The Ethics of Labor Struggle: A Free Market Perspective

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The technofascists, with Echelon, RFID chips, public surveillance cameras, and the like, have us under tighter surveillance at home than we could have imagined a generation ago; they have the globe under the closest thing to an unchallenged hegemony that's ever existed in history. In their wildest dreams for the near future, the PNAC types probably imagine something like Ken Macleod's US/UN Hegemony in *The Star Fraction*, enforced by a network of orbital laser battle stations capable of incinerating ships and armored formations anywhere on the Earth's surface.[1] But in Macleod's story, that Hegemony was overthrown in the end by asymmetric warfare, fought by a loose coalition of insurgencies around the world. Their fluid guerrilla tactics never presented a target for the orbital lasers; and they kept coming back with one offensive after another against the New World Order, until the cost of the constant counter-insurgency wars bled the U.S. economy dry.

I suspect that all these high-tech lines of defense, against would-be military rivals and against subversion at home, are a modern-day version of the Maginot Line.

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

In the military realm, the age-old methods of decentralized and networked resistance have most recently appeared in public discussion under the buzzword "Fourth Generation Warfare."[2]

But networked resistance against the Empire goes far beyond guerrilla warfare in the military realm. The same advantages of asymmetric warfare accrue equally to domestic political opposition. There is a wide range of ruling elite literature on the dangers of "netwar" to the existing system of power, along with an equal volume of literature by the Empire's enemies celebrating such networked resistance. Most notable among them are probably the Rand studies, from the late 1990s on, by David Ronfeldt et al. In *The Zapatista "Social Netwar" in Mexico*,[3] those authors expressed grave concern over the possibilities of decentralized "netwar" techniques for undermining elite control. They saw ominous signs of such a movement in the global political support network for the Zapatistas. Loose, ad hoc coalitions of affinity groups, organizing through the Internet, could throw together large demonstrations at short notice, and "swarm" the government and mainstream media with phone calls, letters, and emails far beyond their capacity to absorb. Ronfeldt noted a parallel between such techniques and the "leaderless resistance" advocated by right-wing white supremacist Louis Beam, circulating in some Constitutionalist/militia circles. These were, in fact, the very methods later used at Seattle and afterward. Decentralized "netwar," the stuff of elite nightmares, was essentially the "crisis of governability" Samuel Huntington had warned of in the 1970s - but potentially several orders of magnitude greater.

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[1] Tor Books, 2001.

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

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

The post-Seattle movement confirmed such elite fears, and resulted in a full-scale backlash. Paul Rosenberg recounted in horrifying detail the illegal repression and political dirty tricks used by local police forces against anti-globalization activists at protests in 1999 and 2000.[4] There have even been some reports that Garden Plot[5] was activated on a local basis at Seattle, and that Delta Force units provided intelligence and advice to local police.[6] The U.S. government also seems to have taken advantage of the upward ratcheting of the police state after the 9-11 attacks to pursue its preexisting war on the anti-globalization movement. The intersection of the career of onetime Philadelphia Police Commissioner John Timoney, a fanatical enemy of the post-Seattle movement, with the highest levels of Homeland Security (in the meantime supervising the police riot against the FTAA protesters in Miami) is especially interesting in this regard.[7]

The same netwar techniques are discussed in Jeff Vail's A Theory of Power blog, in a much more sympathetic manner, as "Rhizome."[8]

One question that's been less looked into, though, is the extent to which the ideas of networked resistance and asymmetric warfare are applicable to labor relations. It's rather odd labor relations aren't considered more in this context, since the Wobbly idea of "direct action on the job" is a classic example of asymmetric warfare. My purpose in this article is to examine the ethical issues attending the use of such labor tactics, from a free market libertarian standpoint.

Vulgar libertarian critiques of organized labor commonly assert that unions depend entirely on force (or the implicit threat of force), backed by the state, against non-union laborers; they assume, in so arguing, that the strike as it is known today has always been the primary method of labor struggle. Any of Thomas DiLorenzo's articles on the subject at Mises. Org can be taken as a proxy for this ideological tendency. I quote the following as an example:

Historically, the main "weapon" that unions have employed to try to push wages above the levels that employees could get by bargaining for themselves on the free market without a union has been the strike. But in order for the strike to work, and for unions to have any significance at all, some form of coercion or violence must be used to keep competing workers out of the labor market.[9]

This betrays a profound ignorance of the history of the labor movement outside the sterile bubble of the Wagner Act.

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

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

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

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

[8] http://www.jeffvail.net/ The book A Theory of Power is available as a free pdf file at http://www.jeffvail.net/atheoryofpower.pdf.

[9] Thomas DiLorenzo, "The Myth of Voluntary Unions," Mises.Org, September 14, 2004[.http://www.mises.org/story/1604].

First of all, when the strike *was* chosen as a weapon, it relied more on the threat of imposing costs on the employer than on the forcible exclusion of scabs. You wouldn't think it so hard for the Misoids to understand that the replacement of a major portion of the workforce, especially when the supply of replacement workers is limited by moral sympathy with the strike, might entail considerable transaction costs and disruption of production. The idiosyncratic knowledge of the existing workforce, the time and cost of bringing replacement workers to an equivalent level of productivity, and the damage short-term disruption of production may do to customer relations, together constitute a rent that invests the threat of walking out with a considerable deterrent value. And the cost and disruption is greatly intensified when the strike is backed by sympathy strikes at other stages of production. Wagner and Taft-Hartley greatly reduced the effectiveness of strikes at individual plants by transforming them into declared wars fought by Queensbury rules, and likewise reduced their effectiveness by prohibiting the coordination of actions across multiple plants or industries. Taft-Hartley's cooling off periods, in addition, gave employers time to prepare ahead of time for such disruptions and greatly reduced the informational rents embodied in the training of the existing workforce. Were not such restrictions in place, today's "just-in-time" economy would likely be far more vulnerable to such disruption than that of the 1930s.

More importantly, though, unionism was historically less about strikes or excluding non-union workers from the workplace than about what workers did *inside* the workplace to strengthen their bargaining power against the boss.

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

> one crucial similarity between those two fascists [Hitler and FDR] is that both successfully destroyed the trade unions. Roosevelt did it by passing exactly the reforms that would ensure the creation of a trade-union bureaucracy. Since F.D.R., the unions have become the protectors of contracts rather than the spearhead of worker demands. And the Roosevelt era brought the "no strike" clause, the notion that your rights are limited by the needs of the state.[10]

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

The extent to which state labor policy serves the interests of employers is suggested by the old (pre-Milsted) Libertarian Party Platform, a considerable deviation from the stereotypical libertarian position on organized labor. It expressly called for a repeal, not only of Wagner, but

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

of Taft-Hartley's prohibitions on sympathy and boycott strikes and of state right-to-work prohibitions on union shop contracts. It also condemned any federal right to impose "cooling off" periods or issue back-to-work orders.[11]

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

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

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

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

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

> …as I repeat ad nauseam, "social democracy is the price you pay for corporate capitalism." There Aint No Sech Thing As A Free Lunch - if you are going to strip the majority of their property and independence and turn them into wage slaves - you have to provide for them.[12]

Dan Sullivan once suggested, along similar lines, that redistribution isn't a matter for debate under state capitalism: the owning classes have no choice in the matter. The distortions, the maldistributions of purchasing power, are built into the very structure of privilege and subsidy; if the distortions are not corrected, they result, though a process of feedback, in wealth growing on

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

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

itself and further aggravating the maldistribution of purchasing power. So long as the distorting privileges are in place, the state capitalist ruling class will simply have no choice but to intervene to counteract the tendency toward overproduction and underconsumption. The only alternatives are 1) to eliminate the original distortion so that purchasing power is tied directly to effort, and labor is able to purchase its full product; or 2) to add new layers of distortion to counteract the original distortion.[13]

In any event, the Wagner regime worked for labor only so long as capital *wanted* it to work for labor. It was originally intended as one of the "humane" measures like those the kindly dairy farmer provided for his cattle in Tolstoy's parable (the better to milk them, of course).[14] If we're going to be livestock, that sort of thing beats the hell out of the kind of farmer who decides it's more profitable to work us to death and then replace us. But that's all moot now; when the corporate elite decided the "labor accord" had outlived its usefulness, and began exploiting the available loopholes in Wagner (and the full-blown breach in Taft-Hartley), labor began its long retreat.

An alternative model of labor struggle, and one much closer to the overall spirit of organized labor before Wagner, would include the kinds of activity mentioned in the old Wobbly pamphlet "How to Fire Your Boss," and discussed by the I.W.W.'s Alexis Buss in her articles on "minority unionism" for *Industrial Worker*.

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

> If unionism is to become a movement again, we need to break out of the current model, one that has come to rely on a recipe increasingly difficult to prepare: a majority of workers vote a union in, a contract is bargained. We need to return to the sort of rank-and-file on-the-job agitating that won the 8-hour day and built unions as a vital force…
>
> Minority unionism happens on our own terms, regardless of legal recognition…
>
> U.S. & Canadian labor relations regimes are set up on the premise that you need a majority of workers to have a union, generally government-certified in a worldwide context[;] this is a relatively rare set-up. And even in North America, the notion that a union needs official recognition or majority status to have the right to represent its members is of relatively recent origin, thanks mostly to the choice of business unions to trade rank-and-file strength for legal maintenance of membership guarantees.
>
> The labor movement was not built through majority unionism - it couldn't have been.[15]
>
> How are we going to get off of this road? We must stop making gaining legal recognition and a contract the point of our organizing…

[13] This is a paraphrase from memory of his argument. Unfortunately, I can't track down the original. I'm pretty sure it was on one of the Georgist yahoogroups in mid-2006.

[14] Leo Tolstoy, " Parable," reproduced at www.geocities.com/glasgowbranch/parable.html

[15] "Minority Report," Industrial Worker, October 2002 [http://www.iww.org/organize/strategy/Alexis-Buss102002.shtml].

> We have to bring about a situation where the bosses, not the union, want the contract. We need to create situations where bosses will offer us concessions to get our cooperation. Make them beg for it.[16]

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

> The bosses, with their large financial reserves, are better able to withstand a long drawn-out strike than the workers. In many cases, court injunctions will freeze or confiscate the union's strike funds. And worst of all, a long walk-out only gives the boss a chance to replace striking workers with a scab (replacement) workforce.
>
> Workers are far more effective when they take direct action while still on the job. By deliberately reducing the boss' profits while continuing to collect wages, you can cripple the boss without giving some scab the opportunity to take your job. Direct action, by definition, means those tactics workers can undertake themselves, without the help of government agencies, union bureaucrats, or high-priced lawyers. Running to the National Labor Relations Board (N.L.R.B.) for help may be appropriate in some cases, but it is NOT a form of direct action.[17]

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

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

DiLorenzo is wrong, of course, in limiting on-the-job action solely to physical sabotage of the employer's property. As we shall see below, an on-the-job struggle over the pace and intensity of work is inherent in the incomplete nature of the employment contract, the impossibility of defining such particulars ahead of time, and the agency costs involved in monitoring performance

[16] "Minority Report," Industrial Worker, December 2002 [http://www.iww.org/organize/strategy/Alexis-Buss122002.shtml].

[17] "How to Fire Your Boss: A Worker's Guide to Direct Action." http://home.interlog.com/~gilgames/boss.htm. It should be noted that the I.W.W. no longer endorses this pamphlet in its original form, and reproduces only a heavily toned down version at its website.

after the fact. But what is truly comical is DiLorenzo's ignorance of the role employers and the employers' state played in establishment unions making the strike a "major 'weapon'" *in the first place*.

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

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

It was probably easier to build unions by means of organizing strikes, getting workers to "down tools" and strike in hot blood when a flying squadron entered the shop floor, than it is today to get workers to jump through the NLRB's hoops (and likely resign themselves to punitive action) in cold blood. And it certainly was easier to win a strike before Taft-Hartley outlawed secondary and boycott strikes up and down the production chain. The classic CIO strikes of the early '30s involved multiple steps in the chain - not only production plants, but their suppliers of raw materials, their retail outlets, and the teamsters who moved finished and unfinished goods. They were planned strategically, as a general staff might plan a campaign. Some strikes turned into what amounted to regional general strikes. Even a minority of workers striking, at each step in the chain, can be far more effective than a conventional strike limited to one plant. Even the AFL-CIO's Sweeney, at one point, half-heartedly suggested that things would be easier if Congress repealed all the labor legislation after Norris-LaGuardia (which took the feds out of the business of issuing injunctions and sending in troops), and let labor and management go at it "*mano a mano*."(18)

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

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

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

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

that state universities are the rightful property of either the students or faculties, and should either be turned into student consumer co-ops, or placed under the control of scholars' guilds. More provocative still, Rothbard tentatively applied the same principle to the (theatrical gasp) private sector! First he raised the question of nominally "private" universities that got most of their funding from the state, like Columbia. Surely it was only a "private" college "*in the most ironic sense*." And therefore, it deserved "a similar fate of virtuous homesteading confiscation."

> But if Columbia University, what of General Dynamics? What of the myriad of corporations which are integral parts of the military-industrial complex, which not only get over half or sometimes virtually all their revenue from the government but also participate in mass murder? What are their credentials to "private" property? Surely less than zero. As eager lobbyists for these contracts and subsidies, as co-founders of the garrison stare, they deserve confiscation and reversion of their property to the genuine private sector as rapidly as possible. To say that their "private" property must be respected is to say that the property stolen by the horsethief and the murderer must be "respected."
>
> But how then do we go about destatizing the entire mass of government property, as well as the "private property" of General Dynamics? All this needs detailed thought and inquiry on the part of libertarians. One method would be to turn over ownership to the homesteading workers in the particular plants; another to turn over pro-rata ownership to the individual taxpayers. But we must face the fact that it might prove the most practical route to first nationalize the property as a prelude to redistribution. Thus, how could the ownership of General Dynamics be transferred to the deserving taxpayers without first being nationalized enroute? And, further more, even if the government should decide to nationalize General Dynamics - without compensation, of course - per se and not as a prelude to redistribution to the taxpayers, this is not immoral or something to be combatted. For it would only mean that one gang of thieves - the government - would be confiscating property from another previously cooperating gang, the corporation that has lived off the government. I do not often agree with John Kenneth Galbraith, but his recent suggestion to nationalize businesses which get more than 75% of their revenue from government, or from the military, has considerable merit. Certainly it does not mean aggression against private property, and, furthermore, we could expect a considerable diminution of zeal from the military-industrial complex if much of the profits were taken out of war and plunder. And besides, it would make the American military machine less efficient, being governmental, and that is surely all to the good. But why stop at 75%? Fifty per cent seems to be a reasonable cutoff point on whether an organization is largely public or largely private.[18]

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

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

As for the other, less extreme tactics, those who object morally to such on-the-job direct action fail to consider the logical implications of a free contract in labor. As Samuel Bowles and Herbert Gintis describe it,

> The classical theory of contract implicit in most of neo-classical economics holds that the enforcement of claims is performed by the judicial system at negligible cost to the exchanging parties. We refer to this classical third-party enforcement assumption as exogenous enforcement. Where, by contrast, enforcement of claims arising from an exchange by third parties is infeasible or excessively costly, the exchanging agents must themselves seek to enforce their claims. Endogenous enforcement in labour markets was analysed by Marx - he termed it the extraction of labour from labour power - and has recently become the more or less standard model among microeconomic theorists.
>
> Exogenous enforcement is absent under a variety of quite common conditions: when there is no relevant third party…, when the contested attribute can be measured only imperfectly or at considerable cost (work effort, for example, or the degre of risk assumed by a firm's management), when the relevant evidence is not admissible in a court of law…[,] when there is no possible means of redress…, or when the nature of the contingencies concerning future states of the world relevant to the exchange precludes writing a fully specified contract.
>
> In such cases the ex post terms of exchange are determined by the structure of the interaction between A and B, and in particular on the strategies A is able to adopt to induce B to provide the desired level of the contested attribute, and the counter strategies available to B…
>
> Consider agent A who purchases a good or service from agent B. We call the exchange contested when B's good or service possesses an attribute which is valuable to A, is costly for B to provide, yet is not fully specified in an enforceable contract…
>
> An employment relationship is established when, in return for a wage, the worker B agrees to submit to the authority of the employer A for a specified period of time in return for a wage w. While the employer's promise to pay the wage is legally enforceable, the worker's promise to bestow an adequate level of effort and care upon the tasks assigned, even if offered, is not. Work is subjectively costly for the worker to provide, valuable to the employer, and costly to measure. The manager-worker relationship is thus a contested exchange.[19]

The very term "adequate effort" is meaningless, aside from whatever way its definition is worked out in practice based on the comparative bargaining power of worker and employer. It's virtually impossible to design a contract that specifies ahead of time the exact levels of effort and standards of performance for a wage-laborer, and likewise impossible for employers to reliably monitor performance after the fact. Therefore, the workplace is contested terrain, and

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

workers are justified entirely as much as employers in attempting to maximize their own interests within the leeway left by an incomplete contract. How much effort is "normal" to expend is determined by the informal outcome of the social contest within the workplace, given the de facto balance of power at any given time. And that includes slowdowns, "going canny," and the like. The "normal" effort that an employer is entitled to, when he buys labor-power, is entirely a matter of convention. It's directly analogous the local cultural standards that would determine the nature of "reasonable expectations," in a libertarian common law of implied contract. If libertarians like to think of "a fair day's wage" as an open-ended concept, subject to the employer's discretion and limited by what he can get away with, they should remember that "a fair day's work" is equally open-ended.

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

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

Now, it's almost impossible to outlaw these things ex ante through a legally enforceable contract. Every time I go to work it strikes me even more how much of what the Wobblies considered "direct action" couldn't possibly be defined by any feasible contractual or legal regime, and are therefore restrained entirely by the workers' perception of what they can get away with in the contested social space of the job. What constitutes a fair level of effort is entirely a subjective cultural norm, that can only be determined by the real-world bargaining strength of owners and workers in a particular workplace - it's a lot like the local, contextual definitions that the common law of fraud would depend on in a free marketplace. And I suspect that as downsizing, speedups and stress continue, workers' definitions of a fair level of effort and of the legitimate ways to slow down will undergo a drastic shift.

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

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

Whistle Blowing can be as simple as a face-to-face conversation with a customer, or it can be as dramatic as the P.G.&E. engineer who revealed that the blueprints to the Diablo Canyon nuclear reactor had been reversed. Upton Sinclair's novel The Jungle blew the lid off the scandalous health standards and working conditions of the meatpacking industry when it was published earlier this century.

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

The authors of The Cluetrain Manifesto are quite eloquent on the potential for frank, unmediated conversations between employees and customers as a way of building customer relationships and circumventing the consumer's ingrained habit of blocking out canned corporate messages.[20]

What they didn't mention is the potential for disaster, from the company's perspective, if workers are disgruntled and see the customer as a potential ally against a common enemy. In an age when unions have virtually disappeared from the private sector workforce, and downsizings and speedups have become a normal expectation of working life, the vulnerability of employer's public image may be the one bit of real leverage the worker has over him - and it's a doozy. If they go after that image relentlessly and systematically, they've got the boss by the short hairs.Given the ease of setting up anonymous blogs and websites (just think of any company and then look up the URL employernamesucks.com), the potential for other features of the writeable web like comment threads and message boards, the possibility of anonymously saturation emailing of the company's major suppliers and customers and advocacy groups concerned with that industry… well, let's just say the potential for "swarming" and "netwar" is limitless.

If the litigation over Diebold's corporate files and emails teaches anything, it's that court injunctions are absolutely useless against guerrilla netwar. The era of the SLAPP lawsuit is over, except for those cases where the offender is considerate enough to volunteer his home address to the target. Even in the early days of the Internet, the McLibel case (a McDonald's SLAPP suit against some small-time pamphleteers) turned into "*the most expensive and most disastrous public-relations exercise ever mounted by a multinational company.*"[21] We have probably already passed a "singularity," a point of no return, in the use of such networked information warfare. It took some time for employers to reach a consensus that the old corporate liberal welfare regime no longer served their interests, to take note of the union-busting potential of Taft-Hartley, and to exploit that potential whole-heartedly. But once they began to do so, the implosion of Wagner-style unionism was preordained. Likewise, it will take time for the realization to dawn on workers that things are only getting worse, and there's no hope in traditional unionism, and that in a Cluetrain world they have the power to bring the employer to his knees by their own direct action. But when they do, the outcome is also probably preordained.

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

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

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

[21] "270-day libel case goes on and on…," 28th June 1996, Daily Telegraph (UK) [http://www.mcspotlight.org/media/thisweek/jul3.html]

> **Fisticuffs:** Economically speaking, why should [workers] do more than the minimum possible for their pay?
>
> **Charles M.**: Why not just rob people if you can get away with it? Economically speaking?
>
> **Fisticuffs:** If a person does a certain amount of work and gets paid for that amount of work, is the person really pricing himself efficiently if he does more work without getting paid more?[22]

Here's a little thought experiment: try imagining Charles M.'s reaction if Fisticuffs had complained that *employers* are "robbing people" when they try to get the most work they can for an hour's wages. You can also do an experiment in real life: go to any mainstream libertarian discussion forum and complain about the bad behavior of the typical worker. The responses will range from commiseration over "how hard it is to get good help nowadays," to visceral outrage at the ingratitude and perversity of such uppity workers. Then go to a comparable forum and complain in exactly the same tone about your boss' behavior. The predictable response will be a terse "if you don't like it, look for another job." Try it for yourself.

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

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

> ...We are not yet a classless society... [F]undamentally the mission of [workers'] elected representatives is to get the most compensation for the least amount of labor. Our responsibility to our shareholders is to get the most production for the least amount of compensation.

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

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

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

Before I move on, there's one possibility for labor organizing that's pretty much new. As described in Yochai Benkler in *The Wealth of Networks*, the networked digital world has created

[22] "Proud to be a Replacement Worker," Libertarian Underground, March 2, 2004. http://www.libertarianunderground.com/Forum/index.php/topic,865.0.html

an unprecedented state of affairs. In many industries, in which the initial outlay for entering the market was in the hundreds of thousands of dollars or more, the desktop revolution and the Internet mean that the minimum capital outlay has fallen to a few thousand dollars, and the marginal cost of reproduction is zero. That is true of the software industry, the music industry (thanks to cheap equipment for high quality recording and sound editing), desktop publishing, and to a certain extent even to film (as witnessed by affordable editing technology and the success of *Sky Captain*). In this environment, the only thing standing between the old information and media dinosaurs and their total collapse is their so-called "intellectual property" rights - at least to the extent they're still enforceable. In any such industry, where the basic production equipment is affordable to all, and bottom-up networking renders management obsolete, it is likely that self-managed, cooperative production will replace the old managerial hierarchies. The potential for such "worker control of the means of production," in the digital world, has been celebrated by no less of an anarcho-capitalist than Eric Raymond.

And the same model of organization can be extended, by way of analogy, to fields of employment outside the information and entertainment industries. The basic model is applicable in any industry with low requirements for initial capitalization and low or non-existent overhead. Perhaps the most revolutionary possibilities are in the temp industry. In my own work experience, I've seen that hospitals using agency nursing staff typically pay the staffing agency about three times what the agency nurse receives in pay. Cutting out the middleman, perhaps with some sort of cross between a workers' co-op and a longshoremen's union hiring hall, seems like a no-brainer. An AFL-CIO organizer in the San Francisco Bay area has attempted just such a project, as recounted by Daniel Levine.[23]

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

I've also seen, in the real world, real wages that have remained stagnant or even fallen slightly since the 1970s, as labor productivity soared and the real GDP nearly doubled. Labor is far more productive than it was thirty years ago; yet virtually the entire increase in GDP in that time has gone to corporate profits, CEO salaries, and exploding land rents. The entire growth of economic output over the past thirty years has gone into mushrooming incomes for the rentier classes, while the majority have kept up their purchasing power by cashing out home equity at Ditech. These facts, seemingly so at odds with Hazlitt's dictum, bring to mind a quote from Mises:

> If a contradiction appears between a theory and experience, we must always assume that a condition pre-supposed by the theory was not present, or else there is some error in our observation. The disagreement between the theory and the facts of experience frequently forces us to think through the problems of the theory again. But so long as a rethinking of the theory uncovers no errors in our thinking, we are not entitled to doubt its truth.[24]

[23] Disgruntled.

[24] Epistemological Problems of Economics

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

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

It's also odd that the Rothbardians see so little advantage in contracts, from a worker's perspective. Thomas L. Knapp, a left-Rothbardian who joined the Wobblies, remarked on the contrast between mainstream libertarians' attitudes toward labor contracts and their attitudes toward contracts in all other economic realms:

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

Far from putting employers and employees at odds with each other, dealing on the basis of explicit contract minimizes misunderstandings. Each party knows what he or she is required to do to execute the contract, and each party knows what he or she can expect as a benefit under it.[25]

Contracts introduce long-term stability and predictability for everyone: something free-market libertarians consider to be a fairly non-controversial benefit, when anything but labor supply is involved. Had Rothbard held down a blue collar job, he might have understood the incredible feeling of relief in knowing you're protected by a union contract against arbitrary dismissal and all the associated uncertainty and insecurity, that comes with being an "at-will" employee.

Another point, on the same subject: Rothbard expressed considerable hostility toward the "economic illiteracy" of workers who voluntarily refrained from crossing picket lines, and consumers who boycott scab goods, is quite uncharacteristic for a subjectivist. It's certainly odd for adherents of an ideology that normally accepts no second-guessing of "revealed preference," to get their noses so out of joint when that preference is for respecting a picket line or buying "fair trade" coffee.

More importantly, in acknowledging that enough potential "replacement workers" so honored picket lines as to constitute a "problem," from his perspective, he also gave the lie to arguments by DiLorenzo and his ilk that the success of strikes depends on forcible exclusion of scabs. To see just how ridiculous that assertion is, imagine someone making the analogous claim that "the success of the boycott as a weapon depends entirely on the use of force to exclude customers from the market." A strike does not have to achieve 100% participation of the workforce, or exclude 100% of potential replacements. It only has to *persuade* enough of both groups to inconvenience the employer beyond his threshold of tolerance. And that a general moral culture which encourages labor solidarity and respect for picket lines, alone, may be enough to achieve this, is suggested

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

by the very fact that Rothbard and his right-wing followers regard that kind of moral culture as such a threat.

Conclusion

Whatever value the Wagner regime had for us in the past, it has outlived. We are getting kicked in the teeth under the old rules. If labor is to fight a successful counteroffensive, it has to stop playing by the bosses' rules. We need to fight completely outside the structure of Wagner and the NLRB's system of certification and contracts, or at least treat them as a secondary tactic in a strategy based on direct action.

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

It's time to take up Sweeney's half-hearted suggestion, not just as a throwaway line, but as a challenge to the bosses. We'll gladly forego legal protections against punitive firing of union organizers, and federal certification of unions, if you'll forego the court injunctions and cooling-off periods and arbitration. We'll leave you free to fire organizers at will, to bring back the yellow dog contract, if you leave us free to engage in sympathy and boycott strikes all the way up and down the production chain, boycott retailers, and strike against the hauling of scab cargo, etc., effectively turning every strike into a general strike. We give up Wagner (such as it is), and you give up Taft-Hartley and the Railway Labor Relations Act. And then we'll mop the floor with your ass.

According to Thomas M. Gordon, the percentage of "discouraged union workers" (workers who say they would join a union in their workplace if one were available) is over 30% - that's the same percentage who actually belong to unions in Canada, where union membership is based on a simple card-check system.[26] So the number of people looking for a way to fight back is about the same as it always was. The avenues of fighting back just seem to have been closed off, from their perspective. We need to show them they're wrong.

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

[26] Thomas M. Gordon, Fat and Mean

Kevin Carson
The Ethics of Labor Struggle: A Free Market Perspective
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