

The Great Reversal: How Neoliberalism Turned the Work Ethic against Workers

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Not for circulation. This contains selections of my book manuscript on the history of the Protestant work ethic from its origins in the mid-17th century to the 21st century. I argue that contemporary neoliberalism in the U.S. today, and to a lesser extent in the U.K. and other European states, amounts to a continuation of a harsh, exploitative version of the work ethic developed by advocates of capitalism in the late 18th century, which I call the “conservative” work ethic. However, there was also a pro-worker, “progressive” version of the work ethic found in the history of classical political economy, reflected in the work of Locke, Smith, Ricardian socialists, James and John Stuart Mill, Marx, Eduard Bernstein, and social democrats. These selections focus on one aspect of the conservative work ethic, developed by Bentham and focusing on the criminalization of poverty and consignment of the poor to forced labor.

1.3 Two Sides of the Puritan Work Ethic

The central ideal of the work ethic is to engage in disciplined labor in a calling—a specialized occupation. Puritan minister William Perkins elaborated an early version of this ideal. Robert Sanderson concisely summarized it in a widely reprinted sermon.¹ God has given “gifts” or abilities to each individual, who has a duty to cultivate and use them in some “settled course of life, with reference to business, office, or employment” for the glory of God and “for his own and the common good” (*AP*, 401).” God would not have given us these gifts if he had not intended that we use them. Hence it is wrong to waste our time and talents in idleness. There is too much to do: “Life must be preserved, families maintained, the poor relieved” (*AP*, 403-4). God has called each person to service in a particular calling. How can you discover what that is? In the course of his sermon, Sanderson develops the core ideas behind modern career counseling. Don’t expect any special revelation to determine your calling. Explore your options, and choose the one that best fits your education, talents, and inclination (*AP*, 422-3).

Steady work is needed not only to do good, but to avoid sin. Idleness leads people into temptation. Work in a calling amounts to effective ascetic discipline by keeping people too busy for their minds to wander to sinful temptations (*AP*, 404). A generation later, Baxter elaborated the work ethic, adding a tone of moral panic to Sanderson’s genial career counseling. Because idleness and laxity at work are signs of flagging faith, wasting time should trigger the gravest of spiritual alarms. “We can never do too much . . . Much precious time is already misspent” (*SER*, 182). He devotes an entire chapter of his five volume *Christian Directory*, a

¹ William Perkins, *A Treatise of the Vocations, or, Callings of Men, with the Sorts and Kinds of Them, and the Right Use Thereof* (John Legat, Printer to University of Cambridge, 1603); Robert Sanderson, “Ad Populum (1627),” *Sermons, by Robert Sanderson, Late Lord Bishop of Lincoln. With a Life of the Author by Isaac Walton and an Introductory Essay by R. Montgomery*, vol. 1 (London: T. Arnold, 1841), sermon IV. Henceforth, this sermon will be cited in-text as *AP*.

comprehensive guide to Christian ethics, to effective time-management (*CD II*, ch. 5). To be sure, we need to rest, but only to the extent needed to restore our capacity to labor. So “rest must always *follow* labor,” as its earned reward (*SER*, 197, emphasis mine). All that busyness takes a toll, but in the service of assurance of salvation. And the reward of salvation is *everlasting* rest, filled with “perfect endless enjoyment of God” in heaven (*SER*, 18).

We must not waste our time and talents because “we are [God’s] workmanship” sent to execute his purposes on Earth (*CD I*, 322; *V*, 478). The same logic enjoins us from wasting any of the natural resources God provided us to carry out this task. “They are our Master’s stock,” “the tools by which we must do much of our Master’s work” (*CD II*, 88). “We must see that nothing of any use, be lost through satiety, negligence or contempt,” for “there is nothing that is good so small, but some one hath need of it” (*CD V*, 373). Luxury consumption and vain entertainments are wasteful, because the resources devoted to them would be better used promoting the public good and helping the needy. “[If] you let the poor lie languishing in necessities, whilst you are at great charges to entertain the rich without a necessity or greater good, you must answer it as an unfaithful servant” (*CD V*, 367). All must practice frugality, and avoid self-indulgence and “covetousness,” which Baxter defines as desiring more than what one needs to do one’s duty (*CD II*, 72).

Weber interpreted this work ethic as inherently antagonistic to the interests of workers. Although the Puritans’ motives for promoting the work ethic were religious, in effect they advanced the spirit of capitalism, getting the masses to labor and sacrifice in ways that maximized the profits of capitalists. Many passages in Baxter’s work support this interpretation. Baxter’s stress on work as a form of ascetic discipline rationalizes the consignment of workers to tedious drudgery: “Diligent labour mortifieth the flesh” (*CD II*, 583). He tells workers who take breaks from their toil that they are robbing their masters: “use every minute . . . spend it wholly in the way of duty” (*CD II*, 122). Weber claims that the Puritans bequeathed to us “an amazingly good, we may even say a pharisaically good, conscience in the acquisition of money, so long as it took place legally.”² Indeed, Baxter insists that “he is commendable who . . . frugally getteth and saveth as much as he can” (*CD V*, 373).” Given a choice among lawful callings, one has a duty to choose the highest-paying one (*CD II*, 585). Material inequality is justified: “God giveth not to all alike.” It is no sin to earn more than others through honest labor and saving (*CD II*, 77). Puritans frequently quote 2 Thess. 3:10: “if any would not work, neither should he eat” (e.g., *CD I*, 334). They repeatedly berate able-bodied beggars as parasites. Beggars should not be relieved, as this robs the deserving poor of alms. Rather, they should be whipped and sent to a house of correction, where they will be forced to labor (*AP*, 400, 414). Baxter even allows the legitimacy of contracts into slavery, driven by the desperation of the poor (*CD III*, 216). These are the themes that underwrite the conservative work ethic.

Yet Weber’s reading of the work ethic is partial. Puritans tempered even their harshest claims on workers—sometimes, to the point of contradiction. Consider slavery. Baxter allows slavery in four cases: (1) by contract in desperation; (2) as punishment for crime; (3) as

² Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, Talcott Parsons (Mineola, NY: Dover, 2003) 111.

restitution for theft, when the thief cannot otherwise pay compensation; and (4) of enemy soldiers captured in a just war. None of these cases permit hereditary slavery. In the first case, where innocents are enslaved, they are so only to a “degree.” Masters may not reduce such slaves to “miserery,” must provide them whatever “comforts of life, which nature giveth to man as man,” and recognize a duty of charity to their slaves (*CD III*, 216). This isn’t chattel slavery, in which the worker is reduced to property and denied all rights. It’s more like permanent indentured servitude. Even in the other cases, masters must recognize that “they are reasonable creatures as well as you, and born to as much natural liberty. If their sin have enslaved them to you, yet nature made them your equals” (*CD III*, 212). They are equally eligible for salvation as free persons, and are entitled to all the same religious services. Masters even owe *more* to their slaves than to their free servants. Slavery for any reason cannot make anyone wholly at the disposal of a master. Masters over slaves in the plantations, who treat their slaves like beasts, excusing such treatment on grounds of the supposed savagery of infidels, are more cruel and odious than cannibals (*CD III*, 212-13). Although Baxter does not explicitly call for the abolition of chattel slavery, it is impossible to reconcile the moral limits he places on slavery with the law, practice, and ideology of chattel slavery in the colonies. Any regime that enforced the laws he prescribes—prohibiting the slave trade, mandating emancipation of any infidel slave who converts to Christianity, and requiring slaveholders to teach them Christianity (*CD III*, 217)—would rapidly end up legislating chattel slavery out of existence.

Puritans did not merely lay moral constraints on how the lowest workers may be treated. More fundamentally, they promoted principles that uplifted the status of ordinary workers. This is a consequence of the sanctification of work. Everyone must “spiritualize their callings and earthly businesses, by going about them in the strength and wisdom of the spirit of God.”³ The spiritualization of callings uplifts the dignity of the lowest worker. *Everyone* who engages in honest labor, however menial, is doing God’s work. *All* productive labor promotes the glory of God in realizing God’s purpose for humans on earth—that we contribute to preserving human life and helping people. God has instituted the different callings in society because all are needed to work together in their distinct offices to promote his purposes, like the different parts of a clock. “[T]here is no member in the body so mean or small, but hath its proper faculty, function, and use, whereby it becometh useful to the whole body, and helpful to its fellow-members” (*AP*, 407). Everyone needs everyone else to do their part for their own work to fully realize God’s purposes. The clock analogy implies a kind of egalitarianism in the value of work from God’s point of view. The Puritan work ethic thus amounts to a profound revaluation of servants, who, for virtually all history, have been despised and mistreated, their labor held in contempt even as it fulfills socially necessary functions. Puritans endowed work with profound meaning, thereby giving workers a reason to dedicate themselves to it, beyond the need to gain assurance of salvation.

Puritans did not hesitate to draw earthly conclusions for how workers should be treated from the equality and dignity of all labor from God’s point of view. Baxter sternly warns masters that they must not rule their servants “tyrannically.” Workers are entitled to safe, healthful conditions. They must be paid fair and living wages. Wage theft is an “odious oppression.” (*CD*

³ John Angier, *An Helpe to Better Hearts for Better Times* (1647) 279.

V, 209-10). The deserving poor—not idlers, but the disabled and infirm unable to work, as well as poor able-bodied workers—are entitled to charity.

The doctrine of the calling beautifully illustrates how easily a sacred duty can be turned into a liberty right. If everyone has a duty to work in their God-given calling, and each has the right to determine their calling for themselves in light of their personal talent, temperament, and tastes, it follows that each has the right to free choice of occupation. England in the 17th century had an increasingly dynamic economy that led to the rise of “masterless men” who had no identifiable superior with the power to force them to work at any job in particular. While insisting that the masterless choose some calling or other if they could find steady work, Puritans raised the *de facto* freedom of the masterless to choose their calling from a contingent fact to a universal right.

With respect to the necessity of working in a calling, God is no respecter of persons (*AP*, 400). Hence, Puritans condemned the idle rich as well as the idle poor. “Gallants”—“those who think they need not labor due to birth, breeding, or estate,” who waste their time on gambling, drinking, sports, and sleeping—are as sinful as monks and beggars, the other two classes of worthless idlers. “[T]he lowest worker deserves more than they” (*AP*, 410-11).” The rich “are no more excused from service and work of one kind or another, than the poorest man” (*CD I*, 333). From those to whom God has given much, much more labor is due. For God told *everyone*, “In the sweat of thy face shalt thou eat bread, till thou return unto the ground” (*CD II*, 579). The gentry sin in failing to educate their children in a calling. They especially fail their daughters, by letting them waste their time playing cards, adorning themselves, idly chatting, and leaving the rearing of their children to others. Most women would best spend their time as teachers, educating their children (*CD III*, 187, 189-90).

Not every means of making money, even if positive laws allow it, counts as legitimate work in the eyes of God. Only work that promotes human well-being and advances the good of the commonwealth counts. Business models that merely extract value from others, or that oppress the disadvantaged, are sinful. Sanderson attacks monopolists, usurers, hucksters, engrossers, and forestallers—those who buy up goods trying to corner the market. He denounces traders who export food from regions experiencing a famine (*AP*, 417, 420-1). Baxter castigates the slave trade. “To go as pirates and catch up poor negroes or people of another land, that never forfeited life or liberty, and to make them slaves, and sell them, is one of the worst kinds of thievery in the world.” Slave traders are “incarnate devils” and “the common enemies of mankind” (*CD III*, 217). Baxter also rejects sharp trading practices that take advantage of the ignorant, gullible, desperate, and poor, even if they are not strictly illegal or fraudulent. While market prices offer a benchmark for a just price, traders also must consider the interests of counterparties. Although they may ask for more than the market price from the rich, if the latter are knowing and willing to pay it, they must ensure that both parties gain from any exchange between equals, and that the poor get an even better bargain than that (*CD V*, 306-13). Both justice and charity limit the interest one may charge on loans. Extracting interest is wrong “when you allow him not such a proportion of the gain as his labour, hazard, or poverty doth require; but because the money is yours, you will live at ease upon his labours” (*CD V*, 325).

Far from licensing the exploitation of the poor by taking advantage of their weak bargaining position, Baxter condemns “oppression,” which he defines as “the injuring of inferiors, who are unable to resist, or to right themselves; when men use their power to bear down right” (*CD V*, 348). Landlords are especially prone to oppress their tenants. “The voluptuous great ones of the world, do use their tenants and servants, but as their beasts, as if they had been made only to labour and toil for them.” Such oppressors are “antichrists,” who “make crosses for other men to bear,” and “tread on their brethren as stepping stones of their own advancement” (*CD V*, 350, 51). Instead of charging what the market may bear, to maximize their profits, landlords and masters should renounce the covetousness that drives them to exploit their inferiors. “Mortify your own lusts . . . which maketh you think that you need so much, as tempteth you to get it by oppressing others. Know well how little is truly necessary!” (*CD V*, 356). Poor, hardworking tenants may be entitled to pay less than market rents. If they have enjoyed below-market rents by custom for a long time, they acquire a conditional title to them. They may also hold other customary rights that preclude their eviction by enclosure (*CD V*, 357, 362). Ordinary tenants should generally enjoy such below-market rents

that they may comfortably live on it, and follow their labours with cheerfulness of mind, and liberty to serve God in their families, and to mind the matters of their salvation, and not to be necessitated to such toil, and care, and pinching want, as shall make them more like slaves than freemen (*CD V*, 359).

Here we see the basis of a pro-worker work ethic, in which honest laborers are entitled to dignity, meaningful work, decent material conditions, comfort, rest, freedom from oppression, and charity. Baxter doesn’t even stop there. According to official Calvinist doctrine, steady disciplined work serves only an epistemic function, as a *sign* of faith, and hence of grace. Yet Baxter, in exhorting all to labor diligently in their calling, could hardly suppose otherwise than that his flock would heed his message. “Doubt not but the recompense will be according to your labor Work out your own salvation” (*SER*, 194-5). He thereby slides into Arminianism, the heresy that we have the free will to choose good, and thereby attain salvation as compensation for the work one does on earth. . . .

Thus, we see that the Puritan work ethic included both conservative and pro-worker ideals. The dual nature of the work ethic follows in part from the dual nature of work from the Puritans’ perspective, as both an ascetic discipline and as sanctified activity that glorifies God in promoting human welfare. When work is seen as an ascetic practice, it rationalizes the consignment of workers to stultifying toil. When it is seen as sanctified activity glorifying God, it raises workers to the same level of awe formerly held by monkish occupants of holy office, while reducing the latter to the status of idle drones to be cast out of the nest. . . .

From the point of view of philosophical ethics, the dual character of the work ethic points to something more profound than a practical compromise. The concept of a calling—that God calls each person to a specialized occupation fitted to their talents, education, and interests, to labor for themselves and the benefit of humanity, to his glory—presupposes an existing division of labor into which workers are sorted. It thereby mostly accepts the existing set of occupations, with its hierarchy of offices. Yet a foundational moral egalitarianism underwrites this hierarchy. The *moral* status of the lowest worker is equal to that of the highest. *All* are called to labor; the

idle rich are not excused. Nor does much of the busyness of the rich, based on oppressing the downtrodden, count as work in the ethical sense, since it fails to benefit humanity. The leveling tendencies of Baxter's ethical egalitarianism are so plain that Baxter feels forced to disavow them. He does this twice when railing against pomp and conspicuous consumption, allowing that what counts as excessive may vary by occupation (*CD* II, 162; V, 356). Illustrating the universal duty of charity with the example of members of the early church, who held everything in common, Baxter insists that he isn't teaching leveling, but only showing that all should "relieve their brethren as themselves" (*CD* V, 479).

Baxter needed an ethical theory to reconcile the tensions in the dual character of the work ethic. And he devised one. Here lies the most astonishing fact of all: Puritan ministers invented what was to become the most influential, and the most secular, foundational moral theory of modern times. This is utilitarianism, the doctrine that everyone's fundamental moral duty is to maximize human welfare.

3.1 Developments in the Work Ethic in the Late 18th Century

A century after Locke's mature political writings, controversy over policy toward the working classes came roaring back. This was the occasion for thinkers to develop both sides of the work ethic in light of changing economic and cultural conditions. One side, represented by Adam Smith and more radical thinkers including marquis de Condorcet, Thomas Paine, and John Stuart Mill, advanced the progressive, pro-worker dimensions of the work ethic that Locke had so skillfully promoted in most of his mature writing. The other side, led by Joseph Priestley, Jeremy Bentham, Robert Malthus, Edmund Burke, William Paley, Richard Whately, and Nassau Senior, followed the spirit of Locke's suspicious and stinting poor law reform proposal. This split reflected two large changes in British society near the turn of the 19th century: a much sharper division between workers and capitalists caused by the Industrial Revolution, and increasing secularization.

The Industrial Revolution dramatically increased the prevalence of wage labor among workers. In classical economics, wage laborers are a class of workers who satisfy four conditions. (1) They don't own or have rights of access to capital (land, natural resources, tools, machinery, etc.), and don't have rights to capital income. Their only productive asset is their own labor. (2) To make a living, they depend on selling their labor power to an employer in return for a wage. (3) They are formally free to change employers and reject any employment contract offered to them. (4) They live in households distinct from their employer. I argued above that wage laborers were relatively rare in 17th century England. For the Puritans, as for Locke, model workers were crafts manufacturers, farmers, and those engaged in merchant trades. Most such workers either owned at least some of their own capital, had rights of access to it, or had rights to capital income in lieu of wages. "Servants," who were overwhelmingly unmarried workers from their teens to their mid-twenties, typically lacked certain freedoms wage workers took for granted: most lived in their employer's household, under their domestic authority, or were indentured. During the 18th century, Parliamentary enclosures wiped out the remaining copyholders. The Industrial Revolution brought about dramatic change in productive organization. The factory system replaced master craftsmen, journeymen, and cottage industry workers with wage workers. It also gave rise to a class of managerial capitalists who focused on

disciplining workers to maximize their work effort,⁴ and a class of rentier capitalists who joined the large landowners in living off their capital income.

This widening of class divisions led to a division in perspectives over the work ethic. The master craftsmen and yeoman farmers of the 17th century functioned both as manual workers and as industrious capital owners. The Puritans' and Locke's work ethic exalted them in both these capacities, relative to idle landlords, scheming financial speculators, and crony capitalists. It entitled them not only to a decent standard of living, but to take pride in their work, and exercise autonomy over how they conducted themselves at work, and over its pace and timing. Hence, in satisfying the duties of the work ethic, they also counted on reaping its rewards. As the Industrial Revolution proceeded, wage workers and their advocates developed the work ethic to support institutional innovations—notably including social insurance, workers' cooperatives, and labor unions—to enable wage workers to enjoy comparable rewards in the industrial system that their pre-industrial predecessors had, or were thought to have had: dignity, autonomy at work, and a secure and decent standard of living.

Capitalists, whether managerial or rentier, developed the work ethic in the harsh, suspicious, and stinting direction presaged by Locke's version of poor law reform. They stressed discipline, frugality, and asceticism for workers, while reaping the lion's share of productivity gains for themselves in their capacity as capital owners. Real wages stagnated from 1770-1840, even as GDP per worker grew and capitalists enjoyed increasing luxury and leisure.⁵

One might think this is not consistent with the fundamental aspirations of the work ethic. Managers and entrepreneurs might lay *some* claim to exemplifying the work ethic—but how could rentiers, speculators, and idle landlords? And how could increasingly disciplined and productive wage workers be denied its benefits? This is what I call the *first great reversal*—the twisting of the work ethic against workers, and in favor of rentiers, crony capitalists, and schemers—those who reap profits from business plans that extract value from the economy, rather than adding to social welfare. (The second great reversal began in the 1970s and continues today.)

To understand how this reversal happened, we must also take account of the secularization of the work ethic. Already by the time of the *Second Treatise*, appeals to the Bible in English political thought were waning.⁶ Although theological premises are foundational to Locke's system, the ratio of secular moral reasoning to scriptural reasoning in the *Second Treatise* is very high compared to that of Baxter's *Christian Directory*, written just 25 years earlier. A half-century after the *Second Treatise*, the secularization of the work ethic is virtually complete in the hands of Benjamin Franklin, whom Weber took to be a paragon of this ideology.

⁴ Gregory Clark, "Factory Discipline," *Journal of Economic History* 54.1 (1994): 128–63.

⁵ Robert Allen, "Engels' Pause: A Pessimist's Guide to the British Industrial Revolution," *Explorations in Economic History* 46.4 (2009): 419–20.

⁶ Christopher Hill, "The Bible in Seventeenth-Century English Politics," *Tanner Lectures in Human Values*, Vol. 14 (Salt Lake City: University of Utah Press, 1991) 105.

In Franklin's thinking, the rationale for the work ethic is not theological, but prudential and utilitarian.⁷

Secularization entailed a commitment to calculate the utilities realized by the work ethic and public policies related to it in terms of goods and bads experienced on earth, rather than in the next life. The quest for leisure and luxury was therefore no longer considered sinful. Whether this was bad depended entirely on the consequences. Yet while the surface logic of the secularized work ethic was this-worldly, background theological assumptions and attitudes continued to influence how thinkers calculated the utilities. This was especially true for those who developed the conservative work ethic. Priestley, besides being a famous chemist and political economist, was a dissenting minister. Malthus was a curate in the Church of England. Paley held various distinguished offices in the Church of England. Whately was Church of Ireland Archbishop of Dublin. Their natural theologies deeply influenced their utilitarian conclusions. I shall argue below that even Bentham, an atheist, expressed fundamentally Puritan attitudes in his judgments of utility.

In the hands of conservatives, secularization also shifted the locus of individualism from the next world to this world. Now, each individual was personally responsible not just for their own salvation, but for their fate on earth. Conservatives imagined that the laws of the unregulated market were God's natural laws, meting out to each individual their just earthly rewards in accordance with their virtue in fulfilling the demands of the work ethic. Hence, any collective "interference" with those laws was unjust and would lead to earthly punishment. One could infer someone's virtue from their wealth prior to any state redistribution. Thus, the rich are presumptively carrying out the demands of the work ethic; the poor are viciously violating them. To justify this in utilitarian terms, conservatives supposed that any redistribution of income and wealth would lead to bad overall consequences, primarily by corrupting the poor.

This way of thinking made a radical break from Baxter and Locke. Recall that Baxter argued that salvation was open to anyone who manifested their faith in God by assiduously following the work ethic. Everyone was equally subject to the demands of the work ethic, and equally eligible to fulfill its demands, *regardless of their station in life*. Each individual is therefore personally responsible for their own salvation. In this life, however, a logic of collective responsibility for everyone's well-being reigns. The idea of a calling reflects God's benevolence in establishing a division of labor whereby everyone promotes the welfare of the entire community in performing the specialized role to which God has called them. Just as each part of a watch, however small, plays an essential role in keeping time, each worker, however lowly, fulfills an essential function in the flourishing of the community. In recognizing this fact, we recognize that we all must take care of one another, since the whole point of the division of labor is to enable us to do so effectively. Hence, all workers are entitled to fair and living wages, and the rich must provide for the poor. Locke retains this communitarian perspective in insisting that society's laws and policies provide for "the good of every particular member of that society" (1T, §92). The duty of charity is strict, and poor workers are entitled to demand it. From this perspective, it is absurd to suppose that one's station in life reflects one's virtue or commitment

⁷ Weber, 11–14.

to the work ethic. It merely reflects the social structural necessity of a division of labor. Thus, while each individual is personally responsible for their own salvation by following the work ethic, here on earth everyone is their brother's keeper.

From the conservative perspective, however, poverty reflected an individual's failure to fulfill the demands of the work ethic. Society is at fault solely in establishing institutions that violate natural law in promoting vice through provisions such as the Poor Law. Conservatives agreed that the Poor Law must therefore either be abolished or radically reformed. If poverty is caused by the vice of the poor, the remedy for poverty must be to force the poor to practice virtue, to live up to the demands of the work ethic. Conservatives differed somewhat on which virtue was most necessary for the poor to practice. Priestley focused on frugality, Bentham on industry, Malthus on chastity, Paley on contentment (understood as the opposite of covetous envy of the rich). Thus, Priestley hoped to convert poor workers into virtuous bourgeois citizens through a legally mandated individual savings plan. Bentham favored a workfare system that turned the working poor into imprisoned debt peons of capitalist entrepreneurs. Malthus advocated leaving the poor to starvation, disease, and destitution, but offered them the hope that they could rescue themselves by postponing marriage and sexual intercourse. Burke and Whately agreed with Malthus, but attempted to put a Christian Tory paternalist veneer on their view.

3.3 Bentham: The Dictatorship of the Bourgeoisie

Boots Riley, in his film *Sorry to Bother You* (2018), portrays a company that calls itself "Worry Free." Its commercials promise poor workers a job that will support their families in comfort for the rest of their lives. The trick is that they must sign a contract binding themselves to drudgery in company-operated prisons, where they are consigned to live and labor for the rest of their lives. While Riley's depiction of contemporary capitalism is hyperbolic, Bentham seriously advanced a similar idea two centuries ago, promising "tranquility" to workers who took it up.⁸

Michel Foucault remade Bentham's reputation by highlighting his panopticon prison design. Foucault also noted Bentham's passing claim, in the work introducing the panopticon, that its principles are equally applicable to the factory, school, hospital, insane asylum, and poorhouse.⁹ Hence it is surprising that Foucault did not cite Bentham's *Pauper Management Improved*, in which he comprehensively described and defended the extension of his prison plan to cover the working poor, along with orphans, the aged, and the disabled.¹⁰ Bentham was so enthusiastic about *Pauper Management Improved* that he reprinted it twice after its initial 1798

⁸ Jeremy Bentham, *Pauper Management Improved: Particularly by Means of an Application of the Panopticon Principle of Construction* (London: R. Baldwin, 1812) 274.

⁹ See Michel Foucault, *Discipline and Punish*, Alan Sheridan (New York: Vintage, 1979) 205, citing Jeremy Bentham, *Panopticon, or The Inspection-House (1787)*, Ed. John Bowring (Edinburgh: W. Tait, 1838), vol. 4 of *The Works of Jeremy Bentham* 40.

¹⁰ Bentham, *Pauper Management Improved*.

publication, and stood by it for the rest of his career.¹¹ Foucault represents the panopticon as embodying a technology based on, and generating, a new type of scientific knowledge of human behavior. Bentham represented his scheme likewise. However, this description neglects the profound influence of the Protestant work ethic on Bentham's plan. The assumptions of the work ethic comprehensively tilted his estimates of utilities. I don't claim that Bentham, an atheist, would have recognized this fact. In the absence of objective empirical measures of utility, all utilitarians have to go on are their own ethical intuitions, which are feelings they have on imagining various states of the world. Bentham's claims on behalf of the utility of his scheme make no sense other than as expressions of unacknowledged non-utilitarian normative attitudes—*Puritan* attitudes—toward work, leisure, and discipline.

Bentham styles his plan as “a Romance—the Utopia,” which he hopes will be enacted into law (*Letter*, 4-5). It advances two ideas familiar in neoliberal thought today: (1) outsourcing state functions to private, for-profit enterprises, and (2) punitive workfare for the poor.¹² It addresses the problem as Bentham sees it: that paupers, including children, the insane, and the disabled, are a net burden on society, being supported by provisions of the Poor Law, financed by property taxes. The solution is to force paupers to work, earning their own way.

Publicly operated workhouses and “houses of correction” designed to instill the work ethic in the poor had long existed in England. But they were never able to cover their expenses by selling what their inmates produced. They were supported by tax revenues. Bentham blamed this inefficiency on the lack of incentives and business acumen of government managers. Let a private, for-profit enterprise put the poor to work, and the managers' incentives can be aligned with the public interest by means of a contract that allows them to pocket the difference between the costs of maintaining the poor and the value of the product they produce. Private enterprise would minimize the costs of maintenance and maximize the profits “extracted from [paupers'] labour,” to the relief of the taxpaying public, which would now receive a share of the profits. The poor themselves would also be relieved through the provision of subsistence and medical care (*Letter*, 8; *PMI*, 9-10). They would also receive training in disciplined labor, acquiring a work ethic by habituation and incentives. “Man must be new made, before [providence] can be made universal” (*Letter*, 29).

Bentham proposed that a single for-profit company, the National Charity Company, have exclusive responsibility for maintaining paupers, and a monopoly on their labor. The Company would build 500 panopticons situated 10 2/3 miles apart across England and Wales, each housing 2,000 paupers, mostly in prison cells. It would be required to accept all paupers who voluntarily entered, and authorized to seize and imprison “all persons, able-bodied or otherwise” caught begging or without visible legitimate means of support, including orphans, sex workers, fortune-tellers, debtors, delinquents and numerous other categories of individuals, whom Bentham classifies in a fine-grained typology of 33 classes (*PMI*, 7, 41, 146; *Letter*, 35-9). Employers,

¹¹ Gertrude Himmelfarb, *The Idea of Poverty: England in the Early Industrial Age* (New York: Knopf, 1984) 78.

¹² Although Bentham denies that compelling the poor to work in panopticons amounts to punishment; he insists that it's more like the enforcement of truancy law (*PMI*, 147).

husbands, and fathers could respectively force their lazy, unfaithful, or insolent servants, wives, and children into a panopticon to reform them (*PMI*, 218-19). Once imprisoned, paupers would be forced to work until they paid off the cost of their maintenance, and entitled to continue to work there as long as they wished (*PMI*, 5).

In fact, Bentham imagines that paupers would be forced to work off considerably more than the costs of their maintenance. The Company's "end in view" is "the extraction of labour, to as great a value as may be" (*PMI*, 62). He calculated that able-bodied men would generate 300% profits, able-bodied women, 200%. But the greatest profits of all would come from child labor (*PMI*, 54-5, 126). Apprentices "constitute the chief basis of the Company's profit-seeking arrangements" (*PMI*, 94-5). The Company could extract high effort from all workers by offering competitive prizes awarded only to the most productive. The prizes themselves need cost the Company nothing, but consist in such things as getting first place in line for meals (*PMI*, 66).

The profit motive would induce Company managers to test ways to minimize the cost of maintaining its inmates. It should provide the cheapest quality food consistent with survival. Bentham thought managers should especially experiment on children, to see how little food they could be fed without dying or falling ill, carefully recording their findings for use by other caretakers (*PMI*, 81-2). According to Bentham's "earn-first principle," inmates would be denied a meal until they performed their assigned task (*PMI*, 62-3). This principle echoed the Puritans' Biblical refrain, "if any would not work, neither should he eat." Men could be encouraged to save their wages by eating only oatmeal and potatoes (*PMI*, 171). Inmates would wear wooden clogs (not leather shoes), and uniforms patched together from cast-off clothing (*PMI*, 87-88). The stigmatizing implications of this attire are evident: just 20 years before, Adam Smith had observed that "The poorest creditable person of either sex would be ashamed to appear in public" without leather shoes and a linen shirt. Others would infer from the lack of such items "that disgraceful degree of poverty, which, it is presumed, no body can well fall into without extreme bad conduct" (*WN*, V.2.k.3).

Inmates would enjoy no privacy. In the panopticon architecture, where paupers would be confined to cells arrayed in an annulus visible to supervisors in a central tower, they would be subject to surveillance at all times, to ensure good behavior (*PMI*, 28-9, 42-4). Supervisors, too, would be subject to comprehensive surveillance by members of the public, who would be free to inspect the panopticon's operations and account books. Public inspection would provide appropriate incentives to managers not to abuse the inmates or let them die (*PMI*, 52, 56-7). Disinterested humanity is an illusion; only incentives will motivate people to maximize utility. Hence caretakers would be fined for deaths of inmates, and awarded bonuses for minimizing death rates (*PMI*, 54-6).

Polka-dot panopticons distributed across the landscape, housing imprisoned paupers forced to work for maximum profit to Company managers: this mad totalitarian vision, which Bentham enthusiastically called his "romance," amounted to the fullest expression of the

dictatorship of the bourgeoisie.¹³ Although he represented his vision as a purely scientific application of utilitarianism, the background normative assumptions of the work ethic, including a legacy of characteristically Puritan attitudes, saturate his plan. “Habits of *industry*” are to be “maintained without relaxation” (*PMI*, 39). Nothing may be wasted. The Company director must swear an oath “to adhere, with unremitting strictness, to . . . principles of economy” (*PMI*, 16). As far as possible, materials should have more than one use (*PMI*, 70). Beds double as tables. Inmates are to be assigned “the same room for all purposes—work, meals, and sleep” (*PMI*, 34). Bentham cannot tolerate spontaneous motions not put to any further purpose. Even the feeble can have their tremors put to work by making them rock infants’ cribs (*PMI*, 97). “Not the motion of a finger—not a step—not a wink—not a whisper—but might be turned to account, in the way of profit.” “Every *fragment* of ability, however minute” of every inmate, even the bed-ridden and the insane, must be put to work (*PMI*, 57). Following the Puritans’ ascetic rejection of frivolous pleasures as a waste of time, Bentham insists that “no portion of time ought to be directed exclusively to the single purpose of comfort.” Allowable comforts are only those taken in the course of work, or to enable it (*PMI*, 121-2). So much for the official utilitarian doctrine that pleasure is the only end in itself. When Bentham thinks of the poor, the only permissible pleasures are those with an instrumental rationale—just as Puritan ascetics such as Baxter preached. In line with Puritans’ suspicion of people getting by without a calling, Bentham calls for irregular workers, such as unlicensed street hawkers, to be forced into panopticons (*PMI*, 146). Like the Puritan advocates of the work ethic and their secular successors, Bentham promotes the goal of maximizing profits, based on hard-headed calculations of objective results.

Puritans were obsessed with keeping “account-books in which sins, temptations, and progress made in grace were entered or tabulated.”¹⁴ Bentham was similarly insistent that the Company keep account books tabulating not only finances but the health, comfort, industry, mortality, and discipline of inmates (*PMI*, 101). John Wesley, the founder of Methodism and a late advocate of the Protestant ethic, delivered a sermon in 1778 in which he famously pronounced that “Cleanliness is . . . next to godliness.”¹⁵ Bentham was similarly preoccupied with provisions to keep the panopticons clean and tidy (*PMI*, 267-71). As Baxter worried that wealth would tempt people to sin, Bentham worried that high wages for workers undermined the morality of the “improvident and uncultivated,” leading them to “sensual excesses” (*PMI*, 135).

Puritans were notably severe and contemptuous of sentimentality. Weber notes that the hero of Bunyan’s *Pilgrim’s Progress*, the most widely read Puritan book, abandoned his wife and

¹³ Isaac Kramnick stresses that Bentham was joined by many other bourgeois radicals at the time in proposing such plans. “Though these radicals preached independence, freedom, and autonomy in polity and market, they preached order, routine, and subordination in factory, school, poorhouse, and prison.” Isaac Kramnick, *Republicanism and Bourgeois Radicalism: Political Ideology in Late Eighteenth-Century England and America* (Ithaca, N.Y.: Cornell UP, 1990) 97.

¹⁴ Weber, 70.

¹⁵ John Wesley, “On Dress [Sermon 88, 1778],” *The Works of the Rev. John Wesley, A.M., Vol. 7* (London: J. Mason, 1837) 15.

children to seek his own salvation.¹⁶ A life comprehensively driven by the impersonal duty to glorify God doesn't sit very well with sentimental partiality toward loved ones. Bentham was similarly unsentimental. He even reveled in his contempt for human feelings about others that resist reduction to cold calculations of their instrumental value. He described paupers as the "refuse" of the population and "that part of the national live stock which has no feathers to it, and walks upon two legs," equally subject to market valuation as slaves (*PMI*, 128; *Letter*, 25-6). Orphans are especially valuable to the Company because they have no "natural connections" to anyone else, so can be assigned "without hardship" to any place where their labor would be most useful and the cost of their maintenance minimized (*Letter*, 16). He suggests that poor parents living on their own could profitably hire the Company to educate their children on borrowed tuition. If they can't pay off the debt by the end of the year, the child would be forfeited to the Company, bound to serve it until age 21 (*PMI*, 234).

On behalf of Bentham, one might plead that all of this could be made consistent with utilitarianism, if one inserts certain empirical assumptions about how the utilities actually work out. But this is the weakness rather than the strength of utilitarianism. It can deliver any conclusions one wants with the "right" utility assumptions. In Bentham's case, these are massively implausible. He imagines that paupers need only their minimal physiological needs served. He doesn't count the massive disutilities entailed by the fact that pauper adults are deprived of dignity, civil rights, freedom, privacy, and opportunities to form friendships, sexual, and intimate relations with others, nor that children are deprived of loving attachments to parents and siblings. He argues that even when children live in the same panopticon as their father, they should only be permitted to see and not converse with him, except under the supervision of an officer or guards, lest the father corrupt them (*PMI*, 159). He stigmatizes dependent poverty to the extent of virtually criminalizing it, without deducting the disutility of shaming the poor from his utility calculations.

His calculations of profitability make no sense. Bentham imagines that panopticons will be self-sufficient because inmates will grow their own food. This will consume two-thirds of the inmates' labor (*Letter*, 32). Much of the remaining labor would have to be devoted to maintaining the panopticons, sewing and repairing inmates clothes, and so forth. The more panopticons constitute complete, self-sufficient communities, the less able they are to gain from trade with outsiders. With so little labor available for production for the market, and so many infirm inmates, how could the Company expect profits exceeding 200%?

Bentham's motivational assumptions are also contradictory. Because disinterested benevolence is an illusion, incentives must be rigged to deliver socially optimal results. This is why panopticon managers themselves must be subject to surveillance by the public. Yet Bentham doesn't explain why members of the public would have incentives to inspect the work of Company managers, nor why they would care if the poor died from starvation, given that the Company would be distributing some of its profits from exploiting pauper labor to ratepayers.

¹⁶ Weber, 58.

Bentham's utility calculations are all the more absurd given his commitment to purely secular reasoning. Baxter could argue that the poor should feel lucky to not be exposed to the sensual temptations to which the rich are exposed, because giving in to them leads to eternal damnation. Bentham wants them to feel lucky just to be alive. We should worry about any moral system that can be so easily gamed through calculations founded on heart-hardening instrumentalization of the people whose lives are at stake. Yet there is no practical way to objectively constrain utility assumptions so as to exclude non-utilitarian moral intuitions.¹⁷

There is a deeper contradiction in Bentham's calculations. Utilitarianism is supposed to be an egalitarian moral system: everyone to count for one, nobody for more than one. Or, more precisely: every util counts exactly the same, whether enjoyed by the rich and powerful, or the poor and downtrodden. Since, in any hierarchical system, those at the bottom of the pyramid are vastly more numerous, utilitarianism should not only be formally egalitarian, but move societies toward substantively more egalitarian outcomes. Moreover, Bentham's refusal to grant distinctions between higher and lower pleasures was explicitly designed to poke holes in the pretenses of the privileged that their pleasures should count for more: "Prejudice apart, the game of push-pin is of equal value with the arts and sciences of music and poetry."¹⁸ Bentham also gleefully leveled the ranks with his pen:

Never is the day labourer, never is the helpless pauper, an object of contempt to me: I can not say the same thing of the purse-proud aristocrat: I can not say the same thing of the ancestry-proud aristocrat: I can not say the same thing of the official bloodsucker: I can not say the same thing of the man covered with the tokens of factitious honor: least of all can I say the same of a King.¹⁹

Yet it is impossible to read Bentham's calculus of utilities in *Pauper Management Improved* as anything other than contemptuous of the poor. He shares with Locke an epistemology of suspicion about them. He claims that panopticon agents may infer with "perfect certainty" that anyone without property or a job must be a criminal, who may therefore be forced into a panopticon (*PMI*, 152). In line with Priestley, it doesn't cross his mind that passive owners of property, extracting income produced by others, are a burden on society, or that the Poor Law distributed unearned rents more fairly. His work ethic, no longer universal, applies only to those who cannot live idly off their property. Bentham can barely stand the idea that the poor might enjoy anything they have not earned through hard labor: if those living outside the panopticons suffer accident or hardship, they should get loans, which keep up "the spirit of

¹⁷ As I have argued in *Value in Ethics and Economics* (Cambridge, Mass.: Harvard UP, 1993) ch. 4.

¹⁸ Jeremy Bentham, *The Rationale of Reward* (London: R. Heward, 1830) 206.

¹⁹ Thanks to Don Herzog for alerting me to this delicious passage in his *Poisoning the Minds of the Lower Orders* (Princeton: Princeton UP, 1998) 236, quoting Jeremy Bentham, "Jeremy Bentham to Greek Legislators [1823]," *Securities Against Misrule and Other Constitutional Writings for Tripoli and Greece*, Ed. Philip Schofield (Oxford: Clarendon, 1990) 194. Herzog cites numerous other passages from Bentham bearing on his egalitarianism.

industry and frugality,” not gifts, which undermine the work ethic (*PMI*, 162).²⁰ But he also can’t stand the idea that their panopticon masters might not profit from even the most minute exertions of their slaves. Who are the parasites here?

9.3 Government Outsourcing and the Carceral State: the Return of Bentham

Bentham (§3.3) advanced two ideas in his version of the conservative work ethic: outsourcing provision of government services to private, for-profit firms, and subjecting the poor and disadvantaged to carceral institutions in which they are forced to labor for little or no pay. Both ideas play an important role in contemporary neoliberal policy.

Outsourcing government services to for-profit firms. Neoliberalism aims to replace state provision of goods with provision by private for-profit firms to the maximum feasible extent. This may involve a demand for complete withdrawal of the state from any provision. Even where the state is expected to play a role in provision—by funding the good or authorizing providers—neoliberalism favors outsourcing actual production of goods and services to private firms.

The fundamental case for this position does not hang on the possibility that competing private firms might offer more variety and freedom of choice to users. To be sure, this consideration has played a role in promoting vouchers for education rather than state-run schools. “A market permits each to satisfy his own taste.”²¹ However, neoliberals have advocated outsourcing and privatization even for monopoly provision, such as power and water utilities, city parking meters, and prisons. They appeal to public choice theory, which justifies this position by claiming that state provision is less efficient than provision by private enterprise. Public choice theorists claim that civil servants are just as self-interested as for-profit providers. But they lack incentives to provide goods of the highest quality at the lowest cost. Rather, they aim to maximize their agencies’ budgets. The public should get a better deal if the state outsources provision to private firms.²² Let competing firms bid for contracts to provide the goods in question, and let the state award the contract to the lowest bidder. The state may need to pay, but private enterprise is nearly always the more efficient provider, quicker to respond to changing conditions, and less wasteful of taxpayer dollars. Similar considerations are advanced

²⁰ He also laments the gifts people give to beggars, pointing to the disutility to workers of seeing beggars enjoy any luxury as a reason to force beggars into slavery (*PMI*, 142). If the purpose of the utilitarian calculus is to replace inegalitarian prejudice with objective reasoning, then allowing resentment against those less advantaged than oneself to count as disutility is self-defeating. Bentham’s system is more generally vulnerable to letting in the back door precisely the arbitrary and tyrannical moral judgments he wanted to exclude (see Jeremy Bentham, *The Principles of Morals and Legislation* [New York: Hafner Press, 1948] ch. 2,) insofar as it allows moral feelings such as resentment and anger, based on non-utilitarian judgments, to count in the hedonic calculus.

²¹ Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962) 94.

²² William A. Niskanen, “The Peculiar Economics of Bureaucracy,” *The American Economic Review* 58.2 (1968): 293–305.

for the superiority of private over publicly owned utilities, hospitals, and other facilities, although they may be paid for by user fees rather than exclusively through general tax revenues.

This argument reprises Bentham's case for outsourcing pauper management to a for-profit corporation. Government managers lack an incentive to make workhouses profitable, and so impose a great burden on taxpayers. Turn the workhouses over to private entrepreneurs, and they will make huge profits, returning a portion of the gains back to taxpayers (§3.3). We have seen that Bentham's accounting was as wildly exaggerated as that of any con artist. Nevertheless there was some basis at the time for his view that government officials were poorly motivated compared to entrepreneurs. England lacked a professional civil service in Bentham's day. In an undemocratic government run by aristocrats, government jobs existed not to serve the public, but to serve the aristocracy. Many offices were little more than sinecures set aside to provide for the aristocracy's second and later sons, who would not inherit an estate. These were among the highly coveted "situations" into which the rich scrambled to place their sons so that they could keep up the high standard of living in which they were brought up—one of the anxieties uniquely suffered by the rich, as Paley noted.

But not all the rich: the Test Act prohibited Dissenters, the 18th and 19th century descendants of the Puritans, from holding public office until its repeal in 1828. Ambitious Dissenters, barred from competing for public office and imbued with the work ethic, poured their energies into business. Although they accounted for only 7% of the British population in Bentham's day, they were 41% of the leading entrepreneurs of the Industrial Revolution, and outnumbered Anglicans 14-to-1 in the all-important manufacturing sector. Almost all of the pathbreaking industrialists of the day were Dissenters.²³ Philosophical radicals such as Bentham were allied with the industrious and frugal entrepreneurial class against the lazy aristocrats and their useless sons, just as Locke's radical Whigs were. Their contempt for government workers relative to business owners, who had to keep on their toes in competitive markets, made some sense in historical context.

Since Bentham, Britain and many other states have democratized and established professional civil services. Is Bentham's and modern public choice theorists' argument for the superior efficiency of outsourcing state provision to for-profit businesses over assigning provision to professionalized bureaucracies equally plausible today? Consider the fact that controversies over this question greatly depend on the good or service being provided. No one expects municipalities to execute their own road-construction, or school districts to manufacture the desks provided to students in public schools. Leading cases of controversy concern the provision of complex human services, such as education, social work, hospitals, prisons, and other correctional facilities. Here we analyze the question solely in its own terms, setting aside momentous questions about such matters as the legitimacy of outsourcing public decisions, such as of criminal punishment, to private parties.²⁴

²³ Kramnick, 47–49.

²⁴ On the momentous questions, see Chiara Cordelli, *The Privatized State* (Princeton: Princeton UP, 2020); Alon Harel, "Private Gain, Public Loss," *Aeon* June 22 2020, <https://aeon.co/essays/privatisation-is-bad-economics-and-worse-politics>; Simon Chesterman

The economic theory of the firm offers insight into this question.²⁵ Why do firms decide to outsource some tasks to other firms, and employ their own workers to perform other tasks? The boundary of the firm—the scope of tasks performed in-house—is the boundary where “government,” or direct supervision of task performance, is more efficient than purchasing performance on the market.²⁶ In general, a firm will use markets for provision of a good or service as the more efficient option when it can completely specify the contract for the desired good or service, can easily judge whether all the terms of the contract have been met, when what matters is just a specific output and not the process by which it is produced, when outside providers know more about how to produce the good or service, and when it costs little for the client to switch from one provider to another, because there are many competing providers and it is easy to switch midstream. A firm will choose to produce a good or service by hiring its own employees to do so when what is desired is too complex or open-ended to be fully specified in a contract, or difficult to tell whether it was done well without direct supervision of the production process, when the production process matters as well as the final output, when the firm has expertise over the process, and when it is costly for the firm to switch from one outside provider to another.

Similar considerations apply to determining the boundary of the state—that is, the boundary between assigning a task to the civil service or outsourcing provision to a private, for-profit firm, when efficiency is considered. It is clearly sensible for the state to procure the plumbing fixtures for its prisons from private manufacturers. It’s easy to specify what is needed, and to tell whether the specifications were met. The state cares about the plumbing fixtures, not the manufacturing processes used to make them. Manufacturers know more than prison officials how to make them, there are plenty of competitors, and there is little cost in switching from one to another.

Operating a prison, by contrast, is a complex and open-ended human service with many desired outputs. Prisons need to secure safe conditions for prisoners and staff, prevent crime, provide health care for prisoners including drug treatment and psychiatric services, run a library to secure prisoners’ rights to do legal research on their own cases, manage visitation by lawyers, relatives, and friends, supply jobs for prisoners, and offer education and rehabilitative services, among many other tasks. It isn’t easy to specify all that should be done along these many different dimensions of prison work, or to measure the quality of such services. The process of service delivery—*how* these things are managed—is constitutive of whether they are done well. There are not many competitors in the private prison industry, and contracts guaranteeing the number of beds that must be filled for long periods (needed to cover the cost of constructing the prison) impose steep costs on switching providers. Even viewing the matter from a narrow efficiency point of view, the theoretical case against outsourcing prison operations is strong.

and Angelina Fischer, eds., *Private Security, Public Order: The Outsourcing of Public Services and Its Limits* (Oxford: Oxford UP, 2009).’

²⁵ John Donahue, *The Privatization Decision* (New York: Basic, 1989) shows how the theory of the firm applies to the privatization of government services.

²⁶ R. H. Coase, “The Nature of the Firm,” *Economica* 4.16 (1937): 386–405.

In general, when the service to be provided is complex and open-ended in these ways, outsourcing to a for-profit provider will predictably lead to cost-cutting at the expense of quality.²⁷ This prediction was confirmed by a U.S. Office of the Inspector General report on privatized federal prisons in 2016. Private prisons make profits primarily by cutting salaries and staff numbers. This neoliberal redistribution of income from labor to capital comports with the conservative work ethic. The consequences are grave. The OIG report found that relative to state-run prisons, rates of assault by prisoners against other prisoners were 32% higher, by prisoners against staff were 260% higher, and rates of sexual assault against staff were 500% higher. Prisoners filed more grievances, lockdowns were more frequent, and prisoners were more often deemed guilty of serious disciplinary infractions.²⁸ These problems and much more pervade the private prison system.²⁹ The fact that the state cedes judgment over disciplinary infractions to private prisons, which render more guilty judgments, is particularly concerning due to the interaction of behavior records with eligibility for parole. It is highly questionable whether private entities should be entitled to exercise the essentially public function of determining the actual length of an indeterminate prison sentence. Concerns about the legitimacy of outsourcing such a function are only heightened given that the judges have a conflict of interest in a guilty judgment, given that profits depend on maximizing the number of beds filled per day.

None of these reservations about outsourcing prison services to for-profit firms excuses the fact that state-run prisons are also horrific places for prisoners and guards alike. The profit motive in privatized punishment merely adds to the unconscionable harms and injustices of the American system of mass incarceration. Yet the very existence, extent, and harshness of this system is due in substantial measure to thinking that has its roots in the conservative work ethic, as elaborated by Bentham and others.³⁰

An exploration of alternatives to the prison system is beyond the scope of this book. Yet I would like to point out that how we envision the *labor* involved in deterring crime, vindicating victims, and rehabilitating people who have committed crimes is not incidental to envisioning alternatives. The labor required for all of these tasks involves complex work of altering the way those involved in criminal activity relate to others, and as well as how nonpenal social and

²⁷ Oliver Hart, Andrei Shleifer, and Robert Vishny, “The Proper Scope of Government: Theory and an Application to Prisons,” *Quarterly Journal of Economics* 112.4 (1997): 1126–61, [Http://www.nber.org/papers/w5744](http://www.nber.org/papers/w5744).

²⁸ U.S. Office of the Inspector General, *Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons* (Washington, D.C., 2016) 11, 14, 64–5, [Https://oig.justice.gov/reports/2016/e1606.pdf](https://oig.justice.gov/reports/2016/e1606.pdf).

²⁹ A compilation of research on the practices of private prisons may be found at the Prison Policy Initiative, <https://www.prisonpolicy.org/research/privatization/>.

³⁰ Foucault’s account of the transformation of punishment from violent spectacle to panoptic discipline should be understood as informed by the conservative work ethic as elaborated by Bentham and others. Foucault. See also Bernard E. Harcourt, *The Illusion of Free Markets: Punishment and the Myth of Natural Order* (Cambridge, Mass.: Harvard UP, 2011), who ties the rise of capitalism to an expansive punishment regime.

economic institutions relate to them. Even if we focus just on institutions involved in law enforcement, it should be evident that many of the services required are complex, require expertise, have many dimensions of quality that are difficult to quantify, that are difficult for nonexperts to evaluate, that often critically depend on the quality of social relationships within which the service is delivered, tailored to the circumstances and background of the individual receiving services, and where the process of delivery matters and not just outputs. Societies have invented a type of labor that provides such services. That is what professionals are for: people who are trained to high standards, typically including a journeyman experience under the supervision of senior practitioners, who care about doing their jobs well and getting recognized by their peers for outstanding work, who exercise judgment in a work context that affords them substantial autonomy, and who collectively develop standards for their profession. In organizational contexts where they are fully recognized as such, professionals comprise the largest class of unalienated workers in modern society.

Professional labor has always stood in tension with capitalist wage labor. When they get the chance, professionals prefer self-employment, partnerships, or employment in public or private nonprofit organizations, where they have a strong voice over the nature of the work they do, so as to retain the autonomy needed to exercise professional judgment. The capitalist firm, especially when driven by the neoliberal maxim to maximize profits by whatever means possible, aims to minimize labor costs by reducing labor to a commodity not just broadly but narrowly construed. In the narrow sense, this entails deskilling workers, mechanizing tasks to be performed by rote, and replacing nuanced expert judgment with uniform protocols. It entails reducing workers to interchangeable parts—which in turn means disregarding whatever values might be tied to developing long-term relationships between particular service providers and individual service recipients, and neglecting the nonquantifiable particularities of the service recipient. It entails stripping service providers of voice over the content and conditions of their work. The relegation of health care, education, welfare services, and other professional work to for-profit corporations, the refusal to cultivate the professionalization of K-12 teachers, nurses, police officers and others, and the increasing emulation of for-profit corporate practices by nonprofit organizations all reflect the increasing power of the conservative work ethic over the organization of labor in modern society. Neoliberals defend the commodification and consequent deprofessionalization of labor in the name of lower cost. This has certainly not been the experience in American health care, which has the highest per capita costs in the world and outcomes far worse than peer countries.³¹ It is doubtful whether the claim is true anywhere, even before quality reductions are considered. What is certain is that it entails worse working conditions, and a redistribution of income from labor to capital, and from subordinate workers to executives.

The Criminalization of Poverty and the Corporate Exploitation of Carceral Labor. In Bentham's vision, the poor should be treated like criminals, forced to labor in prison for the private profit of capitalist entrepreneurs. Such a totalitarian idea might seem remote from purportedly enlightened 21st century practices in liberal democracies. Yet both the

³¹ Anne Case and Angus Deaton, *Deaths of Despair and the Future of Capitalism* (Princeton UP, 2020).

criminalization of poverty, and the subjection of the criminalized poor to unpaid labor for corporate profit, exist in the United States today.

One major means of criminalizing poverty is through debt. (Other means exist, such as the criminalization of homelessness.³²) The poor are often jailed because they cannot afford to pay court-ordered child support. Courts are supposed to adjust child support payments in line with the noncustodial parent's ability to pay. In practice, however, payments are set by Malthusian fantasies about how easy it is for poor men, especially poor black men, to find employment that pays wages high enough to cover personal living expenses as well as child support.³³ The poor are often jailed because they can't make bail.³⁴ They are also jailed because they can't pay court fees or fines for minor infractions. Many jurisdictions have shifted the costs of the court and prison system from taxpayers to convicts, in a system called "offender-funded justice." In some jurisdictions, this has fueled a systematic practice of targeting the poor for arbitrary infractions, such as wearing low-hanging pants, for the sole purpose of raising revenues to support the police, courts, and jails.³⁵ Police in such jurisdictions are so busy collecting their own and other municipal authorities' salaries through de facto armed robbery that they have little time to solve crimes: the greater share of a city's revenue collected through fees and fines, the lower the case closure rate for violent and property crimes.³⁶ This is but one example of many in which neoliberal policies make the better off richer for doing their jobs less well (§9.4). The poor

³² Don Mitchell, "The Annihilation of Space by Law: The Roots and Implications of Anti-Homeless Laws in the United States," *Antipode* 29 (1997): 303–35 Justin Olson, Scott MacDonald, and Sara Rankin, "Washington's War on the Visibly Poor: A Survey of Criminalizing Ordinances & Their Enforcement," Seattle University School of Law Research Paper No. 15–19, Published by the SU Homeless Rights Advocacy Project (2015), [Http://ssrn.com/abstract=2602318](http://ssrn.com/abstract=2602318).

³³ Tonya Brito, "Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Noncustodial Fathers and Their Families," *Iowa Journal of Gender, Race & Justice* 15 (2012): 617–73, [Http://ssrn.com/abstract=2338159](http://ssrn.com/abstract=2338159).

³⁴ Alysia Santo, "When Freedom Isn't Free," *Washington Monthly* Mar./Apr./May 2015, [Http://www.washingtonmonthly.com/magazine/marchaprilmay_2015/features/when_freedom_isnt_free054224.php?page=all](http://www.washingtonmonthly.com/magazine/marchaprilmay_2015/features/when_freedom_isnt_free054224.php?page=all).

³⁵ Radley Balko, "How Municipalities in St. Louis County, Mo., Profit from Poverty," *Washington Post* Sept. 3 2014, [Http://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/](http://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/); Sarah Childress, "Has the Justice Department Found a New Town That Preys on Its Poor?" *Frontline* Apr. 27 2015, [Http://www.pbs.org/wgbh/pages/frontline/criminal-justice/has-the-justice-department-found-a-new-town-that-preys-on-its-poor/](http://www.pbs.org/wgbh/pages/frontline/criminal-justice/has-the-justice-department-found-a-new-town-that-preys-on-its-poor/); Neil Sobol, "Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons," *Maryland Law Review* 75 (2016): 486, [Http://ssrn.com/abstract=2704029](http://ssrn.com/abstract=2704029).

³⁶ Rebecca Goldstein, Michael Sances, and Hye Young You, "Exploitative Revenues, Law Enforcement, and the Quality of Government Service," *Urban Affairs Review* (2018), [Https://doi.org/10.1177/1078087418791775](https://doi.org/10.1177/1078087418791775).

are even routinely incarcerated for inability to pay debts to private businesses.³⁷ Debtor's prison is unconstitutional. While courts may imprison someone who willfully refuses to pay a fine or restitution, they must distinguish between such defendants and those who are too poor to be able to pay.³⁸ Yet courts routinely fail to inquire about defendants' ability to pay before incarcerating them.³⁹

Many jurisdictions have privatized probation for people convicted of misdemeanors who are unable to pay the fine and court fees upon conviction. Probation companies add crushing daily supervision fees on top of the misdemeanor fine and court fees, and extract the mounting payments in installments, threatening jail if they can't keep up. Accumulated debts with interest can amount to many times the original fine.⁴⁰

Incarceration in prison or a local jail sets poor people up for exploitation in a forced labor system. New Deal laws once prohibited the use of prison labor except by state institutions. Businesses won the right to use prison labor in 1979. They won an exemption from minimum wage laws for prison workers in 1995. This led to the employment of hundreds of thousands of inmates of federal and state prisons for mere pennies per hour. Many are forced to work in unsafe conditions without protective equipment, because workplace health and safety laws do not apply to prison laborers.⁴¹

Private prison corporations have expanded into probation, parole, and alternative sentencing services. Such services sometimes involve halfway houses for convicts, who are required to work as part of their rehabilitation. As in Bentham's panoptic system for pauper management, workers only get to keep earnings in excess of the costs of their confinement and supervision by the prison corporation, plus any court fees and fines they have been assessed.⁴² In the United States, however, this practice descends not from the pauper workhouse but from the system of convict leasing, which was used to reimpose involuntary servitude on recently emancipated slaves. States would collect revenues by imposing fines on Black people for often arbitrary infractions, imprisoning them for inability to pay, and leasing them to corporations

³⁷ Eli Hager, "Debtor's Prisons, Then and Now," *The Marshall Project* Feb. 24 2015, <https://www.themarshallproject.org/2015/02/24/debtors-prisons-then-and-now-faq#.NMDB59iCr>.

³⁸ *Beardon v. Georgia*, 461 U.S. 660 (1983).

³⁹ ACLU of Ohio, *The Outskirts of Hope: How Ohio's Debtor's Prisons Are Ruining Lives and Costing Communities* (Ohio: ACLU of Ohio, 2013), http://www.acluohio.org/wp-content/uploads/2013/04/TheOutskirtsOfHope2013_04.pdf; Sobol.

⁴⁰ Jessica Pishko, "Locked up for Being Poor: How Private Debt Collectors Contribute to a Cycle of Jail, Unemployment, and Poverty," *The Atlantic* Feb. 25 2015, <http://www.theatlantic.com/national/archive/2015/02/locked-up-for-being-poor/386069/>; Sarah Stillman, "Get Out of Jail, Inc.," *The New Yorker* June 23 2014, <https://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc>.

⁴¹ Heather Ann Thompson, "The Prison Industrial Complex: A Growth Industry in a Shrinking Economy," *New Labor Forum* 21.3 (2012): 40–43.

⁴² Stillman.

where they would have to work until they paid off the fines.⁴³ Not surprisingly, both in Bentham's workhouse and in modern American debtor's prisons, relentless labor yields immense profits for the capitalist and very little for the debt peon.

Drug addiction provides another path into involuntary servitude exploited by private corporations. Many jurisdictions divert individuals convicted of drug possession into halfway houses run by for-profit corporations, rather than sending them to prison. The Cenikor Foundation, one such corporation with numerous facilities, purports to rehabilitate addicts by setting them to work without pay. Shortly after his reelection, President Reagan visited Cenikor and praised its grounding in the work ethic:

I was glancing through your Cenikor booklet, and I liked the very first sentence I read, "In all the years that Cenikor has been in business, rehabilitating lives, we have found that nothing works as well as work itself." Work is therapy.⁴⁴

Cenikor's theory that relentless unpaid labor cures addiction recalls the Puritan view of work as ascetic discipline that keeps people from being distracted by sinful temptation. The theory is false: Cenikor's "work therapy" does not cure addiction.⁴⁵ Courts nevertheless sentence addicts, who are overwhelmingly poor, to confinement in Cenikor's facilities as an alternative to prison. Inmates must obey innumerable arbitrary rules and submit to regular verbal abuse. But most of all, they work extremely long hours, up to 16 hours per day, often hard manual labor under unsafe conditions, for the sole profit of Cenikor and the numerous corporations to whom Cenikor contracts out their labor.

The Center for Investigative Reporting has identified hundreds of other addiction rehabilitation facilities that purport to cure addiction by means of unpaid labor. Major corporations, including Exxon, Shell, Walmart, and Tyson Foods exploit their labor.⁴⁶ The Supreme Court ruled that such facilities must follow minimum wage, overtime, and maximum hours regulations specified in the Fair Labor Standards Act.⁴⁷ However, the ruling left a huge loophole that permits deductions for room and board. Moreover, enforcement of the FLSA is negligible. In practice, forced labor without pay under the fraudulent claim that unpaid labor is therapeutic remains common in the United States. Bentham's conservative work ethic vision of the transformative powers of forced labor on the poor and marginalized lives on.

⁴³ Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Doubleday, 2008).

⁴⁴ Shoshana Walter, Laura Starecheski, Ike Sriskandarajah, and Katharine Mieszkowski, "American Rehab Chapter 5: Reagan with the Snap," *Reveal (Podcast)* July 25 2020, <https://revealnews.org/episodes/american-rehab-chapter-5-reagan-with-the-snap/>.

⁴⁵ Shoshana Walter, Laura Starecheski, Ike Sriskandarajah, and Katharine Mieszkowski, "American Rehab Chapter 7: The Work Cure," *Reveal (Podcast)* Aug. 1 2020, <https://revealnews.org/episodes/american-rehab-chapter-seven-the-work-cure/>.

⁴⁶ Shoshana Walter, "At Hundreds of Rehabs, Recovery Means Work Without Pay," *Reveal* July 7 2020, <https://revealnews.org/article/at-hundreds-of-rehabs-recovery-means-work-without-pay/>.

⁴⁷ *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290 (1985).

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