Symposium: Rights, Work, and Collective Bargaining

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TOWARDS A JURISPRUDENCE OF LABOUR LAW: METHODOLOGICAL PRELIMINARIES

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1. INTRODUCTION

This article will explore the methodological question that underlies all work on the Jurisprudence of Labour Law. How are we to develop an adequate theoretical basis for evaluating labour laws as they exist in our societies today? What questions must we raise in order to develop this normative theory? What must and can we come to know? The goal of this paper is to argue against and suggest an alternative to two methodological tenets that inform virtually all work done in normative theory today.

I shall label the first tenet “the priority of pure normative theory.” According to this tenet, the primary task of the normative theorist is to define and justify evaluative principles. These principles are to be general in the sense of being applicable to all societies and to all major institutions within any given society. The applied normative theorist is to do the secondary work of using these principles to evaluate some particular institution(s) within some particular society(ies).

On this methodological view, all the work of delineating the proper standards of evaluation and saying why they are correct is to be done by the “pure” theorist who defines and justifies general principles. It is neither necessary nor appropriate for the applied theorist to attempt to justify or further define those standards of evaluation as she or he uses them to judge particular social institutions. Rather, on this methodological view, all the work of empirically investigating the particular institutions and societies to which the principles of evaluation are applied is properly relegated to the applied theorist. It is neither necessary nor appropriate for the pure theorist to ground her or his attempts to delineate and justify standards of evaluation in empirical investigations of particular institutions as they exist in particular societies. According to this first tenet, empirical investigation enters into the enterprise of normative theory only

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because the applied theorist must understand how particular institutions operate and are structured before she or he can judge whether they satisfy the principles the pure theorist has laid down.

The second methodological tenet which this paper aims to criticize and suggest an alternative to will be labeled "metaethical individualism." According to this tenet, the normative theorist is to decide which social institutions and correlated relations among people are legitimate by asking what the legitimate claims of the individual are. The theorist's delineation of the individual's legitimate claims is not to be grounded in any view about which social institutions and relations are legitimate.

Metaethical individualism is an epistemological view about what questions one must raise and what one must know in order to decide that some, rather than other, social institutions and relations are justified. It is not a normative view about the relative values to be accorded to individuals, as opposed to institutions and correlated relations among people. Thus, this essay's rejection of metaethical individualism is not to be equated with the position that it is more important to uphold institutions and the relations they establish among people than to honour any claims that individuals can or do put forth. The rejection amounts, instead, to the position that a delineation of the individual's legitimate claims cannot adequately ground an evaluation of social institutions and relations. Any such delineation can enable one to rank alternative institutions and relations only if it already presupposes a ranking.

The tenets of "the priority of pure normative theory" and of "metaethical individualism" are not exclusively views about how to develop an adequate basis for evaluating labour laws. Instead, they are views about how to develop an adequate basis for evaluating any institution which exists in any society, including labour laws as they exist in the United States and Canada today. Although this essay's main argument will be that those tenets must be rejected to develop an adequate basis for evaluating a society's labour laws, that argument should suggest, more generally, that those tenets must be rejected if an adequate basis is to be developed for evaluating any social arrangement.

Thus, if this essay's argument succeeds, a consequence will be that we, as American and Canadian social and legal theorists, cannot adequately evaluate our societies' labour laws by simply applying general principles of evaluation which were formed without considering what goes on in workplaces in the United States and Canada to-
day. This includes the liberal principles and declarations about human rights which David M. Beatty and Richard T. De George respectively seek to apply in this volume. Nor can one assume, as Beatty and De George seem to, that assertions about the rights that individuals have can serve as a basis for ranking alternative labour laws without already presupposing a ranking of alternative work arrangements. In addition to showing that Beatty's, De George's, and any other approaches to the jurisprudence of labour law must be rejected insofar as they rely on the tenets of the priority of pure normative theory and of metaethical individualism, this essay will more generally suggest that any normative approach to any social issue will be inadequate to the extent that it relies on those tenets.

This article will accomplish these goals in the following manner. Section 2 of this essay will present an account of the role work plays in people's lives. Based on that account, section 3 will argue that metaethical individualism must be rejected if an adequate basis is to be developed for evaluating institutional arrangements of work. Section 4 will then urge that this basis can be developed only if the tenet of the priority of pure normative theory is rejected along with metaethical individualism. The essay will conclude by proposing an alternative to these two methodological views and considering the extent to which normative disagreements about institutional arrangements of work can be rationally resolved.

In describing this plan, this essay speaks of delineating the role of work, as opposed to labour laws, in people's lives. It also speaks of considering how to evaluate institutional arrangements of work, as opposed to labour laws. The foundation of this plan lies in the view that in order to decide what sorts of laws should regulate work in societies, one must first ask what work should be like in societies, and then ask what, if any, sorts of legal regulations are likely to produce the requisite change or maintaining of conditions. Before answering these questions, it is necessary to raise the methodological question of this essay: how are we to decide between alternative views about what work should be like in societies? To answer this, one must begin by considering the role of work in people's lives.

2. THE PRODUCTION AND REPRODUCTION OF SOCIAL LIFE IN AND THROUGH WORK

This article claims that the role work plays in people's lives is, that in and through work, people produce and reproduce their social life. Extensive analysis is needed, however, before that claim can be
either understood or accepted. This analysis can best proceed by separately considering three aspects of work: (1) what is produced through work, (2) the work process itself, and (3) the distributional structure implicit in both the products and process of work.

2.1 The Products Of Work

Starting with what is produced through work, it is obvious that people through their work create the material basis for human life. This material basis includes the food, shelter, and so forth that people must consume in order to survive. It also includes the technology used to create these consumable goods and the technology in turn used to create this technology. Since people expend this material basis in order to live, people’s work does and must continually recreate it.

The material basis that people produce and reproduce through their work is not, however, the material basis for the survival of human beings, simply as human beings. Instead, it is the material basis for the survival and development of humans within particular forms of social life. To start with, the consumable goods that people produce through their work are never what humans qua humans must consume. Rather, people through their work produce specific forms of food such as McDonald’s and gourmet food, specific forms of shelter such as prefabricated housing and renovated brownstones, specific “nonmaterial” goods such as academic journals and pulp magazines. Likewise, the technology that people produce through their work is never what humans qua humans must use for creating what they must consume. Instead, it is the means (for example, the automobile assemblyline) whereby people standing in certain relations to each other (for example, employment relations in which employees are assumed to be interested in doing as little as possible for as much pay as possible) can produce specific types of consumable goods (for example, cars with planned obsolescence).


The goal in analyzing this claim is to produce an accurate description of the world, as opposed to a faithful interpretation of Marx’s views. Nor should this analysis be read to imply that work is the only social sphere in which social life is produced and reproduced. This is true, to a certain extent, of all social spheres.

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The production of these specific forms of consumable goods and technology is not equivalent to the production of specific means for satisfying the needs that all humans qua humans have. Rather, it is the production of conditions for people's forming, maintaining, and/or modifying ways of interacting with each other that are constitutive of some, rather than other, forms of social life. These specific forms of interaction are correlated with individuals having particular types of abilities and inclinations. In other words, by producing specific forms of consumable goods and technology, people produce a condition for the existence of institutional structures distinguishing their own from other societies. These institutional structures assign people particular roles. This makes it possible for people to form some, rather than others, of the relations with each other that are possible for human beings. By thus making these distinctive social relations possible, the production of specific forms of consumable goods and technology makes it possible for people to form some, rather than others, of the abilities and inclinations that humans are able to form.

As an illustration of this process of producing particular types of social structures and relations and thereby individuals with particular types of traits, the production of academic journals is a condition without which the "publish or perish" system which structures relations among people in the academic community could not exist. By being a condition for the existence of the "publish or perish" system, the production of academic journals is thereby a condition for the existence of the ambition to lengthen one's curriculum vitae and for the correlated development of the writing abilities distinctive of members of the academic community. Likewise, the upgrading of American computer, but not steel, technology is a condition for changes in the American educational system and in the relative wealth and political power of various geographical regions. It is thereby a condition for fewer persons aiming to spend their worklives in the plants where their fathers worked. It is also a condition for the growth of computer "literacy."

In short, what people produce through their work is the material basis for the development of some, rather than others, of the institutions, role structures, and relations among people that humans are able to form. Derivatively, what people produce is the material basis for themselves and others developing some, rather than others, of the abilities and inclinations that are possible for human beings.

2. The "publish or perish" system refers to the system under which the quantity of publications is a primary determinant of whether a faculty member attains tenure and receives other rewards available in the academic community.
Two mistakes must be avoided in analyzing this process of social and self production. On the one hand, this production must not be understood as production from scratch. What sorts of consumable goods and technology people at any given time and place can produce depends on what sorts of consumable goods and technology they and others through their work previously produced. It also depends on the nature of the institutions, role structures, social relations, and correlated abilities and inclinations that they and others previously formed through consuming and using particular sorts of consumable goods and technology. Since the material base that people can produce is thus always constrained by their previous production, there are similar constraints on the forms of social life for which people's work, at any given time and place, can provide the material base.

On the other hand, this constraint by previous production does not mean that people are limited to reproducing the material base and form of social life from which their work proceeds. Through their work, people can change, as well as replicate, the types of consumable goods and technology that they expend. Thereby, they can change, as well as replicate, the institutions, role structures, social relations, and abilities and inclinations from which their work proceeds. However, the type and extent of change that people at any given time and place can produce through their work is limited by the consumable goods and technology and forms of social life that they and others previously produced.

2.2 The Work Process

From this account of how people produce, reproduce, and develop their social life through the products of their work, the next consideration is how people do this in and through the work process itself. Implicit in the preceding account of what people produce through work is the crucial claim that, except in the freak case of a Robinson Crusoe, work is never production by a solitary individual. There is, in other words, no such thing as a society wherein each person consumes and uses only consumable goods and technology that she or he alone produced. Labour is divided in any society so that persons work to produce what others consume and use.

Societies differ crucially, however, in the nature and extents of their divisions of labour. Of particular importance is the distinction

between the societal division of labour that obtains in all societies and the detailed division that is significantly developed only in industrial societies and whose growth has so far been correlated with industrialization. Under the societal division, people's roles are to specialize in producing various products that members of their society use and consume. Thus, that division makes people goldsmiths, barrel-makers, priests, and so forth. In contrast, under the detailed division of labour, people specialize in selected tasks involved in producing various products. Thus, the detailed, or hierarchical, division of labour makes people, on the one side, typists in typing pools, banktellers, assemblyline workers, and so forth, and, on the other side, time-motion study experts, personnel managers, and others specializing in allocating tasks and deciding how they are to be performed.⁴

Granted that what people do at work is thus to perform roles within a division of labour, a division that differs in different societies, the work process is a process of people's forming some, rather than others, of the relations with others that it is possible for humans to form. As people form these social relations, they shape themselves into individuals having and exercising some, rather than others, of the abilities and inclinations that are possible for human beings. Thus, typing in a typing pool is inseparable from relating as a subordinate to others who decide just what one should produce, the pace at which one should work, and virtually every other detail as to how one's job is to be performed. While people must thus act as subordinates and superiors in order for work in the typing pool to go on, they cannot so act without forming and exercising specific kinds and extents of intelligence and initiative, including, for typists, substantially suppressing both.

At work, however, people do not necessarily form precisely those social relations and abilities and inclinations demanded by their roles within the existing division of labour. People may instead act to sabotage that division. For example, significant numbers of American assemblyline workers in the 1970's walked off jobs in the middle of shifts, placed lighted cigarette butts in automobile hoods, and so on.⁵

⁴ Marx established and explored the concept of the detailed division of labor. *Id.* at 350-59. For an account of the development of the detailed division of labor since Marx's time and a detailed argument for the claim that industrial development has been correlated with the refinement of this division and its extension to more and more productive activities, see H. Braverman, *LABOR AND MONOPOLY CAPITAL: THE DEGRADATION OF WORK IN THE TWENTIETH CENTURY* (1974).

The types of resistance of which people can conceive and achieve are nonetheless shaped by the prevailing role structure. Thus, the rebellion of assemblyline workers consisted of disobeying management’s rules. This is distinct from usurping management’s role of deciding what the enterprise’s goals should be and how they are best performed.

By thus conforming and failing to conform to their roles within the prevailing division of labour, people form social relations and correlated individual traits that are constitutive of particular forms of social life. In addition, conformity reinforces the institutionalized role structure. Nonconformity may generate changes in that structure, but the structure itself circumscribes the nature and extent of change. Thus, a common managerial response to sabotage on the assemblyline is to increase, or attempt to create the appearance of increasing, worker’s decision-making power. Suggestion boxes may be instituted; workers may be allowed to rotate jobs or to control the assemblyline’s pace. In all these experiments in worker participation, the basic distinction between workers and management is maintained.6

As people’s conformity, resistance, and responses to resistance thus recreate and/or modify the prevailing division of labour, they create the role demands that in the future shape the social relations and correlated abilities and inclinations they and other members of their society will form. This process of social and hence, self production in and through the work process evolves interdependently with other social processes in and through which distinctive social relations and hence, selves are formed. For example, whether and to what extent work force entrants conform to the demands of particular work roles depends on the role expectations to which they are subject in their families and in educational institutions. However, the roles that people perform within a particular division of labour in turn shape the expectations to which they subject their children in the family and which they and professional educators seek to institutionalize in schools.7


7. For a description of the interactional development of role structures in schools, families, and workplaces, see, S. Bowles and H. Gintis, Schooling in
2.3 The Distributional Structure

To comprehend how people produce and reproduce their social life in and through work, it is finally necessary to consider the distributional structure implicit in both the work process and the products of work. The distributional structure involves how societies allocate among their members the consumable goods and technology produced, the natural resources used in production, and control over the labour that people do. To understand how people develop distinctive social relations and abilities and inclinations in and through work within particular distributional structures, the differences in these structures must not be reduced to differences in how egalitarian they are.

Instead, a first basic difference lies in which natural resources societies allocate. For example, Native American societies, at the time of European settlement, left land free for the comer. In contrast, European societies at that time treated land as a resource that people could own. People are able to form certain relations with others and correlated abilities and inclinations only if certain resources are or are not allocated. The relations they form in turn reinforce or generate change within a given allocation. Thus, the status of land as an allocable resource within European, but not Native American, societies of the Seventeenth century, made the Dutch, but not the Native American occupants, able to conceive of Manhattan Island as an entity that could be sold. This difference in the conceptions that the Dutch and the native occupants were able to form in turn made possible the basic change in the allocation of resources affected by the Dutch "purchase" of Manhattan Island for $24.

A second basic difference in societies' distributional structures lies in the entities to whom technology, natural resources, and control over labour are allocated, and in the rights granted in this allocation. Land, for example, may be allocated as commons in which villagers share traditional rights, as property of various collectivities in a socialist State, as individual property subject to varying kinds and extents of government regulation. Technology may be the property of the individual craftsman who uses it, of various state agencies, of shareholders of corporations, and so forth. Control over labour may be allocated through such institutional structures as slavery, serfdom, the guild system, and wage labour.

A society's structures for allocating these various means of production are interdependent. For example, the growth of a wage labour

system depends on land not being left free for the comer. More generally, workers must not individually own the technology and natural resources used in performing their jobs. A society’s system of ownership of means of production also circumscribes its distribution of consumable goods. Differences in the quantity and quality of what various members of a society consume cannot be as great, for example, where immediate families own their means of production and control their own labour as where such ownership and control is vested in a few corporate or government officials.

While a society’s system of ownership makes possible people’s developing only certain relations with others and hence becoming only certain sorts of selves, that system is in turn recreated and/or modified by the relations people form. Thus, those working within a wage labour system have no choice but for their work to increase, decrease, or maintain the relative profitability of firms. As they produce these results, however, they may modify the system of ownership in which they have worked. For example, ownership may become more concentrated as gaps increase in the profitability of large and small firms. Concentration in turn changes the types of relations that may be formed between employers and employees, for example, by eliminating intimacy.

This account of how people produce, reproduce, and develop their social life in and through work has separately considered how they do this through the products of work, in and through the work process, and in and through the distributional structure implicit in work. This separation must in conclusion be seen as merely heuristic. A society’s division of labour, its system of ownership, and what its members produce evolve interdependently. Thus, for example, the detailed division of labour first became widely feasible when various individuals came together, in a single workplace, to work for the same capitalist. That division in turn fuels capitalism’s drive for profits by enabling skilled workers to be replaced by unskilled ones who are easily trained and replaced. Thereby, the continued existence and further development of the detailed division of labour has become a condition for the continued viability of the capitalist system of ownership which initially made it widely feasible. Likewise, the existence of the detailed division of labour was a condition for the production of machinery (for example, the assemblyline) designed to be operated by workers who repeatedly perform simple mechanical motions. Investment in the

production of such machinery has in turn made it difficult for the division of labour to be significantly changed.\(^9\)

3. The Inadequacy of Metaethical Individualism

The above account of the role of work in people's lives was developed for the purpose of considering: how is one to develop an adequate theoretical basis for deciding what workplace institutions should be like in the United States and Canada today? Contemporary normative theory is dominated by a methodological tenet that section 1 of this essay labeled "metaethical individualism." According to that tenet, the normative theorist's foundational task is to determine what the legitimate claims of the individual are. Institutions and relations among people are then to be judged legitimate to the extent that they honour the individual claims previously determined to be legitimate. For this methodology to work, it must be possible to arrive at a list of the individual's legitimate claims. This list must imply, but not presuppose, the legitimacy of some, but not other, institutions and relations among people. On the one hand, a ranking of institutions and relations must be derivable from this list. On the other hand, this list of the individual's legitimate claims must not in turn be based on a conception of the individual assuming her or his involvement in certain relations with others within certain institutions. A list based on such a conception would already assume the legitimacy of some, but not other, social institutions and relations.

The preceding account of the role of work in people's lives makes it possible now to show that metaethical individualism is not an adequate methodology for determining what workplace institutions should be like in our societies. As has been seen, the members of a society recreate and/or modify its material base, division of labour, and system of ownership as they work with each other within these institutional structures. They thereby recreate and/or modify the distinctive social relations and derivative individual traits that they have formed through working within their society's distinctive institutionalized work arrangements. Different institutional arrangements of work thus differ from each other in the interpersonal relations that people working within them form, and hence, in the sorts of individuals that these people become. Due to this, a list of the individual's

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legitimate claims implies a ranking of alternative workplace institutions and correlated social relations only if that list presupposes a conception of the individual as related to others in certain ways within certain workplace institutions.

This criticism of metaethical individualism can be developed by considering various versions of that methodology. Certain metaethical individualists, whom this article will label "intuitive rights theorists," hold that one can know, without argument, what the rights or legitimate claims of the individual are. Social institutions and relations are to be evaluated by asking whether they honour these rights that individuals are intuitively known to have. Other metaethical individualists hold that knowledge of the individual's legitimate claims must be derived through considering the nature of the individual. Institutions and relations are to be ranked according to whether they honour the individual claims that this consideration of the individual's nature has shown to be legitimate. This essay will now argue that unargued-for assertions that individuals have certain rights can imply a ranking of workplace institutions and correlated relations among people only if those assertions in fact presuppose a conception of the individual as related to others in certain ways within certain workplace institutions. A similar difficulty will be argued with regard to attempts to derive, through considering the nature of the individual, an account of the individual's legitimate claims that can be used to evaluate workplace institutions and relations.

3.1 Intuitive Rights Theories

The methodological view that social institutions and relations are to be ranked by whether they honour the rights that individuals are known, without argument, to have, is compatible with varying substantive views about what the rights of individuals are. In regard to work, one type of substantive view is that each individual has a right to develop or be her or himself at work so long as she or he does not interfere with others. The other type of substantive view is that each individual has a right to engage in some specific activity(ies) or to be in some specific state(s) while at work. To criticize the intuitive rights version of metaethical individualism, this article will consider it as linked to instances of each of these two types of substantive views. First, the article will consider the unsupported assertion that each individual has a right to develop her or his own productive capacities so long as she or he does not interfere with others. Then, the article will consider the unsupported assertions that each individual has a right to be employed and a right to free speech in the workplace.
3.1.1. Rights To Self-Development

One version of metaethical individualism grounds an evaluation of institutional arrangements of work and correlated relations among people in the assertion that each individual has a right to develop her or his own productive capacities so long as she or he does not interfere with others. For this version of metaethical individualism to work, a ranking of institutions and relations must be implied by this assertion about individual rights. At the same time, this assertion must not be interpreted to presuppose any particular society's institutionalized definitions of productive capacities or interference with others.

This two-pronged requirement cannot be met. As shown in section 2, the abilities and inclinations that a given individual is capable of developing at work, and the products that she or he can produce depend on the distinctive division of labour and system of ownership within which she or he works and forms relations with the other members of her or his society. They also depend on the particular sorts of consumable goods and technology that have so far been produced in her or his society. The upshot of this is that it is impossible to determine what any particular individual's productive capacities are without considering her or him as working with others within some particular institutional structures. Accordingly, alternative institutional arrangements cannot be ranked by whether they enable each person working within them to develop the productive capacities that she or he has as a human being. A ranking follows only if each person is considered as having productive capacities formed within and defined by some, rather than other, institutional arrangements.

The assertion that each individual has a positive right to obtain what she or he needs to develop her or his productive capacities so long as she or he does not interfere with others must now be distinguished from the assertion that each has a negative right not to be legally prevented from developing these capacities so long as she or he does not interfere with others. The preceding paragraph shows that if this assertion is taken to assign positive rights, it implies a ranking of institutional arrangements of work only if it is interpreted to presuppose a ranking. The same difficulty obtains even if the assertion is taken to assign negative rights.

To distinguish between institutional arrangements that do and do not respect the negative right to develop one's productive capacities so long as one does not interfere with others, it must be possible to determine whether actions that persons are legally prevented from performing do or do not interfere with others. The problem is that
whether a given action interferes with others cannot be determined without considering that action as performed within some particular division of labour and system of ownership. Thus, for example, in societies where labour is divided in detail, some persons may have the role of time-motion study expert. These persons are defined as performing their jobs when they dictate the precise bodily movements other workers employ. In contrast, persons who attempted similarly to dictate to other workers would be defined as interfering with them in societies where labour was not divided in detail. For another example, in the United States today, management is defined as exercising its prerogatives, rather than infringing on workers' own time, when it makes overtime work a condition for holding a factory job. In contrast to pre-New Deal times, however, management is defined as interfering with workers when it refuses to pay extra for overtime.

The point of these examples is that one cannot distinguish between workplace actions that do and do not interfere with others, and hence, between laws that do and do not prevent such interference unless one adopts the definitions of interference institutionalized in some particular division of labour and system of ownership. Just as with the productive capacities of any human individual, the "space" which is a person's own and is not to be infringed is necessarily formed within, and defined by, some particular institutional arrangement of work. Accordingly, just as with the corresponding positive right, the assertion that each individual has a negative right to develop her or his own productive capacities so long as she or he does not interfere with others implies a ranking of alternative institutional arrangements of work only if it is interpreted to presuppose a ranking.

3.1.2. Rights To Engage In Specific Activities

The above difficulty of being able to rank alternative institutional arrangements of work by whether they respect a right of individuals only if the right is already interpreted to presuppose a ranking, might seem avoidable if metaethical individualism were linked with another type of intuitive rights theory. Instead of attempting to ground an evaluation of workplace institutions in assertions that persons have rights to develop or be themselves and/or to be free from others' interference, one's proposed ground might be that persons have rights to engage in some specific activity(ies) and/or to be in some specific state(s) while at work. As examples, take the specific rights to be employed, to be informed of health hazards on the job, and to free speech in the workplace. The problem with the type of intuitive rights theory discussed in section 3.1 is that notions of what it means to
develop or be oneself or to be free from interference can provide a basis for ranking alternative work arrangements only if those notions have surreptitiously been "filled in" to presuppose a ranking. In contrast, it might seem that without any such institutional "filler," assertions that persons have rights to be or do specific things can provide a basis for ranking of work arrangements.

However, all attempts to ground a ranking of institutional arrangements of work in assertions of specific individual rights, fail for the same reason as attempts to ground a ranking in assertions of individual rights to self-development or freedom from interference. The problem with attempting to ground a ranking in assertions of specific rights is that controversies that arise in particular societies are seldom best described as controversies over whether individuals have rights to be or do specific things. Instead, they tend to be controversies about what it means for specific rights to be honoured within the context of a society's institutions. Thus, for example, there is little controversy in the United States today over whether individuals have rights to free speech. There is serious controversy, however, about what rights to union advocacy are entailed by the right to free speech. American legal cases accord serious attention to three fundamentally different positions. The first position is that, notwithstanding rights to free speech, employers' property rights entitle them to ban all union advocacy on their property. The second is that employees' rights to free speech and employers' property rights are suitably balanced by prohibiting all union solicitation by outside organizers, but allowing union solicitation by all and only those employees who are legally on the employer's property. The third position, to which serious attention is accorded in American legal cases, is that the right to free speech demands that outside union organizers be granted equal time, on an employer's property, to combat the employer's anti-union campaign.10

The claim that controversies in particular societies tend to be over what it means to honour specific rights, is further illustrated by considering the right to be employed. Is the right honoured so long as no one is legally prevented from working for those who choose to offer her or him a job? Alternatively, does the right impose an affirmative obligation on the government to become the employer of last resort? Or, is the right honoured only if measures are taken to eliminate all private control over whether people are employed?

10. For consideration of these alternatives, see NLRB v. Babcock & Wilcox Co., 351 U.S. 105 (1956); Republic Aviation Corp. v. NLRB, 324 U.S. 793 (1945).
A choice between different positions about the meaning of rights to be or do specific things must be made if alternative work arrangements that are possible in a society are to be evaluated by whether they honour those specific rights. Thus, the above examples show that widely varying laws about union advocacy cannot be ranked by whether they honour the right to free speech unless that right is further defined. Further definition of the right to be employed is similarly needed if government economic policies are to be ranked by the respect they accord to that right. The problem is that the requisite further definition of the states or activities in which persons have rights to be or to engage is a specification of them as occurring within the context of some, rather than others, of the work arrangements a society can adopt. To generate a choice among policies, a right to be employed must be interpreted as a right within a system allocating certain kinds of control over labour power to certain persons and entities. Likewise, a right to free speech must be understood as a right within a system giving employers certain rights to discipline their workforce and control their property.

The upshot of this is that metaethical individualism fails when linked to either of the two types of intuitive rights theories this essay has distinguished. An evaluation of institutional arrangements of work cannot be grounded in an assertion of a right to self-development because an institutional ranking follows only if the self has antecedently been defined as working within some particular institutional arrangement. Likewise, a right to engage in some specific activity or to be in some specific state can generate a ranking of alternative work arrangements possible in a society, only if the activity or state is antecedently understood as occurring within the context of one of those arrangements.

3.2. Conceptions Of The Individual

The intuitive rights version of metaethical individualism is not the only version of that methodology. Thus, the above criticism of the intuitive rights version does not suffice to show that metaethical individualism is an inadequate methodology. While the intuitive rights version attempts to ground an evaluation of institutions in assertions that individuals have certain rights, the other major version of metaethical individualism attempts to ground an evaluation of institutions in a conception of the nature of the individual and of what it means to respect the individual. A criticism of this other version can now be developed by considering three kinds of attempts to ground an evaluation of institutional arrangements of work in a conception
of the individual. The first is an attempt to evaluate institutions by considering which ones individuals would choose if they abstracted from all traits which they had only because of their membership in particular societies. The second is an attempt to rank institutions by whether they satisfy the wants of individuals. The third is an attempt to evaluate institutions by whether they foster an ideal of individual autonomy.

By considering these three types of attempts, this essay will now argue that metaethical individualism is no more successful when linked to conceptions of the individual than when linked to assertions of individual rights. Indeed, attempts to ground an evaluation of workplace institutions in a conception of the individual will be argued to fail for the same type of reason as was argued above to cause the failure of attempts to ground an evaluation of workplace institutions in assertions of individual rights. A conception of the individual can be the ultimate ground for evaluating institutions only if it is a conception of the individual qua individual, as distinct from a conception which presupposes that the individual relates to others within some specific institutional arrangements. However, the only type of conception of the individual from which a ranking of alternative institutional arrangements of work can be derived, is a conception which presupposes that the individual works within some particular institutional arrangements.

3.2.1. Abstract Choice

John Rawls is the most prominent contemporary exponent of the first type of attempt to ground an evaluation of institutions in a conception of the individual. This attempt consists of asking what institutional arrangements individuals would choose if they abstracted from all inclinations and abilities that they possess only because they were particular members of particular societies. The institutional arrangements that would be thus chosen are then identified as the only justifiable arrangements.¹¹ This version of metaethical individualism is advanced with the explicit goal of escaping the circularity of evaluating institutions by whether they honour individual claims that in themselves presuppose a ranking of institutions. However, it is no more successful than the intuitive rights version at avoiding this circularity.

¹¹ J. Rawls, A Theory of Justice (1971). For an argument that any attempt, including Rawls's, to derive social and political prescriptions from what abstract individuals would choose must fail, see Schwartz, Against Universality, J. Phil. March, 1981, at 127-43.
As argued above in sections 2 and 3.1, the abilities and inclinations that individuals are capable of developing at work and through the products of work are necessarily formed within and defined by some particular division of labour, system of ownership, and material base. The same is true of the "space" which is a person's own and is not to be infringed. Accordingly, if individuals abstracted from all abilities and inclinations that they had only because they were particular members of particular societies, they would have no basis from which to form any claims that could be satisfied within some, but not other, institutional arrangements of work. The upshot of this is that only a mistake can enable philosophers to identify some, rather than other, institutionalized work arrangements as those that would be chosen through this kind of abstract decision-making. Abilities and inclinations formed within and defined by some particular division of labour, system of ownership, and material base must falsely be seen as abilities and inclinations that are common to all human beings.

3.2.2 Want-Regarding Theories

The second type of attempt to ground an evaluation of institutions in a conception of the individual is that of the want-regarding theorist. As defined in this essay, the normative position of the want-regarding theorist is that the justifiability of institutions is a function of their satisfying people's wants. The correlated epistemological position is that one can rank institutions by whether they satisfy individuals' wants without presupposing an institutional ranking in one's index of evaluation. This epistemological view will be termed "the want-regarding version of metaethical individualism."

The obvious criticism of this version of metaethical individualism states that the wants that people seek to satisfy at work and through the products of work are themselves produced in and through the particular institutional structures within which people work. A bias in favor of prevailing work structures is accordingly implicit whenever alternative institutional arrangements of work are ranked by whether they satisfy the wants that individuals have.

To this, the want-regarding theorist might reply that her or his index of evaluation is not merely whether institutions satisfy currently-held wants. Institutions are to be ranked both by whether they satisfy the wants that people currently have and by whether they lead people to form wants that will be easily satisfied. The wants that it will be easiest for people to satisfy at work and through the products of work may differ from those they form in and through these current institutional structures within which they work. On these grounds,
it might be urged that a want-regarding index of evaluation need not be biased in favour of prevailing institutional arrangements of work.

The problem with this reply is that what wants it will be easy for the members of a society to satisfy does not depend on human nature *per se*. Institutions tend to encourage people to form wants that will be easy to satisfy, to the extent that they encourage them to form wants resembling those their society's particular institutions have so far been developed to satisfy, and to lead people to form. Accordingly, an attempt to rank alternative institutional arrangements that may be instituted in a society by whether they encourage the formation of easily satisfiable wants has the same problem as an attempt to base such a ranking on the satisfaction of current wants. In either case, a bias in favour of prevailing institutions is incorporated in the index of evaluation.

3.2.3 A Historically-Bounded Ideal Of Individual Autonomy

A third type of attempt to ground an evaluation of institutions in a conception of the individual might be thought to circumvent the criticisms so far advanced. This version of metaethical individualism starts from the recognition that the abilities and inclinations that a given individual is capable of developing at work and through the products of work depend on the institutional structures within which she or he and the other members of her or his society work. Despite this recognition of human social dependency, a certain sort of autonomy is nonetheless held to be achievable by human beings. Individuals achieve autonomy to the extent that they develop and exercise the requisite abilities and inclinations for rationally shaping their lives to accord with their plans. Whether individuals are capable of thus achieving autonomy or controlling the sorts of selves they come to be in and through work is held to depend on their particular society's division of labour, system of ownership, and material base. Accordingly, this version of metaethical individualism is correlated with the normative position that institutions are to be ranked by whether they enable each person working within them to achieve autonomy. 12

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12. This account of personal autonomy differs significantly from two more common philosophical accounts. On those accounts, being autonomous is a matter of: (1) being legally free to do as one wants, or (2) abstracting from one's particular personal history in deciding what to do or believe. In previous work, I argued that the account of autonomy sketched above is superior to those two more common accounts, particularly in providing a viable basis for evaluating alternative institutional arrangements of work. See, Schwartz, *Against Universality*, J. Phil., March, 1981, at 127-43;
The problem with attempting to ground an evaluation of institutional arrangements of work on whether they further this ideal of individual autonomy is that no ranking of institutions can be derived from this ideal. The reason for this is that people cannot individually choose the sorts of lives they come to lead in and through work. As we have seen, people recreate and/or modify their society's material base, division of labour, and system of ownership as they work within those institutional structures. Thereby, the members of a society preserve and/or change the sorts of relations with others and derivative abilities and inclinations that it is possible for them to form. The choices that a given individual makes at work contribute to this process of social and hence self production. What contribution these choices make is not, however, within the individual's control.

Each individual lacks control because which, if any, institutional changes emerge from her or his choices depends on how those choices concatenate with those of others. Consider, for example, whether the "publish or perish" system is in any way changed and, if so, how by a junior faculty member's decision to give teaching first priority. What effects this decision has on the institutionalized role expectations shaping the social relations and abilities and inclinations this person and others within the academic community can form depends, among other things, on: whether other junior people make similar decisions; how students, job candidates, senior faculty, and university administrators react; how each person's choices influence and are influenced by those of others.

Clearly, no individual's plans can control how her or his choices concatenate with those of others. Therefore, no individual can deliberately shape the effects her or his choices have on the sorts of consumable goods and technology produced in her or his society and on its division of labour and system of ownership. However, we have seen that by affecting the evolution of those institutional structures, an individual's choices crucially circumscribe what relations with others and hence what abilities and inclinations it will later be possible for her or him to form.

The upshot of this is that it is impossible to rank alternative institutional arrangements of work by whether they facilitate each individual's achievement of autonomy. On the one hand, the sort of

Meaningful Work, 92 Ethics 634-646 (1982); and Autonomy in the Workplace, JUST BUSINESS: INTRODUCTORY BUSINESS ETHICS (1984). Although I no longer accept these articles' endorsements of the notion of personal autonomy sketched above, I continue to accept their criticisms of the two more common accounts.
self a person becomes depends on the form of social life she or he and the other members of her or his society produce, reproduce, and develop in and through work. On the other hand, no person can individually direct this process of social production by forming, revising, and pursuing her or his own plans. It is therefore impossible to have a work structure wherein each person individually achieves autonomy, or, in other words, controls, through rational planning, the sort of person she or he comes to be in and through work. Since this is impossible, alternative work structures cannot be differentiated by whether they enable persons to achieve this ideal.

4. IMPLICATIONS AND PROPOSED ALTERNATIVE

The preceding criticisms jointly show that any account of the individual’s claims that implies a ranking of institutional arrangements of work must already have been “filled in” to presuppose a ranking. Thus, by arguing about what the individual’s rights are or about the nature of the individual, one cannot arrive at reasoned evaluations of workplace institutions in one’s particular society. To reach such evaluations, one needs to argue directly about what institutions and correlated relations among people should be like.

To pursue this direct argument, it is necessary to reject not only metaethical individualism, but also an additional, widely-shared methodological tenet. This is the tenet that section 1 of this essay labelled “the priority of pure normative theory.” According to this tenet, the primary task, in normative theory is to delineate and justify principles of evaluation that are applicable to all societies at all times. This primary task is to be pursued by the “pure” theorist who neither needs nor should consider how particular institutions operate and are structured in particular societies. Particular facts are to be considered only when the “applied” theorist pursues the secondary task of asking whether and how particular societies’ institutions satisfy the principles of evaluation that the “pure” theorist has laid down.

The problem with these methodological directives is that it is impossible reasonably to identify a given standard as the correct one for evaluating workplace institutions in all places at all times. One could reach such an identification reasonably only if one could do so through reasoning in which one abstracted from all values, preferences, and so forth that one had only because one was a particular member of a particular society. However, the preceding section has shown that reasoning from such an ahistorical standpoint is unable to yield criteria sharp enough for ranking institutional arrangements of work. It follows
that if one is to reasonably settle controversies about what institutional arrangements of work are justifiable for one's society, one cannot begin by asking: what are the standards to which justifiable workplace institutions must conform in all places at all times? Instead, the first question must be: what sorts of workplace institutions make sense for the particular society in which one lives?

Viewing this as the first question means rejecting the distinction between pure and applied normative theory. Concomittantly, attention to facts about the structure and operation of particular institutions cannot be justifiably excused on grounds that one is engaged in basic theoretical work. To argue reasonably about what sorts of institutional arrangements of work make sense within the context of one's particular society, one needs to ask what sorts of arrangements are possible in one's society.

The question of what is possible is not to be narrowly conceived. Relatively few proposals for maintaining or changing a society's institutions are absolutely incapable of realization. To form reasonable assessments of the realizability of various proposals, it is accordingly often necessary to consider what sorts of changes instituting the proposals demand. It is also necessary to consider the costs attendant on those changes.

To pursue these considerations, it is crucial to recognize that the changes involved in instituting a proposed institutional arrangement of work are not only changes in a society's workplace institutions. As indicated in section 2, what sorts of institutional arrangements of work can be developed and maintained in a society depends on the relations with each other and abilities and inclinations that its members have so far formed. It also depends on what sorts of non-work institutions (for example, what sorts of educational systems and family structures) have so far been developed in that society. In turn, a society's existing institutional arrangement of work shapes both its non-work institutions and the social relations and abilities and inclinations its members can form. To argue reasonably, then, about the possibility of instituting and maintaining various institutional arrangements of work in her or his society, the normative theorist must ask: what sorts of changes in both work and non-work institutions, in people's relations with each other, and in people's abilities and inclinations are preconditions for instituting and maintaining those arrangements? The normative theorist must also consider what changes in work and non-work institutions and in social relations and abilities and inclinations are likely to result from instituting and maintaining those arrangements. To advance a reasoned
view about whether a proposed institutional arrangement of work makes sense within the context of her or his society, the normative theorist must go on to assess the costs and benefits involved in all these preconditions and consequences.

By pursuing this alternative to metaethical individualism and to the priority of pure normative theory, we, as theorists, can reach a limited amount of reasoned agreement about what workplace institutions should be like in our own societies. Some room is likely to remain for reasonably disagreeing about what the preconditions and consequences are of instituting most proposed institutional arrangements of work. Nonetheless, there are claims about preconditions and consequences about the truth of which it will not be possible reasonably to disagree. For example, changes in childcare arrangements are indisputably necessary for the elimination of the sexual differentiation in work roles which currently obtains in the United States.

Given agreement on what its preconditions and consequences are, one can justifiably claim that a given institutional arrangement of work makes sense within the context of one's particular society, only if one can delineate the costs and benefits involved in instituting and maintaining it. One must also be able to show that one's judgments as to which effects of preconditions and consequences are costs and benefits and as to how great those costs and benefits are, accord with values (for example, commitments to equality and to due process) that the members of one's society hold or are able to form. The values invoked must in turn be shown to be both internally consistent and consistent with each other. They must also be shown not to rest, as, for instance, the value of individual autonomy described in the preceding section does, on misconceptions about what institutions and relations among people are or can be like. Presumably, some of the institutional arrangements of work realizable in a society are ones that no member could reasonably claim passed these tests. Thus, on this essay's alternative to metaethical individualism and to the priority of pure normative theory, it is possible for people to reach significant, justifiable agreement on which of the institutional arrangements of work that are realizable in their society are justifiable, or, in other words, make sense for them, as members of their society.

At the same time, this essay's proposed alternative to the methodologies of metaethical individualism and the priority of pure normative theory, does not eliminate the possibility of members of a society's reasonably disagreeing about what institutional arrangements of work make sense for them. Disagreement can exist even among persons who agree on what the preconditions and conse-
quences are of instituting all the alternative arrangements under consideration. As indicated in section 2, people can resist, as well as conform to, the demands of their roles within their society's work structure. Although that structure circumscribes the types of resistance of which people can conceive and achieve, struggles between those conforming to and those resisting that structure in turn can change as well as recreate the structure. The upshot is that the very work structure of a society makes it possible for those working with it to differ as to the value of various aspects of the structure. Those differing about this are rationally required to assess differently the costs and benefits involved in maintaining that structure and instituting various alternatives to it. Since this is so, different members of a society are likely to reasonably differ about which of the institutional arrangements of work that are realizable in their society, make sense for them, as members of their society.

5. CONCLUSION

By analyzing the role of work in people's lives (section 2), this essay exhibited the inadequacy of two methodological tenets that inform virtually all work done in normative theory today. Section 3 showed that it is impossible to succeed at the metaethical individualist's attempt to ground an evaluation of institutions in conceptions of the individual or assertions of individual rights. Contra the tenet of "the priority of pure normative theory," section 4 argued that it is impossible to arrive at valid standards for evaluating the institutions of all societies. Nor is it possible to arrive at reasoned standards of evaluation without first attending to facts about the operation of particular institutions within particular societies.

On the basis of these criticisms of "metaethical individualism" and "the priority of pure normative theory," section 4 sketched a proposed, alternative methodology. Instead of considering the nature and claims of the individual or searching for timelessly true standards of evaluation, normative theorists should attend directly to the question of what sorts of institutional arrangements make sense for them, as members of their particular societies. By grounding their attempts to answer this question in a consideration of facts about the operation of their society's institutions, theorists, within a society, can attain a limited amount of reasoned agreement about whether and how their society's institutions should be maintained or changed. They can, in addition, come to understand how and why members of their society differ in their evaluations of institutions.