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A Marxist Re-Imagining of Capitalism

Alejandro Villegas

Claremont Mckenna College

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Professor Hurley

By
Alejandro Villegas

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Chapter 1 Smith and Hegel: Free Markets

Adam Smith is a founding father of modern economics, arguing that free markets affirm the independence of each person, unlike alternative economic systems. Like Hegel, Smith proclaims that free markets affirm the equal dignity and independence of every individual. In a free-market economy, people can provide for themselves through their labor. Thus, free markets partially emancipate society through economic freedom; each person has the agency to succeed and achieve upward mobility. A person's private financial standing is self-determined and unconstrained by an external authority. For these reasons, supporters of capitalism such as Smith and Hegel embraced a free market economy. However, the development of free markets has created economies of scale that function differently than as described by Hegel and Smith. Those who own the means of production have dominion over the average worker. The owner of a firm, which is typically a patron or investor, reaps most of the surplus value created from the labor of others who in return, receive an hourly wage. As a result, the relationship between producer and laborer creates an insurmountable wealth gap, allowing a select few corporations to dominate markets. The way modern free markets operate in practice should raise serious concerns for those who agree with Smith and Hegel.

1.1 Purpose

This paper will examine the disjuncture between free markets in practice and Smith's conception of free markets. I will offer solutions to address the discrepancy between free markets in practice and free markets as theorized by Smith and Hegel. This will require me to identify the virtues of capitalism that were appealing to Smith and in particular, Hegel who thoroughly outlines the merits of capitalism. A revised account of free markets should better serve the fundamental virtues that Smith and Hegel praised while being consistent with capitalist principles. Hence, I argue that we can empower the labor force through various methods (e.g., labor laws, unions, and alternative conceptions of corporations) which will improve the equal standing between the worker and the producer.

My account of free markets aims to reestablish the equal standing of the labor force which may seem antithetical to capitalism at first, but I argue that it is instead conducive to capitalism. Free markets as they currently operate bear serious costs that are overlooked by how economists have traditionally evaluated the cost of production. The cost of production has traditionally been narrowly defined, only accounting for financial expenses directly related to production inputs such as capital, labor, or raw materials. It does not, however, account for the cost that does not affect a firm's profit. These are the costs that workers, for example, must bear. Workers may be underpaid for strenuous work which reduces the labor cost for the firm. In turn, firms reduce the cost of production and increase profit, but the cost of production does not account for the cost that the workers must bear. The cost of production is often limited to only the expenses that reduce the profit of a firm which does not accurately reflect the *true* cost.

1.2 The Virtues of the Free Market

To begin, we must understand the virtues of capitalism that were appealing to Smith and Hegel. As previously mentioned, Smith and Hegel proclaim that free markets are superior to alternative economic systems due to the emancipatory effects of a free market economy. In a free-market society, people would be free from aristocratic rule. In *The Wealth of Nations*, Smith contends that in a free market society, a person's socioeconomic standing would no longer be predetermined by the social hierarchy arranged under feudalism. Society would no longer be arranged by a feudal caste system in which aristocrats' rule over everyone else. A free-market society would instead require that people interact in market exchanges "on terms of equal authority, esteem, and standing."[1] Prior to free market societies, the proletariat lived in a state of servitude under the rule and will of the elite. If you were born into the proletariat, you remained in a life of servitude, bound to the subordination of aristocrats. In contrast, Hegel and Smith favored capitalism because of its promising features which required the equal standing of people as participants of a free market economy. A free-market economy erodes the social hierarchies of aristocratic domination and proletarian subordination. A free-market economy would yield a new social order that would no longer prearrange one's social standing to a fixed position, emancipating people from the paternalism and rule of aristocrats or elites. Thus, free market economies bestow a socioeconomic arrangement that is egalitarian according to Smith.

Similarly, in *The Philosophy of Right*, Hegel argues in favor of a free market economy because of its promise of equal dignity and independence for each person. In a free market society, people have the autonomy to pursue their desires and decide for themselves how they wish to make a living. Thus, a market economy is an outlet in which people are free to express and fulfill their desires and needs, allowing them to achieve a fulfilling life. People have the agency to pursue their endeavors through free-market exchanges which in turn enables them to determine their social standing. Hence, we affirm our independence in two forms: 1) by establishing and receiving what one expects in return for what we provide in a market exchange and 2) by determining our social standing as we participate in the free market.

A market transaction requires that each person considers the interest of the person as equally important as their own; each person must provide what the other person expects in exchange. People must engage as equals in a market exchange since each person must acknowledge and respect the interests and needs of other people. The failure to engage with others as equals would compromise one’s ability to complete a market transaction, which in turn shapes one’s own success and social standing. We can determine our own socioeconomic standing by successfully completing market exchanges. Thus, free markets provide the opportunity for self-determination by requiring others to regard our own interests as equally important and by allowing us to determine our socioeconomic success. For these reasons, Smith and Hegel believed free markets to be superior to the alternative economic systems that we have seen prior to capitalism.

Hegel outlines the alluring features of a free market society more extensively in Philosophy of Right.[1] To succeed in a market economy, we must interact with others. Market transactions require us to coordinate and collaborate our desires with the desires of others through labor and consumption. Such transactions serve as a heuristic for society that cultivates collaboration. Furthermore, market exchanges would emphasize the importance of a stable civil bond. For any system of private property and market exchanges, we must assume that we are all acting in good faith and obliging by the rules of our market economy. We rely on social institutions to maintain healthy cooperation by establishing rules within a market economy. Such rules would prohibit us from violating basic rights such as stealing. Our experience of the free market would lead us to reject a world in which people have no constraints in pursuing their interests. Instead, we would learn the value of cooperation within society as people reach a mutually agreed-upon set of rules for conduct and transactions between different people or parties. The state would institute an economic arrangement that promotes the common good. For instance, institutions would implement legislation and implement support systems that promote the dignity and equal standing of all people. Social institutions would ensure the opportunity for self-determination for people by removing the looming threat that others, motivated by greed, might undermine, or sabotage us.

[1] It is not clear if Smith would agree with everything in Philosophy of Right. I am only including the arguments that I suspect Smith would sympathize with.

1.3 Hegel's Capitalism: Theory vs. Practice

Hegel's account of free markets identifies the features and principles that a free-market system should serve. Smith seems to agree that such traits, as described by Hegel, are vital to a free-market society. Hegel's account, however, does not accurately depict the reality of modern free markets in the era of economies of scale and globalization. When a free-market society does not secure the virtues that Hegel outlines then the free-market economy yields costs that are overlooked in the expenses of traditional accounting. The free markets of the US and global economy as they operate today fail to secure many of the virtues that are essential to capitalism according to Hegel. Social institutions have failed to secure the principles of self-determination and equal standing. These failures should be understood as market failures that impose unnecessary costs which should be accounted for. With the industrialization and globalization of markets, it is difficult for workers to secure their interest. The laws and institutions that govern our markets have failed to secure the interests of the workforce. In practice, free markets create a division of labor in which the working class, those who do not own the means of production, have limited opportunities for labor which are typically occupations that are degrading and repress their independence. To offer a refined account of a free-market society, we need to understand how free markets are failing to provide the virtues praised by Hegel and Smith. I will explain how the failure to secure the values central to free markets should be understood as inefficiencies in our economy which should be reformed in a revised account of free markets.

1.4 The Development Free Markets: Competition

To begin, we must consider how contemporary markets function under competition with the current conditions of legislative oversight and market arrangements. It is important to note that free-market economies can operate differently under a different legislative arrangement that alters how industries function. I will outline the failures of free-market economies as they function under current conditions and propose changes that could adjust the outcomes of a free-market for the better.

With that in mind, consider how our livelihood is contingent upon how well we fare in our occupation against competition within our line of work. Self-preservation, in a competitive free-market society, requires you to be greedy. To remain competitive in an industry, producers must maximize productivity and cost-efficiency. Producers must develop and acquire the means of production in an industry. Competition in markets will promote industrial innovation to increase profits, enabling producers to expand their enterprises. The means of production for large manufacturers will require workers. Thus, the worker serves as the means of production for producers as they accumulate capital. Workers are commodified by producers who are primarily concerned with the cost of labor, managing workers no different than other costs of production. The primary concern for producers is to remain competitive in a market and thus, profit maximization will supersede concerns for the worker. For the producer, the worker is a mere commodity. Workers are nothing more than labor power that is needed for manufacturing. In other words, when firms commodify workers, it means that firms use workers as mere means to an end.

Firms denigrate their workers, disregarding the needs and interests of their workers. Firms will disregard the burdens that they place on workers when a firm reduces their cost of production which is typically accomplished by minimizing labor cost. Industries will maximize the labor value of workers to increase the labor power that workers provide. To reduce the cost of production, producers develop methods to decrease the cost of labor which will be detrimental to workers. For instance, firms will pay the minimum wage even if it does not adequately compensate for the working conditions that demand intensive labor, minimize the expenses to improve working conditions, and minimize all liabilities and benefits that they owe to their workers. Furthermore, producers decrease the cost of labor, and in turn increase profits, by developing monotonous jobs that do not require skills or experience such as assembly lines. The development of industrial unskilled labor allows producers to dispossess the worker from their product of labor and instead compensate them for only their labor.

The commodification of the worker entails serious costs for the workforce which are often overlooked when evaluating the success or cost of a market. The worker serves as the means of production for the capitalist who appropriates the product of their labor along with any surplus value that the worker produces. Meanwhile, the worker can only reap the value of his labor power and the mechanization of production diminishes the value of labor. Given that the workforce constitutes the majority of people in a free-market society, any evaluation of market success that does not take into account the costs borne by the workforce would be remarkably unsound and inaccurate.

As a result of this asymmetric relationship between worker and producer, which is particularly prominent in economies of scale, when industries increase profits, producers accumulate wealth while the laborer earns a sparing wage. Thus, free markets systematically produce a wealth disparity with the growth of concentrated wealth. This wealth disparity contributes to establishing a division between laborer and producer, which corresponds to their social stratification. In other words, markets reinforce a division of labor that immobilizes the working class from attaining careers in which they are not subordinates of capitalists and companies. Under economies of scale, people cannot compete against established businesses that are bigger. The concurrent conditions of wealth inequalities, accumulated capital, and a stringent division of labor has shaped the current arrangement of free-market societies which has stratified people into property owners and propertyless or in other words, producers and workers.

The development of large enterprises has given employers absolute authority within the workplace where employees are vulnerable to termination for incidents not only within the workplace, but as well as beyond the workplace. In this sense, employers dominate the worker who must work for a living. The worker does not choose his labor out of passion but out of necessity. Thus, workers must comply with their employer, who solely determines the kind of labor that workers must provide and dictates the hours they work, the uniform they must wear, and the times that they can eat. The worker only feels free outside of their job and thereby, alienated from their individual human nature, their labor, and their independence.[1]

1.5 The Failure of Free Markets According to Theory

The free-market conditions that I have outlined starkly contradict the virtues that Hegel and Smith praised. However, we can alleviate some of these free-market pathologies to some degree by creating a revised account of a free-market economy that better serves the underlying principles of capitalism admired by Hegel and Smith. This account must consider how competition develops the means of production in such a way that disempowers workers. Producers are uninhibited and competition forces producers to adapt by any means necessary, which results in the disempowerment of workers. Moreover, free markets create immortal companies that extend beyond what any individual would be capable of. Companies monopolize markets and their means of production because no individual, or even a small group of people, can compete. The development of large powerful firms has undermined the equal standing between producer and worker, making it harder for the workforce to secure their interests.

To accurately evaluate the failures and inefficiencies of our free-market economy, we must change how we assess the success of free markets by redefining the cost of production more broadly to capture the costs that are external to a firm and their profit but penalize other parties such as the workforce. To address these issues, we must also consider how institutions and laws have contributed to the development of markets. Corporation laws and market legislation has given a comparative advantage to producers and investors over the workforce. In the same way that legislation has been made to support investors, legislation can be implemented to support the workforce in securing their interests.

The rise of globalization has only exacerbated free-market pathologies. Firms can maneuver their business operations across different countries and continents. The globalization of markets has created transnational industries that operate across the globe such as Amazon, creating domains of authority that exceed any single government institution. Firms like Amazon are subject to state laws as far as they operate within their given jurisdiction. The defragmentation of corporate regulations and financial institutions creates an incohesive system of market oversight. The transnational structure of firms and the inconsistencies in market regulations between countries, such as labor laws, have diminished the transparency and accountability of firms. Consequently, multinational firms like Nike will capitalize on developing countries with premature institutions and legislation that fail to adequately regulate industries. Thus, companies are entities with global reach that pursue their corporate interests indefinitely. Transnational firms employ a vast number of workers across different countries. Amazon is an example of a global firm operating across transnational markets; they own software development centers in 25 countries, customer service centers in 10 countries, and warehouses in 23 countries. In total, Amazon employs 1,608,000 full- and part-time employees across the globe.[2] The arrangement of modern corporations like Nike and Amazon creates asymmetric power relationships between firms and workers. The rise of transnational markets and firms has been a major source of free-market pathologies.

Countries face serious challenges in protecting the integrity of its free-market economy and subsequently its workforce, which has consequences for the integrity of political discourse and processes. Multinational corporations share similar interests related to foreign economic policy and will collaborate to advance such interests.[3] In addition, multinational corporations have greater means to affect politics by leveraging their global reach, size, and leading role in the national economy.[4] Firms engage in political activities such as lobbying and campaign contributions to influence policies and political leaders. Firms also influence public discourse by contacting journalists, issuing press releases, establishing public campaigns, and organizing demonstrations."[5]

Chapter 2: Resolving Free Market Failures: A New Account of Ownership and Cost

To address some of the implications of multinational corporations and the failures of a free-market economy, we can look to Henry Hansmann's *theory of enterprise ownership.* Hansmann lays out a paradigm for the structure of the firm which construes the firm "as a nexus of contracts."[6] A business, for the most part, is constantly engaging in transactions with different parties. Firms act on the behalf of a business as the centralized single party that arranges transactions and contractual agreements with the different parties involved in the various stages of a business operation (i.e., buyers, suppliers, and workers). Corporate laws recognize the firm as the single legal entity that serves as the signatory to contracts. As such, firms may enter contractual agreements with vendors for supplies or services needed to operate their business, arrange employment contracts with individuals who provide labor services to the firm, reach agreements with shareholders via investor contracts (e.g., bondholders, banks, and other suppliers of capital), or reach an agreement with buyers of a firm's product via contracts of sale. Each of the parties that transact with a firm—whether it be the customers, workers, owners of capital, investors, or the managers of a firm—is considered a patron of the firm. In contrast, the owner of a firm is the party that has the formal right to control or manage the firm and is entitled to all the residual profit that a firm yields. Nonetheless, ownership does not have to entail both formal control and a claim to residual profits although it is common to see that the management of a firm is also entitled to the profits. As such, ownership should not be conflated with management since there might be instances where a firm would benefit if management was a separate group from the recipients of profit.

2.1 Transactions: Market Contracting

In Hansmann's analysis of the firm's structure and ownership, he explains that firms transact with patrons through market contracting. Market contracts are the agreements of exchange between patrons and the firm. For instance, employees agree to a transaction with a firm which exchanges wages for labor. Other patrons such as investors will agree to a transaction—which is different from the transaction of employees—with a firm that exchanges an investment of capital in a firm for company stock. When people buy stocks, they invest their own money in a firm in exchange for a share of the firm which can increase in value or provide a dividend, entitling investors to a stake in profit which can increase with the success of a firm. The transactions in market contracts typically involve some cost in return for something of value for both the patrons and the firm. Market contracts for employees might entail the cost of toilsome labor with a high risk for accidents or injuries for the worker while the firm, on the other hand, might bear costs to upgrade the workplace with cutting-edge technology to improve the safety of workers and perhaps provide health insurance to compensate for the high risk of injury.

2.2 Ownership and the Cost of Market Contracting

Hansmann's account of the firm takes into account a firm's market transaction with separate patrons which, as I mentioned earlier, is usually overlooked when evaluating the cost of production and subsequently, the success of a firm. By including the market contracts involved in a firm's cost of production, we must adjust how we determine whether a firm is operating efficiently. According to Hansmann, firms could operate most efficiently by minimizing the sum of "(1) the costs of market contracting for those classes of patrons that are not owners and (2) the costs of ownership for the class of patrons who own the firm."[7] The cost of marketing contracting is not limited to only monetary expenses, but, according to Hansmann, "costs" should be understood to include "all interests and values that might be affected by transactions between a firm and its patrons."[8] This definition of cost would include unjust employer paternalism, suppression of worker mobility, and worker alienation which are the failures of the free market that I outlined earlier. Firms could achieve cost minimization by implementing the lowest-cost assignment of ownership. The lowest-cost assignment would mean assigning ownership to the party with the most severe problems and costs in market contracting.

Suppose that a firm is changing the safety standards of working conditions, the firm will reach a decision by considering the tradeoff between higher wages and increased safety which correlates to the change in risks and working conditions. The firm will certainly have an interest or incentive to select the conditions of workplace safety which minimize cost for the firm, but this may very well fail to align with the preferences or needs of the workers. The firm fails to arrange market exchanges with the least cost for patrons, which include factors such as workplace safety or wage, quality of product or service, or overpricing of a product to name a few examples. This conception of cost that Hanmann offers takes into account the adverse experiences involved in the process of production such as worker alienation and exploitation.

2.3 The Cost of Market Contracting: Social Cost and Adverse Experiences

Cost, properly understood, would take into consideration a worker's loss of agency or in Elizabeth Anderson's words, "the basic dignity and autonomy" of workers.[9] The loss of dignity and autonomy for employees occurs for a variety of reasons as briefly outlined earlier. For the purpose of my argument, we are only concerned with violations of worker dignity and autonomy that are perpetrated by the firm to secure their interests, particularly on issues where there is a conflict of interest between the firm and employees or some other contracting party. The example from the previous paragraph regarding workplace safety conditions failing to align with the preferences of employees would be an example of a firm failing to secure the dignity and autonomy of workers. Workers are subjected to the degree of risk presupposed by the working conditions which were determined by the firm. The firm made a decision by selecting the level of workplace safety that is in the best interest of the firm without the discretion of any employee. The risk of injury could be much higher than the risk that workers can tolerate, but the firm might be completely indifferent to the concerns of workers. Firms are instead free to operate their private enterprise as they wish, allowing employer paternalism to oversee the workplace.

The primacy of employer paternalism in the workplace allows the firm to impose policies and conditions in the workplace that employees must accept without having any input in the decision. There are many similar instances in which a firm might impose some workplace policy that aligns with the interests of the firm, but completely disregards the preferences and interests of employees. Employees might have to tolerate major injustices imposed by authoritarian firms and in such cases, these workplace transgressions contribute to the aggregate costs of market contracting.

2.4 Power Imbalance: Employer vs Employees

The subordination of the workforce is a primary cause of many workplace injustices, particularly in cases where there is no equal standing between employees and employers. When employer-employee relations are asymmetric and in favor of the employer, the needs and interests of employees are overlooked which results in an adverse or unjust experience in the workplace. There are many instances in which a worker has limited flexibility to change occupation or employer; firms will take advantage of a worker's mobility, or rather their immobility. Furthermore, employment under a different firm does not guarantee improved working conditions. In all likelihood, other firms might engage in similar workplace practices which would not treat workers any better. The inflexibility or immobility of the worker produces an asymmetry in employee and employer relations which allow firms to treat workers unjustly. Take for example, an employee who has worked several years at a firm, the employee has established their livelihood around their current job. She might have bought a house near her workplace with a husband who works nearby and children attending a local school. Furthermore, she has developed skills and knowledge that pertains only to her job at that particular firm. To make matters worse, employers might offer a pension for employees of 25 years so changing employers would mean the loss of a retirement plan. Firms can leverage an employee's cost to change jobs by only paying the worker enough for her to not leave rather than what she truly deserves to be paid. In this scenario, there are serious costs for employees to exercise employment mobility; these costs for employment mobility are referred to as "lock-in."[10] Firms, whether intentionally or inadvertently, benefit from employee lock-in. The problem of lock-in is only one of the factors that contribute to employer-employee asymmetries which impose cost on employees or other parties.

There are other factors that contribute to the asymmetry in employer-employee relations, which typically amounts to a loss of self-determination and equal standing in dignity for employees. For instance, suppose that a prospective employee is offered an unappealing gig as an independent contractor that requires the workers to pay the cost of maintenance out of pocket and does not provide any health insurance for the dangerous task. The entire industry might offer employment only as an independent contractor and not as an employee of a firm, relieving the firm of any responsibilities or accountability that employees would otherwise have a claim to. In her field of work, there might not be any other job opportunities that are better so she may have no choice but to accept employment at a firm as an independent contractor despite the undesirable wage and working conditions; this has been the case for truck drivers and employees of the E-commerce industry.

2.5 The Cost of Injustices: Self-Determination and Equal Standing

These principles of self-determination and equal standing, which are the virtues that Hegel and Smith hailed as central to free markets, must be taken into consideration in an account of market contracting cost. Otherwise, an account of cost that is merely a numerical measurement of monetary expenses would overlook the serious burdens that employees bear through the experience of workplace injustices. Injustices in the workplace typically occur when firms violate fundamental principles of labor. The withstanding of such principles such as self-determination and equal dignity are critical to accurately evaluate the costs of market contracting.

The injustices in labor—which are attributed to violations of worker determination and dignity—involved in the production of a firm are included in our account of market contracting costs. By taking into consideration corporate paternalism or worker subordination, particularly in instances in which the worker is alienated from their labor and workplace, the cost of market contracting is much greater than an account of cost that considers only the numeric loss of monetary value. One might argue that we should not consider these injustices as cost of a transaction because it occurs independent to our interactions or exchanges, but, as I will explain in the following section, this is incorrect

2.6 The Role of Government: Market Power Imbalances and Injustices

The rise of workplace injustices is not a natural occurrence of free markets, but rather a consequence of the asymmetries or power imbalances between employers and employees. Likewise, power imbalances between patrons are not a natural occurrence in markets that are independent of external factors. To the contrary, governing institutions and legislation has significantly contributed to the disempowerment of the labor force and fragmentation of industries in order to promote internal competition between firms within the same industry. By increasing competition amongst a workforce, the cost of labor or cost of contracting is decreased as small firms are each acting in its own interest. Each firm is only concerned with their own interest which means that they reduce the cost for services to undercut competitors in their industries so that more corporations choose to do business with the firms that charge the least. Corporate laws have been deliberately instituted to serve the interests of larger firms by reducing the cost of labor or employment. However, the reduction in labor cost through increased competition also has a significant byproduct effect for the workforce of an industry. The ease of entry for certain industries and promotion of internal competition has resulted in not only the fragmentation of industries, but also the fragmentation of collective bargaining power for the workforce of that industry. The competition between the specific interests of each firm effectively undermines the collective bargaining of that entire workforce.

More will be said about this in the next section which will further examine in more detail the cost of workplace injustices and paternalism along with the role that corporate laws have played in creating asymmetric power relations between the employee and the employer or firm.

2.7 Assigning Ownership: The Case for Patrons

Hansmann's paradigm of the firm maintains that each party that engages in a transaction with a firm is equally vital to the firm's business operation. A firm depends on the contributions of various parties such as management, investors or venture capitalists, employees, suppliers, buyers, and external contractors. Each of these parties, which includes the owner of a firm, are patrons of the firm given that they supply some input when engaging in a transaction with a firm. In making such transactions, each patron bears risks of their own when entering a market contract with a firm. None of the parties, as understood in Hansmann's account on the structure of firms, have an exceptional role or function in a firm's business operation.

Ownership is typically associated with the party that supplies or invests capital in a firm and firms have traditionally granted ownership to investors. However, there is no particular reason to favor any one party to have the assignment of ownership. The supply or ownership of capital does not equate to ownership of the firm in the same manner that the supplier of inputs such as land, labor, or other goods does not presuppose ownership. Hansmann explains that the owners of capital have a claim to only property rights, but that does not necessarily entail contractual rights.[11] Ownership of the firm should instead be understood as "control over an assemblage of contractual rights, none of which need involve physical assets or other items that we customarily term property (such as intellectual property or financial claims)."[12] Therefore, owning the capital of a firm does not require ownership. Firms and capital owners could instead enter a contractual agreement that exchanges temporary property rights or a loan of capital for a fixed percentage of profits or a lump-sum payment.

Hansmann theory of ownership and firm structure reveals a predisposition to form investor-owned firms even when alternative structures of the firm are more apt at managing certain industries. Firms have traditionally given ownership to investors and venture capitalists while management is often responsible for overseeing business operations. The disjunction between ownership and management creates an adversarial dynamic between non investor parties and the firm. A conflict of interests arises between investors concerned with profit and the costs associated with all other parties involved in market contracting with the firm. The management of a firm attempts to please its investors by undercutting all other parties in hopes to minimize cost and maximize profit. Hansmann's paradigm of the corporation can help identify the areas in which a firm might commit transgressions against parties involved in a firm's operations and thereby, create market inefficiencies. However, Hanmann's account for the cost of market contracting offers some solutions to address the excessive costs from workplace injustices and unequal standing between the patrons and the firm by rearranging the ownership and patrons of a firm. Solutions that restructure the firm, however, cannot resolve all the cost from the injustices and unequal standing in our market economy. We must also supplement changes in the management of firms and legislation to further resolve the failures and costs of our free-market economy.

2.8 Corporate Legislation: LLC and Corporate Support

Economic policies have had a significant role in structuring the market economy to accommodate investors and investor-owned firms. Hansmann explains that "tax law, which has been designed principally with the conventional investor-owned firm in mind, creates systematic biases for and against other ownership forms."[13] Investors tend to have considerable leverage over firms due to numerous institutions and policies that have risen "in the United States to enforce the fiduciary duties of managers toward their shareholders."[14] Corporate laws have granted limited liability to shareholders for firms that are registered. Corporation laws such as the Revised Uniform Limited Partnership Act (RULPA) (1995 and 2006) and The Uniform Limited Company Act (ULLCA) (2001) decree investors with legal claims to limited liabilities, accountability, and transparency from a firm. For instance, the RULPA stipulates the following:

> a limited partner cannot be held liable for the partnership debts even if the limited partner participates in the management and control of the limited partnership. General partners under the prior acts were jointly and severally liable for the debts, liabilities, and obligations of the partnership. This liability was complete, automatic and formally inescapable. Under ULPA (2001), however, limited liability limited

> partnership (LLLP) status is expressly available to provide a full liability shield to all general partners.[15]

Policies such as RULPA which legally recognize limited liability corporations (LLCs) have enabled the rise of LLCs which in turn encourages firms that are investor owned. Limited liability contracts protect investors from the risks associated with market contracting with a firm which makes investors a prime candidate for ownership. Investors can enjoy the privilege of limited liability while counterpart parties such as employees or buyers do not have any claims to similar policies of security and limited liability.

To clarify, I am not arguing that we should reject or condemn the legal codification of LLCs which entitle investors to claims of limited liability, transparency, and accountability. Although the legal protections and claims of limited liability contracts provide several benefits to not only firms but also benefits industries altogether, the primary advantage of limited liability contracts is that they are imperative to the viability of a business operation in particular industries. In certain high-risk and high-cost industries, firms would avoid such industries in the absence of limited liability contracts since the opportunity cost would disincentivize entering those industries. Firms would supersaturate alternative safer markets while the development in different markets would remain stagnant. Limited liability contracts are essential for firms to operate in critical industries which consequently, advances innovation and technology that could potentially serve as a public good. Notwithstanding, I am *instead* taking issue with the incentives of corporate law, such as LLCs, which favor investor-owned firms. Such forms of ownership are harmful and counterproductive in certain industries whereas alternative forms of ownership would structure the firm to operate most efficiently with all parties. By supporting investor-owned firms even in instances that might be inappropriate, corporate policies contribute to market inefficiencies and workplace inequalities that immobilize the average worker and create insurmountable income gaps, which I will explain in more detail later.

2.9 The Cost of Ownership

Firms with other forms of ownership would be better suited for instances in which other parties besides investors might have more costs and trouble in market contracting with a firm. Firms can assign ownership to different parties besides investors or owners of capital. By changing which patron is assigned ownership, the market contracts between firms and patrons would yield a distinct set of costs and issues for the firm, customers, owners, employees, and any other patron. Under certain assignments of ownership, the owner of a firm may have more of an incentive to behave opportunistically with patrons in comparison to the incentives of another patron that is assigned ownership. As an owner, each patron would have different incentives and a change in leverage to negotiate the terms of exchange in the market contracts with other patrons. In many instances, conflict of interests between owners and patrons results in undesired transactions that undermine the interest of the patrons. For example, an investor-owned firm often has incentives to use any leverage when negotiating market contracting with patrons such as buyers or employees. The contractual agreement will often favor investors at the expense of customers or workers. Hence, the assignment of ownership produces market inefficiencies.

Chapter 3: Externalities of Market Contracting Failures: Amazon Case Study

The failure to minimize the cost of market contracting is significant not only because it fails to align with the interests of patrons, but more importantly, it produces inefficiencies for the entire market. Take, for instance, the supply chains of E-commerce during the pandemic. Supply chains experienced many disruptions during the pandemic which resulted in delayed deliveries and shortages in raw materials and goods such as toilet paper, electronics, and other common items. Many firms, such as Amazon, manufacture goods in foreign countries to minimize the cost of labor and production. Firms must export these goods via shipping containers which limits supply chains. There are several stages in the transportation of overseas goods in which distributors must coordinate, creating traffic in the supply chain when distributors are unsynchronized. Firms must transport goods between the manufacturer, cargo ships, ports, freight trucks, warehouses, and lastly retail delivery services which distribute goods to stores or people.

Supply chains rely on the collaboration of all parties involved in transportation and these collaborative agreements are settled in market contracts. Collaboration can only occur with the success of market contracts between firms and the patrons of distribution or delivery which requires that they reach an agreement on the terms of exchange. However, Amazon has struggled to reach a successful market contract with employees as indicated by the shortage of labor that Amazon has experienced, especially during the pandemic. Amazon warehouses struggled to retain workers, even before the pandemic, due to inadequate pay and working conditions are physically taxing and demanding. The annual turnover rate for many Amazon warehouses has exceeded 100% while some regions even had turnover rates around 150% (e.g., Cuyahoga, Ohio; Multnomah County, Ore.).[16] Supply chains rely in large part on warehouse workers and delivery drivers, but despite their critical role in supply chains, workers and drivers have a limited amount of leverage. Amazon's negligence of employees and their interests should concern investors as well since the high turnover rate involves extra cost to train new employees and a large portion of their employees are inexperienced, so they operate warehouses less efficiently.

3.1 Market Contracting: Costs for Amazon Employees

Amazon has imposed many costs for workers which created a shortage of warehouse workers. Amazon has employed its own tactics to undermine the bargaining power and leverage of workers with union-busting crusades. Amazon is willing to take extreme measures which were demonstrated in 1999 when they closed a call center in response to the campaign to unionize 400 customer service employees launched by the Communication Workers of Americas.[17] There is clear evidence that Amazon employs "intelligence analysts to research labor organizing threats against the company" which was made public in a previous job listing posted by Amazon which has now been removed.[18]

Warehouse workers and delivery drivers have had virtually no leverage or input for negotiating the terms of exchange for labor with Amazon. Workers are subjected to the paternalism of Amazon. Automated systems organize and distribute packages to workers for processing and loading which are deliberately set to a fast speed so that employees work at an intense pace for their entire shift. Amazon also intentionally sets unattainable productivity quotas for workers so that they're pressured to work at their best pace.[19] As a result of the intense expectations and fast pace, one study found that Amazon warehouse workers "suffered serious injuries at twice the rate of rival companies in 2021."[20] Workers are closely monitored and reprimanded for not working at a fast enough pace. There is also little job security for workers since Amazon relies on seasonal workers year-round. While the wage and bargaining power of Amazon workers remain relatively stagnant, work conditions have worsened with the implementation of technology and automated warehouses.

The working conditions without compensatory wages for Amazon workers is a prime example of excessive costs in market contracting for employee patrons. The owners of the firms use their leverage with employees to negotiate employment contracts which reduces the cost of production for the firm by placing the burden of cost on workers. The failure to reach a market contract that satisfies the needs of warehouse workers has also led to a low retention rate. Workers do not feel properly compensated in market contracts with Amazon. The benefits and wages that workers receive in exchange for their labor do not counterbalance the strenuous labor and working conditions. For the worker, market contracts have more costs than value. The shortage of Amazon warehouse workers and drivers demonstrates how inefficiencies for the entire market arise when market contracts fail to minimize costs for different patrons. The shortage of warehouse workers and high turnover rate contributed to the disruptions and delays in supply chains which also negatively impacted customers.

3.2 Externalities of Legislation: Amazon Unions and Anti-Union Laws

Labor and employment laws have had a significant role in hindering the collective bargaining of Amazon's workforce. Campaigns to unionize Amazon workers have met considerable resistance from legislative barriers. In particular, there are two primary laws that have undermined Unions. The Labor Management Relations Act of 1987 (LMRA)—also known as the Taft-Hartley Act—was the initial federal legislation that disarmed unions, creating a path for future legislation. Unions will oftentimes negotiate for union security agreements which "is an agreement between a labor union and an employer that the employer will require all employees to undertake a specified level of support for the union as a condition of employment."[21] In other words, workers had to pay union fees and support union efforts even if they were not members of the union. The mandatory support for unions compelled workers to join the union. In addition, it was common practice for union security agreements to require a "closed shop" which is an agreement that employers could only hire workers that would be members of the union.

LMRA was significant because it prohibited a "closed shop." This meant that employers could hire workers who did not want to join the union, allowing for dissent from unions. The federal prohibition of closed shops under the LMRA set a precedent for future legislation. The LMRA was eventually followed by the

National Labor Relations Act (NLRA) which was another federal legislation that went a step further than the LMRA. Another common tactic of unions is to engage in secondary boycotts, which are "boycotting actions taken against an organization or company that does business with another organization with whom the primary dispute exists."[22] Secondary boycotts are an effective bargaining tool for unions in negotiations. However, the NLRA prohibited unions and workers from participating in secondary boycotts. With the enactment of the NLRA, legislation disarmed unions from another tactic yet again.

The passage of LMRA and NLRA provided states with leeway to enact laws that extend upon the LMRA and NLRA. States were able to enact right-to-work (RTW) laws since it is now in accordance with the federal law under the LMRA and NLRA. RTW has been enacted in 28 states and has had the most severe consequences for unions in comparison to the original federal acts. The implications of RTW can be understood by the following definition of RTW policy:

> Right-to-work is a policy that allows dissenting union members to not pay non-political dues, or agency fees, to unions. Because of the exclusivity provision in the National Labor Relations Act (NLRA), unions must still represent these dissenting members when negotiating the collective bargaining agreement or when the member is in an arbitration proceeding. The NLRA permits states to have right-to-work laws.[23]

RTW has posed the most trouble for unions in their effort to organize the collective bargaining of the workforce when negotiating with a firm. In most of the literature on RTW, there is a common sentiment that the purpose of RTW was "to make unions more insecure—to slow down or halt the rate at which unions are organized, and to destroy existing unions."[24] RTW disrupted unions by dismantling their bargaining tactics to negotiate with a firm. In RTW states, unions can no longer require mandatory union membership and more importantly, unions could no longer require nonunion workers to pay union dues. However, despite the divergence of nonunion workers, unions could not exclude any worker from the benefits of collective bargaining in negotiations.[25] Thus, RTW prohibits union security agreements altogether, neutralizing one of the major tactics that unions regularly rely upon.

Firms could fragment their unionized workforce by hiring workers that were not in solidarity with the union and forgo paying union fees. RTW made union fees an unnecessary cost. Workers would still benefit from unions regardless of whether they paid their union fees since nonunion workers could not be excluded from the worker collective that unions represent. Thus, there is no longer an incentive for workers to pay a union fee and no motive to act in solidarity with a union since workers would benefit regardless. To some extent, there was a disincentive to participate in a union since union fees would be only an expense with no consequences if workers did not pay it. Workers might also save themself from the trouble of acting in solidarity with unions since there would be no consequences and workers would still benefit from the success of a union. Workers could opt out of participating in their union if they were to organize labor strikes or other disruptive tactics which would mean that workers might not get paid during a labor strike or workers might receive backlash from employers.

3.3 Inconsistent Legislative Support: Power Imbalances within Amazon

In the case of Amazon, labor, and employment laws such as the LMRA, NMRA, and RTW have benefitted the union-busting campaign of Amazon while encumbering the efforts of Amazon workers to unionize. In contrast, corporation laws such as the RULPA, ULLCA, and ULPA have supported the owners and investors of Amazon and their interests. The disparities in legislation for labor and investments are largely responsible—or at the very least complicit—for the disparities between the workers and investors or owners of Amazon. Corporate laws have provided limited liability contracts which has facilitated the vast expansion of Amazon. At the same time, labor and employment laws like RTW have made it difficult for workers to organize and secure their interest in labor negotiations with Amazon.

One might argue, however, that my account of unfair legislation is incorrect since there are federal labor laws that secure employee rights and their rights to organize. According to this argument, the federal protection of employee rights supports the workforce and protects their efforts to unionize. The National Labor Relations Act (NLRA) claims to secure the rights of employees which includes the right to self-organize. The NLRA prohibits the discrimination of unfair labor practices against workers attempting to organize for a union and thus, laws protect workers from employer retaliation.[26] If an employer violates a worker's rights, the worker can file a complaint with their regional National

Labor Relations Board (NLRB) which, if proven, will charge employers with violating federal law. In theory, laws grant employees the right to organize and unionize while prohibiting firms from discriminating. In practice, however, enforcing the protection of employee rights is ineffective and the consequences of violating such rights do not deter employers from engaging in illegal union-busting tactics. For all the cases of unfair labor practices that the NLRB investigated in 2016 and 2017, 41.5% of those cases were found guilty and charged with violating federal law.[27] The high rate of conviction does not imply that the enforcement to protect employee rights has been successful. The high conviction rate instead indicates that many employers are willing to violate the rights of workers regardless of the consequences. The consequences for a violation would "include the issuance of an order directing an employer to cease and desist from conduct found to be unlawful and an order directing that an employer post a notice informing employees of their rights under the NLRA."[28] From the perspective of a firm, these consequences are a small price to pay to disrupt efforts to unionize. Furthermore, employers have a lot of power to prevent unionization and can exploit legislative loopholes to partake in union-busting tactics.

The failures of labor laws to secure employee rights have posed significant challenges for Amazon workers in their efforts to unionize. Corporate laws and labor laws have clearly had negative effects for the parties or patrons that exchange with a firm, particularly for groups with much less influence in comparison to the firm. Legislation, whether it is due to the failures or successes of different legislative acts, has had a significant role in creating severe power imbalances between employees and employers. Although the failures of legislation may be disheartening, there is optimism in the fact that legislation has been consequential in shaping our current free-market economy. Legislation has altered the arrangement of our free-market society which has produced the power imbalances that currently exist. Hence, there is promise that legislation can also alter the arrangement of free markets for the better.

Chapter 4: Legislative Solutions for Corporate Reform in Amazon

In the same fashion that legislation has shaped our free-market economy for the worst in some respects, we can implement new legislation to reform markets so that it resolves the power imbalances between employers and employees. Laws could reestablish the equal standing between people by supporting different patrons so they can negotiate with firms on equal grounds. Improvements in legislation would alleviate some of the injustices that occur in the workplace. Legislation would be an effective tool to minimize the costs of production that disproportionately burden patrons like employees.

There are many strategies that could be implemented via laws. For instance, an obvious start might be to reform labor laws regarding employee rights, but there is potential for much more. Laws could be designed and implemented to incentivize alternative arrangements of the firm which assigns ownership to other patrons besides investors similar to how limited liability contracts incentivize investor ownership. A comprehensive scheme of laws could incentivize the formation of firms that have the lowest-cost assignment of ownership for specific industries while disincentivizing firms with costly assignments of ownership for firms in industries that might have significant cost and consequences. Furthermore, the role of collective bargaining is insignificant in our current free-market system. Without larger institutional changes such as adopting the German system of rules, changes in ownership would do little to reform firms such as Amazon, let-alone markets in general.

Incentives to alter ownership without any other changes in legislations and regulations would not solve the excessive cost of a market or firm. In the case of Amazon, additional government regulation and legislation would be needed to protect the various classes of firm patrons, especially for workers. Regulations would be more effective at mitigating the market failures and costs of Amazon than changes in a firm's ownership. It would be inexpensive for regulatory institutions to collect and process the information from Amazon that is needed to implement a first-best outcome.[29] It would be cheap in the case for Amazon because the information needed to regulate an industry or firm would be mostly centralized under Amazon. When the relevant information is centralized, government regulations might be better at mitigating market cost than adjustments in ownership. When information is decentralized, adjustments in ownership might be the better option to mitigate market costs and failures since it would be too costly for regulatory institutions to collect the necessary information. Thus, government regulation and legislation should be the focal point for reforming Amazon to minimize the externalities imposed on patrons.

4.1 Unions: Mitigating Externalities

Legislation that increases support for unions would also help resolve injustices that employees experience working for Amazon. The unionization of Amazon workers could help secure increased wages, better working conditions, and more non-wage benefits. Take for example, the implementation of automated machinery, which is usually the newest technology of its kind, in warehouses. Technology and automation should improve the safety of employees since they do not have to do the work that automated machinery can complete. This was not the case for Amazon. Instead, the implementation of automated warehouses increased the injury rate of workers. The reason for this increase in injuries is that Amazon implemented technology not because of concerns for worker safety, but for their concern in increased productivity. Therefore, Amazon used automated machinery to also increase the productivity of workers, making the job more physically taxing. A union for amazon workers would bargain for increased workplace safety which might mean slowing down automated machinery. Unions would organize the collective bargaining power of Amazon workers to negotiate for reasonable terms of exchange. A union would force Amazon to take the concerns and interests of workers seriously which would require Amazon to act upon the demands of workers such as a healthier workplace culture, increased wage, better benefits, or whatever it may be. However, unionization would require union law reforms that change legislation to support worker rights to self-organize and unions in general while repealing anti-union laws such as RTW. To simply put it, Unions would assert the preferences of workers in the decisions and practices of a firm by using collective bargaining power to negotiate with a firm.

4.2 Codetermination

While unions provide one mechanism to improve relations between the firm and the workers, there are different strategies or proposals that could also rectify the market failures of workplace injustices from the unequal standing between different groups of market participants (e.g., labor force, producer, investors, etc.)

German codetermination is one of the most promising changes that could be made in legislation to regulate how Amazon operates along with other firms across different industries. Corporate laws would need to replicate some version of the German model of corporate governance, even if it applies only to specific industries, which entails the following conditions:

> Under the German corporate governance system of codetermination, employees are legally allocated control rights over corporate assets through seats on the supervisory board — that is, the board of nonexecutive directors. The supervisory board oversees the management board — the board of executive directors — approves or rejects its decisions, and appoints its members and sets their salaries.[30]

Codetermination would give considerable control rights to workers. Workers could elect up to half the members of a supervisory board which would result in decisions that are more worker oriented. The presence of worker representatives would also alter the decisions of a supervisory board. In addition, the supervisory board would appoint members to the management board which determines the "strategic direction of the firm."[31] Both the supervisory and management board would be better aligned with employee interests. Employee representatives would prevent boards from making decisions with only the objective of investors in mind. Codetermination would also require firms to "dedicate a management board position to labor affairs."[32] This position would create another avenue to include workers and their concerns in the management of a firm. Codetermination seems to be the proposal that would most effectively resolve worker alienation and unequal standing between employees and employers. However, codetermination alone would not result in significant reformation that resolves the many market failures that currently exist under contemporary legislation. Hansmann explains that codetermination is successful in Germany because of their legislative system and scheme of laws that has been designed to facilitate cooperation between different groups of market participants such as employees and employers. Thus, codetermination in the U.S. would need additional support from a robust system of laws in labor, employment practices, and corporations.

For the purpose of this discussion, let us suppose that adequate legislation is in place. If Amazon adopted German codetermination, it is likely that there would be a higher level of satisfaction amongst workers which would increase the retention rate of workers. Amazon could have avoided or, at the very least, mitigated some of its failures in employee market contracting which was, and still is, a serious issue during the pandemic. Amazon's failure with employee market contracts has resulted in a shortage of labor in their warehouses. By allowing for more employee input and expanding their control rights within Amazon boards, Amazon management would give more weight to the preferences of workers in decision making or when putting forth some plan of action. With greater considerations for workers, Amazon would make different decisions that improve the working conditions and treatment of workers, increasing the retention of workers. Furthermore, the supervisory and management board could no longer be negligent of the externalities that workers experience if the boards were to attempt making a decision that caters to investors or customers as they typically would. Both boards will have to regard the concerns of employees with greater importance, if not as equally important as the concerns of investors, customers, or other patrons. Thus, codetermination would reestablish the equal standing of Amazon workers and disrupt employer paternalism. The increased influence of workers would prevent injustices in the workplace which minimizes the cost of employee market contracting.

4.3 Constraining Mechanisms

Aside from unions and codetermination, there are other solutions that could address the power imbalances and excessive costs between the firm and its patrons. The firm has different compartments of authority that are responsible for distinct affairs or proceedings. The affairs of different component in a firm could be limited by policies. These policies could inspire similar methods that limit different functions or behaviors of the firm. Restrictions that focus on specific corporate functions could be implemented via constraining mechanisms, which is a term coined by Hansmann. Each constraint mechanism can also vary in strictness and in the extent of constraints. Constraint mechanisms could offer significant changes to the function of a firm that could perhaps prevent workplace injustices, mitigate some of the market failures of a firm, or reduce unnecessary social and financial costs of a firm. There are three different categories of constraining mechanisms which are control rights, fiduciary duties, and scope of authority. Potential solutions for corporate reform might involve only one constraining mechanism, some combination of two mechanisms, or a combination of all three mechanisms. Approaches or solutions that use all three forms of constraining mechanisms seem to have the most promise for corporate reform, but there are limitations which will be more obvious as I lay out the specific applications and conditions of each mechanism. Nonetheless, constraining mechanisms could alleviate issues like worker alienation or employer paternalism for plenty of firms across several industries.

Let us first consider constraining mechanisms on control rights. There are three forms of constraining mechanisms on control rights that could increase the control rights of workers and each form varies in the degree that workers can exercise control over the firm. The first method is *direct management* which would mean that the workers themselves are the managers of the firm. The second method is *delegated management* which would mean that workers have the power to choose the organization's managers. The last method is *autonomous management* which is seen more often in nonprofit foundations and means that "control resides entirely in the hands of the firm's managers, who are themselves either self-appointing or are selected by third parties."[33] The three methods of allocating control rights, and perhaps other alternative versions of the methods, could offer some improvements in management for certain corporations. The changes in control rights could potentially have benefits that carry over into other issues in the firm such as problems of lock-in, alienation, or increased retention of workers to name a few possibilities.

The second constraining mechanism focuses on fiduciary duties which are restrictions on management's ability to engage in self-dealing transactions.[34] There are three forms of constraints on fiduciary duties and each form varies in the extent of restrictions. The strictest form of fiduciary duties prohibits self-dealing transactions by managers unless approved in advance by all beneficiaries and maintains a non-distribution constraint to controlling persons which prohibits transactions of buying or selling with the firm. Nonprofit foundations implement the strictest fiduciary constraints. The second form of fiduciary duties is the moderate version which prohibits self-dealing transactions unless approved ex ante by non-conflicted managers or ex post by beneficiaries.[35] The third form is a mild version of fiduciary duties that simply prohibits fraud and is often seen in limited liability corporations since contracts assert that members have a duty to act in good faith with fair dealings.[36] These restrictions could apply to specific industries, but in the case of Amazon, constraining mechanisms on fiduciary duties might not offer much benefit or change to prevent Amazon from behaving opportunistically towards its patrons.

The final constraining mechanism focuses on the scope of authority delegated to the managers of an organization. Hansmann explains that the scope of authority “reflects the degree of latitude or discretion given the firm’s managers in determining what the organization will do and how it will be done.”[37] All else held equal, any increase in authority will give managers more opportunity to engage in actions contrary to the interests of the firm's beneficiaries and patrons. There are three levels of this mechanism. The first form of this mechanism has the most extreme limitations, and it requires a firm’s managers to be tightly constrained by the organization’s governing instruments, which specify appropriate managerial action for most circumstances. The second level, which I will refer to as moderate authority constraints, is less extreme than the first and it establishes a firm’s governing instruments that ensures the firm is operating in accordance with the firm’s intended general purpose, but managers are given the discretion to determine how those purposes are to be achieved. The last form of this mechanism gives managers extensive discretion to determine the purposes to be served by the organization and the means of achieving those purposes.

We could implement all three mechanisms by using legislation to incentivize, encourage, or require some form of each constraining mechanism. The healthcare industry would be a good candidate for legislation to use incentives and other forms of legal pressure to encourage certain corporate practices and policies while disincentivizing and discouraging unwanted corporate behavior. Legislation Constraining mechanisms on fiduciary duties would be appropriate, if not called for, in health care industries. It is a frequent practice for investor-owned firms in the pharmaceutical industry to prey on the desperation of buyers who need life-saving medication or treatment by hiking the prices of such products. Restrictions on fiduciary duties would prevent firms from selling lifesaving medical treatment to maximize profit. Profit maximization in healthcare creates reprehensible costs for the purchasers, exploiting their medical needs that require treatment regardless of the price. Furthermore, if only nonprofit organizations were to operate the healthcare industry, healthcare would be managed more efficiently than it would under investor-owned firms. Nonprofits would provide medical products at the appropriate price since nonprofits would not be concerned with the return on investment. Constraining mechanisms on fiduciary duties provides similar outcomes by limiting how firms function so that it prevents the firm from behaving opportunistically and for its own gain. Thus, the healthcare industry could be substantively reformed if legislation encouraged nonprofits to enter the market and all other firms to adopt some level of constraining mechanism on fiduciary duties. All three levels of this mechanism can be implemented so it would still allow for investor-owned firms in healthcare but would considerably reduce market failures by reducing unnecessary cost.

4.4 Constraining Mechanisms: Success and Failures of Different Strategies

The use of a constraining mechanism in other large enterprises like Amazon would not have the same success as it might in healthcare. Several forms of all three mechanisms would be ineffective or not viable. For instance, delegated management is one of the constraining mechanisms in control rights that would be feasible in Amazon. However, even if delegated management were to be implemented in Amazon, merely having an elected representative or even a couple elected representatives as board members would only be capable of amending a few issues. It would not be logistically feasible for a few board members that are removed from the Amazon operations occurring in several cities across several states to significantly alter the working conditions of the half millions of workers in different departments. And board members would not be familiar with the needs and concerns of workers that would be specific to each department, region or state, and other factors. Moderate constraining mechanisms on the scope of authority would be the only other corporate change that would be viable for Amazon. However, this mechanism would also face serious challenges.

The challenges for constraining mechanisms in Amazon do not mean we should be pessimistic or that such mechanisms are useless. I will offer an analogy that might provide clarity for the utility of constraining mechanisms which could also apply to other strategies that are successful in some firms or industries but fail in other cases. Constraining mechanism provides a toolkit that is equipped to repair several kinds of malfunctions like loose screws in a cabinet or replacing the wheels to skateboard, but I would not be able to repair a car with only a toolkit; I could only fix minor issues with my car. Likewise, constraint mechanisms could effectively resolve issues in other firms and industries, but additional solutions and changes would be needed for larger market failures that are caused by greater and more serious problems.

The example of Amazon demonstrates that there are challenges posed by both overarching failures in regulation by governmental institutions and issues that are distinct to specific firms or markets. In the case of Amazon, substantial changes in other areas like unionization or significant changes in legislation would be needed to meaningfully resolve Amazon's market failures. The changes in legislation would need to enact robust laws that support the workforce while repealing anti-union laws. Without the changes that I mentioned, workplace injustices will continue to occur, and the unnecessary cost of workers and other patrons would not be abated. Like other firms and markets, Amazon will require a whole array of strategies and efforts if we wish to truly reform the corporation.

4.5 The Cost of Market Contracting: Truck Driver Industry Case Study

The deregulation of the trucking industry, which occurred in the 1980s, is another interesting case worth examining. The deregulation of the trucker industry prohibited unionization which has decreased the retention of truck workers.[38] There are about three and half million truck drivers in the United States, but ten million people with commercial driving licenses for trucks which is a high turnover rate. I will examine the reasons why truckers do not remain in the industry to hopefully explain the causes for the notable high turnover rate. I will then discuss the implications of the high turnover rate for companies that contract drivers, customers, and the market altogether.

Firms, such as freight brokers or E-commerce companies like Amazon, classify drivers as independent contractors despite oftentimes working exclusively for such firms. By classifying drivers as independent contractors, firms are not responsible for benefits, sick-days, leave-time, holiday pay, the cost of maintenance for trucks (e.g., monthly oil changes, wheel replacements, or damaged car parts) and the risks of drivers. In addition, firms are exempt from payroll taxes (Social Security and Medicare), workers compensation, federal and state unemployment insurance or benefits, and minimum wage by claiming that drivers are independent contractors rather than employees.[39] The terms and conditions of labor as a trucker imposes several financial and social costs for the worker which disincentivizes the occupation.

Despite the many drawbacks and disincentives for truck driving, truckers have essentially no bargaining power or say to negotiate the rate of pay and terms of labor. Freight brokers, who are intermediaries between shippers and carriers, have an advantage in setting the rate of pay which is based on miles driven and not hours on the job. Truck drivers must settle for the rate of pay that a broker offers, which only considers the value of labor skills, leaving out of account the many disincentives of the occupation as a driver. Truckers do not get paid for having to wait out weather emergencies such as rain or snowstorms and the wait time for loading and unloading. Furthermore, trucks have electronic monitoring devices that track the hours driven and stopped to enforce regulations on truck drivers. Regulations limit truckers to only drive no more than eight consecutive hours and require drivers to take a ten-hour break which they are not paid for despite being out on the delivery. The regulations paired with monitoring devices limit the agency of truck drivers by mandating the time of rest and limiting the hours allowed to drive. Drivers must stop as required, even if they are perfectly fine to drive for another hour or more, but truckers are not paid for hours spent on the road. Prospective drivers often feel that the typical rate of pay does not compensate for the working conditions, resulting in the high turnover rate in the trucking industry.

4.6 Truck Driving as Independent Contractors: Externalities of Market Contract Failures

During the pandemic, supply chains underwent delays due to a scarcity of truck drivers–along with warehouse workers–which was not from a shortage of drivers, but because of the low retention rate for drivers. Drivers do not feel that the wage compensates for the working conditions. The delay in supply chains demonstrates how market contracting can produce market inefficiencies. The market contracts for drivers had serious costs that were not compensated in the rate of pay, creating disruptions in distribution for not only large firms like Amazon but for all retailers like small companies or self-employed entrepreneurs. Furthermore, virtually all customers had severe delays in receiving a product. The delay in deliveries had serious consequences for customers with urgent needs such as furniture, appliances, gasoline, and diapers—which all had shortages due to supply chains.

The cost for merchants and customers could have been reduced if truck drivers and Amazon workers could have negotiated for better benefits, working conditions, or increased pay. The failure of market contracts to satisfy the demands of drivers and warehouses resulted in costs for other businesses and customers who were affected by the delays in supply chains. Amazon workers must tolerate the strenuous labor in a dead-end job that does not have much to offer workers. And drivers must work away from their families and home for extended periods year-round. If market contracts had satisfied the concerns of drivers and warehouse workers, both industries would have increased the retention of drivers, alleviating some of the market inefficiencies in the supply chain. Businesses could have delivered products to customers more efficiently.

4.7 The Role of Legislation: Truck Driving Industry Case Study

Deregulation has made the trucking industry remarkably fragmented. Drivers must compete against each other which undermines the bargaining power of each driver. In 1959, for instance, congress passed section 8(b)(4)A of the Taft Hartley Act which made the following declaration:

> [it is] an unfair labor practice for a union to induce or encourage individual employees, or to coerce or restrain persons engaged in commerce, to cease handling or transporting the product of any other producer [section8(b)(4)(A)], and made it unlawful for unions and employers to enter into contracts under which the employer agrees to cease or refrain from handling the product of any other employer [section 8(e)].[40]

Corporate laws like the Taft Hartley Act (THA) disarmed trucker unions from using common tactics that they relied upon which also occurred in the case of Amazon workers that has ceased unionization so far. THA makes it difficult for employees to organize for the purpose of collective bargaining. Hence, government policies have created institutional barriers that make it difficult for a workforce to secure their common interest.

The Motor Carrier Act (MCA; 1980) is another major shift towards market deregulation that contributed to the fragmentation of the truck driving workforce. Like the Taft Hartley Act, MCA made it difficult for truck driving workforce to secure their interest through collective bargaining. The deregulation of the trucking industry was mostly in part due to the MCA. It was passed to increase competition amongst drivers by making entry easier. The MCA no longer required drivers to have a specific permit to carry a particular cargo. Instead, under the MCA, any truck driver, so long as they have a commercial driver's license, is allowed to carry any cargo. More people were able to become truck drivers, most of which were nonunionized. The surge in truck drivers, particularly those that are independent or work for a small company, meant that many of the drivers had no information on competing drivers. Truck drivers do not know the rate of pay and benefits of other truck drivers. Drivers must accept the conditions and pay in the contracts offered by a shipping firm since another driver might take the offer otherwise. This allowed shipping firms to determine the rate of pay for drivers.

Although the MCA was implemented with the intent to increase the size of the workforce, the truck driving industry still experiences a shortage in drivers. To the contrary of the MCA's intended purpose, the deregulation of the trucking industry created a shortage of drivers. Drivers are unwilling to work under the current working conditions. Although the MCA reduced shipping costs for customers, overtime, the primary beneficiaries have been large shipping firms like Amazon which have cut costs of operation by reducing the labor cost of drivers.

4.8 Trucker Industry: Potential Solutions for the Workforce and Mitigating Externalities

There are several means by which market contracts could have been improved. This section will consider potential solutions that could alleviate some of the primary concerns for the trucker workforce. To begin, let us first consider how changes at the corporate level could improve the situation between drivers and shipping firms like Amazon that contract drivers. E-commerce or shipping firms could settle on a rate of pay for freelance drivers and small trucking companies that includes performance bonus clauses in market contracts which stipulate a monetary incentive in exchange for completing an indicium of productivity (e.g., miles traveled or value of total deliveries).[41] However, there are serious challenges for truck drivers which are similar to the circumstances of Amazon workers. Corporate laws are largely responsible for making it difficult for workers to cooperate together for collective bargaining power.

Similar to the legislative changes that I suggest for Amazon, significant improvements can be made for the workforce by making adjustments to the current laws that govern markets and industries. For instance, as I mentioned earlier, the MCA was deliberately implemented to fragment the truck driving industry, making the entry of the profession easier for independent drivers and welcoming new drivers to join the profession of truck driving. It is important to note that the MCA did have some benefits for our markets and supply changes by removing government redlines that prohibited drivers from carrying different cargo without the appropriate permit. The removal of required permit restrictions meant a removal of constraints for drivers, increasing their agency to determine which cargo they will load and carry. In addition, the MCA eased entry into the trucker workforce. A proposal to improve the conditions of the workforces should be designed to preserve the benefits of the MCA. The concern to preserve benefits of the MCA means that a solution should avoid interfering with the workforce via regulations or other paternalistic policies that complicate a worker's ability to carry out their job.

4.9 Unique Challenges of Trucker Industry: Fragmentation and Decentralization

Many of the traditional legislative proposals and other strategies to reform employer-employee relations cannot be applied in the truck driving industry. The reason that typical policies could not work in the trucking industry is because the workforce of drivers is composed mostly by independent contractors, small start-up companies that are self-employed, and many other fragmented truckers. For instance, unionization is virtually infeasible for truck drivers because of how thoroughly fragmented the trucking industry is, which makes collective bargaining nearly impossible since drivers are extremely decentralized. To put it in perspective, the top ten shipping carriers, which would include Amazon, represent 85% of shipping capacity while the top ten trucking companies only account for 12%. Thus, the trucking industry can serve as an example on how to rectify the market failures and their excessive costs that burden people who do not work for a traditional corporation. Solutions to rectify such failures and costs would need to address the power imbalances between large firms and small independent contractors so that truckers are no longer subject to the will of larger corporations which ignores the preferences and concerns of truckers. The example of truckers might offer insight on how to improve the equal standing and opportunity of self-determination for people outside of traditional corporations.

A large portion of the potential solutions to improve the conditions of the trucking industry will rely on innovative policy. Policies like the MCA have been responsible for the fragmentation of the trucking industry which now works against the interests of drivers. And as a result, the fragmentation has contributed to shortage of labor in the trucking industry. Thus, if policies have fragmented the industry, then policies can also consolidate the industry, which is one potential to restore their collective bargaining power.

4.10 Alternative Solutions: Mergers, Tax Incentives, Changes in Labor Laws

The potential solutions that could amend trucker workforce would all require the implementation of legislation that is designed to support drivers and encourage behaviors within the trucker industry. For instance, the government could offer tax credits and subsidies for the expenses of a trucking company that would be used for the cost of maintenance and other expenses of drivers. Tax credits and subsidies would increase with the more drivers that work for a company. Mergers would slowly defragment parts of the trucking industry, making it easier for the workforce—and especially for consolidated trucking companies—to secure their interest. If policies were to make mergers easier and incentivized, the collaboration of small firms or independent contractors would restore some of the collective bargaining power of workers. However, tax incentives could have unfair consequences for self-employed drivers and small businesses.

A less problematic solution would be to require employers to pay truckers for a certain number of hours when they are not driving. The Fair Labor Standards Act (FLSA) and hours-of-service law limits the hours that truckers can drive and requires breaks of around 10 hours at the minimum. Employers pay truckers by miles driven so all the extra hours that a trucker is not driving goes unpaid. Thus, a required minimum hourly wage would prevent employers from minimizing the pay of drivers which would improve the working conditions of truckers.

Chapter 5: Conclusion

The case of the truck driving industry demonstrates how large firms still benefit from the power imbalances with other patrons even if they are not direct employees of the firm. Corporations are in a position to determine the terms of exchange which is used to minimize their cost by imposing it on patrons. Under our current system labor and employment laws along with corporate laws, patrons have reduced agency in transactions with larger companies which makes patrons vulnerable to the will or paternalism of companies. The average employee has even less agency than other patrons when transacting with a firm which makes the largest group of our economy the most vulnerable to workplace injustice and excessive cost when engaging in exchanges with firms. The common argument in response to any dissatisfaction with a company is that we are free to walk away from the exchange, but this narrative is misleading because it overlooks the reality that the reach of large companies encompasses our alternative options and our day-to-day lives. If we exit a transaction with one firm, we are merely choosing another firm to impose unjust costs and burdens upon us.

The current conditions for the ordinary worker are antithetical to the virtues and promises of capitalism that Hegel and Smith proclaimed. The unjust practices imposed by the conduct of corporations functioning under our current free-market economy is often explained and rationalized by a myth. This myth claims that corporations and our economy function the way they do—which is unapologetic of the injustices, costs, and deprivation that people experience under the will of corporations—because that is the reason that companies have survived and thrived under a free-market economy. However, this myth fails to contextualize how corporations and our economy have arrived at this point. Upon closer inspection, the myth fails to consider the significant role of our governing institutions and legislation in the development of our market economy and its corporations. Laws and regulations have catered to the development of our economy by putting corporations at the forefront while failing to protect the equal standing and secure the opportunity for self-determination of the average person. In fact, as I pointed out in this essay, our elected officials and governing institutions have deliberately undermined the stability and prosperity of employees because they were in industries that would benefit larger corporations. There are several instances in which our institutions have supported the endeavors of corporations while neglecting, if not thwarting, the welfare of people through our employment. This disparity in institutional support has enabled the massive power imbalance between companies and the individuals that make the workforce.

As I have outlined in this paper, there are several failures in our current free-market economy. Our institutions have failed to secure fundamental principles of capitalism for the ordinary person. Our institutions have not only failed us, but they have contributed to the conditions in which people are subjected to the will, injustices, and costs of corporations. However, in this paper, I have offered various strategies by which we could reform our free markets so that it places the worker at the forefront. The strategies that I provide are categorized into two different forms of proposals: 1) changes in the corporation and 2) changes in our institution and legislation. Both forms of proposal have the same purpose in mind. That is, the primary purpose of this paper is to reimagine not only a free-market economy, but also to reimagine a society that places the worker at the center of importance. And I remain optimistic that we can alter the behavior of companies and the function of our free markets to restore the equal standing of the people that are central to our society under a free market—the worker.

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