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"Humbug" or "Human Good"?

EP Thompson, the Rule of Law, and Labor from The Making to Neoliberal American Capitalism

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"Productive relations themselves are, in part, only meaningful in terms of their definition at law" (Thompson, 1975: 208)

Introduction

How can E.P. Thompson's approach to the rule of law inform the study of labor coercion, conflict, and regulatory change in contemporary American workplaces within and beyond the boundaries of the nation-state? This paper argues that Thompson’s reflections upon the rule of law helps us conceptualize the role of law in shaping labor relations under neoliberal American capitalism. Neoliberal American production regimes are understood to be based upon the unfolding of various forms of coerced wage-labor at home and abroad, suggesting that the performance of work is enforced through state structures that are antithetical to understandings of liberalism itself. Welfare recipients are compelled to work to receive entitlements, the criminally punished labor as a condition of incarceration, while migrants working in the US and in zones of American occupation are juridically tied to their employer and under threat of deportation (Peck, 1996; Raghanuth, 2009; Wacquant, 2009; Hahamovitch, 2011; Wishnie, Cooper, and Fisk, 2005; Klein, 2009). At the same time, children labor for globalized American corporations (Bergman, 2011). While it is difficult to estimate the size of the coerced labor force today, the summation of "workfare", prison, and migrant laborers may constitute up to 7% of the US workforce.1 Moreover, hundreds of

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1 This figure is based upon a comparison of the US labor market participation rate (which suggests a domestic labor force of 189 million) against the population of coerced workers. For the labor market participation rate, see http://data.bls.gov/timeseries/LNS11300000. The population of coerced workers in the United States can be estimated at 14 million. "Workfare" and prison labor remains relatively small (several hundred thousand and 80,000 respectively) (Waquant, 2009), while the number of temporary foreign migrant workers has been estimated to be two million (INS does not keep data). Undocumented workers are estimated to be 12 million strong.
thousands of foreign migrant soldiers and service personnel work outside the boundaries of the US, but in areas under its military jurisdiction, such as Iraq and Afghanistan. Child labor has been estimated to be 218 million worldwide.2

Far from showing the incompleteness of the liberal or the neoliberal project, legal coercion to work evinces the contradiction between an ideology of freedom to contract and the actual existing definition and enforcement of labor relations. Forms of domestic and imperial labor un-freedom are, at the level of policy, integrated with market regulations, while, all become sites of legal resistance and legal disputes within the courts. This prompts the question, in the words of Thompson, whether the rule of law is "humbug" or "a human good" to coerced wage workers in a neoliberal and global American economy, or to what extent and how it may be both.

Below, in Part I, I first review scholarly debates over what the rule of law meant to Thompson, and, argue that, contrary to what his critics and champions assert, Thompson’s saw law not only as a "human good" but as a janus-faced institution with "humbug" attributes in a dialectical relationship with the good. This is because he viewed law as a primordial site of political contention, one that always embodied dynamics of power, competing moral economies (with concomitant alternative understandings of rights), and, at times, social change. One sees this approach to law become his historical methodology from The Making to his later published essays. I conclude this section by suggesting that his janus-faced and dialectical view of law is well-placed to consider the labor and legal questions raised under neoliberal American capitalism. For, his non-teleological emphasis on the persistence of legal repression, competing rights discourses, and change through struggle helps complicate the dominant narrative that neoliberalism is about "rolled-back/rolled-out" state structures.

Part II examines the politics and structures of legal coercion over labor today. It makes three claims. First, that class conflict under neoliberalism has been, in part, about expanding three pre-existing juridical orders that compromise workers’ mobility, volition, and contractual freedoms. Longstanding distinctions between market and non-market work, citizen and subjects, and national and extra-territorial production in the law have helped consolidate rulers’ claims upon labor power. Yet, unfolding coercions blend, at the level of policy, with market structures. Secondly, I examine the politics behind and content of court claims filed in the name of or by "workfare", prison laborers, migrant workers at home and abroad, and extra-territorial child laborers. I show that these claims arise primarily (but not solely) through actions and plural discourses of market freedom, political liberalism, and regulation. Thirdly, I find and show how US courts, responding to domestic and global workers’ rights-claims, legitimate contemporary labor coercion, while also, occasionally, softening it. What we imagine to be "free" wage-labor in a liberal market, based upon mobility, volition, and contract is a juridical construction that courts are foreclosing, while tempering coercion with rights. The "humbug" and "human good" faces of law rear together in the legal process under neoliberalism.

I. E.P. Thompson and the Rule of Law

2 Numbers come from International Labor Organization figures. See Bergman, 2011: 455.
What E.P. Thompson was thinking when he wrote his 11 page essay on the "rule of law" at the close of Whigs & Hunters (1975) is the well-known starting point through which to deconstruct his approach to law. What, Thompson asked in this postscript, could his study of the Black Act in 17th century England contribute to historical understanding of law? Following Marx, historians already understood how, in this period, law curtailed agrarian use-rights upon common lands. His research on the parliamentary extension of the death penalty to rebellious acts such as deer stealing, tree cutting, and burning by agrarian rebels gave further fodder to a pre-existing thesis that law institutionalized, and therefore served, capitalist property rights and relations. But, Thompson qualified this point. He posited two things: older legal claims based upon alternative moral economies provided a language of resistance for the poor, and secondly, that even this "bad law" contained procedures that "bound the rulers to act only in the ways which its forms permitted; they had difficulties with these forms..." (209). Thus, he concluded that, while much of the law and its implementation by judges was "humbug", the rule of law itself was not. While serving class rule, its ideology of "equity and universality" "served to bring power even further within constitutional controls" (Thompson 1975, 206-7). As such, he continued "the defence of the citizen from power’s all-intrusive claims, seems to me to be an unqualified human good" (208).

This piece has had its critics and champions over the years, with critics wondering how a Marxist historian could have volte-faced into a liberal. But, if one reads closely, his 1975 piece merely re-iterated a position that Thompson espoused from the beginning in The Making. Read: "...the poor man might often feel little protection when caught up in law’s toils. But the jury system did afford a measure of protection...if any...are inclined to question the value of these limits, they should contrast...the Scottish courts" (80). It was not until the 1975 piece that Thompson’s views on law became controversial, however.

In 1977, the Harvard critical legal historian Morton Horwitz famously responded that “I do not see how a Man of the Left can describe the rule of law as ‘an unqualified human good.’”(1977, 566). Horwitz argued that Thompson failed to account for how abstract legalism foreclosed the pursuit of social justice in politics by casting the hegemonic smokescreen of formal legal equality in society. In 1980, the Marxist historian, Adrian Merritt agreed, asking how Thompson could fail to realize that the very legalism he supported was the very logic of class power under capitalism, where market institutions and formal equality, such as those of property and contract, were exploitation's handmaiden. For them, the "humbug" and "human good" faces did not call for the laudation of law, it provided fodder to explain law’s hegemonic power in society. David Cole of Indiana School of Law, more recently (2001), has endeavored to explain why Thompson could see law’s "humbug" face everywhere in his work, yet conclude that law’s "human good" face was unqualified. Cole asserted that Thompson held a minimalist vision of the rule of law gleaned from his particular period of research, where the constraint of arbitrary monarchical power was an "unqualified human good.”

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3 I think that Cole's argument that Thompson's view of law really was only what he said it was, a constraint on arbitrary power, intimates that his critics took his claims too far. But, this, in a way, only reiterates what Thompson already said, leaving the debate back at square one.
Now, here, I’d like to suggest two things. First, when both Merritt and Horwitz criticized Thompson for failing to understand how formal-legal equality and contract consolidated the inequities of capitalism foreclosing substantive alternatives, they suggested that the rule of law to which Thompson referred was the law of market capitalism whose formal-legal smokescreens they understood so well. Yet, Thompson did not use words formal legal equality or make any reference to the law of 19th century capitalism (which Merritt tells us is the law of contracts) in his comments on the rule of law. Had he wanted to specify that he meant the rule of law under capitalism, he would have done as much. As, for example, he did in The Making when discussing the paradoxical marriage between laissez-faire and the security state in utilitarian politics and doctrine (read, Bentham). Instead, he spoke generally about legal procedures, which in their bourgeois legal form, have mapped onto the restraint of state power in the name of private rights; but, which, in themselves, do not have a necessary link to market capitalism. If anything, Thompson left the law of 19th century capitalism under-theorized in his essay when he asserted that the 18th century was the time of law while the 19th century was about "economic sanctions and to the ideology of the free market and of political liberalism" (206). This, of course, ignores what legal forms constituted the market and liberal politics.

Second, I would argue that Thompson’s critics and champions have focused a bit too much on the phrase "human good" without paying enough attention to his "humbug" thesis and the dialectic between their janus-faces. Robert Gordon may have meant as much in a tributary essay in 1993-4, where he argued that his (Thompson) provides an "extremely sophisticated understanding of the many social roles of law" (1993-4) Law could be repressive with a "political oligarchy inventing callous and oppressive laws to serve its own interests" (207), and might always be; but moral economies of rights and justice (past or present) could change power relations through law. One might substitute law for his rhetoric on class: law "did not rise like the sun at the appointed time. It was present at its own making." Or, alternatively, law "is defined by men as they live their own history, and, in the end, this is its only definition" (1963, 9,11). And, here, we might argue that Thompson’s views on law and as well as those of his critics echoed a larger polemic present in The Poverty of Theory and elsewhere. Thompson does not talk about legal formalism and contract as the logic of capitalism because he would not consider these forms to be its necessary "structuring structures" (to use the language of his epistemological foe, Althusser). The law of capitalism was only visible as a process, and here, as historical research evinced, the social reality of law was a much messier web of repression, "the unwritten popular code" (moral economy), and change.

We see these dynamics strikingly from The Making to his later essays. When legislatively defined crimes against property, industrial rebellion, political and economic organization, and policing increased in the 18th and into the 19th century, Thompson argues that popular resistance did as well because "this distinction between the legal code and the unwritten popular code" of rights in the name of freedom from power expanded" (1963, 61-63). This led to calls for freedom of the press, organization, and the right to vote beginning in 1820, movements that, in 1824 and 1832 were partially successful. These years saw the repeal of the Combination Acts and the extension of voting rights for the middle classes. An 1825 law against labor unions and the exclusion of the working classes
from the vote propelled more resistance. Law’s "humbug" reared its face with the "human good".

The dialectic between repression, competing systems of rights, and change is also found in its negative form in Whigs and Hunters and Customs in Common: Studies in Traditional Popular Culture (1991) where Thompson argued that "what was often at issue was not property, supported by law, against no-property; it was alternative definitions of property-rights...When it ceased to be possible to continue the fight at law, men still felt a sense of legal wrong: the propertied had obtained their power by illegitimate means" (1975, 203-4). Ultimately, I do not think that he thought the struggle over power and law's "humbug" and "human good" faces would attenuate. For, in his own words, history itself offered no evidence otherwise. In his (1980) essay "The State of the Nation" in Writing by Candlelight, for example, he wrote:

"This contest has swayed backwards and forwards, through a thousand episodes, and with each generation it has been renewed. We have subjected feudal barons, overmighty subjects, corrupt Lord Chancellors, kings and their courtiers, overmighty generals, the vast apparatus of Old Corruption, inhumane employers, overmighty commissioners of police, imperial adventurers and successive nests of ruling-class conspirators to the rule of law. Every now we have notched up a victory, and every now and then the ratchet has slipped back" (1980, 245-6).

While the rhetoric of "slipping back" suggests a Marxist idea of progress, the language of "backwards and forwards" "thousand episodes" and "renewal" over generations suggest a continual dialectic of social conflict in history. To this extent, Merritt, may have had a point when she asserted that such a Hobbesian view of the world detracted from his Marxism. Given his view of human society, he could not imagine law’s disappearance via socialism. "A historian is unqualified to pronounce on such utopian projections. All that he knows is that he can bring in support of them no historical evidence whatsoever" (208). Law would remain as a "human good", a tool to challenge law's ever-present repressive "humbug" other face. And, as a side note, this belief in procedure is perhaps why contemporary left liberals, such as Jeremy Waldron (2007), cite E.P. Thompson today to counter those who imagine law to be only about market institutions. For if one holds this view, law can no longer curb the expansion of state power in domains of national security and war.

E.P. Thompson's approach to law and labor in the history of capitalism is one starting point through which to examine both in their neoliberal American form. I think this is the case for the following reason, which corresponds to my reading of Thompson’s approach to them above. His anti-teleological view of history and his disinclination to accord capitalist structures an inherent legal logic suggests we re-think the content of its legal structuring structures, and, by extension, those undergirding the most recent transition into neoliberalism. For, unlike what Merritt and Horwitz’s critiques above suggested, market institutions, such as property and contract, and regulatory projects in the name of substantive justice, say nothing about how market institutions are enforced. Thompson’s account suggests that what the market means and the kinds of conflicts surrounding it are continually played out under the law.
II. The Rule of Law and Labor under Neoliberal American Capitalism

Despite habitual intimations to the contrary, American liberal capitalism has always legally compelled work in excess of a formal legal contract. Indeed, "the great transformation" at the close of the 19th century to a labor market based upon "free" wage-labor simultaneously created new juridical distinctions between market v. institutionalized labor, citizen and subjects, and national and extra-territorial production, all of which challenged liberal principles of volition, freedom of movement, and contract.  

Class politics under neoliberalism in the post-1970 period are played out within these legal forms. "Workfare" emerged as a new kind of welfarism wherein individuals work in order to receive social safety net benefits (Peck, 2001). As Lawrence Mead has found (2006), "workfare" was shaped by decades of conservative politics dating to the 1960s. Pioneered in the 1970s by New York City and other localities, it was made into Federal Law in 1996, when President Clinton signed The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The US Chamber of Commerce backed the bill on the grounds that it "trained" and prepared the dependent poor for employment. Today, however, it provides a labor force for public authorities and private actors. Under "workfare" recipients of government aid are entitled to prevailing wages in a given area of work. As such, their labor is not a terrain of non-regulation in a market, it is an area where the structure of state law defies liberal market principles. Contrary to the ideology of "free labor" based upon mobility, volition, and contract, as part of legislative policy, "workfare" recipients do not have choice of employer, cannot change employers at will, and will lose all benefits if they do not show up on the job.

Concomitantly, in the prison, neoliberalization has entailed the commodification of a rising prison population for profit. The privatization of correctional services has gone hand in hand with the leasing out of inmates to corporations. This was on evidence in the aftermath of the BP spill in Louisiana, for example, where inmate labor was the first pool drawn upon to engage in clean-up. The size of this industry remains small as a percentage of the overall labor force in the United States, but it is increasing, suggesting that the country could go on the road to “carceral full employment” (Wacquant, 2009). For example, in 1996, Oregon passed a constitutional amendment approving compulsory work for the entire prison population.

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4 Both the workhouse and penitentiary, were reserve labor pools until the New Deal State did away with both. At the same time, in 1898, when the Isthmus Canal Commission learned they could not use indentured labor in a post-Civil War world to build the Panama Canal, they pioneered deportable labor. In 1936, this regime was installed in the US Virgin Islands, while it became a way of governing labor on US military bases abroad, such as in Guantanamo and Guam in the post-WW II period (Lipman, 2009). Deportable labor circulated back into the boundaries of the nation with world war labor mobilizations. In 1917 and 1942, the "alien labor" contract juridically bound subjects to their employers (restricting movement) in order to prevent them from moving elsewhere. Unlike citizen workers, state agents and employers could mobilize the penalties of repatriation or deportation as a threat to compel work (an extra-economic sanction beyond market coercion) The distinction between the citizen and the subject was normalized in immigration legislation in 1952. Finally, US labor laws have never extended to extra-territorial labor relationships unless a particular territory comes under US jurisdiction.
Businesses from 1970 to the 2000s also lobbied Congress to expand its access to temporary migrants. As such, the temporary migrant labor regime has spread from agriculture and war industries, becoming most prominent within those labor processes and sectors associated with the neoliberal/post-Fordist knowledge economy (the ratio of agricultural to knowledge economy foreign temporary workers is now 1:33) (DHS Population Statistics, 2009). Temporary labor migrants continue to work juridically bound to their employers and subject to deportation if fired. This is not a terrain of non-regulation as workers are entitled to certain wage-standards and conditions.

Deportation expanded as a punitive labor market sanction in 1986 when the Immigration Reform and Control Act (IRCA) made it unlawful for employers to hire the undocumented. This measure was supported by labor unions in the name of reducing competition. While employer organizations such as the U.S. Chamber of Commerce opposed it in 1986, employer sanctions has given businesses a new dominion in the workplace, as immigration agents can be called into the workplace to deport workers if they not comply with employer demands.

The globalization and liberalization of US military empire and production participates in the expansion of labor coercion. While the US military and federal military contractors have used deportable labor since the 1950s, migrant contracting networks remain outside of law’s purview. Beyond a military base itself, the US does not give standing to workers abroad to sue American interests, military or corporate. For example, Congress has never ratified a treaty that gives a child laborer employed by a US corporation standing (Bergman, 2011: 457). The Trafficking Victims Protection Acts of 2000, 2003, and 2005, passed at the behest of domestic labor groups, now gives standing to individuals trafficked by extra-territorial American interests.

The definition of labor un-freedom and its regulation does not only play out at the top in legislative policy, however. Below I examine the role of legal claims and courts in redefining neoliberal labor regulation.

a. "Workfare"

Jamie Peck (2003) has argued that resistance to "workfare" reflects work enforcement strategies pursued at the local level. In New York City, where "workfare" subjects are placed in public sector employment, public sector unions united with "workfare" labor to challenge the program on the grounds of perceived competition in a market and the program’s defiance of "free" labor principles in NY state courts in 1997. The claim was that, under the program, "workfare" labor did not have the right to bargain as any other actor would in the market as their remuneration was fixed by the benefit. The moral world of this rights-based claim was that of formal legal equality in a market.

The New York Supreme Court struck down their legal claims on the grounds that "workfare" workers are, in fact, not workers at all. A close reading of the judicial decision shows that the court relied on a distinction between market and non-market work. Brukhman v. Giuliani 2000 N.Y. LEXIS 77 (1997) stipulated that "workfare" workers are not "employees" because they are not "in the employ" of anyone. The judge continued to stipulate that "Participants are "assigned" to various "work sites", where they provide
"valuable service" until they are able "to secure employment in the regular economy". Thus, while the rights-based claim was that of equality in a market, the judge struck it down on the grounds that "workfare" labor was non-market. This preserved the coercive policy intact.

b. "Prison Labor"

Labor and employment rights in the prison, where prisoners are compelled to work as a condition of incarceration, have also been an area for legal resistance and court consideration of claims against coercion. Claims filed by individuals and collectives have been made in the name of political liberalism and market regulation via constitutional and statutory arguments. Courts, in response, have generally beat back prisoners efforts. In 1963, for example, Robert Draper, held in Washington state for robbery, challenged compulsion to work as a violation of his 13th amendment right to be free from forced labor. The Ninth Circuit Court of Appeals, in response, held that such right did not extend to prisoners Draper v. Rhey 315 F. 2d 193 (1963). In 1977, as part of the prisoners’ rights movement, inmates in a North Carolina prison sought to unionize, yet prison administrators curtailed their capacity to meet, solicit member, or distribute union materials to inmates. Inmates filed a suit, arguing that the policy was an unconstitutional infringement on their first and fourteenth amendment rights, namely to free speech and association, as well as equal protection under the law (Tibbs, 2012). Although a lower district court ruled in their favor, the Supreme Court overturned the ruling in Jones v. North Carolina Prisoners’ Labor Union, Inc. 433 U.S. 119 (1977) on the grounds that “prisons, it is obvious, differ in numerous respects from free society” (Raghanuth, 2009).

Statutory claims arguing that the minimum wage applies to the prison have had mixed- result in the courts. There is a long line of cases filed "pro se" by individuals under the Fair Labor Standards Act such as Wentworth v. Solem 548 F. 2d 773 (1977) Vanskike v. Peters 974 F. 2d 806 (1992) and Gambetta v. Prison Rehabilitative Industries 112 F.3d 1119 (1997) where courts hold that inmates are not “employees” because they labor for the state outside of the market (Zatz 2008). However, there are situations in which courts have ruled that minimum wage applies. And, here, it appears to hinge on the form of the contractual relationship forged between an employer, prison administrators, and the inmate laborer. Several cases have ruled that inmates are not entitled to minimum wages when prison administrators make contracts with private employers for inmate services within prison walls. For example, in Sims v. Parke Davis & Co., 334 F. Supp. 774 (E.D. Mich., 1971) and in Alexander et al. v. Sara 559 F. Supp. 42 (1983) courts decided that private corporations had "relinquished" their status as an employer when they made a contract with the state to use prison labor. Therefore, no minimum wage requirement ensued, remuneration was under state discretion. Where the minimum wage has been held to apply is when employers contract directly with inmates (as in a case where inmates are chosen to act as teaching assistants as part of inmate educational programs, Carter v. Duchess Community College 735 F.2d 8 (1984)). Or, when the public prison becomes a private actor in the market, distributing goods made by inmates for profit. When prisoners working for 40 hours a week for Arizona Correctional Industries Program (ARCOR) for 50 cents an hour filed a suit for minimum wage, the courts found such low production costs a risk to market standards and unfair competition beyond prison walls Hale v State of Arizona 967 F.2d 1356 (1992).
From the above we see that workers' claims have used the language of rights to break down a distinction in law and society between free and institutionalized prison labor. Courts have, for the most part, repudiated the claims. The instances in which claims have been successful depend on factors that are largely beyond individual control, but are in the hands of state and employer design. Some types of authoritative decisions (not to pay a wage) have been changed through law, but the coercive relationship itself remains intact.

c. Migrant Workers

The increased use (in number and distribution) of deportable migrant labor by employers within the boundaries of the nation brings migrant legal resistance into US courts. Both temporary migrant visas and undocumented legal status gives employer extra-economic sanctions in the labor & employment relationship that exceed control over citizen labor: the power to induce a loss of residency status or deportation upon termination. Unlike in the case of citizen labor, state law is implicated in the enforcement of employment contracts, exceeding and adding to market coercion.

The relationship between an employer power’s to induce loss of status and market coercion has been a site of legal resistance on behalf or by migrant workers. In 2002, farm labor advocates (the Migrant Farmworker Justice Project in Florida and the National Employment Law Project in New York City) filed a case on behalf of foreign temporary workers in agriculture on the grounds that migrant labor contracting under the H-2A program failed to satisfy general statutory employment rights under the Fair Labor Standards Act (FLSA). More specifically, in Arriaga v. Florida Pacific Farms LLC, et al., 305 F.3d 1228 (11th Cir. 2002), the farmworkers and their advocates argued that the "50 percent" rule, where workers had to labor for half the contractual period to be eligible for transportation and visa remuneration, brought their wages below minimum wage guarantees. They also argued that recruitment costs fronted by workers to labor contractors in their home country did as well. Both, the advocates and workers stipulated, made the employer capacity to induce loss of status in the initial period of employment egregious, to the extent that workers labored to recuperate up-front costs or, in all likelihood, debt. The 11th Circuit responded that the travel and immigration expenses be borne by the employer at the moment of hire. The court wrote that labor contractors in charge of recruiting on behalf of US employers were outside the purview of the statute, however. This decision legitimated one of the most pernicious aspects of migrant labor travel into the US. Recruitment costs can be thousands of dollars, leading migrants into situations where they work for months to pay off debts to labor recruiters (Southern Poverty Law Center, 2005). "Human good" and "humbug" justice at once.

Individual migrant workers have also asked courts to determine whether an immigration visa constitutes a promise of employment by migrants in the absence of a formal employment contract. Courts have ruled that migrant visas do not constitute any kind of contract between an employer and employee; that is, a visa creates no expectation of employment. For example, in Van Heerden v. Total Petroleum, Inc., 942 F. Supp. 468 (1996), a temporary migrant from South Africa working in Denver argued that the company induced him to quit his job and migrate to the US, after which they desolved his position. Van Heerden argued that this had caused him much emotional duress, a he had expected that his three-year visa meant employment for a fixed three-year period. In response, the
United States District Court, D. Colorado concluded that "An individual hired for an indefinite period of time in Colorado is an "at will employee" whose employment may be terminated by either party without cause and without notice. The presumption of at will employment, however, is not absolute and may be rebuttable under circumstances giving rise to an implied contract of employment. But, an application to the INS, for a visa does not indicate that there is an implied contract between the parties." By asserting that a visa application does not constitute an implied contract, the association between "at will" employment (market coercion) and repatriation as an extra-economic sanction in the workplace has been strengthened.

Undocumented workers have also filed cases asserting more rights. While the undocumented retain collective bargaining rights in US law, as articulated by Agriprocessor CO., INC v. NLRB 514 F.3d 1 (2008), deportation has a limiting factor on the ability of undocumented workers to express this right since 1984. In Sure-Tan 467 U. S. 903 the Supreme Court ruled that neither backpay nor reinstatement (two remedies for wrongful discharge under the National Labor Relations Act) would be available to deported workers. Hoffman v. Plastic Compounds Inc. 535 U.S. 137 (2002) extended this framework by denying backpay and reinstatement to all undocumented workers, irrespective of their continued presence in the United States (Fisk, Cooper, and Wishnie, 2005). Immigration status trumps workplace rights. Coercion, or the fear of deportation as a disciplinary force in the labor market, has been legitimated through the courts.

C. National v. Extra-territorial

Despite the fact that US law does not follow imperial production, legal cases filed in courts have attempted to discipline American corporations or their subsidiaries abroad. A case in point is that of Flomo v. Firestone Natural Rubber Co. LLC 643 F.3d 1013, 1017 (2011). This case came into the Federal courts following a prior decision in Sosa v. Alvarez-Machain 542 U.S. 692 (2004), which said that foreign citizens could sue multinational corporations under the Alien Tort Statute. Save the Children united with pro-bono lawyers to challenge the use of child labor on a Liberian rubber plantation. The argument was couched in the language of market regulation, as lawyers argued that Firestone took advantage of the rural familial networks, which compelled children into the plantation. Despite their arguments, Judge Posner wrote that child labor was a normal part of production extra-territorially, wherein "high daily production quotas for its employees, who are poor Liberian agricultural workers" necessitate that families use their children to help them. Moreover, despite evidence presented at trial that hauling rubber stunted children's growth, Posner took a market-based utilitarian approach to the case "We also--and this is the biggest objection to this lawsuit--don't know the situation of Liberian children...there is a tradeoff between family income and child labor; children are helped by the former and hurt by the latter; we don't know the net effect on their welfare of working on the plantation." The intersection between corporate and familial compulsion of labor was left intact in the name of unknowable market-based welfare.

The case of deportable labor abroad in zones of American jurisdiction, such as Iraq and Afghanistan, is another area in which extra-territorial labor is coming into the courts.

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5 The Alien Tort Statute enacted in 1789 had allowed foreign citizens to bring claims against piracy, mistreatment of ambassadors, and violation of safe conducts into US courts if the actions violated customary international law.
The Defense Base Act, passed in 1941, to compensate workers for injury when employed by military contractors abroad, applies to foreign temporary workers employed by them. For example, after 12 Nepali workers were captured by Al-Qaeda and executed en route to employment, their families, one surviving worker, and pro-bono lawyers in the US filed a case against their employers for compensation under the Act, which they received. However, the inadequacy of this regulatory statute to cover the myriad of coercive practices deportable migrants encounter is leading workers and their advocates to file new claims. Workers have reported being told that they were going to Gulf states rather than military zones, having their documents seized and held by labor recruiters, and paying large sums to obtain promises of employment (Stillman, 2011). The above case has now gone forward in the Southern District of Texas under the Alien Tort Statute and the Trafficking Victims Protection Act (TVPA), passed by Congress in 2000 (it is the first TVPA case ever). The workers argue that KBR, an American services, engineering, and construction company, and its subcontractor, Daoud Partners, a Jordanian company knowingly work with recruiters who defraud workers, seize their papers, and take large sums of money from them in return for work contracts. On August 23rd, 2013 the Court ruled that the Alien Tort Statute does not give extra-territorial laborers harmed by US interests abroad standing. The TVPA question is going forward.

Conclusion

From the above, it appears that coercive labor policies under neoliberalism are challenged by multiple actors using discourses of formal legal quality, political liberalism, and market regulation in the name of workplace justice. We see how the structuring structure of labor regulation under neoliberalism is coming "from the bottom-up".

Ultimately, what we see is that the law of "neo"liberal labor relations is not a return to the era of freedom of contract epitomized by Lochner era jurisprudence and workplace relations. Courts are not institutionalizing laissez faire as a constitutional principle. Instead, what we see, overall, is that jurisprudence defers to coercive labor policies, sometimes disciplining them with rights.

Works Cited


6 The most recent Supreme Court case in Kiobel v. Royal Dutch Petroleum Co., 569 U.S. _____ (2013) reversed the 2004 case that had allowed individuals to sue US corporations abroad (including Flomo, above).


Moore, Phoebe (2012)


'Moral economy’ retrieved in digital archives

Kazuhiko Kondo

1. In the current political discourse the term ‘moral economy’ has been used in criticism of the casino capitalism and the doomed ‘morality’ of economy today.¹ Recent academic publications, though in more or less diverse use, appear to be inundated with it. Titles are easier to count, and if searched for those containing ‘moral economy’ in the Bibliography of British and Irish History and the British Library Integrated Catalogue, one gets 34 publications in the BBIH, and 66 hits with moral economy contained in book or chapter titles in the BLIC.² While the BBIH is limited to articles and books of British and Irish history, and the BLIC comprises books of all subjects, there are only four publications included in both. The larger number of BLIC hits obviously comes from the inclusion of the table of contents of recent books (e.g. chapter titles of collection of essays) as well as the blanket inclusion of all subject books. Together they range, for instance, from ‘Avarice, monopoly and the moral economy in England, c.1350-c.1600’³, ‘The moral economy of business’⁴ and Usury, moral economy and Islamic banking⁵ to ‘Robert Boyle and the moral economy of experiment’⁶, ‘The moral economy of opium in colonial India’⁷ and ‘Bioethics and the global moral economy of human embryonic stem cell science’⁸ Even Mothering in the new moral economy⁹ and The moral economy of grandparenting¹⁰ are discussed. Among 66 publications of the BLIC 43 are those published since 2000, and among 35 of the BBIH 17 are since 2000.

¹ As both David and Ed Miliband used in August/September 2010.
² The number of hits is sometimes deceptive as they include some mechanical double counts. So the apparent BBIH hits of 35 are reduced to genuine 34, apparent BLIC hits of 72 to genuine 66.
⁴ Leslie Hannah, in Civil histories, ed. Peter Burke et al. (Oxford, 2000).
⁵ H. H. Al Ajlan (Exeter, 2007).
⁶ M. Ben-Chaim, in Science in Context, xv (2002).
⁷ J. F. Richards, in Drugs and empires, ed. by Patricia Barton (Basingstoke, 2007).
⁹ Sue Parker (Durham, 2006).
Some of the recent titles may only be self-indulgent and catchy inventions to attract wider readership, but the frequent usage and broadening variety are evidence of the charm of the term as well as of its ambiguity. Moral economy is a neat and evocative term when one discusses entitlement, justice and order in a changing society. But cannot we be less diffuse and more solid in using this valuable term?

The Oxford English dictionary on historical principles, that essential resource of language use, cites a literature for ‘moral economy’ in the second half of the twentieth century, J. C. Scott, *The moral economy of the peasant*. It was in the year 1976 that the American sociologist published his book based on his social anthropological studies of the peasant economy and revolts of south-east Asia, especially Burma and Vietnam, in the first half of the twentieth century. Scott describes the basic norm of the peasant’s mentalité populaire as ‘the moral economy of the subsistence ethic’, that defines the local community and reciprocity among villagers. Their protest against its infringement appears as deliberate protection of the inherited customs. His discussion continues in his next book, *Weapons of the weak*, where he views the ‘everyday forms of peasant resistance as Brechtian forms of class struggle’. Scott is ambitious to extend the scope of the concept by pointing positively ‘to themes that might find echoes elsewhere’ and to ‘the sense of right and entitlement that suffused pre-capitalist practices and that alone could account for the sense of justified outrage and indignation’. His academic debts are to social anthropologists of Asia and social and cultural historians of Europe, among whom he acknowledges the origin of the phrase ‘moral economy’ as from Edward P. Thompson.

2.

E. P. Thompson was among those important historians of the historiographical sea-change in the late twentieth century, and discussed ‘the ambiguous tradition of the eighteenth-century “mob” to rescue the ‘more or less spontaneous popular
direct action’ from historical condescension. He focussed on the food riots in eighteenth-century England and emphasized ‘more articulate popular sanctions and . . . more sophisticated traditions than the word “riot” suggests’. He went on to argue that the legitimizing ‘assumptions of an older moral economy’ rendered the disturbances to be more than a mere uproar of destruction and looting.16 His incipient conception of moral economy in The Making of the English Working Class (1963)17 was later developed substantially in his article, ‘The moral economy of the English crowd in the eighteenth century’ (1971).18 It was the most forceful article that described and explained the characteristic popular behaviour and legitimizing ideas of order and justice as observed during the food riots in eighteenth-century England and Wales, and hence the most decisive one to promulgate the term ‘moral economy’ among historians before Scott. Thompson continued to observe the reciprocal dealings and theatrical exchanges between the common people and the gentry and to discuss the bipolar ‘field of force’ in his later works.19 Thompson went on to stress the importance of folklore studies and historical anthropology.20

Not surprisingly the works of Thompson in the 1970s have informed not only British historians but also European, Asian and Japanese scholars who come from different backgrounds but invariably work on popular culture, justice, order and legitimacy in a changing society.21 As German, French and other European examples are well known,22 I will mention only two Japanese studies: first Yoshio Yasumaru, historian of Japanese popular culture and society, makes full use of the Thompsonian concept of ‘moral economy’ when he discusses the frequent, almost epidemic riots of peasants and townsmen in eighteenth- and nineteenth-century Japan. ‘The pulling down of merchant houses and physical destruction of warehouses’, as Yasumaru argues, ‘did not accompany personal, bodily attacks,

17 Thompson, The making, 67-8.
20 E. P. Thompson, ‘Folklore, anthropology and social history’, Indian Historical Review, iii (1977), 247.
22 Detlev Puls, Wahrnehmungsformen und Protestverhalten (Frankfurt am Main, 1979).
because the destruction was regarded as a public punishment more or less sanctioned by authority, and because the tradition of recovering moral economy to the local society by direct action of the people was still alive and available. He adds, ‘popular regulation of the property right was the part and parcel of moral economy’.23

In all the cases of Thompson, Yasumaru and Scott the popular protest and direct action do not culminate in political revolutions. They are either Brechtian or Robin Hoodian, and at the same time very ‘rational’ and deliberate in their own context.

The French Revolution used to be a primary inspiration for social historians in the 1950s and 60s, but the term moral economy has not come into frequent application in its recent studies. Lynn Hunt and Keith Baker would prefer the term ‘political culture’, which means for them ‘the values, expectations and implicit rules that expressed and shaped collective intentions and actions’.24 On the other hand, Michio Shibata, Japanese historian of the French Revolution, makes full use of the term ‘moral economy’ when he discusses the Parisian sans-culotte movements in the Revolution as well as the rural food riots in the ancient régime.25 In this connection it is more interesting to cite Thompson himself who, after reviewing recent historiography in 1991, paraphrased moral economy for ‘the political culture, the expectations, traditions, and indeed, superstitions of the working population most frequently involved in actions in the market; and the relations . . . between crowd and rulers’.26

The present author has also been inspired to discuss the sale of wife, rough music (charivari), Jacobite and other political mobs, labour disputes as well as food riots in England of the long eighteenth century (c.1660-c.1830) as instances of popular direct actions of sanction and social justice in place of negligent authorities. By ‘sanction’ I mean a historic law/rule/order which bears its implicit sanctity and is accepted by all participants and enforced through a more or less violent ‘rite of ridicule, punishment and conformity’. Those who infringed it should be punished/sanctioned in public; those who conformed to it would be approved/sanctioned into the community. Thus the political culture of moral

23 Yoshio Yasumaru, Nihon no kindaika to minshu shiso [Popular thoughts in early modern Japan] (Tokyo, 1974); Komminto no ishikikatei [The consciousness of the Poorman’s Party], Shiso, No.726 (1984), p. 87.
26 Thompson, Customs, p. 260.
economy meant much in which the common people executed historic ‘justice’ by themselves as sanctioned by community law.\textsuperscript{27}

‘Moral’ and ‘economy’ are both arguably significant words with historic backgrounds. The etymology and historical usage of the term ‘moral economy’ will be discussed soon.

Such has been the forceful influence of E. P. Thompson, but there are disappointing and even perplexing sentences of Thompson himself to deal with today. His \textit{Customs in common} includes a long chapter, ‘The moral economy reviewed’, and after ample responses to reviews and criticisms of the ‘Moral economy’ article of 1971, its section IV starts thus:

\begin{quote}
‘I do not know how far back one must go to find the origin of the term, “moral economy”. I think that it comes from the late eighteenth century, but I cannot now find references'.
\end{quote}

He continues, ‘it was certainly around in the 1830s’, and quotes Bronterre O’Brien, Chartist, with his alleged polemic of moral economy against political economy.\textsuperscript{28} Here I begin to be uneasy. Was ‘moral economy’ actually an eighteenth-century term? If so, was it a ‘directly anti-capitalist usage’ in opposition to ‘political economy’ — as Thompson puts it? Is it fair to resort to a polemic of a Chartist in 1837 in order to show an example of the eighteenth-century discourse of food riots? In fact food riots in England had come to be rare by Chartist years. Wasn’t it Thompson himself who demonstrated the ‘sea change’ of political climate at the turn of the century (1790s to 1810s) in \textit{The making}? Naturally, one would also expect that of language in the same period.

As Thompson confesses above, the historical provenance of his moral economy has been untraceable. Two solutions today are plausible. On the one hand, the personal papers and correspondence: the Thompson Papers are donated by E. P. and Dorothy Thompson at the Bodleian Library, Oxford, but will be closed until 2043.\textsuperscript{29} However, the research correspondence between E. E. Dodd and E. P. Thompson (1964–79) is now available at the University of Warwick, and contains hundreds of letters and notes which relate to the eighteenth-century food riots, incendiary letters and the blacks.\textsuperscript{30} I have read all of them, but rather disappointingly, no single mention to the term, moral economy, is made in the remaining correspondence, even when talking about that particular \textit{Past & Present} article of 1971. Dodd writes

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\textsuperscript{27} Kazuhiko Kondo, \textit{Tami no moral [Culture & society in early modern England]} (Tokyo, 1993).
\textsuperscript{28} \textit{Customs in common}, 336–7.
\textsuperscript{29} Personal communication.
\textsuperscript{30} University of Warwick, Modern Records Centre, MSS 369, donated by the family of E. E. Dodd.
\end{flushright}
to Thompson, after thanking the receipt of the offprint in June 1971,

I cannot claim to have contributed more than a fraction of the basic evidence and I had not attempted to construct any theory of the basis of riots, though I had sometimes been struck by the moderation – almost the orderliness – of the proceedings. But I think you state a good case for finding a root conviction not so much of rights as of right inspiring some, at least, of the crowds.31

Dodd’s comment is good, but the enigma remains.

On the other hand, the digitized archives: EEBO, ECCO, MoMW, etc. are made accessible recently, and have been transforming the conditions of historical research worldwide, and one can pursue full-text searches of published materials and trace what was going on among the writers of topical issues of the period, such as religion, moral reform, poor law, Ireland and foreign parts of the world. The present paper is not about the extensiveness of the term moral economy, but about its historical usage and changing meanings in the long eighteenth century. It explores publications of the period by full-text search of the digitized archives and rehabilitates the shifting contexts and diverse meanings of the term. The rehabilitation will render the interpretation of eighteenth-century discourse and worldview subtler and more appropriate.

3.

In their collected essays, Wealth and virtue, Istvan Hont and Michael Ignatieff censured Thompson for his alleged antinomy: moral economy versus political economy.32 According to Hont and Ignatieff, 1) Thompson’s antinomy conceals the contemporary ‘moral imperative . . . shared by paternalists and political economists alike’; 2) Thompson confines his discussion to the English/British context which formed only a part of ‘the European enlightenment camp’; 3) Thompson ignores the divisive debate going on in the battleground of philosophes and économistes over the corn trade, over laissez-faire and regulation. They imply that the width and diversity of ‘moral philosophy’ and ‘political oeconomy’ of the enlightenment period have not been properly recognized by Thompson. Thompson replied to Hont and Ignatieff in his Customs in common (1991), but he remains sceptical of the importance of what was going on among the European philosophes and enlightenment writers, and maintains that the relationship between Adam Smith,

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the English crowd and British tract-writers was more significant. Thompson’s intellectual Euro/French scepticism as expressed here is not for the first time.

A glance at etymology of the words ‘economy’ and ‘moral’ may be appropriate here, before exploring the digital archives of the long eighteenth-century. Economy derives from ancient Greek, oikonomia: oikos being household, nomia being arrangement. So oikonomia was originally management of a household or family, and then extended in Hellenistic Greek to administration and government. In post-classical Latin, however, the accepted translation of oikonomia was dispensatio meaning planning, prudent handling or explanation of doctrine. In middle and early modern French économie meant good use of a thing, harmonious disposition of the parts of a whole, and order of things as established by Providence. And these meanings were shared by early modern English. As the OED says, ‘hence in certain theological senses economy and dispensation [providential arrangement] are used interchangeably’. Incidentally, the term ‘political economy’ was an invention of the seventeenth century. The first appearance of French économie politique was in 1611, and William Petty used ‘political oeconomies’ in 1691.

Moral, on the other hand, comes from Latin: moralis was invented by Cicero as a rendering of ancient Greek ethikos; mos was custom, mores habits. In classical Latin philosophia moralis was used in opposition to philosophia naturalis; and moral philosophy in English was first used in c.1443. The OED adds medieval Italian usage of morale (adj.) concerning decent, proper modes of behaviour. ‘Moral’ in early modern and modern English meant something related to human and social, as opposed to natural/physical/logical. Hence, in the University of Cambridge ‘moral sciences tripos’ was established in 1851 to comprise humanities and social sciences (i.e. PPE in Oxford), until 1903 when J. M. Keynes, taught by Alfred Marshall, passed the first economics tripos.

One is warned, therefore, of taking such assumption for granted that ‘moral economy’ was always about good administration of resources and harmonious order of things. It could stand for a less virtuous state of a community, and the context could be either ecclesiastical or secular.

33 Thompson, Customs, pp.275-7.
34 One is reminded of his vehement attack on Althusser and Althusserians in Thompson, Poverty of theory (London, 1978).
35 Oxford English Dictionary Online. art. economy. My reference is invariably to the OED when discussing etymology.
36 OED, art. political
4. Now the digitized resources — part and parcel of my discussion. *Early English Books Online (EEBO, 1450-1700)* originated in E. B. Power’s project to microfilm important early books in Britain during the 1930s, amalgamated other collections, and now contains about 100,000 titles as digitized, searchable full text archive.\(^{37}\) *Eighteenth Century Collections Online (ECCO, 1701-1800)* derives from the *Eighteenth-century Short Title Catalogue* which was first intended as short-title catalogue of all English-language publications of the eighteenth century held in research libraries throughout the world. The catalogue developed into a more ambitious project of microfilming all pages. Now digitized, the archive/database in two parts claims to contain over 180,000 titles (200,000 volumes) except for periodicals and engravings.\(^{38}\) *The Making of the Modern World (MoMW)*, on the other hand, has its origin in the microfilm edition of the Goldsmiths-Kress Libraries, amalgamated collection of economic literature in the widest sense since Caxton up to mid-nineteenth century in London and Harvard Universities. This specialized in economics, intellectual history and social science: i.e. ‘moral sciences’ in the sense of late-nineteenth-century Cambridge University. *MoMW* includes many publications in French, Italian and other European languages as well (33% of the 61,000 titles are in none-English languages). Now digitized and renamed, this is a very useful resource for our historical analysis.\(^{39}\)

The three digitized resources come from different projects, and are of different characters. *EEBO* and *ECCO* comprise substantial percentage of all publications in English from Caxton to 1800. *MoMW* claims less comprehensive from the start, but, being focussed on moral sciences and economics, suits our aim. They complement each other and help form a more balanced view of the published discourse of the period, hitherto unavailable. It would be of little avail to venture a statistical analysis of discourse over the period, because none of the three is a perfect collection of publications of the period. But together, they form a practical corpus of published words in English and some other languages, sufficient to form a historical spectrum.

By pursuing careful full-text searches of ‘moral economy’ (including a variety of spellings such as ‘morale oeconomie’ and ‘moral economist’) one gets 2 hits in EEBO, 58 hits in ECCO, and 87 deceptive hits in MoMW. ‘Deceptive’, because they include several technical noises, including library labels and *ex libris* marks. Really

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37 http://eebo.chadwyck.com/about/about.htm
38 http://gdc.gale.com/products/eighteenth-century-collections-online/
significant hits are about half of the whole. Nonetheless, the results are interesting and, if examined in chronological order, revealing. Some typology of the usage of moral economy may be proposed.

As, *OED* tells, *oikonomia* was interchangeable with *dispensatio* in post-classical Latin, economy in English was invariably spelt *oeconomy* until the mid-eighteenth century. So was ‘moral oeconomy’ used in theological context, meaning providential order and godly dispensation until the 1750s. Thus in 1730 Robert Leeke (fl. 1728-40), fellow of St John’s College, Cambridge, discusses providence in his sermon, *No act of religion acceptable to God, without faith in Jesus Christ*, referring to ‘... directing the moral oeconomy of things.’ Also Richard Murray (fl. 1747-8) writes about ‘the plan of moral oeconomy, prescribed by Jesus’ in his *Alethia: or a general system of moral truths, and natural religion* (1747). And William Warburton (1698-1779) was forceful when he spoke about ‘general view of the course and order of God’s moral oeconomy’ in his *Julian, or a discourse... in which the reality of a divine interposition is shewn* (1751). These usage may be named **type A**: moral economy (still spelt oeconomy) as providential dispensation or godly order. ‘Moral’ in this context is incidental and means little other than ‘in/of human society’.

A different strand of discourse in English emerges in 1759 when an anonymous writer, ascribed to Samuel Johnson (fl. 1759-63) both in the British Library catalogue and by the compiler of *ECCO*, writes in his *Philosophick mirror, or a general view of human oeconomy*: ‘... words to express noble ideas and refined sentiments, as well in natural philosophy and moral oeconomy as in particular branches of arts and sciences’ The author places moral oeconomy side by side with natural philosophy and other branches of learning, and implies nothing about theology or religion. Rather, he places it in a very secular and enlightened sphere of knowledge. Here one could exchange moral oeconomy and moral philosophy without scruple.

Contemporary French usage can be pointed to, e.g. *Journal Oeconomique... sur les arts, l'agriculture, le commerce...* (1756) where ‘problème oeconomique, moral et
physique’ is discussed, and Nicolas Baudeau, *Première introduction à la philosophie économique* (1771) where ‘l’enseignement moral économique de la loi divine de justice, de l’ordre divin de bienfaisance’ is discussed. In 1765 *The Royal Magazine* printed a letter from a reader to ‘... silence all objections, not only against the order of nature, but also the moral oeconomy of mankind’. Those uses of Baudeau and *the Royal Magazine* may and may not include godly meanings.

Ambiguity disappears in 1782 when James Dunbar (? - 1798), a lecturer in moral philosophy at Aberdeen, writes in his *Essays on the history of mankind* about ‘peculiar association of qualities, which is properly called national, as distinguishing a people long under the same physical and moral oeconomy from the rest...’ The quote is none the less interesting from the viewpoint of the British perception of ‘the other’ with certain national qualities, but more pertinent here is the juxtaposition of ‘physical and moral oeconomy’, which is similar to that of ‘natural philosophy and moral oeconomy’ of the quote of 1759. The author of 1759 was discussing in conjunction with natural philosophy, arts and sciences; Dunbar here is talking about the social/cultural conditions of people as well as the physical. Noah Webster (1758-1843) may be added here, whose *Dissertations on the English language* (1789) is more explicit about his secular use of the term: ‘to collect facts... and apply them to the most useful purposes of government, agriculture, commerce, manufactures, rural, domestic and moral economy.’ This quote appears as though the first English spelling instance of moral economy.

I will name those usage **type B**: moral economy in secular context as a socio-cultural environment without any virtuous connotation. Moral here simply means social/cultural, economy means conditions/system. (Johnson 1759 as above may be more appropriate in C.)

There can be variants to this type. William Blizard (1744-1835), surgeon, talks about co-operating ‘for the good of the public’ in his *Suggestions for the improvement of hospitals* and gives ‘the hint for improving the moral economy of the community’. Thomas Ruggles (1745-1813), barrister, writes in *The history of the poor* ‘to educate millions of his subjects, the rising and the future generations of the labouring-poor of this kingdom, in habits of industry and moral economy, sure

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44 *Journal oeconomique, ou mémoires, notes et avis sur les arts, l’agriculture, le commerce...* (Paris, Jan. 1756), p.80. MoMW
46 *The royal magazine or gentleman’s monthly companion*, xii (London, 1765), p.237. MoMW
48 Noah Webster, *Dissertations on the English language* (Boston: Mass, 1789), v. ECCO
49 William Blizard, *Suggestions for the improvement of hospitals* (London, 1796), x. MoMW
preludes to a greater chance of comfort. Both of them can be slightly ambiguous but the contexts are about charity and living conditions of the community/population certainly in secular context, with more or less ethical/virtuous implication. So those examples can be named type B+.

Then the year 1799 saw James Stanier Clarke (1765?-1834), clergyman, discuss The political, commercial and civil state of Ireland. Before going on to the topical union of Ireland and William Petty’s findings, Clarke considers the national policy in two views: ‘Civil economy comprehends the support of individuals, and consequently of a state; moral economy regards religion or the manners of a people’. Clarke is still insecure but heading toward the usage of ‘moral economy’ that which deals with the administration and management of resources, in his case with regard to religion and/or manners of people, which modern scholars may call political culture in a traditional and customary vein. This tract of Clarke’s is reprinted in a nine-volume publication relating to the union of the next year.

We may add such interesting phrases as moral arithmetic/research in close juxtaposition of political economy. For instance John McArthur (1755-1840), in his Financial and political facts of the eighteenth and present century, writes about ‘knowledge in human science, political economy and moral arithmetic’, and Thomas Holcroft (1745-1809), in his Travels from Hamburg through Westphalia . . . to Paris writes about ‘the causes and consequences of idleness [as] a most interesting subject in political economy and moral research’. These usages lead to Richard Lovell Edgeworth (1744-1817) in his Essays on professional education, stating explicitly that ‘lectures on moral and political economy are part of the course at some universities, and where the professors are eminent, much may be learnt from this mode of instruction; but in general, on these intricate subjects, reading the works of men skilled on these topics is preferable to hearing their lectures’. Edgeworth would be followed by Thomas Row Edmonds (1803-89) in his Practical moral and political economy (1828). Together, they evidence the
emerging juxtaposition of ‘political economy’ and ‘moral economy’ or a like: **type C.** The juxtaposition of the two terms is not necessarily antinomy, i.e. opposition to each other. Moral economy here is not only management of socio-cultural resources but also knowledge, something to be lectured.

The year 1809 is more important as it also saw an emerging cynicism/ sarcasm toward moral economy in *The Agricultural Magazine, or Farmers’ Monthly Journal*. Its March issue states that ‘To argue this matter upon certain principles of moral economy, the favourite speculation of many well-meaning people, is obviously to engage in the argumentum ad absurdum’. And the author goes on to censure ‘the coercing power to command these presumed benefits’. ‘Such were Robespierre and his anti-monopolizing and anti-forestalling party in France’.\(^{57}\) — This forms **type D** of moral economy: speculation or view of the social order and harmony, an ideal entertained by some and objected by others.

Then we have George Ensor (1769-1843), political writer born in Dublin, maintaining *On national government* in 1810 that ‘... the moral economy of life would be deranged, the absolute ruin of society ensue ...’\(^{58}\) This is either about type B+ or D of moral economy: the socio-cultural conditions and/or harmony of community with more or less ideal/ethical implications.

By the time of T. R. Edmonds’s *Practical moral and political economy: or the government, religion, and institutions, most conducive to individual happiness and to national power* (1828) and Thomas Chalmers’s *On political economy, in connexion with the moral state and moral prospects of society* (1832), moral economy has come into extensive use. Thus Andrew Ure (1778-1857) in his *Philosophy of manufactures* (1835) discusses scientific, moral and commercial economy of the factory system.\(^{59}\) By Ure moral economy means social and cultural conditions/system of things without any idealization.

5.

Therefore, four usages of the term ‘moral economy’ may be summarized before the *cause célèbre* of Bronterre O’Brien (1804-64) is properly discussed.

A: providence, dispensation in theological discourse.

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*most conducive to individual happiness and to national power* (1828).


B: social and cultural conditions in secular context.
B+: *ditto* with more or less ethical implications.
C: management of socio-cultural resources and its learning, often juxtaposed with political economy.
D: view of social order and harmony, an ideal entertained by some and opposed by others.

The four usages are proposed here only for convenience’s sake, and there are ambiguous cases: though A and B are exclusive to each other, B and C are sometimes hard to divide, D is a little leap forward from B+. One may surmise that, although B+ and D are put invariably in secular context, their usage may have been influenced from A, godly order of things.

Now, how does Bronterre O’Brien, Thompson’s inspiration, fit to these usages? I will start the quotation from before Thompson started:

> . . . Man is a compound animal — he is not a mere beast, to toil and hoard; he is also a being to enjoy. True political economy is like true domestic economy; it does not consist solely in slaving and saving; there is a moral economy as well as a political, and a far more important one. But these quacks would make wreck of the affections, in exchange for incessant production and accumulation. . . . It is, indeed, the MORAL ECONOMY that they always keep out of sight.  

The quote, if read carefully, is about ‘true’ and ‘wrong’ political economy. ‘True political economy’ of O’Brien does not only consist in ‘slaving and saving’ but there is ‘a moral economy’ integrated, while ‘wrong political economy’ propagated by ‘social quacks’ keeps the moral economy ‘out of sight’. ‘Quacks and impostors’ would pursue ‘incessant production and accumulation . . . large masses of capital and the division of labour’, that are quite alien to ‘the inferior human being.’ Here O’Brien is not only speaking for ‘the inferior human being’, independent artisans and small producers, but also anticipating young Marx as a critique of alienation in the capitalist society.

As shown in this paper, the possibilities of the digital analysis are infinite. We have access to an ocean of digitized contemporary literature on moral and political, economy and philosophy, toward which Thompson and other historians in the twentieth century were inevitably impressionistic and speculative. The discourse

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60 Bronterre’s *National Reformer*, 21 Jan. 1837, pp.2-3.
61 Karl Marx, *Critique economical & philosophical*. Thanks to Jeremy Krikler’s hint.
of moral economy in the long eighteenth century demonstrates its diversity and chronological development. Thompson's antinomy of moral and political economies appears more speculative and wishful than the rich, historical results we have got. They were used side by side and sometimes complementing each other in a subtle way — even in Thompson's quote of Bronterre O'Brien 1837.
Moral economy? Popular demands, liberalism and state intervention in the struggle over anti-profiteering laws in Greece 1914-1923

Nikos Potamianos

The concept of moral economy was developed by E. P. Thompson in his study of English society in the 18th century aiming at the interpretation of the food riots and crowd activity. Since then it has been used in a great variety of contexts, meeting with remarkable success, although Thompson had expressed his reservations for what he considered to be a loose usage of the concept. In the case of Greece, the concept of moral economy has been proposed by some scholars for the interpretation of workers’ action in Greece in the first decades of the twentieth century. It has been argued that the labor movement did not develop so much demands of an “industrial type” – regarding wages and working hours – as it has focused on issues that were related to food prices and control of the labor process, criticizing capitalist social relations and the free market economy from the point of view of the traditional balance of power and customary regulations. Of crucial importance for this argument are the strong popular reactions against “shameful profit” (the native term for profiteering), in demonstrations and other public interventions of the unions in the 1910’s and 1920’s, when a noteworthy working-class pole was formed. In this paper I will examine these perceptions regarding profiteering, but first the reader should be introduced to the society to which I am referring to.

The years that this paper refers to constituted a period of great turbulence for Greece. First of all the country was involved in three wars in the decade 1912-1922 (Balkan Wars 1912-13, Great War 1917-18, Greco-Turkish war 1919-1922). Greece’s area and population doubled in that period and the country had to incorporate populations from different ethnicities – some of which faced the Greek state authorities with hostility. A new political system emerged after 1909, while in 1915 the political conflicts escalated to a kind of low intensity civil war between the Liberal party and its royalist opponents, which led to authoritarian solutions: in 1922-23 and in 1925-26 army officers imposed a dictatorship. For the first time socialist ideas expanded on a massive scale, and in 1918 both the General Confederation of Greek Workers and the Socialist Workers Party of Greece were founded. At the same time, we see the development of the upper middle class organizations as well as of a remarkable petite bourgeoisie class pole.

Essential for the development of a leftist labor unionism was the steep decline of the standard of living of the popular classes during the war decade and the following years. During the 19th century the salaried employees, small property owners, farmers, shopkeepers and craftsmen enjoyed a rather satisfactory standard of living, thanks to the diffusion of small property and a type of economic development that did not lead to mass proletarianization. However, in the beginning of the 20th century the tendency for

concentration and centralization of capital was increased; the successive army
mobilizations led to destitution many poor households, which did not have significant
resources apart from the work of adult men; due to the wars waves of refugees flooded
the big cities, people who were violently proletarianized –and after the defeat in the war
of 1922 more than 1,000,000 refugees from Asia Minor settled permanently in Greece.
And last but not least real wages were reduced significantly due to an unprecedented
inflation: from 1914 to 1923 prices increased twelve-fold. The causes of this extremely
high inflation lay not so much in the disruption of international commerce and the rarity
of goods (particularly during World War I), but rather in the fact that the Greek state
financed the wars not with new taxes or loans but with the issue of a currency.

This inflation caused intense protests, and the state responded by intervening
directly in order to ensure food provision, by introducing price controls (valorization) to
the essential goods (and in periods to a multitude of products), rent controls and a special
legislation against “profiteering”: this imposed harsh penalties on the merchants who
were selling essential goods (food, fuel etc) in prices that were above the valorization or in
prices that “led to too much profit” according to the decision of the courts (which always
examined the specific circumstances and the state of the market); furthermore, they also
prosecuted as profiteering the act of withholding food (in order to sell it at a higher price
in the future) and its adulteration.

These measures were introduced by both the major political wings which ruled the
country in that period, following the example of the measures taken during World War I
by the great European countries –which had always been the model for Greece and the
whole world. It was a development that was part of a general rise of statism both in
Greece and internationally, which of course did not take place without conflicts and
contradictions. The legislation regarding profiteering and price controls developed
gradually, under the pressure of circumstances and popular protests regarding high prices
and shameful profits.

The organized social force par excellence that mobilized against high prices was
the labor movement, which during this period became more massive and more radical.
The Labor Centre of Athens, a second-level trade union which brought together many
unions of the capital, had protested on the issue of high prices already from the end of
1913, while in 1912 it had founded a consumers’ cooperative estimating that the “high
prices of food, its adulteration and the use of false weighing scales is a scourge,
which is partly due to the merchants’ profiteering». In the summer of 1914 started a campaign
against the increase in the prices of rents which after the eruption of World War I was
enriched with demands asking from the state to take charge of the provision and prices of
foods.

In 1916 in cooperation with the Labor Centre of Piraeus and after being in contact
with the labor unions of the provinces they proceeded with more intense protests, which
formed part of a process that would lead to the creation of national organizational
structures; they asked for “extremely hard measures” by the state against the increase of
prices and the withholding of essential goods, their fair distribution to the consumers
through state shops, the forbiddance, if necessary, of their trade by individuals (and at any
case the forbiddance of commercial trusts), the creation of local Committees of Social
Defense which would proceed with the methodical and just food commandeering and
their valorization. In their resolutions the two labor centers adopted the concept of
profiteering, simultaneously with its prevalence in the public discourse and the voting of
the respective legislation; however emphasis was rather given on the concept of
exploitation, by attacking those who “exploited people by taking advantage of their
hunger”: the concept of exploitation is used not solely in the orthodox Marxist way (appropriation by the employers of the surplus value created by the employees) but rather in the sense of taking advantage of circumstances and the people’s needs by businessmen who sought to achieve high and excessive profit in the market (“some merchants, industrialists, profiteers and intermediaries exploit the misery of the many becoming extremely rich”, for example with the creation of “an artificial lack of foods”).

The activity of the labor centers against high prices was suspended for a while by the escalation of conflict between the two major political parties and by the martial law imposed when Greece entered World War I. After the end of the war and until 1923 we had a flourish of workers mobilizations, where strikes with wage demands were combined with resolutions and protests (or even revolts, like in Volos in 1921) against “profiteering”, while inflation skyrocketed. From that point onwards the demand to take measures against high prices appeared in almost every resolution of the labor centers all over Greece; in a demonstration of the General Confederation of Greek Workers in 1921 the economic demands focused on “taking radical measures against profiteers” and popular control of valorizations, since “the achieved increase of wages had no importance at all, since at the same time the profiteers are left free to increase the prices on essential goods and to counterbalance any increase in the wages achieved by the organized workers”. So a great variety of measures was proposed, more and more radical: imposing valorizations again (they had been abolished), creation of committees for controlling profiteering with the participation of workers, establishment of state shops, confiscation of the goods that were in the merchants’ warehouses and their sale at a fair price, seizure of the properties that were made during the war so they could be used by the state to finance the reduction in the price of goods, imposing harsher penalties to profiteers which ranged from permanent closure of their shop to the capital punishment.

It is impressive that a lot of the more radical measures were proposed by labor centers that were under the control of unionists affiliated to the two great bourgeois parties and not by the communists. The latter differentiated themselves with the promotion (an accurate one) of the war against Turkey as one of the essential reasons for high prices, while the “reformists” leave this matter untouched. Otherwise, the notion of profiteering had dominated completely the texts produced by labor centers of every political affiliation: it was commonly accepted that “various groups of profiteers, large capitalists, ship-owners, large businessmen and merchants [...] become rich by the blood and sweat of the working people” and that “the profiteering of the merchants” (and sometimes of the state) is responsible for the steep decline of the standard of living of the workers. In this context they rejected the interpretation of expensiveness by the government and the upper middle class organizations as a result of the increase of the labor cost (due to successful strikes) and the great devaluation of drachma; as a matter of fact profiteering was considered responsible for the latter: in 1923 the Labor Centre of Athens organized a demonstration with a demand to close the Stock Market, the seat of profiteers who were considered to be responsible for the increase of the price of currency exchange and for the resulting great increase of prices, and the crowd attacked stockbrokers.

Therefore, we have an emerging labor movement where the struggle against expensiveness, which is attributed mainly to the greed of businessmen, occupies a significant place in its mobilizations and repertoire of demands. As I have already mentioned, this picture is an important part of the argument regarding the prevalence of perceptions of moral economy in the Greek labor movement. However, I believe we should broaden our perspective and consider a series of factors and arguments which, in my
opinion, demonstrate that the use of the concept of moral economy in this case is not a productive one.

First of all, regarding the labor movement, focusing on the problem of high prices did not have so much to do with the powerful presence of a traditional culture among workers, but was part of its tendency of referring to the “larger issues”, the problems of the people in general and the national political arena. Of course, the special issues of each profession and the demands of an “industrial type” that focused on wages and working hours were emphatically present; however in this early period what was really called for was overcoming the still powerful guild mentality and the particular professional identities and the forging of a unified class identity, and as a result demands were promoted that involved every worker. In addition the small degree of concentration of production meant that salaried employees were scattered in most of the branches in small units and their unification was problematical: therefore special care was necessary for the development of a strategy for their unification, which was reflected both on the organizational structures of the labor movement and on the type of the demands asked: as regards the second-level organizations we have few federations of unions of specific branches, which focused on the issues of each profession and the claims/negotiations with the employers, and mainly “labor centers”, created on a local basis, constituted by unions of different branches, with an intensely politicized discourse and role. Finally, the mobilization against profiteering facilitated the widening of the appeal of the newborn labor movement to other popular strata, in the context of the “struggle over class”: in the Greek society the social categories which could be polarized both around the labor and the petite bourgeoisie class pole were not insignificant.

Secondly, the emergence of the discourse about shameful profit, I would say of the “political idiom” of shameful profit, was not backward looking but was totally attuned to its era: not only did it derive mainly from the recent experience of inflation, but the idiom was closely related to and had been developed in a dialectic relationship with the rise of state intervention in the economy and with the modern ideological trends that legitimized it. The rise of statism in Greece and globally had been a long term process which was accelerated in the 1910s in the context of the exceptional conditions that wars entailed: particularly regarding Greece, the disruption of international commerce from 1914 onwards constituted a serious threat to a country heavily dependent on international trade for the provision of cereal and other essential goods and made state intervention necessary on a large scale, forcing even militants of liberalism to accept the involvement of the state in importing and distributing foodstuff.

This rise of statism was combined with a special way of perceiving the problems to be solved, with changes in the representations of the society and with the determination of what lay at stake each time. The discourse on profiteering could be considered an exemplary case, since in the previous decades the term was used solely as an insult and now became the basic interpretation of the high prices of food: and if it was the profiteering of merchants that led to high prices, this could and should be dealt with forms of state intervention in the market, like valorization, establishing what constituted fair and unfair commercial profit and the suppression of any instances of profiteering.

We'll understand better this development if we compare the idiom of shameful profit with the interpretation of (any) high prices that dominated until 1912: in public discourse the protests regarding the market prices took mainly the form of denouncement of high duties and indirect taxes (which burdened prices and hurt the people), in the liberal ideological context of the principle of the freedom of commerce. The “idiom of taxes”, let’s call it that, appears in the end of the 1870s when indirect taxes increased
abruptly: in 1880 a liberal radical called upon the “taxpayer worker” not to be “angry against the grocer” but to “see the hand of the state” who was responsible for the surge in the prices of the foods. The discontent of the lower strata regarding their diminished buying power was therefore politicized on the basis of their opposition to the tax burden and to the governments that promoted it: it was a rare occurrence in political discourse to attribute responsibility to the merchants. After 1914 the correlation of high prices with high duties did not disappear but declined a lot, since the experience of high inflation and lack of goods was so powerful that a transformation of the intellectual framework could not be avoided and since statism moved in leaps towards its social and political legitimation. So, when the labor centers in Athens in 1920 attacked the government that “established the freedom of commerce” and “faced the food provision situation with fatalism” it was clear that their perspective was not a kind of outmoded paternalism of Ancien Regime.

At the same time, when state authorities responded (to the extend they did so) to demands of this type, this did not mean that they were inspired by a “paternalistic ideological model” similar to the one of the English elite in the 17th and 18th century to which Thompson refers to. In any case, there were concessions to popular demands, dictated by the needs of each political side, during the fierce political conflict of 1915-1925, to gain popular support. However, the institutional framework that has been voted did not constitute a kind of enactment of “moral economy” – unless we consider as such any kind of market regulation. We should instead consider the prosecution of profiteering mainly as a response of the authorities to the exceptional conditions created by the wars, a response that took under consideration people’s sentiments regarding fair profit. In short, there was a dialectic between the popular demands and the institutional framework: the voting of the law against profiteering, similarly to the imposition of controls in the rent prices, established a new field of popular demands and state intervention, continuously under negotiation and ever changing (from 1916 to 1925 a multitude of modifications and addendums to the initial laws was voted).

Of course state intervention could be combined with other interpretations of expensiveness and not with the idiom of profiteering. Therefore, it is time to examine our third point and take a closer look at the discourse about shameful profit. This drew from older relevant perceptions and negative representations of the greedy merchant, which did not frequently surface in the public discourse: those who invoked them somewhat more systematically were the (not many) heralds of cooperatism as a solution to the social question, who in Greece created mainly consumers’ cooperatives. Nevertheless, the few reports we located in older newspapers confirm that the figure of the profiteering merchant had been established both in the consciousness of the popular classes and the educated white collars. And the widening of inequalities and the social polarization that developed during the wars became embodied in the negative figure of the profiteer, as it happened in other countries as well.2 The domination of the idiom of profiteering, in other words, was largely due to the existence of a powerful traditional representation which assumed new functionality in conditions of inflation and social polarization. However, I would like to point out that this was not the product of the meeting of a traditional society with the capitalist market. I remind you that the previous dominant interpretation of high prices was of high culture origin and compatible with economic liberalism, while important to my approach is the fact that there are no references to some older paternalistic regulations. In Greece, after the revolution of 1821 which led to the

establishment of the Greek state, a clearly modern and liberal institutional framework was created. Previously there were customary regulations of the market, similar to the ones mentioned by Thompson, which were abolished: for example in Santorini and Tinos merchants were not allowed to buy food from the producers (or products that had just been imported to the island) if these were not previously made available for sale to consumers in the market for 3 days. There is no record of people's reactions to their abolition (similarly to the abolition of guilds): perhaps because the population of the cities was renewed radically after the expulsion of the Turks in 1821, or perhaps because generally the situation of poor Greeks improved after the war of independence (thanks to the reduction of taxes and the leasing of the Turkish farms to peasants with low prices); while generally the reactions to the new institutional framework focused on the centralized structures of the new state and assumed the form of local insurrections against them, where the local elite allied with the lower classes.

Let us return to the idiom of profiteering for my fourth point. It was not a particularly workers’ idiom, and there is no indication that it originated from the working class. Even bourgeois adopted it, however rarely, to refer to the “greedy speculation” of real estate owners, while shopkeepers, the main target of accusations of profiteering, defended themselves by using it in their turn against the “capitalists”. I would like to put some emphasis on the case of white collars, whose role in the development and dissemination of the idiom was rather important, as it emerges from the activity of the unions of the employees of the private and public sector (particularly regarding the issue of the controls in the rent prices), from the involvement mainly of those employed in intellectual work (with salary or freelancers) in organizations like “Consumers’ Defense” etc., which mobilized against high prices, and especially from the articles and columns in newspapers: the issue of high prices was approached by the newspapers mainly from the point of view of the “salaried bourgeois” who experienced financial debasement during the war and the inflation, while at same time he should keep a standard of living relevant to his status and social position.

Indeed, given the fact that the newspapers were written and read mainly by white collars employees, one could argue that it was exactly in this period that a particular consciousness of the “petite bourgeois salaried class, employees of the private and public sector” was created and emerged in the public discourse, especially in relation to the high prices that hurt them and to the threatened status that divided them from the working class. What is of interest to us here is that we usually consider that the action of the educated lower middle class is driven by modern values; since its role was important in the creation of the idiom of shameful profit, as I have the feeling that was the case, this idiom should not be considered predominantly as a product of the value system of a traditional society.

Because my final point is that we should insist on using a relatively narrow definition of moral economy, as suggested by E. P. Thompson in “The moral economy reviewed”, in which necessary is the presence of views that are based on customary practices of market’s regulations and which function as “alternative economics”. If we do not do this, we risk classifying in the category of moral economy any kind of perception that escapes the confines of the orthodox neoclassical economics and invokes a notion of justice. And why should we limit ourselves to the subsistence crises and the food riots? Moral concepts are used with great intensity when the survival per se is at stake, but not only then. In fact in every type of criticism of capitalism and the free market, and even

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more, in every discourse and practice relevant to economy, moral values are involved and, above all, views about what is fair and what is not.

The notion of profiteering and the condemnation of shameful profit, which as we saw dominated the years of the wars and the great inflation after 1914 in Greece, obviously entail an intense moral dimension. Indeed the “shameful profit” idiom can be incorporated in the moral economy category, taken in a loose sense. However, can this assist us in interpreting aspects of the Greek society and politics of that period? I believe not so much, to the extent we wish to go beyond the ascertainment that whenever there is a subsistence crisis perceptions dominate that promote a function of economy that does not condemn to death members of the community and reproaches, in moral terms, those responsible for such an eventuality. We are rather led to overemphasize the traditional characteristics of Greek society and to downgrade the more modern ones, which provide the tone to the structure of feeling4 of a period of acceleration of social change –whose part and parcel was the increasing state intervention to economy. In general, I believe we cannot understand the 20th century, if we incorporate to a loosely defined concept of moral economy every non-liberal regulation of the markets and the relevant popular demands: moral economy is a concept created to interpret the reactions of the poor to the establishment of liberal capitalism and not to interpret the rise of contemporary statism. It presupposes perceptions rooted in a condition where the markets and the economy remain embedded in the whole of the social and the cultural and have not yet been separated from it; their autonomization brought about non-reversible ideological results. Moral economy is backward looking; its agenda includes some short of restoration of the moral world order. And I should confess here that, to paraphrase Thompson, I am seeking to rescue the anti-profiteering discourse and in general the use of discourse about economy which invokes moral values, as well as to rescue the practice of market regulations and controls, from the enormous condescension of contemporary people who, like myself, seek modern solutions to the problems of today and identify moral economy with outmoded ideas of a pre-industrial crowd of another era, to which we cannot and do not wish to return (but from which we can be inspired of course).

4 Raymond Williams, Marxism and literature, Oxford 1977.
Actuarial Time, Work-Discipline and Industrial Capitalism;
or, The making of the American Working Class

Michael Ralph

“If the transition to mature industrial society entailed a severe restructuring of working habits—new disciplines, new incentives, and a new human nature upon which these incentives could bite effectively—how far is this related to changes in the inward notation of time?”


In the 1963 publication of his Making of the English Working Class as well as his 1967 article, “Time, Work-Discipline, and Industrial Capitalism,” E.P. Thompson credits the last few decades of the eighteenth century and the first few decades of the nineteenth with giving rise to an infrastructure for “work-discipline” that included a new sense of time (distinguished by a “heightened awareness of mortality”) and new forms of social difference through which these developments gained social traction. Building on this conceptual framework, my paper explores how industrialists came to rely on actuarial science as a way to understand the relationship between a worker’s profile and his or her potential productivity. In a longer version of this paper, I plan to show how the hierarchical calculus of value in which workers were embedded structured the perceptions they internalized about each other and the forms of sociality they developed. For the moment, I am interested to tease out the institutional transformations and historical shifts that corresponded to these social distinctions.

The end of the Transatlantic slave to the US in 1808 meant that planters were often compelled to breed slaves, or to hire them out. Within a few decades, more slaves were rented than were bought and sold, in many parts of the country. In a context of rapid technological innovation, industrial slaves acquired expertise that enhanced their market value. But the value of enslaved workers did not merely derive from the productivity to be extracted from bonded labor. To guard against the potential loss of workers who had attained premium skill sets, but who were now engaged in especially hazardous enterprises, industrialists came to rely on slave insurance policies that often no longer based value on physical stature but on expertise. These policies threatened to make plantation labor regimes even more coercive, since owners of capital could recoup much of the value of a slave in the event of his or her demise. At the same time, the industrial slave frequently offered a better investment than other forms of property precisely because the enslaved worker continuously acquired expertise.

This paper uses original research based on the mortality rates, as well as the insurance and tax records of companies that employed enslaved and ostensibly free workers in nineteenth century Virginia coal mines, to explore the making of the American working class. But first, I offer some original insights on the complicated trajectory through which merchants have historically been concerned to establish and regiment the monetary value of a human life. Instead of focusing on a narrow historical window, the following discussion mines developments from the 18th and 19th centuries—the period in which EP Thompson
discerned the emergence of a distinct temporality—to theorize financial technologies and transformations in industry that reverberate well into the 21st century.

**Actuarial Time**

In recent years, much has been made of the devastating revelation that a number of Fortune 500 companies—including Bank of America, Citibank, McDonnell Douglas, Hershey, Nestlé, Wal-Mart, Proctor & Gamble and American Express—have made use of what industry insiders call “corporate-owned life insurance” (COLI) policies, elsewhere known as, “dead peasant insurance.” These are insurance policies for which firms are the beneficiaries, rather than the worker’s dependents. For surviving family members, the outrage stems in part from the fact that they did not even know about these policies. Others have a more fundamental critique: that it is abominable, and in their view unprecedented, for one person to speculate on another person’s life.

Contrary to this critique, the oldest records available for what we might call life insurance entail quotidian, ad hoc strategies through which people speculated on other people’s lives. Such practices included wagers on the lives of indigent people. Even more prevalent were markets in speculation concerning the mortality of aristocrats or the outcome of capital legal decisions. The widespread practice of generating capital from speculation on other people’s lives led many polities to ban life insurance entirely. Yet, in England, no such legislation existed until the Gambling Act of 1774 (also known as the Assurance Act of 1774), which outlawed life insurance except in cases where, “the person insuring shall have an interest in the life or death of the person insured.”

During the years to come, Parliament approved further legislation against life insurance. Yet, there is no evidence that any polity restricted the use of insurance on slaves or debtors. As early as 1402, merchants were insuring slaves for transport. The practice of insuring an outstanding debt likewise has a long history.

As we know, insurance works by pooling risk. Firms corral policyholders who pool their capital so that funds are available when someone suffers a loss. Profit derives from the store of capital the firm guards. Maritime insurance firms date back to the fifteenth century. Merchants interested to pool risk would sign at the bottom of a contract, from which we get the term “underwriter” as someone who guarantees an insurance policy. During the centuries to come, merchants would begin to insure their own lives, or those of family members, in advance of voyages. Initially, the basis for such a policy was a subjective impression of individual health. But the structure of the life insurance industry changed with the advent of scientific knowledge about how to better predict human mortality. In 1693, Edmund Halley, best known for his pioneering study of comets, created the first known mortality table, which measured life expectancy along one axis and the average year in which a person of a given age had died along another. By use of this mathematical construct, insurers assigned differential coverage based on how long someone in a given demographic was likely to live. The London Society of Equitable Assurances on Lives and Survivorships would, in 1762, begin to base life insurance premiums on age rates, or what they called “life contingencies.” This was a crucial turning point because pricing insurance at consistent rates for people of varied age had historically discouraged younger people from contracting policies while aging and ailing persons sought them out. US companies soon adapted life tables from British firms. And while a few life tables were long maintained as the industry standard, US forms soon hired actuaries to develop mathematical predictions of their own based on data unique to US populations.

The nature of life insurance changed dramatically during the nineteenth century, with the rise of actuarial science and more sophisticated strategies for assessing the mortality of people.
within a given demographic. Abolitionist and future actuary, Elizur Wright visited England in 1844, where he was aghast to see men who could no longer afford to pay their insurance premiums step onto a block, one by one, to sell their policies. Wright decided this form of auction too closely resembled slavery and vowed to develop a mathematical system for tabulating the value of a human life proper to the condition of a free man in US civil society. In 1854, Wright shared with the New England Life Insurance Company his modified version of a British actuarial table that had been created some eleven years earlier, marking a crucial turning point in the fate of an emergent industry. Despite advances that now made it possible to quantify human mortality, the monetary value of another person’s life continued to be a vexed proposition.

By 1844, the value of the English life insurance industry already exceeded 150 million pounds. The net worth of the US life insurance industry, around the same time, was a paltry 4.5 million dollars. Yet in the next two decades, that figure would climb to 2.3 billion dollars as the US developed the world’s most lucrative life insurance industry. The crucial question thus becomes—what happened in the US between 1840 and the 1870s to re-shape the way Americans understood human mortality and to develop a new repertoire of strategies for securing their futures?

In an apparent consensus, US historians have argued that life insurance took root at this juncture because scores of Americans were abandoning rural homesteads for urban employment opportunities, leaving behind the large agrarian households and community networks that had previously sustained them in times of crisis. These developments, coupled with the declining significance of the church as the primary arbiter of moral judgment regarding commercial matters, led many Americans to find security in emergent investment strategies, like life insurance. Yet this narrative has not yet adequately integrated a parallel sequence of events that helped to re-shape longstanding views concerning the value of a human life: these include the formal abolition of slavery in Britain, and its reverberations in an American polity that took the shape of an attempted secession, war, and widespread casualties. How did these developments shape changing attitudes about human mortality? About region, race, and risk?

Along with the outlaw of the Transatlantic slave trade, merchants were legally prohibited from contracting in slave insurance. Yet, due to a legal aporia, there were no formal regulations banning insurance on slaves in coastal waters or in the riverine arteries through which the domestic slave trade took shape. Between the time that the slave trade to the US was outlawed in 1808 and slavery was abolished in 1865, slave life insurance was a crucial element of industrial insurance, a key feature of slave shipping, and a central element of credit networks throughout the agrarian south. During this period, the nature and function of slave insurance was reconfigured.

The prevailing research tends to treat life insurance as a distinct genre of risk that borrows from, and maintains an analogy with, marine insurance. Instead, one might argue that the purported distinction between marine and life insurance was unsteady from the outset. While scholars tend to treat marine insurance as a precursor to strategies for assessing the monetary value of chattel—and even human beings before life tables become available—it drops out of the story with the birth of life insurance. Yet, in the aftermath of Emancipation in the US, marine insurance returned with a vengeance in commercial shipping traffic to places like Cuba and Brazil, as these markets benefitted from a rush to securitize human capital in the few places it was still legal to do so. Thus, the dynamics I seek to tease out indicate that what we call life insurance and marine insurance bled into each other even as they appeared distinct at moments.
in social attitudes as well as in legal arguments through which they were, at times, rendered discrete.

Thus far historians have generally reduced the link between slavery and insurance to marine insurance, or slaves-as-cargo. Consider the prominence assigned to Captain Luke Collingwood’s decision to “jettison” 132 slaves from the Zong during his 1781 voyage. “Jettison” was indeed a category for which insurers were not liable, though it was the first time many people became aware of the practice. And, in a growing body of scholarship, historians have considered the pivotal role this seeming disregard for human life played in firing abolitionist sentiment.

Yet, it is crucial to differentiate between formal legal decisions and the pragmatics of exchange, as they shaped Atlantic trade zones. Thus, as Jonathan Levy suggests, the 1841 case of Thomas McCargo vs. The New Orleans Life Insurance Company might present a more useful way to theorize the stakes involved with affixing a monetary value to a human life in the mid-nineteenth century US. This case involved the slave ship Creole, en route from Norfolk, Virginia to New Orleans, Louisiana, down and around the east coast when nineteen male members of the 135 slaves on board staged a successful uprising. They secured the ship and commanded the captain to sail to the Bahamas, as they were aware of an insurrection that had taken place the year before aboard the Hermosa. Those enslaved persons, upon arrival in the British territory, had been liberated. Though the enslaved persons aboard the Creole were virtually freed upon their arrival to New Providence, Bahamas, the case of Thomas McCargo vs. The New Orleans Life Insurance Company took more than a decade to resolve, the crucial issue being whether or not a revolt amounted to a “peril of the sea,” in which case the insurance company would be liable. This legal quandary turned on the “peculiar” nature of enslaved property. In accordance with a nineteenth century notion that each man owned his “capacity” to work—and that life insurance, by extension, was about owning one’s own risk—the revolt of enslaved persons upon the Creole testified to an “assertion of freedom.” Citing this act of self-possession as evidence that these formerly enslaved persons were now the authors of their own activity in the world meant they were no longer slaves and, thus, no longer property.

In this way, the case of Thomas McCargo vs. The New Orleans Life Insurance Company articulated with the original idea of enslaved cargo that had defined marine insurance in so far as one man’s right to own another was predicated on the compromised legal standing of the latter and not some inherent ontological property of the enslaved. At the same time Thomas McCargo was part of a new moment when it became possible for people—especially in this enduring hierarchy of presumed commercial expertise, men—to imagine insuring their own lives. That is, from an eighteenth century moment when “insurable interest” governed one person’s right to own another, a person was now understood to have property in one’s own life. In the aftermath of Thomas McCargo, slave insurrections were no longer covered by insurance companies, as the door remained ajar for the rare possibility that enslaved persons might find occasion to seize their own destinies.

In 1851, the formerly enslaved Reverend Noah Davis of Baltimore exploited an insurance policy on his own life as collateral to secure hundreds of dollars he then used to purchase his wife and two children who had been enslaved in Virginia. Four years later, when he discovered that his eldest son sat in a Richmond jail, he took out an insurance policy that he exchanged for the boy’s freedom. Two years later, when he encountered his daughter in a Fredericksburg, Virginia auction, he convinced two bystanders to purchase her while he repaid them with a $1,000 policy on her life. Thus, while the idea of placing a monetary value on the life of a free
citizen was still controversial in the mid-nineteenth century, the point was so mundane to African Americans by that juncture that it was arguably inextricable from the way they conceived social mobility. This was as much the case for free persons as it was for enslaved workers.

Some scholars have used the fact that a few mere thousand slaves were insured during the height of the slave insurance industry as evidence that planters were somehow disinterested in generating as much capital as they had available to them. But these scholars have not paid adequate attention to the way the institution of slavery was reconfigured during the domestic trade. As planters carefully bred slaves, hired them out, and had them trained to labor in emergent industries like railroads, steamboats, and coal mines, the value of slaves as capital would no longer be determined primarily by a given slave’s physical characteristics. Instead, policies crafted during the domestic slave trade emphasized the slave’s skill set. The most highly valued slaves were domestic workers with decades of experience and intimate knowledge about how to run a household, artisans (like blacksmiths, shoemakers), workers with highly coveted expertise (like butchers, coal miners, and clerks) and those who excelled in especially dangerous industries (like railroads and steamboats) commanded the highest dividends. This means that slave insurance foreshadowed post-bellum genres of industrial insurance, as owners of capital sought to shield themselves against the risks associated with the loss of an individual’s capacity for labor.

Since the industrial age, insurance—namely, life insurance—has helped people to measure the distance from familiar modes of mutual aid. But it also crucial to consider the opportunity the history of insurance offers to chart the politics of stratification that has defined finance capital in a post-emancipation era. After all, the same historical moment in which slavery was abolished witnessed an uptick in sharecropping and convict leasing, institutions designed to defend forms of wealth and privilege that suddenly threatened to come undone. Despite a similar emphasis on institutionalizing credit-debt relations, insurance appears benign by comparison. Even though insurance firms assign differential value to human lives, the birth of insurance is seen, along with the triumph of capitalism and democracy, as part of the birth of freedom. And yet, the most thoughtful scholars among us have long been wary of this conflation.

In 1898, W.E.B. Dubois—then a professor at Atlanta University—edited a report based on the proceedings of the “Third Conference for the Study of Negro Problems,” which his institution had hosted on May 25th and May 26th of that year. This publication capped a three-year, three-part, research investigation: an inquiry concerning “the Mortality of Negroes in Cities” in 1896, “another into the General Social and Physical Condition of 5,000 Negroes living in selected parts of certain Southern cities” in 1897 and, now, an examination of “efforts Negroes” had been “making to better their social condition.” It is in the context of this report that Dubois confesses a longstanding fear that the birth of black life insurance firms would spell the official demise of the mutual aid societies formed as indigenous mechanisms of security during the context of enslavement. He also worried that newly emancipated African Americans would be readily exploited by insurance firms, as he argues in his 1898 report, “Negroes should be emphatically warned against unstable insurance societies conducted by irresponsible parties, and offering insurance for small weekly payments, which really amount to exorbitant rates.” Dubois was right that actuaries and underwriters would saddle African Americans with higher premiums. Of course, the demise of Reconstruction meant that African Americans would ultimately return with renewed vigor to mutual aid societies, often in the form of social clubs or fraternities and
sororities where members paid dues and pooled resources in times of crisis. Still, as we know, African Americans could only rarely, if ever, extricate themselves entirely from their monetary value in the marketplace.

In other words, Dubois’ concern about the vicissitudes of the insurance marketplace was empirically sound if a bit overstated. Perhaps then his theory of labor is a better guide to making sense of risk and liability in the post-bellum age than his activist stance. Recall that in *Black Reconstruction* Dubois characterized the abdication of work in which thousands of African Americans participated as a general strike. Following this insight, we might consider more carefully the stakes of insuring enslaved laborers with an eye to what it illuminates about heretofore underappreciated elements of US labor history.

The Making of the American Working Class

As we know, the end of the Transatlantic slave trade meant that planters were enticed to breed slaves. They also generated revenue by shipping slaves to territories in the Lower South, in which case cargo moved by steamboat down the Mississippi River from Midwestern cities in Ohio, Indiana or Illinois, or down the East Coast from Chesapeake Bay port cities like Baltimore to port cities in the Gulf Coast, like New Orleans. In the process, planters routinely took out insurance policies on their slaves to mitigate the potential hazards associated with transport. In urban locales like Virginia, where the demand for slave labor was high and the reserves were dwindling, workers were routinely hired out. As mentioned before, enslaved coal miners worked in one of the most dangerous industries and possessed one of the most highly prized skill sets. Of course, it is an axiom of slave insurance—and of capitalism more broadly—that the most dangerous enterprises are often the most profitable.

The Chesterfield county mines are nestled in the Richmond Coal Basin. At a nearby location, coal was discovered in 1701. Evidence of successful extraction dates back to 1730, at least. As such, Virginia’s Midlothian coal mines may well be the “oldest coal mines in America.”

The Midlothian coal mines got into commercial production in 1748. As these developments quickly generated interest in means by which to transport this precious resource, the Midlothian coal mines also became the site of Virginia’s first railroad.

In 1825, Abraham S. and Archibald L. Woolridge established the mining firm, A. & A. Woolridge & Co. in part by leasing land from Major Henry Heth. Major Heath, a British émigré to the US, settled in Chesterfield County, Virginia, in 1759. Henry Heath fought in the American Revolution as part of the 1st Virginia Regiment, shooting through the ranks from captain up to major. In the later years of his life, Major Heath honored his second amendment right through duty his state militia, but also became a successful businessman. Dabbling in tobacco, Heath would ultimately become most well known for erecting a family business at the Black Heath coal pits that was later taken over by his son, the Confederate General Henry Heath. Though, the younger Heath was also named Henry, most people called him Harry.

The end of the Transatlantic slave trade and birth of the US domestic industry enticed young Harry to make the most of his access to capital in land and slaves. According to state of Virginia tax records, Harry Heath only owned twenty slaves in 1801. But he was savvy, and an 1810 classified ad in the *Richmond Enquirer* proves he was interested in securing additional workers:

WANTED, on hire for the balance of the year, 30 or 40 able bodied Negro Men, for whom a liberal price will be given—they will be employed in the Coal Mines—
Apply to the Subscribers in Manchester, or to Harry Heth at the Coal Pitts
March 2.
By 1812, young Harry Heath had successfully acquired 114 slaves. And, while most enslaved persons were subject to harsh punishment and grueling work, coal mining was considered to be an especially dangerous industry. In this connection, it’s worth noting that the Heath pits of Chesterfield county mark the first recorded explosion of a coal mine in 1810. There was another in 1818. Then, on March 18, 1839, there was an especially gruesome explosion at the “Black Heath” coal mine that resulted in the tragic deaths of forty workers. Thirty-eight were slaves, though only the names of the two white mine superintendents were published in local newspapers. The Richmond Enquirer compared this disaster to similar trends in English coal mines, where more than a hundred people had been killed between 1812 and 1815, though it concluded the report by citing scientific discoveries that were likely to reduce the rate of mortality. Despite the optimism that dominated mining ventures, coal mining continued to be an exceedingly dangerous enterprise. Some decades later, A.S. Woolridge submitted a petition to the Virginia General Assembly, on behalf of his stockholders, fretting about the “deadly hazards” to which enslaved miners as well as ostensibly free, wage laborers were subjected. The coal miner, he noted, “must encounter dangers at every stage, from the falling or crumbling of the roofs and pillars; from the accidental fire”—a tragedy that had twice occurred at the Midlothian mines, the Assembly was careful to note, “from sudden irruptions of water flooding his works; from the fearfully destructive explosions produced by inflammable gas; and from the breaking of ropes and other accidents in the ascending and descending the shafts, a danger which will be better appreciated when it is remembered that every laborer employed in mining is at least twice a day suspended over a depth of many hundred feet.” In fact, adding to a list of many firsts, the US Department of the Interior’s Bureau of Mines had credited the Heath pits in Chesterfield county with being the site of the “first reported explosion” of a US coal mine in 1810. The report cited the presence of methane, “an odorless, colorless, flammable gas,” that engulfed “poorly ventilated” mines as the primary cause of these calamities. Even trying to investigate the source of a potential methane gas leak proved hazardous, as an 1876 article from the Rural Messenger stressed:

...Mr. Thomas Carol, the foreman...was informed that the mine was filling up with gas, and went down to the pit to see about it. He held in his hand an open lamp, such as is commonly used by the pit hands. The moment he reached the bottom of the pit, and started to go into the mouth of the shaft, the gas communicated with the lamp and a horrible explosion occurred.

Or, consider the 1836 Chesterfield County Circuit Court lawsuit in which the jury awarded the plaintiff, Mr. Hill, $400 after an enslaved worker he had rented to a Mr. Randolph for one year died in a coal mine after inhaling what the court brief calls, “impure and noxious air.” Thus mining was not simply hazardous to the owners of capital whose profits could literally go up in smoke, but for enslaved workers who stood to die a slow, quiet death from imbibing poisonous gases. Still, these perils did little to slow the industry. Instead, eager industrialists sought insurance to protect their investments in their workers. Slaves were not sent into the pits unless they were insured. As internal correspondence at the Baltimore Life Insurance Company dating to 1857 reads, “The parties who apply for insurance of the Coal Pit Hands are very anxious to get the Policies as they are keeping the hands”—that is, slave hands—
above ground and idle till they get them insured.” Both the Baltimore Life Insurance Company and the Nautilus Insurance company (the latter eventually acquired by New York Life Insurance) insured slaves at the Chesterfield county mines. And, slaves were not insured unless they received medical exams.

The health risks that derived from loose methane in the mines—what the courts called “impure and noxious air”—were a constant concern. Why then did it take a protracted protest movement for ostensibly free coal miners to demonstrate the hazards of the industry? And, how could it be that they overlooked the extensive history of medical evaluations in culling evidence for their case? In closing, I will have a bit more to say about the relationship between a person’s legal standing and the risks to which he is subjected, about how that risk is tethered to a particular kind of liability, or resolution, and why insurance is a productive medium through which to make sense of these dynamics.

For more than 150 years, scientists had been aware that underground coal mining destroys lung tissue and leads workers to experience a dramatic decrease in the flow of oxygen to the bloodstream marked by chronic shortness of breath. Yet, what is now identified as “black lung disease” did not formally cohere as a medical illness until the end of the 1960s, and it required “a bitter, protracted struggle against the government, the medical profession and even their own union,” to quote one expert. Coal mine workers had long suffered minor lung deterioration, sometimes called, “miner’s asthma.” But for a long time this condition was considered an occupational hazard, rather than an “occupational disease,” as it is now classified, the latter a question of liability for employers.

When labor practices became automated in 1930, the quantity of coal dust to which miners were exposed increased dramatically. And yet workers were dissuaded from fighting for healthier working conditions since labor leaders had agreed to mechanization in exchange for increased wages and benefits. Further, miners had to transform how medical professionals, who had an incentive to side with their employers, viewed their plight. The medical specialists most knowledgeable about working conditions were employed by the very corporations the workers sought to petition (not even the Ludlow massacre, when striking miners were mowed down in a hail of gunfire by their employees, had transformed the conditions of this exploitative labor regime). The industry was finally re-organized after World War II. Yet, workers still found it difficult to marshal evidence that could convince licensed professionals of the structural hazards associated with coal mining. Even the advent of x-rays for workers did nothing to alter the formal medical establishment’s position. Finally, with the creation of the Black Lung Association in 1968, workers, doctors, and grassroots organizers could band together in a formal organization dedicated to their cause, launching a series of strikes and education campaigns which finally succeeded in pressuring the federal government into passing a Black Lung Act in 1972, which expanded the scope of evidence associated with chronic lung disease. By the 1980s, this movement succeeded in transferring liability for the health of coal mine workers from the federal government to private employers and black lung disease was finally classified as an injury that fit within the rubric of worker’s compensation (even if regulatory agencies have at times confessed that it is “virtually impossible to determine” which mines are in compliance with established standards at any given moment in time).

In light of these dynamics, we might ask ourselves what would have happened if the medical exams of slaves been introduced as evidence for ailing twentieth century laborers? This
is not simply a counterfactual but a rhetorical question. Still the fact that we can pose it at all points to an aporia at the intersection of US labor history and the history of finance capital—that is, the history of industrial insurance. Even more urgently, it reveals a crucial element of economic restructuring in a post-bellum moment. For, the most alarming aspect of life insurance, as it surfaced in a post-bellum moment, is that both the individual medical history and the salary that is the basis for the actuary’s projection derive from confidential information. In other words, life insurance arguably constitutes the privatization of a calculus of value that had historically governed slave labor regimes. What does it mean that these dynamics accompanied the ostensible birth of freedom?

Is it not ironic that we have better information on enslaved coal miners than on coal miners whose lives might carry corporate-owned life insurance policies, which remain privileged information. The 2006 Pension Protection Act stipulates that corporations must make employees aware of insurance policies taken out in their names. Why, then, are there so many situations in which employees and their families report being alarmed to discover that the employer of the deceased generated millions of dollars from the death of a loved one? Is it merely the scale of the death benefit that unsettles? Could it be that the information is presented in too technical a matter for the employee to understand, so that he or she signs forms without appreciating all of the monetary stakes involved? It could perhaps be the fact that several types of corporate-owned life insurance are classified as securities, as part of a firm’s investment strategies. As such, they are governed by the SEC and thus rarely become the basis for explicit discussion between employers and employees. As such, one might query the legal justification for one person to hold value in another person’s life at all.

In this sense, we might say that corporate-owned life insurance derives its efficacy from an ideological slippage that emerges from the history of insurance litigation. As I mentioned before, prior to the eighteenth century slave insurance was permissible because the insured object didn’t have legal status that citizens enjoyed. In the aftermath of Thomas McCargo vs. The New Orleans Life Insurance Company the formal legal rationale was that ownership of a worker equates to ownership over another person’s risk. Thus nineteenth century legislation would trace a line from the 1774 language of “insurable interest” to insurance in workers. Yet, what about the related point, which likewise emerges from the case of Thomas McCargo, that insurance in another person presumes the insured enjoys compromised legal standing in the polity? This was held to be the definition of unfreedom. Is that an adequate formulation for thinking about twenty-first century labor relations?

Actuaries frequently tie the legal justification for COLI to the 1881 Supreme Court case of Warnock v. Davis, which specifies that the doctrine of “insurable interest” applies:“(i) In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection; and (ii) In the case of other persons, a lawful and substantial economic interest in having the life, health or bodily safety of the individual insured continue, as distinguished from an interest that would arise only by, or would be enhanced in value by, the death, disability or injury of the individual insured.” Of course, recent revelations of multi-million dollar corporate-owned life insurance policies would seem to undermine the legal rationale that a COLI policy restricts an employee from being “enhanced in value by, death, disability or injury.” That you can leverage an employee’s “risk-factor” as a way to generate wealth offers a more complicated portrait of human capital than we are accustomed to seeing. This research also suggests that even people who do not see themselves as the descendants of enslaved persons from Africa are
implicated in forms of valuation forged during the age of legalized enslavement. The evidence is everywhere.

In 1987, around the same time that coal miners finally secured the right to proper health care and safety mechanisms and adequate notice of the risks their enterprise entails, material evidence of the subterranean trajectory connecting these free workers with their enslaved brethren came to light. While breaking ground on a new site, developers discovered a small family burial plot alongside the Midlothian turnpike. Their initial plan was to somehow preserve it. But, as construction unfolded, they happened upon a cemetery four times that size. Forensic experts identified the inhabitants of the mass grave to be people of very modest means. And the proximity of this burial ground to Chesterfield county’s Midlothian coal mines indicates that this is a site where expired slaves had been dumped. But consider that these workers shared earth with a white family. A Chesterfield County planning department document from 1983 referring to this plot of land takes note of a “Slave cem[etary]” located in close proximity to “that of whites.” All told, 226 bodies were recovered from the mass grave, an eerie figure insofar as it marks the number of years Chesterfield county mines had been in service, from the time coal was discovered in 1710 until 1927. But, you don’t have to believe in omens to appreciate the fact that shared material conditions have structured the relations between distinct yet overlapping categories of US workers, from the antebellum period until the present.

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12 Levy, Freaks, 35.

13 Ibid.

14 It is likely that planters also insured slave doctors, by that I mean women who delivered countless babies on US plantations. Recall that in the nineteenth century medical expertise was based largely on practical experience rather than professional licensing and that enslaved women were more highly prized for their knowledge than many medical doctors with degrees from highly esteemed academic institutions. Yet, none of the records I have thus far encountered provide concrete evidence of efforts to insure enslaved medical experts.


16 Michael Ralph, “Movement Politics,” Introduction to special issue of Disability Studies Quarterly 32(3) on Disability Studies and social movement politics. Access at: http://dsq-sds.org/article/view/3266/3102. The argument developed in the following paragraph borrows heavily from Ralph, “‘Life in the midst of death.’”


22 Ibid, 119.

25 Virginia Auditor CC PP tax records, 1801, 1812 [differentiate?]
26 Humphrey, *Coal-mine explosions*, 1.
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32 Frantel, *Death and Slave Insurance Records*, 12.
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