did not neglect the benefits free trade would bring to those who would never attain self-employment. Abolition of monopolies would also strengthen the bargaining power of sailors, due to the multiplication of ships needed to bear a higher-volume foreign trade, and to increase the purchasing power of "workmen of all sorts," by reducing prices.<sup>41</sup> The higher volume of trade would also employ many who were, under monopoly, unable to find work and thereby reduced to beggary.<sup>42</sup> As we have seen from Smith's observations, in the order of esteem and standing, earning one's living is better than begging. So free trade advances equality for many, even for those who do not enjoy full independence from the will of a master.

Thus, the Levellers rejected the principal arguments for social hierarchy of all kinds—the great chain of being, patriarchalism, original sin. Their critique of arbitrary and unaccountable state power was part and parcel of their critique of other forms of domination—of the church over all English subjects, of men over women, of lords over tenants, of guilds over artisans. The state underwrote these other forms of government by grants of monopoly (the established Church of England being just another kind of monopoly), restraints on free trade, and invasions of the birthrights of English subjects, which they saw as a form of property.<sup>43</sup> The Levellers supported property rights and free trade for the ways they secured and promoted the personal independence of individuals from the domination of others. These institutions promoted the ability of men and women to become masterless, and increased the dignity and bargaining power of those who remained servants, by raising their wages and real incomes and by lifting beggars from destitution to employment.

Locke, too, was an egalitarian who supported extensive rights to private property and contract. Did he link egalitarianism to rights to property and contract in the same ways as the Levellers? Lacking space for a more extensive commentary, I shall merely note some profound affinities between the Levellers and Locke, writing some decades after them. Locke's constitutional principles—popular sovereignty, a nearly universal male franchise, equality under the law, equal representation of districts, supremacy of the House of Commons—are all Leveller principles.<sup>44</sup> Like them, his egalitarian critique of arbitrary and unaccountable state power is deeply tied to his critique of other forms of government. In particular, his feminism (his insistence that wives are entitled to independent rights to property, freedom of contract, divorce, and personal autonomy from

their husbands) is indispensable to his critique of patriarchalist defenses of absolute monarchy.<sup>45</sup> He also insists that property owners are not entitled to take advantage of the poor by conditioning an offer of subsistence on their submission to arbitrary power.<sup>46</sup> As with the Levellers, once we focus on the egalitarian interest in avoiding relations of domination and subjection, it is much easier to see how, in the context of seventeenth-century institutions, market society could be an egalitarian cause.

EGALITARIANISM BEFORE THE  
INDUSTRIAL REVOLUTION: SMITH

We have seen that in the seventeenth century, egalitarians supported private property and free trade because they anticipated that the growth of market society would help dismantle social hierarchies of domination and subordination. State-licensed monopolies were instruments by which the higher ranks oppressively governed the middling and lower ranks. Opposition to economic monopolies was part of a broader agenda of dismantling monopolies across all domains of social life: not just the guilds, but monopolies of church and press, monopolization of the vote by the rich, and monopolization of family power by men. Eliminate monopoly, and far more people would be able to attain personal independence and become masterless men and women. Even those who remained servants would gain esteem and standing through enhanced income and bargaining power with respect to their masters.

Did that vision continue through the eighteenth century? We need only consult the leading eighteenth-century advocate of market society, Adam Smith, to know the answer. Today, Smith is read as advocating market society because it would lead to economic growth and an efficient allocation of resources. These are unquestionably significant themes in his writings. However, he did not think that economic growth and efficiency were the leading virtues of market society. Rather, the transition from feudalism to market society, driven by the rise of commerce and manufactures, led to “order and good government, and with them the liberty and security of individuals . . . who had before lived almost in a continual state of war with their neighbours, and of servile dependency upon their superiors. This . . . is *by far the most important of all their effects*.”<sup>47</sup>

The critical mediating factor leading to these favorable effects was the transition from gift to market exchange as the principal basis by which individuals satisfied their needs. Feudalism was based on “hospitality”: because markets were undeveloped, the landlord could spend his surplus

in no other way than by maintaining a hundred or a thousand men. He is at all times, therefore, surrounded with a multitude of retainers and dependants, who, having no equivalent to give in return for their maintenance, but being fed entirely by his bounty, must obey him. . . . The occupiers of land were in every respect as dependent upon the great proprietor as his retainers. Even such of them as were not in a state of villanage, were tenants at will. . . . A tenant at will . . . is as dependent upon the proprietor as any servant or retainer whatever, and must obey him with as little reserve. . . . The subsistence of both is derived from his bounty, and its continuance depends upon his good pleasure. Upon the authority which the great proprietors necessarily had . . . over their tenants and retainers, was founded the power of the ancient barons. They necessarily became the judges in peace, and the leaders in war, of all who dwelt upon their estates. . . . Not only the highest jurisdictions, both civil and criminal, but the power of levying troops, of coining money, and even that of making bye-laws for the government of their own people, were all rights possessed allodially by the great proprietors of land.<sup>48</sup>

To depend on the good will of another for one's subsistence puts one at the mercy of the other, and under his subjection. Gifts are not free: "hospitality" is given in return for obedience. The result is *private government*: the gift-giver's unaccountable dominion over the recipients of his good will. But private government was *bad* government. Not only did it reduce most people to a state of "servile dependency," but the feudal lords were always at war with one another, leaving the country "a scene of violence, rapine, and disorder."<sup>49</sup>

The rise of commerce and manufacturing had ironically beneficial results:

All for ourselves, and nothing for other people, seems, in every age of the world, to have been the vile maxim of the masters of mankind. As soon, therefore, as they could find a method of consuming the whole value of their rents themselves, they had no disposition to share them with any other persons. For a pair of diamond buckles, perhaps, or for something as frivolous and useless, they exchanged the maintenance, or, what is the same thing, the price of the maintenance of 1000 men for a year, and with it the whole weight and authority which it could give them . . . thus, for the gratification of the most childish,

the meanest, and the most sordid of all vanities they gradually bartered their whole power and authority.<sup>50</sup>

On Smith's account, the rise of commerce and manufacturing led people to leave the lords' estates to become artisans and tradesmen. Although the latter still depended on the great proprietors' expenditures for a living, now any given lord contributed only a small proportion of the subsistence of any of them. Hence no lord was in a position to command any of them: he got only buckles, not authority, from his payment. The substitution of market exchange for gift exchange thereby liberated artisans and tradesmen from "servile dependency." A similar process liberated the farmers. As the lords dismissed their retainers, they did not need to take so much of the harvest for the maintenance of hundreds or thousands. So the lords also dismissed many tenants at will, while raising rents on the remainder. The latter were willing to pay higher rents only in return for long-term leases. By this means, the farmers were also liberated from servility to the lords. Tenants at will, fearful of eviction if they do not obey every whim of their landlord, must bow and scrape before them. Farmers protected by long-term leases need only pay the rent. The market nexus replaces a relation of domination and subjection with an arm's-length exchange on the basis of mutual interest and personal independence. By undermining the authority of the landlords, market society also increased the power of the national government, which brought peace, order, and the rule of law.<sup>51</sup>

So far, Smith's account of the rise of market society is historical. It does not take into account the *expected* effects of setting markets *free*—of removing all monopolizing constraints on trade. Chief among these constraints were primogeniture and entails, which kept nearly all land locked up and undivided in the possession of the firstborn sons of a few great families. Smith condemned these constraints as "founded upon the most absurd of all suppositions, . . . that every successive generation of men have not an equal right to the earth," but that land ownership be restrained by "the fancy of those who died perhaps five hundred years ago."<sup>52</sup> This arrangement was inefficient, because great landowners are more interested in conspicuous consumption than improving the land, which requires laborious attention "to small savings and small gains."<sup>53</sup> The most efficient agricultural producers are the yeoman farmers, small proprietors who work their own land. Neither sharecroppers nor tenants at will nor even leaseholders had a great incentive to invest in land improvements, because their landlord would appropriate part or all of the

gains. Nor was slavery efficient, because slaves have no incentive to work hard.<sup>54</sup> If primogeniture and entail were abolished, great estates would be divided upon the death of the owner, and sold. Land prices would fall because a greater supply of land would reach the market. This would put farms within reach of the most productive—the yeoman farmers. Smith looked to North America as a model of what would happen: even individuals of very modest means could buy their own farms, and yeoman farmers dominated the agricultural sector.<sup>55</sup>

Smith believed that in a fully free market, the commercial and manufacturing sectors would similarly be dominated by small-scale enterprises, run by independent artisans and merchants, with at most a few employees. Large-scale enterprises were a product of state-licensed monopolies, tariffs, and other mercantilist protections. It was only necessary to raise the large concentrations of capital used by joint-stock corporations for four types of “routine” business that required no innovation or entrepreneurial vision: banking, insurance, canals, and water utilities. With or without special state protections, they would tend to fail.<sup>56</sup> In a free market, with barriers to entry eliminated, firms managed by their owners would out-compete the directors of joint-stock corporations because the former, risking their own money, would invest more energy, attention, and skill in their businesses. With many entrants into the open market, rates of profit would fall. When profits are low, few great fortunes can be accumulated, so nearly all capital owners will have to work for a living.<sup>57</sup>

No wonder Smith’s pin factory, his model of an enterprise with an efficient division of labor, employed only ten workers.<sup>58</sup> *The Wealth of Nations* was published in 1776. Smith was writing only at the threshold of the Industrial Revolution. The spinning jenny had been invented in 1764, kept secret until it was patented in 1770, and only beginning to be used in a few factories by 1776. No one could have anticipated the rise of Blake’s “dark, satanic mills” on the basis of such slender evidence. Smith reasonably believed that economies of scale were negligible for the production of most goods.

Thus we see that Smith’s economic vision of a free market society aligns with the Levellers’ vision more than a century earlier. Abolish guilds, monopolies, tariffs, restrictions on land sales, and other state-enforced restrictions on “natural liberty,” and concentrations of great wealth would be dissipated, while labor would enjoy a “liberal reward.”<sup>59</sup> Any remaining inequalities of wealth would hardly matter. In Smith’s day, there were only two things great wealth could buy that were beyond

the reach of those of modest means: dominion over others, and vanities.<sup>60</sup> For the rich, the rise of market society replaced the pursuit of dominion with the pursuit of trifling vanities. This was a huge win from an egalitarian point of view. Eliminate barriers to free markets, and the fortunes of the rich would be quickly dissipated, while opportunities for self-employment would proliferate.<sup>61</sup> This would be another huge advance for equality. It is a deeply humane vision.

EGALITARIANISM BEFORE THE INDUSTRIAL REVOLUTION:  
FROM PAINE TO LINCOLN

Imagine a free market economy in which nearly everyone is either self-employed as a yeoman farmer, artisan, or small merchant, or else as a worker in a small firm with high and rising wages, sufficient to enable enough saving so that one could purchase one's own farm or workshop after a few years. Markets would be perfectly competitive, so no one would enjoy market power over others. Profits would be low and everyone would have to work for a living, so labor would not be despised. Material inequality would be limited to individual differences in personal labor effort and skill, not to inequalities in birth, state-granted privileges, capital ownership, or command over others' labor. Everyone would meet on an equal footing with everyone else. All would enjoy personal independence. No one would be subject to another's domination. Would this not be close to an egalitarian utopia, a truly free society of equals?

Egalitarians thought they saw such a utopia emerging in America. This is hard to imagine today, given that the United States is by far the most unequal among the rich countries of the world. Yet from Smith's day to Lincoln's, America was the leading hope of egalitarians on both sides of the Atlantic.

To be sure, slavery was a monstrous blot on that hope.<sup>62</sup> But in the heady years of the American Revolution and the early American republic, optimism reigned. The Northwest Ordinance of 1787 had prohibited the spread of slavery to the northwestern territories. By 1804, all the Northern states had passed laws to abolish slavery. Many thought that slavery was headed for a natural death as an inefficient form of production, as Smith had argued.

In the age of revolutions, America offered opportunities to free workers, unlike any other country in the world. The great majority of the free population was self-employed, either as a yeoman farmer or an independent artisan or merchant. Journeymen had a good chance of owning their

own enterprise after a few years. In the North, not only slavery, but other forms of unfree labor, such as apprenticeship and indentured service, were in steep decline.<sup>63</sup> The future appeared to promise real personal independence for all.

Thomas Paine was the great advocate of this vision in the revolutionary era, in three countries. Raised as a Quaker and apprenticed as a stay-maker, Paine despised social hierarchy and dedicated his life to political agitation for equality. He was a hero of the American Revolution for writing *Common Sense*, the most popular and influential political pamphlet up to that time. *Common Sense* rallied the colonists not simply around independence, but around the idea that America, as a republic, would show the world how a free society of equals would look. During the French Revolution, he was elected to the National Convention. He was also lionized by American and English labor radicals, who read his writings well into the nineteenth century. The Chartists, active from 1838 to 1848, put him on their reading list.

Paine's economic views were broadly libertarian. Individuals can solve nearly all of their problems on their own, without the state meddling in their affairs.<sup>64</sup> All improvements in productive technology are due to enterprising individuals, who hope that government will just leave them alone.<sup>65</sup> A good government does nothing more than secure individuals in "peace and safety" in the free pursuit of their occupations, enjoying the fruits of their labors, with the lowest possible tax burden.<sup>66</sup> Paine was a lifelong advocate of commerce, free trade, and free markets.<sup>67</sup> He argued against state regulation of wages, claiming that workers should bargain over wages on the free market.<sup>68</sup> Against populist suspicion of finance, Paine was a leading advocate of chartering the Bank of North America, in part to supply credit for artisans, in part as a defense against the state's issuing too much paper money.<sup>69</sup>

Most problems, he argued, are the result of government. Excess printing of paper money (not hoarding, as popular crowds supposed) was the cause of inflation. So he criticized demands for price controls during the Revolutionary War inflation, and argued against price controls at the French National Convention.<sup>70</sup> He called for hard money and fiscal responsibility.<sup>71</sup> In most states—England was his chief example—government is the principal burden on society, waging war, inflating the debt, and imposing burdensome taxes. Government spending is mostly wasteful. Taxation is theft; government is a "system of war and extortion."<sup>72</sup> People living off government pay are social parasites, oppressing the

industrious.<sup>73</sup> Government is also the chief cause of poverty, due to “the greedy hand of government thrusting itself into every corner and crevice of industry, and grasping the spoil of the multitude.”<sup>74</sup> He proposed a plan to eliminate poverty in England by rebating the oppressive taxes the poor were forced to pay. Cut taxes drastically, and the poor will do fine, while the better off will no longer have to pay poor rates to support the welfare system.<sup>75</sup>

Paine’s views on political economy sound as if they could have been ripped out of today’s Republican Party playbook.<sup>76</sup> How, given these positions, could he have been the hero of labor radicals in the United States and England for decades after his death in 1809? He shows enormous faith in free markets and does not display a trace of the anticapitalist class conflict that characterized nineteenth-century politics. The answer is that labor radicals saw access to self-employment as central to avoiding poverty and attaining standing as equals in society. In the late eighteenth and early nineteenth centuries, the most radical workers were not the emerging industrial proletariat, but artisans who operated their own enterprises.<sup>77</sup> As such, they were simultaneously capitalists and workers: they owned their own capital, but also had to work for a living. As operators of small businesses, they favored commerce and open access to markets and credit. America, with nearly universal self-employment either actually realized or a seemingly realistic prospect for free workers, offered proof of concept. Paine was the greatest popularizer of the American experiment.

In an economic context in which the self-employed find their status and opportunities threatened by powerful institutions, it does not make sense to pit workers against capitalists. Popular politics instead pits the common working people against elites—that is, whoever controls the more powerful institutions. It may also pit the common working people against idlers—those who, like aristocrats, do not have to work for a living, but live off the labor of others. The Levellers saw the state as underwriting all kinds of oppressive private governments—of landlords, the established church, guilds, patriarchy. In Paine, however, the pre-industrial egalitarian vision narrowed to focus on the state. Nearly all states, other than the United States, were corrupt. Corruption exists whenever the state favors elites at the expense of ordinary working people—when it acts “by partialities of favor and oppression.”<sup>78</sup> Paine enumerated several forms of unjust favoritism that oppressed ordinary working people. Idle landlords received special representation in the House of Lords, and a separate set of laws applicable only to them.<sup>79</sup> The state gave charters (monopolies) to

elites, at the expense of the right of all people to engage in trade, and at the cost of economic growth.<sup>80</sup> It taxed working people to lavishly fund the king and his court of idlers.<sup>81</sup> It handed out sinecures to buy the votes of members of Parliament, and provide places for the worthless younger sons of aristocrats who, under primogeniture, would receive no inheritance.<sup>82</sup> The worst corruption by far was the state's waging of bloody and colossally expensive wars to support plunder and imperialism, at the cost of exploding tax burdens and public debt. Because the aristocracy controlled the system of taxation, they exempted themselves from most taxes and placed the burdens of funding these wars on working people, through oppressive sales taxes.<sup>83</sup>

Paine's low-tax, free-trade libertarian agenda made considerable sense for an export-led agricultural economy facing high grain prices, as was true for late eighteenth-century America. "The commerce by which [America] hath enriched herself are the necessaries of life, and will always have a market while eating is the custom of Europe."<sup>84</sup> Free market wages were high in a country suffering from chronic labor shortages, and in which self-employment was a ready option for nearly all.<sup>85</sup> When the bulk of the population is self-employed, pleading for relief from state meddling is quite a different proposition than it would be today. There is not much call for employment regulations if there are few employees, and virtually all have a ready exit into self-employment. When no enterprises are large enough to have market power, there is no need for antitrust regulation. When land is abundant and practically free, land use and pollution regulations are hardly needed because people are spread out and environmental effects (as far as people understood at the time) minimal. When people can appraise the quality of virtually all goods for sale on inspection, and nearly everyone grows what they eat, there is little need for laws regulating the safety of consumer goods. Arcane financial instruments could not bring an economy to its knees in an era in which banking was primitive and much of the economy was not monetized. So there was little need for complex financial regulation. In the absence of any notion of central banking or modern monetary policy, the gold standard was a better policy than one allowing states to issue paper money at will—a practice that led to destructive inflation in Paine's day. Paine's America probably came as close as anywhere in the world to avoiding market failures, as contemporary economists define them.

One issue, however, continued to bother Paine near the end of his life: widespread poverty. In *The Rights of Man*, he argued that poverty in

England could be solved by rebating the taxes the poor paid to support England's king, court, sinecures, military, and colonial system. Roll back this wasteful spending, end the poor rates, and there would still be a surplus that could be rebated to the poor or spent on educating their children, which would prevent their falling into poverty as adults.

Implicit in his thinking was a more systematic appreciation of the causes of poverty. It could not be simply due to a corrupt state oppressing the poor with excessive taxes to fund wasteful spending, or to monopolizing and other forms of state favoritism. People needed access to education to avoid poverty. In "Agrarian Justice," Paine went much further in questioning the adequacy even of the system of nearly universal self-employment that he saw in America. The great defect of such a system is that it makes families depend on labor to avoid poverty. What happens when, due to old age, disability, illness, or death, there is no one in the family able to work? The rich had a stock of capital on which they could live without working. To prevent poverty, everyone would need something comparable. Paine proposed a system of universal social insurance, including old-age pensions, survivor benefits, and disability payments for families whose members could not work. In addition, he proposed a system of universal stakeholder grants for young adults starting out in life, which they could use to obtain further education or tools, so their labor would earn enough to avoid poverty. This was the first realistic comprehensive social insurance proposal in the world, and the first realistic proposal to end poverty.

Paine insisted that this did not represent an abandonment of his principles of private property and free markets. Individualist to the last, Paine justified his social insurance system on strict Lockean property principles. Revenues for social insurance would come from an inheritance tax, which in his day amounted to a land tax. This was just, because landowners, in enclosing a part of the earth that was originally held in common by all, had failed to compensate everyone else for their taking. Even if they had mixed their labor with the land in the original appropriation, this entitled them only to the value their labor added to the land. They could not claim to deserve the value of the raw natural resources, or the value of surrounding uses that enhanced the market price of land. Each member of society was entitled to their per capita share of these values. So, landowners still owed a rent to everyone else. By this reasoning, Paine justified social insurance as a universal right, not a charity.<sup>86</sup>

This emergence of a systematic economic account of poverty, not tied to corrupt special favors dealt out by the state, was to remain

underdeveloped in Painite radical labor ideology. English radicals such as William Cobbett and the Chartists continued to focus on political corruption as the source of the independent worker's oppression. The idea of social insurance as a systematic solution to a problem inherent in a system that let free markets be the sole mechanism for allocating income had to await the rise of socialism before it was taken up again—and then, ironically, by socialism's enemies. Bismarck, the notorious antisocialist who banned the activities of the German Social Democratic Party, implemented the first social insurance program in the world.

Even as the Industrial Revolution was bringing the presocialist era of egalitarian labor radicalism to an end in Europe—Chartism breathed its last gasp in 1848—the dream of a free society of equals built on independent small producers continued in the United States through the Civil War. This was the ideal on which the antebellum Republican Party was founded. Its central principle, antislavery, was based not so much on the moral wrong slavery inflicted on the slaves (although this was acknowledged), as it was on the threat slavery posed to the self-employed worker. The central platform of the antebellum Republican Party was to prohibit the extension of slavery in the territories. The creation of gigantic slave plantations in the territories would absorb land that would otherwise be available for free men to make it on their own as yeoman farmers, and consign them to wage labor for the rest of their lives.<sup>87</sup> President Lincoln articulated the view of his party. He rejected the theory that all workers must either be wage workers or slaves—either hired or bought by capital—and, if hired, “fixed in that condition for life.” This he condemned as the “mud-sill” theory of society—the idea, advanced by proslavery Senator James Hammond of South Carolina, that every society needed an inferior class of people consigned to drudgery, on which to base civilization, just as every soundly built house needs to rest on a mudsill.<sup>88</sup> Lincoln advanced a rival view

that there is not, of necessity, any such thing as the free hired laborer being fixed to that condition for life. . . . Many independent men in this assembly doubtless a few years ago were hired laborers. And their case is almost, if not quite, the general rule. The prudent, penniless beginner in the world labors for wages awhile, saves a surplus with which to buy tools or land for himself, then labors on his own account another while, and at length hires another new beginner to help him. This, say its advocates, is free labor—the just, and generous,

and prosperous system, which opens the way for all, gives hope to all, and energy, and progress, and improvement of condition to all.<sup>89</sup>

This progress of free labor to full self-employment is what the “society of equals” was all about.<sup>90</sup>

Was the Republican promise truly “for all”? The Homestead Act of 1862 was an attempt to fulfill that promise. However, to masses of wage laborers in the big Northern cities, this was already an unrealistic dream that did not speak to their needs as workers. It was even more unrealistic for free blacks, Chinese indentured servants, Mexican-American peons, and American Indians, who occupied “halfway houses of semifree labor.”<sup>91</sup> The Thirteenth Amendment, which abolished slavery, attempted to advance that promise for nonwhites. Under it, peonage and other forms of involuntary servitude were prohibited—although litigation against various forms of peonage continued well into the 1940s, long after the dream of universal self-employment was dashed forever. More revealing for our purposes is the fact that the Thirteenth Amendment was the basis for the Civil Rights Act of 1866, which banned racial discrimination in the sale and rental of property. That a law banning slavery supported a right to buy land made sense only given a background ideology that identified free labor with self-employment, which required that the worker could buy or rent his capital. Yet that promise was left unfulfilled by the failure of the radical Republican’s vision of Reconstruction, which would have divided the former slave plantations among the freed people.

Even had the radical Republican program of Reconstruction been enacted, its ideal of free labor was doomed. What began as a hopeful, inspiring egalitarian ideal in the United States self-destructed in three ways.

First, the ideal of universal self-employment never managed to incorporate the unpaid domestic labor essential to family life, which was performed overwhelmingly by women. Congressional debate over the Thirteenth Amendment made it clear that women were excluded from the promise of fully free labor. Notwithstanding the amendment, husbands retained property in their wives’ labor.<sup>92</sup> This was a contradiction inherent in the free labor ideal, as the independence of men depended on their command over their wives’ labor.<sup>93</sup> Hidden in the ostensible universalism and hyperindividualism of the ideal was a presumption of male governance over their wives’—and children’s—labor. The feminist movement, which arose from the abolitionist movement, was to highlight this

contradiction, as women came to demand independent and equal standing in the workplace and at home.

Second, the Civil War, which ended slavery in the name of independent labor, ironically propelled the very forces that put the universalization of that ideal farther out of reach, even for the class of white men. It was a powerful driver of industrialization, and hence of the triumph of large enterprises using the wage labor system over the small proprietor.

Third, the ideal contained an implicit esteem hierarchy that was ultimately to turn its egalitarian aspirations upside down. If the only fully respectable labor is independent, self-employed labor, if the way to attain recognition as an equal is to operate one's own enterprise, then what is one to make of those who remain wage laborers for their whole lives? Lincoln was clear: "If any continue through life in the condition of the hired laborer, it is not the fault of the system, but because of either a dependent nature which prefers it, or improvidence, folly, or singular misfortune."<sup>94</sup> Even in 1861, with the frontier still open, the burgeoning pace of immigration and urban industrialization was outrunning the flow of men out West. Lincoln's disparaging judgment of wage laborers is akin to blaming those left standing in a game of musical chairs, while denying that the structure of the game has anything to do with the outcome. Thus, what began as an egalitarian ideal ended as another basis for esteem hierarchy: to raise the businessman on a higher plane than the wage worker.<sup>95</sup>

#### THE CATAclySM OF THE INDUSTRIAL REVOLUTION

The Industrial Revolution shattered the egalitarian ideal of universal self-government in the realm of production. Economies of scale overwhelmed the economy of small proprietors, replacing them with large enterprises that employed many workers. Opportunities for self-employment shrank dramatically in the course of the nineteenth century, and have continued to shrink to the present day. The Industrial Revolution also altered the nature of work and the relations between owners and workers in manufacturing, widening the gulf between the two.

There was a hierarchy of masters over journeymen and apprentices in the small-scale preindustrial workshop. Apprentices, in particular, without the right to a wage (like many American interns today), were unfree. Yet several factors constrained this hierarchy. Masters worked side by side with journeymen, performing the same labor while teaching apprentices the same skills. The fact that they performed work of the same kind as

their subordinates, in the same workshop, softened the conditions of work. Masters could not make their subordinates labor in a shop whose conditions were so uncomfortable or unsafe that they would be unwilling to work there themselves. Nor could they impose a pace of work more relentless than they would be personally willing to endure. The pace of the typical artisanal workshop was relaxed, and included many breaks. Masters fraternized with their journeymen. Alcohol passed freely between masters and journeymen even during working hours. Finally, in the United States through the early years of the nineteenth century, skilled journeymen enjoyed a reasonable expectation of being able to set up shop for themselves after a few years of wage labor, in the manner Lincoln thought was the norm. With such a short, easy bridge from one rank to the next, it was relatively easy for workers to reconcile the hierarchy that did exist with egalitarian republican values.<sup>96</sup>

The Industrial Revolution dramatically widened the gulf between employers and employees in manufacturing. Employers no longer did the same kind of work as employees, if they worked at all. Mental labor was separated from manual labor, which was radically deskilled. Ranks within the firm multiplied. Leading executives might not even work in the same building. This facilitated a severe degradation of working conditions. Workers were subject to the relentless, grueling discipline of the clock and the machine. Employers, instead of drinking with their workers, preached temperance, industry, punctuality, and discipline. Conditions were harsh, hours long, wages low, and prospects for advancement, regardless of how hard one worked, minimal.

The nineteenth century saw the spread of total institutions across society: the prison, the asylum, the hospital, the orphanage, the poorhouse, the factory. Jeremy Bentham's notorious prison plan, the Panopticon, was his model for these other institutions.<sup>97</sup> Other liberals, such as Joseph Priestley, allied with factory owners and social reformers to promote these new types of hyperdisciplinary institution. Here lay the central contradiction of the new liberal order: "Though these radicals preached independence, freedom, and autonomy in polity and market, they preached order, routine, and subordination in factory, school, poorhouse, and prison."<sup>98</sup>

Preindustrial labor radicals, viewing the vast degradation of autonomy, esteem, and standing entailed by the new productive order in comparison with artisan status, called it *wage slavery*. Liberals called it *free labor*. The difference in perspective lay at the very point Marx highlighted. If one looks only at the conditions of entry into the labor

contract and exit out of it, workers appear to meet their employers on terms of freedom and equality. That was what the liberal view stressed. But if one looks at the actual conditions experienced in the worker's fulfilling the contract, the workers stand in a relation of profound subordination to their employer. That was what the labor radicals stressed.

In this light, let us now return to the contrast between Smith and Marx with which this lecture opened. It is often supposed that their differing assessments of market society were based on fundamentally opposed values. Yet both marveled at the ways market society drove innovation, productive efficiency, and economic growth. And both deplored the deskilling and stupefying effects of an increasingly fine-grained division of labor on workers.<sup>99</sup> They differed rather on what they expected market society to offer to workers. Smith's greatest hope—the hope shared by labor radicals from the Levellers to the Chartists, from Paine to Lincoln—was that freeing up markets would dramatically expand the ranks of the self-employed, who would exercise talent and judgment in governing their own productive activities, independent of micromanaging bosses. No wonder Smith's optimistic representation of market relations focused on the butcher, the brewer, and the baker—all independent proprietors. Free market society could be championed as “left,” as an egalitarian cause, so long as “by far the most important” of its effects was “the liberty . . . of individuals . . . who had before lived almost in a continual state of . . . servile dependency upon their superiors.” With the Industrial Revolution, the pervasiveness of markets in *labor* returned manufacturing workers to an even deeper state of subjection to their superiors than before. Smith, who despised selfishness, disparaged the quest to accumulate vast fortunes, and cited “the disposition to admire, and almost to worship, the rich and the powerful . . . [as] the great and most universal cause of the corruption of our moral sentiments” would not have approved.<sup>100</sup>

Preindustrial egalitarians had no answer for the challenges of the Industrial Revolution. Their model of how to bring about a free society of equals through free markets via near-universal self-employment was shattered. Advocates of *laissez faire*, who blithely applied the earlier arguments for market society to a social context that brought about the very opposite of the effects that were predicted and celebrated by their predecessors, failed to recognize that the older arguments no longer applied. Thus arose a symbiotic relationship between libertarianism and authoritarianism that blights our political discourse to this day. For what we have yet to adequately grasp is the nature of the challenge before us: *private government*.

## NOTES

1. Of course, this usage of the term “left” is anachronistic. But it serves to fix ideas. I hasten to add that some egalitarians of the seventeenth and eighteenth centuries—notably, the Diggers, and Rousseau—rejected market society. My focus in this lecture is on those who embraced it.
2. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, vol. 1, Glasgow Edition of the Works and Correspondence of Adam Smith (Indianapolis: Liberty Fund, 1981), I.ii.2.
3. Karl Marx, *Capital: A Critique of Political Economy*, edited by Frederick Engels, translated by Samuel Moore and Edward Aveling (Chicago: Charles H. Kerr, 1912), 195–96.
4. This is not just cynicism on Smith’s part. He points to a transcultural social fact, that every gift implies a debt that, until reciprocated in kind, subordinates the recipient to the giver. See Marcel Mauss, *The Gift*, translated by I. Cunnison (New York: Norton, 1967); William Miller, *Humiliation* (Ithaca, NY: Cornell University Press, 1993), ch. 1.
5. Marx, *Capital*, 195.
6. Thus, the so-called Adam Smith problem—the purported tension between Smith’s moral theory, founded on sympathy with others, and his economics, supposedly founded on pure egoism, is dissolved.
7. “All for ourselves, and nothing for other people, seems, in every age of the world, to have been the vile maxim of the masters of mankind.” Smith, *Wealth of Nations*, vol. 1, III.iv.10.
8. On this point, I fully agree with Pierre Rosanvallon, *The Society of Equals*, trans. Arthur Goldhammer (Cambridge, MA: Harvard University Press, 2013), 11, 29, 51.
9. For the first statement of the army’s program, see “Agreement of the People,” in *The English Levellers*, edited by Andrew Sharp (New York: Cambridge University Press, 1647), 92–101. “Agitators”—Leveller officers chosen by their men—debated this proposal with Cromwell and Ireton at Putney in 1647. The Putney debates offer some of the most riveting reading in the history of political thought, at a level of intellectual depth and seriousness vastly exceeding contemporary public discourse. See “Putney Debates,” *Puritanism and Liberty, Being the Army Debates (1647–9) from the Clarke Manuscripts with Supplementary Documents*, edited by A. S. P. Woodhouse (Chicago: University of Chicago Press, 1951), 1–124.
10. “Putney Debates, 29 October 1647,” *Puritanism and Liberty*, 75.
11. John Lilburne, William Walwyn, Thomas Prince, and Richard Overton, “An Agreement of the Free People of England, 1 May 1649,” in *The Levellers: Miscellaneous Writings*, edited by James Otteson, vol. 4 of *The Levellers: Overton, Walwyn and Lilburne* (Bristol: Thoemmes Press, 1649) articles XXX, XVIII, XX, XIX.
12. John Lilburne, “Englands Birth-Right Justified,” in *Works of John Lilburne* 62–64, edited by Otteson, vol. 3 of *The Levellers*.
13. John Lilburne, “Londons Liberty in Chains Discovered,” *Works of John Lilburne*, 175–77.
14. William Walwyn, “For a Free Trade,” in *Works of William Walwyn*, vol. 2 of *The Levellers*, edited by Otteson, 399–405.

15. It would be anachronistic to attribute such ideas to any seventeenth-century thinkers because the modern notion of distributive justice was not invented until the end of the eighteenth century. Samuel Fleischacker, *A Short History of Distributive Justice* (Cambridge, MA: Harvard University Press, 2004).
16. See “The Root and Branch Petition (1640),” *Documents Illustrative of English Church History*, edited by Henry Gee and William John Hardy (New York: Macmillan, 1896), 537–45, <http://history.hanover.edu/texts/engref/er97.html>, a contemporary document calling for an end to the church’s powers in these respects.
17. Thomas Leng, “‘His Neighbours Land Mark’: William Sykes and the Campaign for ‘Free Trade’ in Civil War England,” *Historical Research* 86, no. 232 (2013): 230–52.
18. William Blackstone, *Commentaries on the Laws of England*, 1st ed. (Oxford: Clarendon Press, 1765), ch. 15.
19. For some legal complexities in the early modern era, see Karen Pearlston, “Review of *Women, Property, and the Letters of the Law in Early Modern England*,” *Osgoode Hall Law Journal* 44, no. 1 (2006): 219–21; for documentation of women’s contestation of husbands’ authority, along with contemporary cultural recognition of its limits, see Don Herzog, *Household Politics: Conflict in Early Modern England* (New Haven, CT: Yale University Press, 2013).
20. Recall John Locke, *Second Treatise of Government* (Indianapolis: Hackett, 1690) §77: “The first society was between man and wife, which gave beginning to that between parents and children; to which, in time, that between master and servant came to be added . . . and make up but one family, wherein the master or mistress of it had some sort of rule proper to a family.” Locke here includes employees in the family, and represents it as a kind of government, which, in the state of nature, is not patriarchal. I shall return to Locke’s feminism later in this lecture.
21. See Blackstone, *Commentaries*, ch. 14; Karen Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States* (Cambridge: Cambridge University Press, 1991) (documenting the early modern English law of master and servant, and how it continued to govern U.S. employment relations well into the nineteenth century).
22. See Don Herzog, *Happy Slaves* (Chicago: University of Chicago Press, 1989), ch. 1.
23. Arthur O. Lovejoy, *The Great Chain of Being: A Study of the History of an Idea* (Cambridge, MA: Harvard University Press, 1936).
24. Robert Filmer, *Patriarcha: Or the Natural Power of Kings* (London: W. Davis, 1680).
25. Christopher Hill, *The World Turned Upside Down: Radical Ideas during the English Revolution* (New York: Penguin Books, 1991), 155.
26. See Saint Augustine, *City of God*, translated by Marcus Dods (Edinburgh: T. & T. Clark, 1888), XIX.15.
27. Hill, *World Turned Upside Down*, ch. 3, 4.
28. Herzog, *Happy Slaves*, ch. 1.
29. See Hill, *World Turned Upside Down*, esp. ch. 8; Andrew Bradstock, *Radical Religion in Cromwell’s England: A Concise History from the English Civil War*

- to the *End of the Commonwealth* (New York: I.B. Tauris, 2011), esp. ch. 5. Thus arose the endlessly repeated conservative charge that egalitarians believe in the perfectibility of human beings. Absurd as applied to today's believers in an egalitarian distribution of income and wealth, democracy, and other secular egalitarian doctrines, the charge makes sense as applied to historical Christian millennialist egalitarian social movements, which needed to refute the authoritarian doctrine of original sin.
30. Samuel Torshell, *The Womans Glorie: A Treatise, First, Asserting the Due Honour of That Sexe, by Manifesting That Women Are Capable of the Highest Improvements and Instancing Severall Examples of Womens Eminencies . . .*, 2nd ed. (London: Printed for John Bellamy, 1650), 11.
  31. Hill, *World Turned Upside Down*, 310–12.
  32. John Lilburne, "The Free-Man's Freedom Vindicated," *Works of John Lilburne*, 105–6.
  33. Elizabeth Chidley, "Petition of Women, Affecters and Approvers of the Petition of Sept. 11, 1648 (5th May 1649)," *Puritanism and Liberty*, 367.
  34. Hill, *World Turned Upside Down*, 312.
  35. "Root and Branch Petition," articles 10, 12, 24.
  36. Michael Levy, "Freedom, Property and the Levellers: The Case of John Lilburne," *Western Political Quarterly* 36, no. 1 (1983): 116–33, here 120.
  37. See Walwyn, "For a Free Trade," 403–4 (complaining that the burdens of guild government lie "more heavily upon the more moderate Traders" who suffer from the guilds' "many unreasonable Orde Oathes, fines, Censures" and that they spend too much time "in Courts & meetings about others affaires").
  38. Leng, "'His Neighbours Land Mark,'" 233, 236.
  39. Thomas Johnson, *A Plea for Free-Mens Liberties: Or the Monopoly of the Eastland Merchants* (London, 1646) 2, 3, [http://gateway.proquest.com.proxy.lib.umich.edu/openurl?ctx\\_ver=Z39.88-2003&res\\_id=xri:eebo&rft\\_id=xri:eebo:citation:99861268/](http://gateway.proquest.com.proxy.lib.umich.edu/openurl?ctx_ver=Z39.88-2003&res_id=xri:eebo&rft_id=xri:eebo:citation:99861268/).
  40. Walwyn, "For a Free Trade," 403.
  41. *Ibid.*, 402, 401.
  42. Johnson, *Plea*, 4.
  43. "Reason being the fountain of all honest laws, gives to every man propriety and liberty; propriety of interest, freedom of enjoyment and improvement to his own advantage . . . those who have bereft us of our liberty, have made bold with our propriety" (*ibid.*).
  44. Jacqueline Stevens, "The Reasonableness of Locke's Majority: Property Rights, Consent, and Resistance in the Second Treatise," *Political Theory* 24, no. 3 (1996): 423–63.
  45. As Jeremy Waldron decisively demonstrates, in *God, Locke, and Equality: Christian Foundations of John Locke's Political Thought* (Cambridge: Cambridge University Press, 2002), ch. 2.
  46. "As justice gives every man a title to the product of his honest industry . . . so charity gives every man a title to so much out of another's plenty, as will keep him from extreme want, where he has no means to subsist otherwise: and a

man can no more justly make use of another’s necessity to force him to become his vassal, by with-holding that relief God requires him to afford to the wants of his brother, than he that has more strength can seize upon a weaker, master him to his obedience, and with a dagger at his throat, offer his death or slavery.” John Locke, “First Treatise of Government,” *The Works of John Locke in Nine Volumes*, 12th ed. (London: Rivington, 1824), §42.

47. Smith, *Wealth of Nations*, vol. 1, III.4.4 (emphasis added).
48. *Ibid.*, III.4.5–8.
49. *Ibid.*, III.4.9.
50. *Ibid.*, III.4.10.
51. *Ibid.*, III.4.11–15.
52. *Ibid.*, III.2.6.
53. *Ibid.*, III.2.7.
54. *Ibid.*, III.2.8–13.
55. *Ibid.*, III.4.19.
56. Smith, *Wealth of Nations*, vol. 2, V.1.E.32. Joint-stock corporations tend to fail because their governance structure cannot solve the principal–agent problem of holding directors accountable to investors. Surveying the history of joint-stock corporations, Smith finds that directors lack expertise, initiative, and energy because they are risking other people’s money, and allow employees to squander the corporation’s resources (*Ibid.*, V.1.E.18, 27).
57. Smith, *Wealth of Nations*, vol. 1, I.ix.20. It follows that, while a free market economy would be more unequal than primitive society, it would be far more equal than a feudal or mercantilist economy. For further support of the view that Smith’s vision of a free market society has egalitarian tendencies, see Deborah Boucoyannis, “The Equalizing Hand: Why Adam Smith Thought the Market Should Produce Wealth without Steep Inequality,” *Perspectives on Politics* 11, no. 4 (2013): 1051–70.
58. Smith, *Wealth of Nations*, I.1.3.
59. Other Enlightenment figures shared this view: “It is easy to prove that fortunes tend naturally toward equality, and that excessive differences of wealth either cannot exist or must promptly cease, if the civil laws do not establish artificial ways of perpetuating and amassing such fortunes, and if freedom of commerce and industry eliminate the advantage that any prohibitive law or fiscal privilege gives to acquired wealth.” Antoine-Nicholas Condorcet, *Outlines of an Historical View of the Progress of the Human Mind* (G. Langer, 2009), 10th epoch.
60. Medicine was so unreliable that one might be better off not being able to afford a doctor’s services. No one could travel in comfort or speed at any expense. The penny press made news available to all. Theaters offered cheap seats. No wonder Smith disparaged the quest for great wealth as not worth the trouble. See *The Theory of Moral Sentiments*, edited by D. D. Raphael and A. L. Macfie, Glasgow Edition of the Works and Correspondence of Adam Smith (Oxford: Oxford University Press, 1976), I.3.2.1, III.3.31, IV.1.6.8.
61. Smith, *Wealth of Nations*, vol. 1, III.4.16.

62. So was the fact that the hope was predicated on mass, violent expropriation of land from its former possessors. In contrast to slavery, which received substantial attention from many Euro-American egalitarians, Native American claims received little attention.
63. Joyce Appleby, *Capitalism and a New Social Order: The Republican Vision of the 1790s*, Anson G. Phelps Lectureship on Early American History (New York: New York University Press, 1984), 89; Eric Foner, *Tom Paine and Revolutionary America* (New York: Oxford University Press, 1976), 32, 43–44.
64. Thomas Paine, *Rights of Man. Part the Second: Combining Principle and Practice*, 8th ed. (London: J. S. Jordan, 1792), 7–8.
65. *Ibid.*, 59n\*.
66. *Ibid.*, 60.
67. See for example, Paine, *Rights of Man, Part 2*, 82; Thomas Paine, *The Crisis: In Thirteen Numbers. Written during the Late War. By the Author of Common Sense* (Albany, NY: Charles and George Webster, 1792), no. 3, 40.
68. Paine, *Rights of Man, Part 2*, 150.
69. Foner, *Paine and Revolutionary America*, 183–200.
70. See *ibid.*, ch. 5, for an extended discussion of Paine’s thought and activities regarding price controls.
71. *Ibid.*, 190.
72. Paine, *Rights of Man, Part 2*, 16.
73. *Ibid.*, 69.
74. *Ibid.*, 3–4.
75. *Ibid.*, 113–31.
76. The Republican Party, however, has not followed Paine in other respects: his critique of Christianity (Thomas Paine, *The Age of Reason* [Boston: Thomas Hall, 1794]); his feminism (see Eileen Hunt Botting, “Thomas Paine Admidst the Early Feminists,” in *Selected Writings of Thomas Paine*, edited by Ian Shapiro and Jane Calvert [New Haven, CT: Yale University Press, 2014], 630–54); his opposition to the death penalty; his opposition to military spending, war, and imperialism. Most of all, Paine, who experienced poverty for much of his life, had profound sympathy for the poor and never disparaged them as lazy, lacking enterprise, or corrupted by “welfare.” As we shall see, he argued that everyone had a right to sufficient income to avoid poverty.
77. Craig Calhoun, *The Roots of Radicalism: Tradition, the Public Sphere, and Early Nineteenth-Century Social Movements* (Chicago: University of Chicago Press, 2012).
78. Paine, *Rights of Man, Part 2*, 11.
79. *Ibid.*, 63, 100.
80. *Ibid.*, 92–98.
81. *Ibid.*, 67–69.
82. *Ibid.*, 105–6. When Paine complained that people on government pay were parasites, he was not speaking of magistrates, parish officials, or other government workers who perform actual public services for modest pay. He was complaining of the court, and of sinecures. Genuine civil servants, by contrast, are entitled to reasonable pay (*ibid.*, 54, 72, 119).

83. *Ibid.*, 4, 77–80, 87, 100–102, 155. In contrast to the U.S. Republican Party today, Paine opposed regressive consumption taxes and supported taxes on inheritances and bonds.
84. Thomas Paine, *Common Sense* (Edinburgh: Eighteenth Century Collections Online. Gale, 1776), 33.
85. Paine expressed his objection to wage controls, and preference for market wages, in an era when regulations set *maximum* wages.
86. Thomas Paine, “Agrarian Justice,” *The Writings of Thomas Paine, Vol. III (1791–1804)*, edited by Moncure Daniel Conway (New York: Putnam’s Sons, 1894), 322–44.
87. Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War*, with a new introduction (New York: Oxford University Press, 1995) is the indispensable work on this subject.
88. James Henry Hammond, “Speech in the Senate, 35th Congress, Session 1,” *Congressional Globe*, March 4, 1858: 71.
89. Abraham Lincoln, “Annual Address before the Wisconsin State Agricultural Society, at Milwaukee, September 30, 1859,” *Abraham Lincoln, Complete Works*, edited by John Nicolay and John Hay, vol. 1 (New York: Century Co., 1859), 581.
90. “There is no permanent class of hired laborers amongst us. . . . The hired laborer of yesterday, labors on his own account to-day; and will hire others to labor for him to-morrow. Advancement—improvement in condition—is the order of things in a society of equals.” Abraham Lincoln, “Fragment on Free Labor,” *Collected Works of Abraham Lincoln*, vol. 3, edited by Roy Basler (New Brunswick, NJ: Rutgers University Press, 1859), 463.
91. Foner, *Free Soil*, Kindle loc. 332–37.
92. *Ibid.*, 434.
93. *Ibid.*, 377–80.
94. Lincoln, “Address before the Wisconsin State Agricultural Society,” 581–82.
95. Lincoln may have baked it into the ideological infrastructure of his party. A century and a half after his pronouncement, Eric Cantor, then Republican House majority leader, tweeted on Labor Day 2012: “Today, we celebrate those who have taken a risk, worked hard, built a business and earned their own success,” <https://twitter.com/ericcantor/status/242654833218293760>. Cantor appears to be viscerally incapable of recognizing how a day could be dedicated to honoring wage laborers.
96. Sean Wilentz, *Chants Democratic: New York City and the Rise of the American Working Class, 1788–1850* (New York: Oxford University Press, 2004), 508–16.
97. Gertrude Himmelfarb, *The Idea of Poverty: England in the Early Industrial Age* (New York: Knopf, 1984), 78. See, for example, Jeremy Bentham, *Pauper Management Improved: Particularly by Means of an Application of the Panopticon Principle of Construction* (London: R. Baldwin, 1812).
98. Isaac Kramnick, *Republicanism and Bourgeois Radicalism: Political Ideology in Late Eighteenth-Century England and America* (Ithaca, NY: Cornell University Press, 1990), 97.
99. Smith, *Wealth of Nations*, vol. 2, V.1.F.50.
100. Smith, *Theory of Moral Sentiments*, I.3.3.1.

## LECTURE II. PRIVATE GOVERNMENT

### COMMUNIST DICTATORSHIPS IN OUR MIDST

Imagine a government that assigns almost everyone a superior whom they must obey. Although superiors give most inferiors a routine to follow, there is no rule of law. Orders may be arbitrary and can change at any time, without prior notice or opportunity to appeal. Superiors are unaccountable to those they order around. They are neither elected nor removable by their inferiors. Inferiors have no right to complain in court about how they are being treated, except in a few narrowly defined cases. They also have no right to be consulted about the orders they are given.

There are multiple ranks in the society ruled by this government. The content of the orders people receive varies, depending on their rank. Higher-ranked individuals may be granted considerable freedom in deciding how to carry out their orders, and may issue some orders to some inferiors. The most highly ranked individual takes no orders but issues many. The lowest-ranked may have their bodily movements and speech minutely regulated for most of the day.

This government does not recognize a personal or private sphere of autonomy free from sanction. It may prescribe a dress code and forbid certain hairstyles. Everyone lives under surveillance, to ensure that they are complying with orders. Superiors may snoop into inferiors' e-mail and record their phone conversations. Suspicionless searches of their bodies and personal effects may be routine. They can be ordered to submit to medical testing. The government may dictate the language spoken and forbid communication in any other language. It may forbid certain topics of discussion. People can be sanctioned for their consensual sexual activity or for their choice of spouse or life partner. They can be sanctioned for their political activity and required to engage in political activity they do not agree with.

The economic system of the society run by this government is communist. The government owns all the nonlabor means of production in the society it governs. It organizes production by means of central planning. The form of the government is a dictatorship. In some cases, the dictator is appointed by an oligarchy. In other cases, the dictator is self-appointed.

Although the control that this government exercises over its members is pervasive, its sanctioning powers are limited. It cannot execute or

imprison anyone for violating orders. It can demote people to lower ranks. The most common sanction is exile. Individuals are also free to emigrate, although if they do, there is usually no going back. Exile or emigration can have severe collateral consequences. The vast majority have no realistic option but to try to immigrate to another communist dictatorship, although there are many to choose from. A few manage to escape into anarchic hinterlands, or set up their own dictatorships.

This government mostly secures compliance with carrots. Because it controls all the income in the society, it pays more to people who follow orders particularly well and promotes them to higher rank. Because it controls communication, it also has a propaganda apparatus that often persuades many to support the regime. This need not amount to brainwashing. In many cases, people willingly support the regime and comply with its orders because they identify with and profit from it. Others support the regime because, although they are subordinate to some superior, they get to exercise dominion over inferiors. It should not be surprising that support for the regime for these reasons tends to increase, the more highly ranked a person is.

Would people subject to such a government be free? I expect that most people in the United States would think not. Yet most work under just such a government: it is the modern workplace, as it exists for most establishments in the United States. The dictator is the chief executive officer (CEO), superiors are managers, subordinates are workers. The oligarchy that appoints the CEO exists for publicly owned corporations: it is the board of directors. The punishment of exile is being fired. The economic system of the modern workplace is communist, because the government—that is, the establishment—owns all the assets,<sup>1</sup> and the top of the establishment hierarchy designs the production plan, which subordinates execute. There are no internal markets in the modern workplace. Indeed, the boundary of the firm is *defined* as the point at which markets end and authoritarian centralized planning and direction begin.<sup>2</sup>

Most workers in the United States are governed by communist dictatorships in their work lives. Usually, those dictatorships have the legal authority to regulate workers' off-hour lives as well—their political activities, speech, choice of sexual partner, use of recreational drugs, alcohol, smoking, and exercise. Because most employers exercise this off-hours authority irregularly, arbitrarily, and without warning, most workers are unaware of how sweeping it is. Most believe, for example, that their boss

cannot fire them for their off-hours Facebook postings, or for supporting a political candidate their boss opposes. Yet only about half of U.S. workers enjoy even partial protection of their off-duty speech from employer meddling.<sup>3</sup> Far fewer enjoy legal protection of their speech on the job, except in narrowly defined circumstances. Even where they are entitled to legal protection, as in speech promoting union activity, their legal rights are often a virtual dead letter due to lax enforcement: employers determined to keep out unions immediately fire any workers who dare mention them, and the costs of litigation make it impossible for workers to hold them accountable for this.

I expect that this description of communist dictatorships in our midst, pervasively governing our lives, often to a far greater degree of control than the state, would be deeply surprising to most people. Certainly many U.S. CEOs, who think of themselves as libertarian individualists, would be surprised to see themselves depicted as dictators of little communist governments. Why do we not recognize such a pervasive part of our social landscape for what it is? Should we not subject these forms of government to at least as much critical scrutiny as we pay to the democratic state? My project in this lecture is to explain why public discourse and political philosophy largely neglect the pervasiveness of authoritarian governance in our work and off-hours lives and why we should return our attention to it, and to sketch some thoughts as to what we should do about it—for neglect of these issues is relatively recent. They were hot topics of public discourse, academic and legal theorizing, and political agitation from the Industrial Revolution through the New Deal. Now they are the province of members of marginalized academic subfields—labor historians, labor law scholars, and some labor economists—along with a few labor lawyers and labor activists.

Our currently dominant tools for discerning our work lives were manufactured before the Industrial Revolution and originally designed as viewfinders to the future. They were rejected as useless by organized labor movements that arose in recognition of the fundamental irreversible changes in workers' prospects brought about by the Industrial Revolution. They have been redeployed since the grave decline of organized labor movements, but now as blinders on our actual institutional landscape of work. We need different instruments to discern the normatively relevant features of our current institutions of workplace governance. In particular, we need to revive the concept of *private government*.

## PRIVATE GOVERNMENT: THE VERY IDEA

Most modern workplaces are private governments. By this, I do not mean merely that they are in the so-called private sector, and have some internal structure of authority—as specified, for instance, in the rules for corporate governance. I refer rather to a particular sort of constitution of government, under which its subjects are unfree.

The notion of “private government” may seem a contradiction in terms. In the impoverished vocabulary of contemporary public discourse, and to a considerable extent in contemporary political philosophy, “government” is often treated as synonymous with the state, which, by supposed definition, is part of the “public sphere.” The supposed counterpart “private sphere” is the place where, it is imagined, “government” ends, and hence where individual liberty begins. Here is a characteristic expression of this view in U.S. public discourse:

Giving up our very freedom for a system that allow[s] the government to further meddle in our private lives . . . [is] not the answer. . . . Every single thing government does to increase its own power increases the size of *its slice* of the liberty pie . . . Since there are only two slices, every time the government’s slice of the liberty pie grows, the citizens’ slice is *reduced*.<sup>4</sup>

That is according to Ken Cuccinelli, the former attorney general of Virginia. But nothing hangs on him. He is merely expressing a view widely accepted in public discourse, certainly among libertarians, but not only among them. Let us unpack the confusions.

First, government exists wherever some have the authority to issue orders to others, backed by sanctions, in one or more domains of life.<sup>5</sup> The modern *state* is merely one form of government among others, defined by Max Weber as “a compulsory organization” that asserts a monopoly on determining the legitimate use of force over a territory.<sup>6</sup> Popular usage before the nineteenth century is much clearer about the government/state distinction than we are today. Here is John Adams, replying to Abigail’s famous letter asking him to “remember the ladies”:

We have been told that our struggle has loosened the bonds of government every where; that children and apprentices were disobedient; that schools and colleges were grown turbulent; that Indians slighted their guardians, and negroes grew insolent to their masters. But your

letter was the first intimation that another tribe, more numerous and powerful than all the rest, were grown discontented. . . . Depend upon it, we know better than to repeal our masculine systems.<sup>7</sup>

Here Adams frankly acknowledges that government is “every where”—parents (and *governesses*) exercise government over children, masters over apprentices, teachers over students, guardians over Indians, masters over slaves, husbands over wives. We have seen from my previous lecture that this understanding of the scope of government was equally familiar to actors in seventeenth-century England.

Now consider the public/private distinction. If something is legitimately kept private *from* you, that means it is none of your business. This entails at least one of the following: you are not entitled to know about it, your interests have no standing in decisions regarding it, you aren’t entitled to make decisions regarding it or to hold those who do accountable for the effect their decisions have on you. If it is private *to* you, that means it *is* your business, *and* you may exclude others from making it any of theirs. This entails at least one of the following: you are entitled to keep others from knowing about it; you need not consider others’ interests in making decisions regarding it; you are not accountable to others for your decisions regarding it; you are entitled to exclude others from making decisions regarding it.

If something is “public,” that means it is the business of a more or less well-defined group of people (members of “the public”), such that no one is entitled to exclude any member of the group from making it their business. Publicity in the informational sense typically extends much further than publicity with respect to standing, decision making, and accountability. The latter three categories refer to the governance of the thing in question. Its public status, with respect to governance, involves means by which the public asserts standing to make claims regarding its governance, and organizes itself to make collective decisions regarding it, and/or hold accountable the individuals elected or appointed to make such decisions.

Privacy is relative to persons. A thing that is private with respect to some persons may be public with respect to others. A private club is private from nonmembers, but generally a public thing to its members: the club will typically have meetings to which its members are invited, in which they learn about the club’s activities and finances, insist that their interests be taken into account in its operations, make decisions about it,

and hold officers of the club accountable. It follows that there is no single public sphere or a single private sphere in society. There are many spheres, and which are public or private depends on who you are.<sup>8</sup>

Today we associate the state with “the” public sphere, and things that are not the state’s business, but individuals’ own business, with “the” private sphere. Insofar as these associations are thought to be inherent, the idea of “private government” would appear to be contradictory. Isn’t everything in the “private sphere” part of individual liberty, and everything subject to “public” (government, confusedly limited to state) control, a constraint on individual liberty? That is Cuccinelli’s idea, which reflects associations entrenched in contemporary public discourse.

But of course the association of the state with the public sphere is not inherent. It is a contingent social achievement of immense importance. The centuries-long struggles for popular sovereignty and a republican form of government are attempts to make the state a public thing: something that is the people’s business, transparent to them, servant to their interests, in which they have a voice and the power to hold rulers accountable. Authoritarian governments insist on the opposite—that the affairs of state are the private business of the rulers.

This point generalizes to *all* governments, not just governments run by the state. You are subject to *private government* wherever (a) you are subordinate to authorities who can order you around and sanction you for not complying over some domain of your life, and (b) the authorities treat it as none of your business, across a wide range of cases, what orders it issues or why it sanctions you. A government is private with respect to a subject if it can issue orders, backed by sanctions, to that subject in some domain of that subject’s life, and that subject has no say in how that government operates and no standing to demand that their interests be taken into account, other than perhaps in narrowly defined circumstances, in the decisions that government makes. Private government is government that has arbitrary, unaccountable power over those it governs. This of course is a matter of degree. Its powers may be checked in certain ways by other governments, by social norms, and by other pressures.

Note that *the privacy of a government is defined relative to the governed, not relative to the state*. The notion of governments that are kept private from the state is much more familiar: we speak of corporate governance, church governance, and so forth, in referring to legal entities that are private in relation to the state. That notion of private government abstracts from the people who are governed and their relation to these

governments. They focus only on the fact that the state is kept out of decision making in these governments. My definition of private government focuses on the fact that, in many of these governments, the governed are kept out of decision making as well.

Now consider the connections of government to freedom. Cuccinelli depicts a zero-sum tradeoff between the liberties of the state and those of its citizens. But there are at least three concepts of freedom: negative, positive, and republican. If you have negative freedom, no one is interfering with your actions. If you have positive freedom, you have a rich menu of options effectively accessible to you, given your resources.<sup>9</sup> If you have republican freedom, no one is dominating you—you are subject to no one's arbitrary, unaccountable will.<sup>10</sup> These three kinds of freedom are distinct. A lone person on a desert island has perfect negative and republican freedom, but virtually no positive freedom, because there is nothing to do but eat coconuts. An absolute monarch's favorites may enjoy great negative and positive freedom if he has granted them generous privileges and well-paid sinecures. But they still lack republican freedom, since he can take their perks away and toss them into a dungeon on a whim. Citizens of prosperous social democracies have considerable positive and republican freedom, but are subject to numerous negative liberty constraints, in the form of complex state regulations that constrain their choices in numerous aspects of their lives.

All three kinds of freedom are valuable. There are sound reasons to make tradeoffs among them. If we focus purely on negative liberty, and purely concerning rival goods, it *might* seem that Cuccinelli is correct that the size of the liberty pie is fixed: one agent's liberty over rival good G would seem to preclude another's liberty over it. But this is to confuse negative *liberties* with *exclusive rights*. There is nothing incoherent about a Hobbesian state of nature, in which everyone has the negative liberty to take, or compete for possession of, every rival good. That would be a social state of perfect negative liberty: it is a state of anarchist communism, in which the world is an unregulated commons. Such a condition would also be catastrophic. Production would collapse if anyone were free to take whatever anyone else had worked to produce. Even the natural resources of the earth would rapidly be depleted in an unregulated commons. Without property rights—rights to exclude others—people would therefore be very poor and insecure. Opportunities—*positive liberties*—are vastly greater with the establishment of a system of property rights.

This is a standard argument for a regime of private property rights. It is impeccable. Yet its logical entailments are often overlooked. Every establishment of a private property *right* entails a correlative duty, coercively enforceable by individuals or the state, that others refrain from meddling with another's property without the owner's permission. Private property rights thus entail massive net losses in negative liberty, relative to the state of maximum negative liberty. If Lalitha has private property in a parcel of land, her liberty over that parcel is secured by an *exclusive right* at the cost of the identical negative liberty of seven billion others over that parcel. If we are good libertarians and insist that the justification of any constraint on liberty must appeal to some other more important liberty, then the libertarian case for private property depends on accepting that positive liberty very often rightly overrides negative liberty. It follows that even massive state constraints on negative liberty (in the form of enforcements of private property rights) can increase total liberty (in an accounting that weights positive liberty more highly than negative, as any accounting that can justify private property in terms of freedom must).

State-enforced constraints on negative liberty can also increase total liberty through their enhancement of republican freedom. This is a venerable argument from the republican tradition: without robust protection of private property rights (which, as we have seen, entail massive net losses of negative liberty), a republican form of government is insecure, because the state is liable to degenerate into despotism, exercising arbitrary power over its subjects. This argument has been carried over in modern libertarian writing.<sup>11</sup>

This form of argument is equally applicable to substate private governments. If one finds oneself subject to private government—a state of republican unfreedom—one can enhance one's freedom by placing negative liberty constraints on the power of one's private governors to order one around or impose sanctions on one's refusal to comply. This may involve state regulation of private governments. For example, a state's imposition of a requirement on employers that they refrain from discriminating against employees on the basis of their sexual orientation or identity enhances the republican and negative freedom of workers to express their sexual identities and choose their sexual and life partners. It also enhances their positive liberties, by enabling more people to move out of the closet, and thereby increasing opportunities for LGBT people to engage

with others of like sexual orientation. The state's imposition of negative liberty constraints on some people can thereby enhance all three liberties of many more.

Private government is, thus, a perfectly coherent concept. To grasp it, we need to reject the false narrowing of the scope of government to the state, recognize that one's liberty can be constrained by private governors in domains of activity kept private from the state, and that increased state constraints on people's negative liberties can generate massive net gains in individual positive and republican freedoms. It can even generate net gains in their negative liberties, to the extent that the people being constrained by the state are private governors over others.

#### WORKPLACE GOVERNMENT AND THE THEORY OF THE FIRM AS IDEOLOGICAL BLINDER

Employees are pervasively subject to private government, as I have defined it. Why is this so? As far as the legal authority of the employer to govern employees was concerned, the Industrial Revolution did not mark a significant break. Legally speaking, employers have always been authoritarian rulers, as an extension of their patriarchal rights to govern their households.

The Industrial Revolution moved the primary site of paid work from the household to the factory. In principle, this could have been a liberating moment, insofar as it opened the possibility of separating the governance of the workplace from the governance of the home. Yet industrial employers retained their legal entitlement to govern their employees' domestic lives. In the early twentieth century, the Ford Motor Company established a Sociological Department, dedicated to inspecting employees' homes unannounced, to ensure that they were leading orderly lives. Workers were eligible for Ford's famous \$5 daily wage only if they kept their homes clean, ate diets deemed healthy, abstained from drinking, used the bathtub appropriately, did not take in boarders, avoided spending too much on foreign relatives, and were assimilated to American cultural norms.<sup>12</sup>

Workers today might breathe a sigh of relief, except that most are still subject to employer governance of their private lives. In some cases this is explicit, as in employer-provided health insurance plans. Under the Affordable Care Act, employers may impose a 30 percent premium penalty on covered workers if they do not comply with employer-imposed wellness programs, which may prescribe exercise programs, diets, and abstinence from alcohol and other substances. In accordance with this provision, Penn State University recently threatened to impose a \$100 per month

surcharge on workers who did not answer a health survey that included questions about their marital situation, sexual conduct, pregnancy plans, and personal finances.<sup>13</sup> In other cases, employer authority over workers' off-duty lives is implicit, a byproduct of the employment-at-will rule: since employers may fire workers for any or no reason, they may fire them for their sexual activities, partner choice, or any other choice workers think of as private from their employer, unless the state has enacted a law specifically forbidding employer discrimination on these grounds. Workplace authoritarianism is still with us.

The pro-market egalitarian aspiration toward nearly universal self-employment aimed to liberate workers from such governance by opening opportunities for nearly everyone to become their own boss. Why did it fail? Why are workers subject to dictatorship? Within economics, the theory of the firm is supposed to answer this question. It purports to offer politically neutral, technical, economic reasons why most production is undertaken by hierarchical organizations, with workers subordinate to bosses, rather than by autonomous individual workers. The theory of the firm contains important insights into the organization of production in advanced economies. However, it fails to explain the sweeping scope of authority that employers have over workers. What is worse, its practitioners sometimes even *deny* that workers lie under the authority of their bosses, in terms that reflect and reinforce an illusion of workers' freedom that also characterizes much of public discourse. Both the theory of the firm, and public discourse, are missing an important reality: that workers are subject to their employers' *private government*.

The pro-market egalitarian dream failed in part due to economies of scale. The technological changes that drove the Industrial Revolution involved huge concentrations of capital. A steam-powered cotton mill, steel foundry, cement or chemical factory, or railway must be worked by many hands. The case is no different for modern workplaces such as airports, hospitals, pharmaceutical labs, and computer assembly factories, as well as lower-tech workplaces such as amusement parks, slaughterhouses, conference hotels, and big-box retail stores. The greater efficiency of production using large, indivisible capital inputs explains why few individual workers can afford to supply their own capital. It explains why, contrary to the pro-market egalitarian hope, the enterprises responsible for most production are not sole proprietorships.

But economies of scale do not explain why production is not managed by independent contractors acting without external supervision, who

rent their capital. One could imagine a manufacturing enterprise renting its floor space and machinery and supplying materials to a set of self-employed independent contractors. Each contractor would produce a part or stage of the product for sale to contractors at the next stage of production. The final contractor would sell the finished product to wholesalers, or perhaps back to the capital supplier. Some New England factories operated on a system like this from the Civil War to World War I. They were superseded by hierarchically organized firms. According to the theory of the firm, this is due to the excessive costs of contracting between suppliers of factors of production.<sup>14</sup> In the failed New England system, independent contractors faced each other in a series of bilateral monopolies, which led to opportunistic negotiations. The demand to periodically renegotiate rates led contractors to hoard information and delay innovation for strategic reasons. Independent contractors wore out the machinery too quickly, failed to tightly coordinate their production with workers at other stages of production (leading to excess inventory of intermediate products), and lacked incentives to innovate, both with respect to saving materials and with respect to new products.<sup>15</sup>

The modern firm solves these problems by replacing contractual relations among workers, and between workers and owners of other factors of production with centralized authority. A manager, or hierarchy of managers, issues orders to workers in pursuit of centralized objectives. This enables close coordination of different workers and internalizes the benefits of all types of innovation within the firm as a whole. Managers can monitor workers to ensure that they work hard, cooperate with fellow workers, and do not waste capital. Because they exercise open-ended authority over workers, they can redeploy workers' efforts as needed to implement innovations, replace absentees, and deal with unforeseen difficulties. Authority relations eliminate the costs associated with constant negotiation and contracting among the participants in the firm's production. To put the point another way, the key to the superior efficiency of hierarchy is the open-ended authority of managers. It is impossible to specify in advance all of the contingencies that may require an alteration in an initial understanding of what a worker must do. Efficient employment contracts are therefore necessarily incomplete: they do not specify precisely everything a worker might be asked to do.

While this theory explains why firms exist and why they are constituted by hierarchies of authority, it does not explain the sweeping scope of employers' authority over workers in the United States. It does not

explain, for example, why employers continue to have authority over workers' off-duty lives, given that their choice of sexual partner, political candidate, or Facebook posting has nothing to do with productive efficiency. Even worse, theorists of the firm appear not to even recognize how authoritarian firm governance is. Major theorists soft-pedal or even deny the very authority they are supposed to be trying to explain.

Consider Ronald Coase, the originator of the theory of the firm. He acknowledges that firms are "islands of conscious power."<sup>16</sup> The employment contract is one in which the worker "agrees to obey the directions of an entrepreneur." But, he insists, "the essence of the contract is that it should only state the limits to the powers of the entrepreneur."<sup>17</sup> This suggests that the limits of the employer's powers are an object of negotiation or at least communication between the parties. In the vast majority of cases, outside the contexts of collective bargaining or for higher-level employees, this is not true. Most workers are hired without any negotiation over the content of the employer's authority, and without a written or oral contract specifying any limits to it. If they receive an employee handbook indicating such limits, the inclusion of a simple disclaimer (which is standard practice) is sufficient to nullify any implied contract exception to at-will employment in most states.<sup>18</sup> No wonder they are shocked and outraged when their boss fires them for being too attractive,<sup>19</sup> for failing to show up at a political rally in support of the boss's favored political candidate,<sup>20</sup> even because their daughter was raped by a friend of the boss.<sup>21</sup>

What, then, determines the scope and limits of the employer's authority, if it is not a meeting of minds of the parties? The state does so, through a complex system of laws—not only labor law, but laws regulating corporate governance, workplace safety, fringe benefits, discrimination, and other matters. In the United States, the default employment contract is employment at will. There are a few exceptions in federal law to this doctrine, notably concerning discrimination, family and medical leave, and labor union activity. For the most part, however, at-will employment, which entitles employers to fire workers for any or no reason, grants the employer sweeping legal authority not only over workers' lives at work but also over their off-duty conduct. Under the employment-at-will baseline, workers, in effect, cede *all* of their rights to their employers, except those specifically guaranteed to them by law, for the duration of the employment relationship. Employers' authority over workers, outside of collective bargaining and a few other contexts, such as university

professors' tenure, is sweeping, arbitrary, and unaccountable—not subject to notice, process, or appeal. The *state* has established the constitution of the government of the workplace: it is a form of private government.

Resistance to recognizing this reality appears to be widespread among theorists of the firm. Here, for example, is what Armen Alchian and Harold Demsetz say in their classic paper on the subject:

It is common to see the firm characterized by the power to settle issues by fiat, by authority, or by disciplinary action . . . . This is delusion. The firm . . . has no power of fiat, no authority, no disciplinary action any different in the slightest degree from ordinary market contracting between any two people. I can “punish” you only by withdrawing future business or by seeking redress in the courts for any failure to honor our exchange agreement. That is exactly all that any employer can do. He can fire or sue, just as I can fire my grocer by stopping purchases from him or sue him for delivering faulty products. What then is the content of the presumed power to manage and assign workers to various tasks? Exactly the same as one little consumer's power to manage and assign his grocer to various tasks. . . . To speak of managing, directing, or assigning workers to various tasks is a deceptive way of noting that the employer continually is involved in renegotiation of contracts on terms that must be acceptable to both parties. Telling an employee to type this letter rather than to file that document is like telling a grocer to sell me this brand of tuna rather than that brand of bread. I have no contract to continue to purchase from the grocer and neither the employer nor the employee is bound by any contractual obligations to continue their relationship.<sup>22</sup>

Alchian and Demsetz appear to be claiming that wherever individuals are free to exit a relationship, authority cannot exist within it. This is like saying that Mussolini was not a dictator, because Italians could emigrate. While emigration rights may give governors an interest in voluntarily restraining their power, such rights hardly dissolve it.<sup>23</sup>

Alternatively, their claim might be that where the only sanctions for disobedience are exile, or a civil suit, authority does not exist. That would come as a surprise to those subject to the innumerable state regulations that are backed only by civil sanctions. Nor would a state regulation lack authority if the only sanction for violating it were to force one out of one's job. Finally, managers have numerous other sanctions at their disposal

besides firing and suing: they can and often do demote employees, cut their pay, assign them inconvenient hours or too many or too few hours, assign them more dangerous, dirty, menial, or grueling tasks, increase their pace of work, set them up to fail, and, within very broad limits, humiliate and harass them.

Perhaps the thought is that where consent mediates the relationship between the parties, the relationship cannot be one of subordination to authority. That would be a surprise to the entire social contract tradition, which is precisely about how the people can consent to government. Or is the idea that authority exists only where subordinates obey orders blindly and automatically? But then it exists hardly anywhere. Even the most repressive regimes mostly rely on means besides sheer terror and brainwashing to elicit compliance with their orders, focusing more on persuasion and rewards.

Alchian and Demsetz may be hoodwinked by the superficial symmetry of the employment contract: under employment-at-will, workers, too, may quit for any or no reason. This leads them to represent quitting as equivalent to firing one's boss. But workers have no power to remove the boss from his position within the firm. And quitting often imposes even greater costs on workers than being fired does, for it makes them ineligible for unemployment insurance. It is an odd kind of countervailing power that workers supposedly have to check their bosses' power, when they typically suffer more from imposing it than they would suffer from the worst sanction bosses can impose on them. Threats, to be effective, need to be credible.

The irony is that Alchian and Demsetz are offering a theory of the firm. The question the theory is supposed to answer is why production is not handled entirely by market transactions among independent, self-employed people, but rather by authority relations. That is, it is supposed to explain why the hope of pro-market pre-Industrial Revolution egalitarians did not pan out. Alchian and Demsetz cannot bear the full authoritarian implications of recognizing the boundary between the market and the firm, even in a paper devoted to explaining it. So they attempt to extend the metaphor of the market to the internal relations of the firm and pretend that every interaction at work is mediated by negotiation between managers and workers. Yet the whole point of the firm, according to the theory, is to eliminate the costs of markets—of setting internal prices via negotiation over every transaction among workers and between workers and managers.

Alchian and Demsetz are hardly alone. Michael Jensen and William Meckling agree with them that authority has nothing to do with the firm; it is merely a nexus of contracts among independent individuals.<sup>24</sup> John Tomasi, writing today, continues to promote the image of employees as akin to independent contractors, freely negotiating the terms of their contract with their employers, to obtain work conditions tailor-made to their idiosyncratic specifications.<sup>25</sup> While workers at the top of the corporate hierarchy enjoy such freedom, as well as a handful of elite athletes, entertainers, and star academics, Tomasi ignores the fact that the vast majority of workers not represented by unions do not negotiate terms of the employer's authority at all. Why would employers bother, when, by state fiat, workers automatically cede all liberties not reserved to them by the state, upon accepting an offer of work?

Not just theorists of the firm, but public discourse too, tend to represent employees as if they were independent contractors.<sup>26</sup> This makes it seem as if the workplace is a continuation of arms-length market transactions, as if the labor contract were no different from a purchase from Smith's butcher, baker, or brewer. Alchian and Demsetz are explicit about this, in drawing the analogy of the employment relation with the customer–grocer relation. But the butcher, baker, and brewer remain independent from their customers after selling their goods. In the employment contract, by contrast, the workers cannot separate themselves from the labor they have sold; in purchasing command over labor, employers purchase command over people.

What accounts for this error? The answer is, in part, that a representation of what egalitarians hoped market society would deliver for workers before the Industrial Revolution has been blindly carried over to the post-Industrial Revolution world. People continue to deploy the same justification of market society—that it would secure the personal independence of workers from arbitrary authority—long after it failed to deliver on its original aspiration. The result is a kind of political hemiplegia: like those patients who cannot perceive one half of their bodies, a large class of libertarian-leaning thinkers and politicians, with considerable public following, cannot perceive half of the economy: they cannot perceive the half that takes place *beyond* the market, *after* the employment contract is accepted.

This tendency was reinforced by a narrowing of egalitarian vision in the transition to the Industrial Revolution. While the Levellers and other radicals of the mid-seventeenth century agitated against all kinds of

arbitrary government, Thomas Paine mainly narrowed his critique to state abuses. Similarly, the Republican Party kept speaking mainly on behalf of the interests of businesspeople and those who hoped to be in business for themselves, even after it was clear that the overwhelming majority of workers had no realistic prospect of attaining this status, and that the most influential businesspeople were not, as Lincoln hoped, sole proprietors (with at most a few employees, the majority of whom were destined to rise to self-employed status after a few years), but managers in large organizations, governing workers destined to be wage laborers for their entire working lives. Thus, a political agenda that once promised equalizing as well as liberating outcomes turned into one that reinforced private, arbitrary, unaccountable government over the vast majority.

Finally, nineteenth-century *laissez-faire* liberals, with their bizarre combination of hostility toward state power and enthusiasm for hyperdisciplinary total institutions, attempted to reconcile these contradictory tendencies by limiting their focus to the entry and exit conditions of the labor contract, while blackboxing what actually went on in the factories. In fact, they did drive a dramatic improvement in workers' freedom of entry and exit.<sup>27</sup> Under the traditional common law of master and servant, employees were bound to their employers by contracts of one year (apprentices and indentured servants for longer), could quit before then only on pain of losing all their accrued wages, and were not entitled to keep wages from moonlighting. Other employers were forbidden to bid for their labor while they were still under contract.<sup>28</sup> Workers were liberated from these constraints over the course of the nineteenth century.<sup>29</sup>

This liberation, as is well-known, was a double-edged sword. Employers, too, were liberated from any obligation to employ workers. As already noted, the worst the workers could do to the boss often involved suffering at least as much as the worst the boss could do to them. For the bulk of workers, who lived at the bottom of the hierarchy, this was not much of a threat advantage, unless it was exercised collectively in a strike. They had no realistic hope under these conditions for liberation from workplace authoritarianism.

No wonder a central struggle of British workers in the mid-nineteenth century was for limits on the length of the working day—even more than for higher wages. This was true, even though workers at this period of the Industrial Revolution were suffering through “Engels’s pause”—the first fifty to sixty years of the Industrial Revolution during which wages failed to grow.<sup>30</sup> My focus, like theirs, is not on issues of wages or distributive

justice. It is on workers' freedom. If the Industrial Revolution meant they could not be their own bosses at work, at least they could try to limit the length of the working day so that they would have some hours during which they could choose for themselves, rather than follow someone else's orders.<sup>31</sup>

That was an immediate aim of European workers' movements in the mid-nineteenth century. As the century unfolded, workers largely abandoned their pro-market, individualistic egalitarian dream and turned to socialist, collectivist alternatives—that is, to restructuring the internal governance of the workplace. The problem was that the options open to workers consisted almost exclusively of private governments. Laissez-faire liberals, touting the freedom of the free market, told workers: choose your Leviathan. That is like telling the citizens of the Communist bloc of Eastern Europe that their freedom could be secured by a right to emigrate to any country—as long as they stayed behind the Iron Curtain. Population movements would likely have put some pressure on Communist rulers to soften their rule. But why should Leviathan set the baseline against which competition took place? No liberal or libertarian would be satisfied with a competitive equilibrium set against this baseline, where the choice of state governments is concerned. Workers' movements rejected it for nonstate governments as well.

To their objection, libertarians and laissez-faire liberals had no credible answer. Let us not fool ourselves into supposing that the competitive equilibrium of labor relations was ever established by politically neutral market forces mediated by pure freedom of contract, with nothing but the free play of individuals' idiosyncratic preferences determining the outcome. This is a delusion as great as the one that imagines that the workplace is not authoritarian. Every competitive equilibrium is established against a background assignment of property rights and other rights established by the state. The state supplies the indispensable legal infrastructure of developed economies as a kind of public good, and is needed to do so to facilitate cooperation on the vast scales that characterize today's rich and sophisticated economies.<sup>32</sup> Thus, it is the state that establishes the default constitution of workplace governance. It is a form of authoritarian, private government, in which, under employment-at-will, workers cede *all* their rights to their employers, except those specifically reserved for them by law.

Freedom of entry and exit from any employment relation is not sufficient to justify the outcome. To see this, consider an analogous case for

the law of coverture, which the state had long established as the default marriage contract.<sup>33</sup> Under coverture, a woman, upon marrying her husband, lost all rights to own property and make contracts in her own name. Her husband had the right to confine her movements, confiscate any wages she might earn, beat her, and rape her. Divorce was very difficult to obtain. The marriage contract was valid only if voluntarily accepted by both parties. It was a contract into subjection, entailing the wife's submission to the private government of her husband. Imagine a modification of this patriarchal governance regime, allowing either spouse to divorce at will and allowing any clause of the default contract to be altered by a prenuptial agreement. This is like the modification that laissez-faire liberals added to the private government of the workplace. Women would certainly have sufficient reason to object that their liberties would still not be respected under this modification, in that it preserves a patriarchal baseline, in which men still hold virtually all the cards. It would allow a lucky few to escape subjection to their husbands, but that is not enough to justify the patriarchal authority the vast majority of men would retain over their wives.<sup>34</sup> Consent to an option within a set cannot justify the option set itself.

#### BACK TO THE FUTURE

My historical investigation explains why a certain libertarian way of thinking about market society and its promise made considerable sense in its original context prior to the Industrial Revolution, and why it was reasonable for egalitarians to support it at that time. But the Industrial Revolution destroyed the context in which that vision made sense. The new context perverted what was once a liberating, egalitarian vision into support for pervasive workplace authoritarianism—arbitrary, hierarchical, private government. The evolving rhetoric of laissez-faire liberalism that arose in the nineteenth century papered over the real issues and represented, in Orwellian fashion, subjection as freedom.

Workers' movements from the mid-nineteenth century through World War II were not fooled by this.<sup>35</sup> That is not to say that they all had sound ideas for how to solve the problem. I have no space to recount the follies of democratic state socialism.<sup>36</sup> Nor do I have space to recount the catastrophes of state communism, which were dominated by the same totalitarian vision of the original designers of total institutions—only dramatically scaled up, more violent, and unmixed with any skepticism about state power. Like the original designers, state communists

looked to ideals of neither liberty nor equality, but rather to utilitarian progress and the perfectibility of human beings under the force of private government.

My point is rather that, with the drastic decline of organized labor, and especially with the triumph of ostensibly free markets since the end of the Cold War, public and academic discourse has largely lost sight of the problem that organized workers in the nineteenth century saw clearly: the pervasiveness of private government at work. Here most of us are, toiling under the authority of communist dictators, and we do not see the reality for what it is.

No doubt many of us, especially most of those who are reading these lectures, do not find the situation so bad. My readers, most likely, are tenured or tenure-track professors, who, almost uniquely among unorganized workers in the United States, enjoy due process rights and a level of autonomy at work that is unmatched almost anywhere else among employees.<sup>37</sup> Or, if they are college students or graduates, they are or likely will be the dictators or higher-ranked officials of private governments. Or they will escape the system and belong to the thin ranks of the self-employed who have no employees of their own. The people I am worried about are the 25 percent of employees who understand that they are subject to dictatorship at work,<sup>38</sup> and the other 55 percent or so who are neither securely self-employed nor upper-level managers, nor the tiny elite tier of nonmanagerial stars (athletes, entertainers, superstar academics) who have the power to dictate employment contracts to their specification, nor even the ever-shrinking class of workers under ever-retrenching collective bargaining agreements. That 55 percent is only one arbitrary and oppressive managerial decision away from realizing what the 25 percent already know. But this 80 percent receives almost no recognition in contemporary public and academic discourse.

I do not claim that private governments at work are as powerful as states. Their sanctioning powers are lower, and the costs of emigration from oppressive private governments are generally lower than the costs of emigration from states. Yet private governments impose a far more minute, exacting, and sweeping regulation of employees than democratic states do in any domain outside of prisons and the military. Private governments impose controls on workers that are unconstitutional for democratic states to impose on citizens who are not convicts or in the military.

The negative liberties most workers enjoy *de facto* are considerably greater than the ones they are legally entitled to under their employers.

Market pressures, social norms, lack of interest, and simple decency keep most employers from exercising the full scope of their authority. We should care nevertheless about the insecurity of employees' liberty. They work in a state of republican unfreedom, their liberties vulnerable to cancellation without justification, notice, process, or appeal. That they enjoy substantially greater negative liberty than they are legally entitled to no more justifies their lack of republican liberty than the fact that most wives enjoyed greater freedoms than they were legally entitled to justified coverture—or even coverture modified by free divorce.

Suppose people find themselves under private government. This is a state of republican unfreedom, of subjection to the arbitrary will of another. It is also usually a state of substantial constraints on negative liberty. By what means could people attain their freedom? One way would be to end subjection to government altogether. When the government is a state, this is the anarchist answer. We have seen that when the government is an employer, the answer of many egalitarians before the Industrial Revolution was to advance a property regime that promotes self-employment, perhaps even to make self-employment a nearly universally accessible opportunity, at least for men. This amounts to promoting anarchy as the primary form of workplace order.

The theory of the firm explains why this approach cannot preserve the productive advantages of large-scale production. Some kind of incompletely specified authority over groups of workers is needed to replace market relations within the firm. However, the theory of the firm, although it explains the necessity of hierarchy, neither explains nor justifies private government in the workplace. That the constitution of workplace government is both arbitrary and dictatorial is not dictated by efficiency or freedom of contract, but rather by the state. Freedom of contract no more explains the equilibrium workplace constitution than freedom to marry explained women's subjection to patriarchy under coverture.

In other words, in the great contest between individualism and collectivism regarding the mode of production, collectivism won, decisively. Now nearly all production is undertaken by teams of workers using large, indivisible forms of capital equipment held in common. The activities of these teams are governed by managers according to a centralized production plan. This was an outcome of the Industrial Revolution, and equally much embraced by capitalists and socialists. That advocates of capitalism continue to speak as if their preferred system of production upholds "individualism" is simply a symptom of institutional hemianopsia, the

misdeployment of a hopeful preindustrial vision of what market society would deliver as if it described our current reality, which replaces market relations with governance relations across wide domains of production.

Workers in the nineteenth century turned from individualistic to collectivist solutions to workplace governance because they saw that interpersonal authority—governments over groups of workers—was inescapable in the new industrial order. If government is inescapable or necessary for solving certain important problems, the only way to make people free under that government is to make that government a public thing, accountable to the governed. The task is to replace private government with public government.

When the government is a state, we have some fairly good ideas of how to proceed: the entire history of democracy under the rule of law is a series of experiments in how to make the government of the state a public thing, and the people free under the state. These experiments continue to this day.

But what if the government is an employer? Here matters are more uncertain. There are four general strategies for advancing and protecting the liberties and interests of the governed under any type of government: (1) exit, (2) the rule of law, (3) substantive constitutional rights, and (4) voice. Let us consider each in turn.

Exit is usually touted as a prime libertarian strategy for protecting individual rights. By forcing governments to compete for subjects, exit rights put pressure on governments to offer their subjects better deals. “The defense against oppressive hours, pay, working conditions, or treatment is the right to change employers.”<sup>39</sup> Given this fact, it is surprising how comfortable some libertarians are with the validity of contracts into slavery, from which exit is disallowed.<sup>40</sup> In their view, freedom of contract trumps the freedom of individuals under government, or even the freedom to leave that government. While contracts into slavery and peonage are no longer valid, other contractual barriers to exit are common and growing. Noncompete clauses, which bar employees from working for other employers in the same industry for a period of years, have spread from technical professions (where nearly half of employees are subject to them) to jobs such as sandwich maker, pesticide sprayer, summer camp counselor, and hairstylist.<sup>41</sup> While employers can no longer hold workers in bondage, they can imprison workers’ human capital. California is one of the few states that prohibit noncompete clauses. As the dynamism of its economy proves, such contractual barriers to exit are not needed for

economic growth, and probably undermine it.<sup>42</sup> There should be a strong legal presumption against such barriers to exit, to protect workers' freedom to exit their employers' government.

The rule of law is a complex ideal encompassing several protections of subjects' liberties. (a) Authority may be exercised only through laws duly passed and publicized in advance, rather than arbitrary orders issued without any process. (b) Subjects are at liberty to do anything not specifically prohibited by law. (c) Laws are generally applicable to everyone in similar circumstances. (d) Subjects have rights of due process before suffering any sanctions for noncompliance. Not all of these protections, which were devised with state authority in mind, can be readily transferred to the employment context. Most of the solutions to problems the state must address involve regulations that leave open to individuals a vast array of options for selecting both ends and means. By contrast, efficient production nearly always requires close coordination of activities according to centralized objectives, directed by managers exercising discretionary authority. This frequently entails that the authority of managers over workers be both intensive (limiting workers to highly particular movements and words, not allowing them to pursue their own personal objectives at work or even to select their own means to a prescribed end) and incompletely specified. The state imposes traffic laws that leave people free to choose their own destinations, routes, and purposes. Walmart tells its drivers what they have to pick up, when and where they have to deliver it, and what route they have to take. In addition, managers need incompletely specified authority to rapidly reassign different tasks to different workers to address new circumstances. Finally, excessively costly procedural protections against firing also discourage hiring. All these obstacles to applying rule-of-law protections in the workplace empower employers to abuse their authority, subject workers to humiliating treatment, and impose excessive constraints on their freedom.

At the same time, it is easy to exaggerate the obstacles to imposing rule-of-law protections at work. Larger organizations generally have employee handbooks and standard practice guides that streamline authority along legalistic lines. Equal protection and due process rights already exist for workers in larger organizations with respect to limited issues. A worker who has been sexually harassed by her boss normally has recourse to intrafirm procedures for resolving her complaint. Such protections reflect a worldwide "blurring of boundaries" among business, nonprofit, and state organizations, which appears to be driven not simply by legal

changes, but by cultural imperatives of scientific management and ideas of individual rights and organizational responsibilities.<sup>43</sup> Some but not all of these managerial developments are salutary. They are proper subjects of investigation for political theory, once we get beyond the subject's narrow focus on the state.

A just workplace constitution should incorporate basic constitutional rights, akin to a bill of rights against employers. To some extent, the Fair Labor Standards Act, antidiscrimination laws, and other workplace regulations already serve this function. A workers' bill of rights could be strengthened by the addition of more robust protections of workers' freedom to engage in off-duty activities, such as exercising their political rights, free speech,<sup>44</sup> and sexual choices. Similar protections for employee privacy could be extended in the workplace during work breaks. The Occupational Safety and Healthy Administration (OSHA) prohibitions of particularly degrading, dangerous, and onerous working conditions can be viewed as part of a workers' bill of rights. Nabisco once threatened its female production line workers with three day suspensions for using the bathroom, and ordered them to urinate in their clothes instead.<sup>45</sup> It was only in 1998 that OSHA issued a regulation requiring employers to recognize workers' right to use a bathroom, after cases such as Nabisco's aroused public outrage. Workers in Europe are protected from harassment of all kinds by anti-mobbing laws.<sup>46</sup> This gives them far more robust workplace constitutional rights than workers in the United States, who may be legally harassed as long as their harassers do not discriminate by race, gender, or other protected identities in choosing their victims.

There are limits, however, to how far a bill of rights can go in protecting workers from abuse. Because they prescribe uniformity across workplaces, they can at best offer a minimal floor. In practice, they are also grossly underenforced for the least advantaged workers.<sup>47</sup> Furthermore, such laws do not provide for worker participation in governance at the firm level. They merely impose limits on employer dictatorship.

For these reasons, there is no adequate substitute for recognizing workers' voice in their government. Voice can more readily adapt workplace rules to local conditions than state regulations can, while incorporating respect for workers' freedom, interests, and dignity. Just because workplace governance requires a hierarchy of offices does not mean that higher officeholders must be unaccountable to the governed, or that the governed should not play any role in managerial decision making. In the United States, two models for workers' voice have received the most

attention: workplace democracy and labor unions. Workplace democracy, in the form of worker-owned and -managed firms, has long stood as an ideal for many egalitarians.<sup>48</sup> While much could be done to devise laws more accommodating of this structure, some of its costs may be difficult to surmount. In particular, the costs of negotiation among workers with asymmetrical interests (for example, due to possession of different skills) appear to be high.<sup>49</sup>

In the United States, collective bargaining has been the primary way workers have secured voice within the government of the workplace. However, even at its peak in 1954, only 28.3 percent of workers were represented by a labor union.<sup>50</sup> Today, only 11.1 percent of all workers and 6.6 percent of private sector workers, are represented.<sup>51</sup> Although laws could be revised to make it easier for workers to organize into a union, this does not address difficulties inherent to the U.S. labor union model. The U.S. model organizes workers at the firm level rather than the industry level. Firms vigorously resist unionization to avoid a competitive disadvantage with nonunionized firms.<sup>52</sup> Labor unions also impose inefficiencies due to their monopoly power.<sup>53</sup> They also take an adversarial stance toward management—one that makes not only managers but many workers uncomfortable. At the same time, they often provide the only effective voice employees have in workplace governance.

It is possible to design a workplace constitution in which workers have a nonadversarial voice in workplace governance, without raising concerns about monopolization. The overwhelming majority of workers in the United States would like to have such a voice: 85 percent would like firm governance to be “run jointly” by management and workers.<sup>54</sup> In the United States, such a constitution is illegal under the National Labor Relations Act, which prohibits company unions. Yet this structure is commonplace in Europe. Germany’s system of codetermination, begun in the Weimar era and elaborately developed since World War II, offers one highly successful model.<sup>55</sup>

It is not my intention in this lecture to defend any particular model of worker participation in firm governance. My point is rather to expose a deep failure in current ways of thinking about how government fits into Americans’ lives. We do not live in the market society imagined by Paine and Lincoln, which offered an appealing vision of what a free society of equals would look like, combining individualistic libertarian and egalitarian ideals. Government is everywhere, not just in the form of the state, but even more pervasively in the workplace. Yet public discourse and

much of political theory pretends that this is not so. It pretends that the constitution of workplace government is somehow the object of voluntary negotiation between workers and employers. This is true only for a tiny proportion of privileged workers. The vast majority are subject to private, authoritarian government, not through their own choice, but through laws that have handed nearly all authority to their employers.

It is high time that public discourse acknowledged this reality and the costs to workers' freedom and dignity that private government imposes on them. It is high time that political theorists turned their attention to the private governments of the workplace. Since the Levellers, egalitarian social movements have insisted that if government is necessary, it must be made a public thing to all the governed—accountable to them, responsive to their interests, and open to their participation. They were shrewd enough to recognize the pervasiveness of private government in their lives. It is time to go back to the future in recovering such recognition and experimenting with ways to remedy it.

#### NOTES

1. This is true of the corporate form. Legally, the corporation, *not* the shareholders, owns the firm's assets. In a partnership, an oligarchy governs and owns all the assets.
2. R. H. Coase, "The Nature of the Firm," *Economica* 4, no. 16 (1937): 386–405.
3. Eugene Volokh, "Private Employees' Speech and Political Activity: Statutory Protection against Employer Retaliation" (2012), <http://ssrn.com/abstract=2174776/>.
4. Ken Cuccinelli, *The Last Line of Defense: The New Fight for American Liberty* (New York: Crown Forum, 2013), 52, 231.
5. This may sound like a positivist account of *law*. But government need not rule by law—that is, general rules of conduct. It can rule by orders or decrees, issued ad hoc to particular persons for particular occasions. I take no stand here regarding a positivist account of law.
6. Max Weber, *Economy and Society*, edited by Guenther Roth and Claus Wittich (Berkeley: University of California Press, 1968), 56.
7. John Adams, "Letter to Abigail, April 14, 1776," *Letters of John Adams Addressed to His Wife*, edited by Charles Adams, vol. 1 (Boston: C. C. Little and J. Brown, 1841), 96–97.
8. I draw on Herzog, *Household Politics*, 89–94, who spends more time distinguishing the entailments of privacy than I do here.
9. Here I focus on "external" conceptions of positive freedom in terms of opportunity sets within individuals' budget constraints, legal permissions, and other external conditions. I set aside psychological notions of positive freedom, such as freedom from addictions, compulsions, or other motives with which the agent does not identify.

10. Philip Pettit, *Republicanism: A Theory of Freedom and Government* (New York: Oxford University Press, 1997), 5.
11. See, for example, Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962), linking private property to political and not just economic freedom.
12. Joyce Shaw Peterson, *American Automobile Workers, 1900–1933* (Albany: State University of New York Press, 1987), 57, 72.
13. Natasha Singer, “Health Plan Penalty Ends at Penn State,” *New York Times*, September 19, 2013, <http://www.nytimes.com/2013/09/19/business/after-uproar-penn-state-suspends-penalty-fee-in-wellness-plan.html>.
14. Coase, “Nature of the Firm.”
15. Oliver Williamson, “Markets and Hierarchies: Some Elementary Considerations,” *American Economic Review* 63, no. 2 (1973): 316–25, here 322.
16. Coase, “Nature of the Firm,” 388.
17. *Ibid.*, 391.
18. Only fifteen states do not allow a disclaimer to count as a per se defense against a charge of wrongful discharge under an implied-contract exception to employment-at-will; twenty-two states allow disclaimers and limit implied-contract exceptions to written documents; thirteen states do not recognize any implied-contract exception to employment-at-will. Charles Muhl, “The Employment-at-Will Doctrine: Three Major Exceptions,” *Monthly Labor Review*, January 2001: 5.
19. *Nelson v. Knight*, Iowa Supreme Court, No. 11-1857, July 12, 2013.
20. Neela Banerjee, “Ohio Miners Say They Were Forced to Attend Romney Rally,” *Los Angeles Times*, August 29, 2012, <http://articles.latimes.com/2012/aug/29/news/la-pn-miners-romney-rally-20120829/>.
21. Dugan Arnett, “Nightmare in Maryville: Teens’ Sexual Encounter Ignites a Firestorm against Family,” *Kansas City Star*, October 12, 2013, <http://www.kansascity.com/2013/10/12/4549775/nightmare-in-maryville-teens-sexual.html>.
22. Armen Alchian and Harold Demsetz, “Production, Information Costs, and Economic Organization,” *American Economic Review* 62, no. 5 (1972): 777–95, here 777.
23. Even the addition of immigration rights to new governments—something workers do not enjoy at work—does not dissolve their authority. Within the European Union (EU), citizens are guaranteed the right not only to exit, but to enter other member states. Yet this has not eliminated the authority of EU member states.
24. Michael Jensen and William Meckling, “Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,” *Journal of Financial Economics* 3 (1976): 305–60, here 310.
25. John Tomasi, *Free Market Fairness* (Princeton, NJ: Princeton University Press, 2012), 23, 77, 81.
26. This tendency facilitates a common abuse of labor law, in which employers pretend that their employees are independent contractors, to avoid minimum wage, maximum hours, benefits and safety regulations, to shift the burden of

employment taxes on their workers, and to force them to pay for equipment and uniforms. The court test in such cases is always whether the employer exercises control over the worker. See, for example, *Alexander v. FedEx Ground Package System*, 2014 U.S. App. LEXIS 16585 (9th Cir. Aug. 27, 2014), which ruled that FedEx misclassified thousands of its California truck drivers as independent contractors.

27. Josiah Wedgwood, a pioneer of the Industrial Revolution in promoting worker discipline in his pottery factory, was also a major abolitionist.
28. Blackstone, *Commentaries*, ch. 14.
29. Karen Orren tells the story for the United States in *Belated Feudalism*. Similar developments took place in other common law countries and the rest of Western Europe during the nineteenth century. An important lesson of her work is that some nineteenth-century labor law legal doctrines in the United States and England that are thought to be novelties of laissez-faire free contract ideology—for example, that an employer could confiscate a worker's entire accrued wage for the slightest insubordination—were in fact merely continuations of English labor laws established in the feudal era. In other words, laissez faire at the level of market relations left feudal authoritarianism intact at the level of intrafirm relations.
30. Robert Allen, "Engel's Pause: A Pessimist's Guide to the British Industrial Revolution," *Explorations in Economic History* 46, no. 4 (2009): 418–35.
31. Under employment-at-will, the legal reach of employers' authority extended to the entire day, as it still does today except when expressly limited by law, or, in fifteen states, by contract. However, for practical purposes, the separation of the workplace from the home substantially raised the costs and reduced the benefits to many employers of reaching that far, and thereby opened up room for workers to enjoy freedom from their bosses when off duty.
32. As I argue in Elizabeth Anderson, "Equality and Freedom in the Workplace: Recovering Republican Insights," *Social Philosophy and Policy* 31, no. 2 (2015): 48–69. One consequence of this point is that the traditional libertarian argument that the state should simply stop "interfering" with the economy is misguided: it is like saying that the commissioner of baseball should stop interfering with the game by promulgating its rules. It turns out that, to facilitate efficient cooperation at the vast scales of modern developed economies, the rules have to be remarkably complex. This opens up room both for democratic control in the public interest and regulatory capture.
33. For the classic exposition, see Blackstone, *Commentaries*, ch. 15.
34. As I argue in Anderson, "Equality and Freedom in the Workplace."
35. See, for example, Sidney Pollard, "Factory Discipline in the Industrial Revolution," *Economic History Review* 16, no. 2 (1963): 254–71. He notes the "deliberate or accidental modelling of many [factory] works on workhouses and prisons, a fact well known to the working population" (p. 254). I stress that it did not take Marxists or socialists to see the problem in the terms in which I have presented them. American labor republicans also understood it. See Alex Gourevitch, *From Slavery to the Cooperative Commonwealth: Labor and*

- Republican Liberty in the Nineteenth Century* (New York: Cambridge University Press, 2015).
36. Most famously, the inability of comprehensive centralized planning to use the information needed to allocate resources efficiently. See Friedrich A. Hayek, "The Use of Knowledge in Society," *American Economic Review* 35 (1945): 519–30.
  37. Those of you who are adjunct or contingent faculty, on the other hand, understand firsthand what I am talking about.
  38. Workplace Democracy Association, "Zogby Poll: As Independence Day Nears, Workplace Democracy Association Survey Finds One in Four Working Americans Describe Their Employer as a 'Dictatorship,'" June 23, 2008, <https://workplacedemocracy.wordpress.com/2008/06/23/workplace-democracy-survey/>.
  39. *Pollock v. Williams*, 322 U.S. 4, at 18 (1944). In this opinion, Justice Jackson, writing for the Supreme Court, struck down a Florida statute criminalizing failure to specifically perform a labor contract on which an advance was made, as contrary to the Thirteenth Amendment prohibition on involuntary servitude. Note the late date of the decision. Risa Goluboff, "The Thirteenth Amendment and a New Deal for Civil Rights," in *The Promises of Liberty: The History and Contemporary Relevance of the Thirteenth Amendment*, edited by Alexander Tsesis (New York: Columbia University Press, 2010), 119–37, explains how Jackson's reasoning reflected New Deal (positive liberty) rather than *Lochner*-era freedom of contract (negative liberty) principles.
  40. See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 331; Walter Block, "Toward a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Smith, Kinsella, Gordon, and Epstein," *Journal of Libertarian Studies* 17, no. 2 (2003): 39–85; Stephen Kershnar, "A Liberal Argument for Slavery," *Journal of Social Philosophy* 34, no. 4 (2003): 510–36. For libertarians opposed to the validity of slave contracts, see Murray Rothbard, *The Ethics of Liberty*, rev. ed. (New York: New York University Press, 1998), 40–41; Randy Barnett, "Contract Remedies and Inalienable Rights," *Social Philosophy and Policy* 4, no. 1 (1986): 179–202.
  41. Matt Marx, "The Firm Strikes Back: Non-Compete Agreements and the Mobility of Technical Professionals," *American Sociological Review* 76, no. 5 (2011): 695–712; Steven Greenhouse, "Noncompete Clauses Increasingly Pop Up in Array of Jobs," *New York Times*, June 8, 2014, <http://www.nytimes.com/2014/06/09/business/noncompete-clauses-increasingly-pop-up-in-array-of-jobs.html>; Clare O'Connor, "Does Jimmy John's Non-Compete Clause For Sandwich Makers Have Legal Legs?" *Forbes*, October 15, 2014, <http://www.forbes.com/sites/clareoconnor/2014/10/15/does-jimmy-johns-non-compete-clause-for-sandwich-makers-have-legal-legs/>.
  42. Orly Lobel, *Talent Wants to Be Free: Why We Should Learn to Love Leaks, Raids, and Free Riding* (New Haven, CT: Yale University Press, 2013).
  43. Patricia Bromley and John Meyer, "'They Are All Organizations': The Cultural Roots of Blurring Between the Nonprofit, Business, and Government Sectors," *Administration & Society* (2014), DOI: 10.1177/0095399714548268.

44. There may be legitimate limits to this for higher-ranked managers and press agents who are regarded as official spokespersons for their firms. It is one thing to fire an ordinary Pepsi worker for drinking Coke on the job (Suzanne Presto, "Coke Employee Fired for Drinking Pepsi on the Job," *CNN Money*, June 16 2003, [http://money.cnn.com/2003/06/13/news/funny/coke\\_pepsi/index.htm](http://money.cnn.com/2003/06/13/news/funny/coke_pepsi/index.htm)), and quite another for the CEO of Pepsi to publicly disparage Pepsi in comparison to Coke.
45. Mark Linder and Ingrid Nygaard, *Void Where Prohibited: Rest Breaks and the Right to Urinate on Company Time* (Ithaca, NY: ILR Press, 1998), 46.
46. James Whitman and Gabrielle Friedman, "The European Transformation of Harassment Law," *Columbia Journal of European Law* 9 (2002–2003): 241–74.
47. Cynthia Estlund, "Why Workers Still Need a Collective Voice in the Era of Norms and Mandates," *Research Handbook on the Economics of Labor and Employment Law*, edited by Cynthia Estlund and Michael Wachter, 463–90 (Northampton, MA: Edward Elgar, 2013), 470–71.
48. See John Stuart Mill, *Principles of Political Economy*, edited by J. M. Robson (Toronto: University of Toronto Press, 1965), vol. 3 of *Collected Works of John Stuart Mill*, ch. 7, for a classic defense in the liberal tradition. For a contemporary economic view, see Samuel Bowles, Herbert Gintis, and Bo Gustafsson, eds., *Markets and Democracy: Participation, Accountability, and Efficiency* (Cambridge: Cambridge University Press, 1993).
49. See Henry Hansmann, "Employee Ownership of Firms," in *The New Palgrave Dictionary of Economics and Law*, edited by Peter Newman, vol. 2 (London: MacMillan, 1998), 43–47, 45–46. I thank Steve Nayak-Young for this reference.
50. Gerald Mayer, *Union Membership Trends in the U.S.* (Washington, DC: Congressional Research Service, 2004), iv, [http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1176&context=key\\_workplace](http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1176&context=key_workplace).
51. Bureau of Labor Statistics, *Union Members—2014*, USDL-15-0072 (2015), 1, <http://www.bls.gov/news.release/pdf/union2.pdf>.
52. By contrast, in Europe, unions often deliver benefits to workers across entire industries, and often to workers as a whole, even when their membership is only a small proportion of all workers. For international comparisons, see Jelle Visser, *ICTWSS: Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts in 34 Countries Between 1960 and 2012* (Amsterdam: Amsterdam Institute for Advanced Labour Studies (AIAS), 2013), <http://www.uva-aias.net/208/>.
53. It does not follow that nonunionized firms are free from monopoly. Monopsonistic conditions are pervasive in labor markets. Alan Manning, *Monopsony in Motion: Imperfect Competition in Labor Markets* (Princeton, NJ: Princeton University Press, 2003).
54. Richard B. Freeman and Joel Rogers, *What Workers Want* (Ithaca, NY: ILR Press; New York: Russell Sage Foundation, 2006), 84.
55. For a brief introduction to Germany's system of works councils, see Rebecca Page, *Co-Determination in Germany: A Beginners' Guide* (Düsseldorf: Hans-Böckler-Stiftung, 2009).