Sewer Syndicalism: Worker Self-Management in Public Services

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SEWER SYNDICALISM: WORKER SELF-MANAGEMENT IN PUBLIC SERVICES

Eric M. Fink*

Staat ist ein Verhältnis, ist eine Beziehung zwischen den Menschen, ist eine Art, wie die Menschen sich zu einander verhalten; und man zerstört ihn, indem man andere Beziehungen eingeht, indem man sich anders zu einander verhält.1

I. INTRODUCTION

In the late nineteenth and early twentieth centuries, municipal governments in various US cities assumed responsibility for utilities and other services that previously had been privately operated. In the late twentieth century, prompted by fiscal crisis and encouraged by neo-liberal ideology, governments embraced the concept of “privatization,” shifting management and control over public services2 to private entities.

Despite disagreements over the merits of privatization, both proponents and opponents accept the premise of a fundamental distinction between the “public” and “private” sectors, and between “state” and “market” institutions. A more skeptical view questions the analytical soundness and practical significance of these dichotomies. In this view, “privatization” is best understood as a rhetorical strategy, part of a broader neo-liberal ideology that relies on putative antinomies of “public” v. “private” and “state” v. “market” to obscure and reinforce social and economic power relations.

While “privatization” may be an ideological definition of the situation, for public service workers the difference between employment in the “public” and “private” sectors can be real in its consequences3 for job security, compensa-

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1 Gustav Landauer, Schwache Staatsmänner, Schwächeres Volk!, 12 DER SOZIALIST 89, 89 (1910), available at http://www.yumpu.com/de/document/view/9268493/det-sozialist-organ-des-sozialistischen-bundes-02-jg-1910 (“The state is a relationship, a connection between people, one way that people behave toward one another; and we destroy it by entering into new relationships, by behaving differently toward one another.”).

2 For the sake of convenience, I use the term “public services” to refer to services that are provided to the general public within a given locality, regardless of whether the provider of those services is nominally a “public” or “private” entity.

3 Cf. WILLIAM I. THOMAS & DOROTHY SWAIN THOMAS, THE CHILD IN AMERICA: BEHAVIOR PROBLEMS AND PROGRAMS 572 (1928) (“If men define situations as real, they are real in their consequences.”).
tion, and other respects. Yet, in both the “public” or “private” sectors, workers labor under similar conditions of bureaucratic-managerial control, regardless of whether the boss represents a government agency or private company. Against these sibling forms of hierarchical control, this work posits the alternative of “public service syndicalism,”4 under which workers themselves take responsibility for managing public service operations.

Worker self-management5 in public services has been rare in the United States. But examples, both here and elsewhere, do exist. Most recently, the British government, as part of its “Big Society” agenda, has pursued the creation of employee-run public service “mutuals.” Critics within the labor movement and the left have regarded that initiative with suspicion, seeing it as an effort to continue a neo-liberal agenda under the guise of worker empowerment. Yet, the fact that a center-right British government has at least embraced

4 The term public service syndicalism is used here as a shorthand for a model of public service delivery through entities directly controlled and managed by workers (“public service syndicates”). See Kenneth Casebeer, Community Syndicalism for the United States: Preliminary Observations on Law and Globalization in Democratic Production 5 (Miami Law Research Paper Series, Working Paper No. 2011-36, 2011), available at http://ssrn.com/abstract=1966172 (defining “community syndicalism” as a system of “local community start-up finance and operating credit for industrial production combined with democratic worker ownership and control of production”). The choice of nomenclature consciously links the call for public service syndicalism to radical currents within the labor movement emphasizing direct worker control over the workplace. See Mark M. Hager, Bodies Politic: The Progressive History of Organizational “Real Entity” Theory, 50 U. Pitt. L. Rev. 575, 618 (1989) (“Syndicalism’s central ambition was to achieve direct and democratic worker control of industrial management decisions.”); Tom Brown, Principles of Syndicalism, LIBCOM.ORG (Nov. 27, 2006, 4:08 PM), http://libcom.org/library/principles-of-syndicalism-tom-brown (this material was originally published as a series of articles in War Commentary for Anarchism in 1943) (defining “Syndicalism” as “a theory and movement of trade unionism . . . in which all means of production and distribution are brought under the direct control of their workers by the use of direct action, and organized through federations of labor unions; direct political and economic democracy in the workplace and community organized through labor unions and federations, including the abolition of capitalism, social classes, parliamentary government, bureaucracy and political parties”); Gaylord Wilshire, Syndicalism: What It Is, LIBCOM.ORG (Dec. 30, 2007, 3:58 PM), http://libcom.org/library/syndicalism-what-it (this work was originally published as a pamphlet in 1912 in London by Twentieth Century Press) (“The essence of Syndicalism is the control by the workers themselves, be they intellectual or manual, of the conditions of their own work.”).

5 I use the terms “worker self-management” and “worker control” interchangeably in this work. Cf. Sam Dolgoff, Workers’ Control vs Workers’ Self-Management, in The Anarchist Collectives: Workers Self-Management in the Spanish Revolution 1936–1939 app. at 81 (Sam Dolgoff ed., 1974) (distinguishing “workers’ control” (“a strictly limited area of decision-making power, a voice—at best secondary—in the control of the conditions of the work place”) from “workers’ self-management” (“the organization of all workers in the work place into a workers’ council or factory committee . . . which makes all the decisions formerly made by the owners and managers”)). The form of public service syndicalism envisioned here is closer to Dolgoff’s conception of “worker self-management” in its operation, though the idea of implementing this form through legal and policy intervention by the state will no doubt be met with skepticism by orthodox syndicalists. See id. (identifying “self-management” as “the very process by which the workers themselves overthrow their managers and take on their own management and the management of production in their own work place”). See also Wilshire, supra note 4 (“Instead of the State giving industrial control to the workers, as the Socialists fondly hope, the Syndicalists look to the workers taking such control and giving it to the community.”).
the language of worker control in public services suggests that similar experimentation may be politically feasible in the United States as well.

II. THE PUBLIC-PRIVATE PENDULUM

Over the course of the past hundred or so years, the management of public services has passed back-and-forth between government and private entities. In the late nineteenth and early twentieth centuries, the dominant trend was toward government responsibility for services. In the late twentieth century, a reverse trend of privatization gained momentum. In the early twenty-first century, the picture has been mixed, with both continued privatization in some areas and a return to government operation in others.

A. Municipalization

While municipal government in the United States directly provided some public services in colonial times, the general pattern began with private actors providing services under government regulation, evolving into a system of “direct public subcontracting” in the early nineteenth century, before giving way to direct municipal provision in the late nineteenth and early twentieth centuries.

The early twentieth century municipal governments that assumed responsibility for public utilities and services represented the local face of the Socialist and Progressive movements. The differing ideologies of these movements appealed to different core constituencies: Socialists, rooted in the industrial working class and organized labor movement, were devoted to abolishing

7 Id. at 31–32 (reviewing history of sanitation services in New York); id. at 32–33 (street paving); id. at 33–37 (mass transit). See also Paul Jerome Raver, Municipal Ownership in the Last Five Years, 9 J. LAND & PUB. UTIL. ECON. 121, 121 n.1 (1933) (citing “rapid growth in the number and size of municipal enterprises” between 1912 and 1917); Thomas F. Campbell, Municipal Ownership, ENCYCLOPEDIA CLEVELAND HIST., http://ech.case.edu/cgi/article.pl?id=MO (last modified July 21, 1997, 1:13 PM).
10 See JUDD, supra note 8, at 29–35. In some cities, municipal Socialists also drew support, at least temporarily, from middle-class, business-oriented reformers, forming coalitions based on shared concerns about corruption and inefficiency in local government. See id. at 22–23, 36–40.
industrial capitalism in favor of a “Cooperative Commonwealth.”

Yet, in practice, municipal Socialists and Progressives pursued similar agendas in office, most notably the public ownership of utilities and expansion of services. For Progressives, the primary motivations were concerns over
corruption and inefficiency associated with private contractors. They also believed that well-functioning Socialist-run cities could provide a working model for a post-capitalist society:

The Socialist urban utopia entailed democratic ownership and control of public utilities, bakeries, ice houses, coal and wood yards, department stores, slaughter houses, and many other things, all guided by the spirit of community cooperation... Jobs would be provided for the unemployed; free medical care for the aged; public baths, laundries, parks, and playgrounds for the people. Socialists planned to build a showplace, an example of government run by and for the working people.16

Early twentieth century municipal reforms left a legacy of sanitation systems, water and power utilities, parks and recreation facilities, and other amenities that continued to operate under municipal control long after the Progressive and Socialist administrations that created them were a distant memory.17 Before the century’s end, however, economic and ideological developments would threaten this legacy.

B. Privatization

During the last decades of the twentieth century, prompted in part by fiscal crisis18 and encouraged by an ascendant ideology of neo-liberalism,19 a trend

14 See Glaeser, supra note 6, at 6–13, 40. Cleveland mayor Newton Baker expressed this motivation in opining that “the movement for municipal ownership in the United States is the direct and immediate fruit of the misconduct of privately owned public utilities.” Newton D. Baker, Municipal Ownership, 57 ANNALS AM. ACAD. POL. SCI. 188, 188 (1915). George Stewart Brown, then a Baltimore city council member, explained support for municipal ownership among “Progressive Democrats” as resting on three beliefs: “(1) that competition in the public services is impracticable; (2) that municipal ownership will pay, either in cash savings to the taxpayer or in cheaper and better service; (3) that municipal ownership is a political necessity, and will remove the main and most threatening source of political corruption.” George Stewart Brown, Municipal Ownership of Public Utilities, 182 N. AM. REV. 701, 701 (1906); Biographical Directory of Federal Judges: Brown, George Stewart, FED. JUD. CENTER, http://www.fjc.gov/servlet/nGetInfo?jid=3303&cid=999&ctype=na&instate =na (last visited Mar. 12, 2014) (identifying Baltimore City Council service).

15 JUDD, supra note 8, at 22, 30. It was the devotion to unglamorous but efficient public utilities that gave rise to the sobriquet “sewer socialists.” See LOUIS WALDMAN, LABOR LAWYER 260 (1944) (crediting New York Socialist leader Morris Hillquit with coining the phrase “sewer socialism” as a term of derision aimed at Milwaukee Mayor Dan Hoan); see also Bruce M. Stave, The Great Depression and Urban Political Continuity: Bridgeport Chooses Socialism, in SOCIALISM AND THE CITIES, supra note 8, at 157, 176 (citing sewage treatment system established in Bridgeport, Connecticut under Socialist Mayor Jasper McLevy as “the classic example of ‘sewer socialism’ ”). The term has come to be used more favorably to describe the practical accomplishments of municipal Socialists. See, e.g., Joel Kotkin, Editorial, Sewer Socialism: Cities Need a Back-to-Basics Strategy. Catering to Art-Loving Yuppies Just Won’t Work., L.A. TIMES, Sept. 12, 2004, at M1, available at http://articles.latimes .com/2004/sep/12/opinion/op-kotkin12.

16 JUDD, supra note 8, at 32.

17 See Radford, supra note 13, at 867.

emerged toward shifting management and control of public services to the private sector. Privatization has taken various forms, ranging from contracting with private entities to operate and manage certain aspects of services, to selling off services entirely to private organizations.

At the municipal level, privatization reached its peak in the late 1990s. By that time, a substantial majority of cities had engaged in at least some form of privatization, affecting about one-fifth of municipal services overall. While nearly all types of service have been subject to some form of privatization, the extent has varied among different types of service.

Perhaps symbolizing the high-water mark of the privatization wave, in the late 1990s the City of Milwaukee privatized its municipal sewage system, the very embodiment of "sewer socialism." More recently, Milwaukee also considered, but ultimately abandoned, a proposal to privatize its water service.

The fate of water privatization in Milwaukee is consistent with recent trends,
which have seen “reverse contracting” (i.e. governments reassuming direct responsibility for previously outsourced services) matching or outpacing privatizations.28

There is an extensive body of scholarship on privatization, taking a variety of analytical approaches and offering variously favorable and critical appraisals.29 Despite the differences, this work generally shares one notable common feature: an inattention to public service workers. While “taxpayers,” “consumers,” and “the public at large” are typically identified as relevant “stakeholders” in privatization decisions,30 the workers engaged in providing services are mostly absent, appearing only indirectly in claims that civil service rules and public-sector unions impair the efficiency of government-provided services.31 There is little discussion about the effect of privatization on workers, and no consideration of workers’ potential role in service management.

For public service workers, privatization may entail a loss of job protection,32 reduced wages or benefits,33 and otherwise less-favorable working conditions as compared to public employment. For the labor movement, which in the United States has become increasingly concentrated in the public sector,34 privatization threatens a loss of membership and strength.35 Consequently, pub-
lic employees and labor unions have generally been strong opponents of privatization.

III. A CRITIQUE OF PRIVATIZATION AS PURE IDEOLOGY

Proponents and opponents of privatization alike share a core assumption: “that there is some distinction between the performance of certain functions by government institutions and performance by private ones, and . . . that the distinction is both real and of very deep significance.” Yet, for both socio-legal analysts and service workers, the public-private dichotomy may be a distinction with limited difference, bearing neither the normative weight it carries in jurisprudential theory, nor the analytical weight it carries in economic argument. As a practical matter,

the basic choice in the organization of society is not between organization by government bureaucracy on one hand, and markets on the other—a choice that is assumed in the privatization literature. Rather, the basic choice is between two kinds of bureaucracy, which really do not differ much at all.

This is particularly true from the perspective of workers. Under both government and private management, employees carry out tasks assigned by, and under the supervision and control of, managers who are appointed by, and ultimately accountable to, capital asset owners. In their day-to-day experiences on the job, public and private sector employees alike have little if any self-determination.

36 Sagers, supra note 29, at 38.
37 Id. at 41. See also Alexander Volokh, Privatization and the Elusive Employee-Contractor Distinction, 46 U.C. Davis L. Rev. 133, 147 (2012) (noting the “deep similarity” between direct government management of public services and management by private contractors, and arguing that there is no “non-contingent distinction between the two types of agents”).
38 Sagers, supra note 29, at 38. Cf. MAX WEBER, ECONOMY AND SOCIETY: AN OUTLINE OF INTERPRETIVE SOCIOLOGY 956 (Guenther Roth & Claus Wittich eds., 1978) (observing that “bureaucracy” represents the characteristic organizational form of both the modern state agency and the modern business enterprise).
39 A crucial defining feature of bureaucratic organization is the “principle of office hierarchy” entailing “a clearly established system of super- and subordination in which there is a supervision of the lower offices by the higher ones.” WEBER, supra note 38, at 957 (emphasis omitted); see also id. at 980 (“The bureaucratic structure goes hand in hand with the concentration of the material means of management in the hands of the master.”). Weber emphasizes that “[i]t does not matter for the character of bureaucracy whether its authority is called ‘private’ or ‘public.’ ” Id. at 957.
41 See Running Government Like a Business, supra note 32, at 40 (arguing that the lack of “a genuine voice in important decisions about their work lives and the power to make that voice heard” typifies the situation of employees in the United States). See also id. at 54–55 (quoting employees of the federal Transportation Security Administration who cite unilateral managerial control and the lack of “voice on the job” as a primary motivation for seeking union representation). To be sure, there are meaningful differences between public- and private-sector employment. Most significantly, unlike private-sector workers, who (outside the dwindling unionized segment of the workforce) can typically be fired at-will, public-sector workers generally enjoy some protection against arbitrary discharge. See id. at 47–50. Public-sector workers are also far less likely to face strong resistance from their employers when they seek to organize a labor union. Id. at 53.
That is not to say that the public-private distinction lacks any socio-legal significance. To the contrary, it “plays an important legitimating role in society and . . . conceals prevalent and very significant maldistributions of power.”\textsuperscript{42} As Karl Klare explains, “[t]he primary effect of the public/private distinction is . . . to inhibit the perception that the institutions in which we live are the product of human design and can therefore be changed.”\textsuperscript{43} In the realm of work, the legitimate role of the public-private distinction plays out in the beliefs “that industry and commerce can only function on a largely authoritarian basis,” and that “the basic principles of democracy do not apply in the workplace.”\textsuperscript{44}

This ideological function hides behind the typical framing of privatization as a merely neutral technocratic device for achieving economic efficiency and enhanced performance in existing programs and services.\textsuperscript{45} Yet, privatization also has the “potential to rearrange policy landscapes and to affect underlying distributions of power among democratic actors and institutions.”\textsuperscript{46} In this sense, privatization is not a value-free economic tool, but very much a political strategy, facilitating substantive changes in policy goals and outcomes, without the same checks and balances, oversight, and accountability that apply to government agencies.\textsuperscript{47}

From this perspective, privatization is best understood as one element of the multifaceted project of neo-liberalism,\textsuperscript{48} which has held hegemonic sway over political, economic, and legal discourse and practices for more than three decades.\textsuperscript{49} In concrete terms, neo-liberalism “is a shorthand term used to denote a particular set of economic and political policy proposals”, notably “free trade, privatization, reduced government spending, and deregulation of capital flows.”\textsuperscript{50} Neoliberalism’s broader significance, however, is ideological: a set of “cultural conceptions that governments and financial agencies attempt to apply and enforce along with and through economic and political practices.”\textsuperscript{51}

In this broader ideological sense, neo-liberalism represents a “sophisticated class struggle on the part of the upper strata [in society] to restore . . .

\textsuperscript{42} Sagers, supra note 29, at 41.
\textsuperscript{44} Id.
\textsuperscript{46} Id. at 722.
\textsuperscript{47} Id. at 718–19.
\textsuperscript{48} See Harvey, supra note 19 (identifying privatization as one of “four main features” of capitalist “accumulation by dispossession” under neoliberalism); id. at 65 (“Neoliberals are particularly assiduous in seeking the privatization of [state-owned] assets.”).
\textsuperscript{49} See Neoliberalism as Creative Destruction, supra note 20, at 27–29. As Harvey explains, for a “system of thought to become dominant” its “fundamental concepts . . . become so deeply embedded in commonsense understandings that they are taken for granted and beyond question.” Id. at 24.
\textsuperscript{50} Karen Ann Faulk, If They Touch One of Us, They Touch All of Us: Cooperativism as a Counterlogic to Neoliberal Capitalism, 81 ANTHROPOLOGICAL Q. 579, 587 (2008).
\textsuperscript{51} Id.
class dominance.” 52 Neoliberalism asserts that the only legitimate social institution is the market, and that the only legitimate social actor is the individual, particularly the individual as consumer. 53 There is no room, in the neo-liberal worldview, for non-market institutions or collective action. Within that worldview, privatization appears a “common sense” solution, because any alternative is either conceived to be inherently and irredeemably deficient (as with public services administered by government and staffed by public employees organized and represented through unions) or utterly beyond the conceptual pale (as with public services administered and staffed by self-managing workers themselves). In turn, the practice of privatization bolsters the hegemony of neo-liberal ideology, by further delegitimizing non-market collective-action modes of service provision. 54

IV. BEYOND “PUBLIC” V. “PRIVATE”: WORKER SELF-MANAGEMENT AS AN ALTERNATIVE TO BUREAUCRATIC-MANAGERIALISM

A venerable radical tradition has long advocated for direct control and management of productive enterprises by workers themselves. 55 This tradition emphatically rejects “the belief that employees lack the capacity collectively to organize and govern complex industrial enterprises.” 56 The argument for worker control is two-fold. Most immediately, self-management is a more democratic alternative to both privately-owned and state-owned modes of bureaucratic-managerial control. 57 More broadly, the exercise

52 Neoliberalism as Creative Destruction, supra note 20, at 41.
53 Id. at 22–23.
54 COLIN CROUCH, THE STRANGE NON-DEATH OF NEOLIBERALISM 21 (2011) (likewise identifies privatization as a core element of neo-liberalism). Consistent with the suggestion that the public/private distinction is less fundamental than commonly supposed, see supra notes 37–38 and accompanying text, Crouch argues that “privatization” and “marketization” of public services under neo-liberalism has not, in practice, transferred responsibility and control to a truly private market. CROUCH, supra. Rather, what passes for “privatization” commonly entails a hybrid structure, under which government relies on private entities to finance and manage public services, through contractual arrangements that permit the private contractors to pocket service revenues while insulating both the private contractors and the governmental authorities from meaningful accountability through either the democratic process or market discipline. Id. at 94–96.
56 See Klare, supra note 43.
57 See DOW, supra note 40, at 27–32 (discussing democracy as normative basis for worker control). Without going so far as syndicalists or Marxists in seeking the abolition of capitalist forms of enterprise, progressive reformers likewise seek to promote workplace democracy by institutionalizing “a . . . labor voice in . . . corporate and workplace governance” through “works councils,” “codetermination,” and the like. Richard Michael Fischl, Labor Law, the Left, and the Lure of the Market, 94 MARQ. L. REV. 947, 951–52 (2011); see also Kenneth
of worker control within particular enterprises is a prefigurative practice for attaining the goal of “building a new world within the shell of the old.”58 In this dual sense, worker control “operates as a counterlogic to the individualized and materialist conception of citizenship promoted by neoliberal capitalism.”59

A. Worker Control in Theory

Dow offers a comprehensive theoretical and empirical assessment of worker control as an alternative mode of firm governance.60 He distinguishes four ideal-types of firm governance, based on two structural-functional dimensions: ownership of capital assets, and control over production.61 Along the first dimension, the distinction is between “private” and “public” ownership.62 Along the second dimension, the distinction is between control by providers of capital (i.e. owners) and control by providers of labor (i.e. workers).63 In this typology, a capital-managed firm is “capitalist” if assets are privately owned and “socialist” if assets are publicly owned, while a labor-managed firm is “laborist” if assets are privately owned and “self-managed” if assets are publicly owned.64

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58 See, e.g., Alberto R. Bonnet, The Political Form at Last Discovered: Workers’ Councils Against the Capitalist State, in OURS TO MASTER AND TO OWN, supra note 55, at 66, 66 (arguing that “the workers’ council showed an inherent potential to overcome the division between the economic and the political spheres,” and thus a means of “overcoming the capitalist state itself.”); Sheila Cohen, The Red Mole: Workers’ Councils as a Means of Revolutionary Transformation, in OURS TO MASTER AND TO OWN, supra note 55, at 48, 49 (“[T]hese worker-generated structures simultaneously challenge the capitalist state and create the potential template for a new, worker-run society organized along the same directly democratic, accountable lines.”); Donny Gluckstein, Workers’ Councils in Europe: A Century of Experience, in OURS TO MASTER AND TO OWN, supra note 55, at 32, 33 (“[W]orkers’ councils . . . provide a glimpse of an alternative to capitalism” and “represent a transition to the future, constituting a radically different kind of power.”); PANNEKOEK, supra note 55, at pt. 1, § 7, available at http://libcom.org/library/workers-councils-1-pannekoek (“The workers’ councils are the form of self-government which in the times to come will replace the forms of government of the old world.”); Antonio Gramsci, Unions and Councils, http://www.marxists.org/archive/gramsci/1919/10/unions-councils.htm (last visited Mar. 13, 2014) (Trans. Michael Carley, originally published in L’Ordine Nuovo on Oct. 11, 1919) (“The factory council is the model of the proletarian state.”); see also MICHAEL FIELDING & PETER MOSS, RADICAL EDUCATION AND THE COMMON SCHOOL: A DEMOCRATIC ALTERNATIVE 149 (2011) (discussing “prefigurative practice” and citing “the syndicalist phrase, ‘to build a new world in the shell of the old’”).

59 See Faulk, supra note 50, at 608–09 (discussing worker cooperatives in the Argentine “recuperated businesses movement”).

60 See generally Dow, supra note 40.

61 Id. at 2–3.

62 Id.

63 Id. Dow’s analysis proceeds from a neo-institutionalist conception of “a firm . . . as a set of incomplete contracts among input suppliers,” within which “the right to make decisions not previously determined by contracts must be assigned to some person or group.” Id. at 4–5 (assigning residual control rights is the focus of the second dimension in Dow’s typology).

64 Id. at 3 tbl.1.1.
The discourse of privatization typically presumes that, regardless of whether service operations are in public or private hands, control rights will be exercised by management on behalf of asset owners. That is, the choice is presumed to be between control by government managers (in cases where government directly provides services) or control by private managers (in cases where government sells, leases, or contracts for management of service operation).

Dow’s formulation highlights the option of worker self-management as an alternative to both state-managed and privatized services. In this respect, he echoes a longstanding radical-left critique of government ownership as an incomplete and inadequate alternative to capitalist exploitation of labor.65

Reviewing and critiquing the most common normative justifications for worker control, Dow66 suggests that the most persuasive are those based on the values of dignity and community.67 The authoritarian nature of traditional employment relations, whether in the private or public sector, undermines these values.68 In contrast, worker self-management enhances the dignity of workers by liberating them from subaltern status, and nurtures solidarity among workers by restructuring their work within a social relation of mutual responsibility.69

In the dominant conception of a “public-private distinction,” the workplace is located in the “private” sphere, where “public” values like dignity and community are inapplicable. Dow’s argument for extending these values into the workplace implicitly rejects the public-private bifurcation, and instead recognizes that the workplace is not sharply bounded-off from other sites of social existence:

[P]eople care about social relationships apart from their consequences for individual welfare . . . . Employment may be only one dimension of life, but it is an important one; sanctions may not involve the firing squad, but being fired is painful; and nor-

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65 See, e.g., Bonnet, supra note 58, at 72 (noting distinction “between the socialization of the product . . . and the socialization of the production process”). For Korsch, the attempt to implement “socialization” through “statization” (under the Social Democratic leadership in post-WWI Germany, or under municipal sewer socialist administrations in the US) represented only a “simple change of employer.” Id. at 73. “The worker as such,” Korsch argued, “doesn’t win more freedom; his way of life and work won’t be more humanized because the manager appointed by the owners of private capital is replaced by an official appointed by the state government or the municipal administration.” Id. at 74; see also ISTVÁN MÉSZÁROS, BEYOND CAPITAL: TOWARDS A THEORY OF TRANSITION xvii (1995) (identifying “the socialist mode of control, through the self-management of the associated producers” as an alternative to both the “global capitalist” and “Stalinist Soviet” systems); Wilshire, supra note 4 (“The Syndicalist views both nationalisation and municipalisation of industry with more or less indifference.”).

66 Dow, supra note 40, at 23–44.

67 Id. at 36.

68 See id. (“The fundamental problem is that such firms involve a unidirectional authority relationship between a boss and subordinate, where one commands and the other obeys. Such master-servant relationships are by their nature not conducive to dignity or self-respect on the part of the subordinate.”).

69 Cf. Gramsci, supra note 58. (“[C]ollaboration to produce well and usefully develops solidarity, multiplies the links of affection and fraternity. Everyone is indispensable, everyone is at their post, and everyone has a function and a post . . . . The existence of the council gives workers the direct responsibility of production, it draws them to improving the work, instills a conscious and voluntary discipline, creates the psychology of the producer, of the creator of history.”).
nally it is hard to turn down a job if one doesn’t know when the next offer will arrive. Under these circumstances, the relational aspects of unaccountable authority appear morally suspect, and encouragement of more [labor managed firms] (or even an outright ban on [capital managed firms]) might seem to be an appropriate response.70

B. Worker Control in Practice

There has been only limited experience with worker-run public services in the United States. Outside the United States, worker control in public services has been put into practice in at least two significant, and very different, cases: in Spain during the civil war of 1936–39, and in Great Britain under the current Conservative/Liberal-Democrat coalition government’s Big Society program.

I. Worker-Run Public Services in the United States

The most fertile ground for experiments in worker-controlled public services in the United States has been in public education. Several teacher-run schools have been established, in some cases with the support of local teachers unions.71 Such schools currently operate in large cities including New York,72 Los Angeles,73 Detroit,74 Milwaukee,75 Boston,76 and Newark,77 and in smaller districts like LeSueur-Henderson, Minnesota.78

70 Dow, supra note 40, at 40.
One false start in the direction of worker-run public services emerged in New York City in 2010. The New York City Taxi and Limousine Commission (“TLC”)79 announced a “Group Ride Vehicle Pilot Program,” under which private commuter-van services would replace bus lines formerly operated by the Metropolitan Transit Authority (MTA)80 in Brooklyn and Queens.81 Transit Workers Union Local 100 (“Local 100”), which represents MTA bus drivers, sought an injunction to halt the pilot program.82

Alongside its legal challenge, Local 100 also submitted a proposal to operate its own commuter-van service under the pilot program.83 The union’s plan was to operate the service under a non-profit corporation, TWU Express, and to hire laid-off bus drivers at prevailing union wages.84 The TLC appeared poised to accept the Local 100 bid.85 However, shortly after the court denied Local 100’s request for an injunction,86 the union abandoned its plan to operate the commuter-van service.87
2. Public Service Syndicalism in Civil War Spain

A dramatic example of worker control in public services occurred during the Spanish Civil War (1936–39). In Barcelona and the surrounding region, workers assumed control over what had been privately-owned commercial and industrial enterprises, including (but by no means limited to) those engaged in public utilities and services.\(^8^8\) These included water, gas, and electric utilities;\(^8^9\) telephone services;\(^9^0\) railways,\(^9^1\) ports,\(^9^2\) and municipal transit;\(^9^3\) health services;\(^9^4\) and even hairdressing shops.\(^9^5\)

Despite its historical significance, the Spanish experience—emerging under the extreme circumstances of wartime, and brought about spontaneously by a working class with a deep and rich anarchist and syndicalist tradition—might appear to have limited precedential value in the very different conditions of the United States today. A more recent case, in a social and economic context more closely resembling our own, offers better support for the premise that it may be feasible to implement some form of worker self-management in public services here.

3. Public Service Mutuals in Great Britain

In 2010, the British government launched a new program of “mutualization,” under which public service workers would assume managerial responsibility from government authorities. The initiative began with a pilot program under which management of selected service entities was transferred from public authorities to employee-controlled “Pathfinder mutuals.”\(^9^6\) The pilot entities

\(^8^8\) Gaston Leval, Collectives in the Spanish Revolution 227 (1975); Augustin Souchy, Collectivizations in Catalonia, reprinted in The Anarchist Collectives: Workers’ Self-Management in the Spanish Revolution 1936–1939, supra note 55 at 86, 86 [hereinafter Collectivizations]; Augustin Souchy, Workers’ Self-Management in Industry, reprinted in The Anarchist Collectives: Workers’ Self-Management in the Spanish Revolution 1936–1939, supra note 55 at 78, 78, 82 [hereinafter Self-Management in Industry]. In many cases, the workers simply took over operations after the private owners and their managers fled in the wake of fighting. Self-Management in Industry, supra, at 78. Leval, supra, at 246 offers a “piquant” anecdote involving assumption of control by workers at the Barcelona tramway system, which had been owned by the General Tramways Company:

All the top level personnel had left, and the syndical delegation found in the offices only the lawyer instructed to represent the company and to parley with them. . . . [The company’s lawyer] received [the delegation] most cordially, declaring that he accepted the new situation, and even that, as a lawyer, he was putting himself at the service of the workers.

\(^8^9\) Leval, supra note 88, at 240; Collectivizations, supra note 88, at 91.

\(^9^0\) Collectivizations, supra note 88, at 88.

\(^9^1\) Leval, supra note 88, at 253–54; Collectivizations, supra note 88, at 89.

\(^9^2\) Leval, supra note 88, at 264; Collectivizations, supra note 88, at 90–91.

\(^9^3\) Leval, supra note 88, at 245; Collectivizations, supra note 88, at 86.

\(^9^4\) Leval, supra note 88, at 264.

\(^9^5\) Collectivizations, supra note 88, at 93.

“cover a wide variety of sectors, including health, social care, youth services, school support services and further education.”

The stated motivation for the program was to “challenge traditional public service structures and unleash the pent-up ideas and innovation that has been stifled by bureaucracy.” The hope was that the mutual model would “liberate public sector workers and ‘introduce radical shifts in ownership, accountability and financing.’” Proponents anticipated that the change would lead to enhanced service quality for users, and enhanced working experiences for employees.

Despite the vaunted benefits for workers, the mutualization plan came under fire from labor unions representing public service employees. In response to the government’s announcement of the Pathfinder Mutual program, one union leader asserted, “There is no appetite from the public sector workforce or the public generally for these so-called co-operatives. It is insulting to think that these DIY co-operatives, set up on the cheap, can replace a well-established and joined-up public sector.”

In particular, these critics were unpersuaded by the analogy to employee co-operatives in the commercial sector. To think that cancer treatment can be equated with the values of the retail sector beggars belief. And to keep repeating the words ‘John Lewis’ as the reasoning for these changes is just mangling and perverting the English language. You go to John Lewis to buy a sofa or a fridge, not to have chemotherapy.

Dismissing claims that the initiative would promote service enhancements and worker autonomy, another union leader contended that, “[t]he coalition’s resort to mutuals as an alternative to directly provided public services is largely an attempt to save money on reduced pay, conditions, and pensions.”


99 Id. (quoting Francis Maude).


101 See, e.g., Cooper, supra note 100 (citing greater engagement and motivation as benefits for employees in mutuals); Le Grand, supra note 97, at 3 (citing improved “well-being,” “satisfaction,” and “working conditions” as benefits for employees).

102 Wintour, supra note 98 (quoting Unite joint general secretary Tony Woodley).

103 Id.

For such opponents, the mutualization policy represents little more than an effort to mask Thatcherism with a cooperative face. Behind the rhetoric of social enterprise and worker empowerment they see the same project of dismantling what remains of the welfare state and demolishing what remains of the trade union movement.105

Indeed, the Big Society program has roots in efforts, dating back to the 1980s, to identify “alternatives to the central state as the supplier of various types of public goods.”106 On the political right, a key proponent was British Conservative Party figure James Douglas, who argued for increasing the role of the so-called “Third Sector” as an alternative to state provision, favored by the social-democratic left, and for-profit enterprise, favored by then-dominant strands of the New Right.107 He specifically identified “mutual associations” among the Third Sector organizations that could replace government as providers of benefits and services.108 In this sense, the turn from privatization to mutualization does not represent a repudiation of Thatcherism, so much as a continuation of its core project—disabling “source[s] of countervailing power in the state”109—by other means.110

Labor opposition also reflected concerns about the material impact of mutualization on pay, benefits, and job security for service workers. Specifically, while pensions for existing workers will be unaffected by the move from

Heather Wakefield, head of local government for Unison, a health and local government workers union).

105 See Andrew Gamble, The Free Economy and the Strong State: The Rise of the Social Market Economy, 16 SOCIALIST REG. 1, 14–16 (1979) (discussing “the political onslaught on social democracy and its main organizational support, the trade unions” as a key element of neo-liberal ideology and policy); Alan Ware, The Big Society and Conservative Politics: Back to the Future or Forward to the Past?, 82 POL. Q. 82, 83–84 (2011) (noting the Thatcher government’s goal of “try[ing] to reduce the power of a whole range of intermediate organisations,” including unions).

106 Ware, supra note 105, at 82.

107 Id.

108 Id. See also Johnston Birchall, The Big Society and the ‘Mutualisation’ of Public Services: A Critical Commentary, 82 POL. Q. 145, 145–46 (2012) (“[T]he idea of devolving provision of public services to organisations owned variously by employees, service users and local communities has been on the political agenda since the mid-1980s under the previous Conservative government headed by Margaret Thatcher and then by John Major.”). The “New Labour” government of the 1990s also embraced a “new mutualism” under which control of formerly-nationalized services was transferred to non-governmental bodies with employee participation. Id. at 145–46 (discussing community-employee trusts in healthcare and leisure services); Jane Wills, A Stake in Place? The Geography of Employee Ownership and Its Implications for a Stakeholding Society, 23 TRANSACTIONS INST. BRIT. GEOGRAPHERS 79, 79, 81 (1998) (discussing employee and employee-management buyouts in coal, bus, and railway maintenance sectors).

109 Ware, supra note 105, at 85; Gamble, supra note 105, at 14–16, 19–20 (noting importance to the neo-liberal “social market strategy” of action by the Thatcherite “strong state” to “intimidate and demoralize the labour movement, so weakening its political opposition”).

110 Indeed, at least some mutualization advocates recognized that “the perception that supporting the transition to the mutuals model constitutes privatization via another route” represented a potential political threat to the government’s program. COOPER, supra note 100, at 6 (warning that “the competitive dynamics of the market in which [mutuals] are operating may be complicated by government attempts . . . to protect smaller players from acquisition by larger incumbents for political reasons”).
government employment to the mutual setting, new employees will not enjoy such protection. In addition, without policies and practices in place to ensure access to capital, cultivation of management capacities, and other supportive resources, there are concerns about the ability of employee mutuals to survive in competition with larger, better-capitalized market participants.

V. TOWARD A LEGAL FRAMEWORK FOR PUBLIC SERVICE SYNDICALISM

Radical forms of worker control “tend to arise ‘spontaneously,’ without conscious preparation.”

Historically, worker control emerges in the wake of a “major crisis” through the autonomous effort of workers already exhibiting “a high level of independent organization.” The case of worker-run public services in Civil War-era Spain exemplifies this pattern.

Yet, the case of public service mutuals in Britain suggests the possibility of promoting some form of worker self-management in public services through deliberate policy and legal intervention. The British case further suggests that experiments in worker-controlled public services may be politically feasible in the United States as well.

A legal framework to promote worker self-management in public services could entail a mix of preferences in favor of worker-run service contractors, along with educational and training programs, and financial support for worker-run entities. This framework draws on existing policy in the area of government contracts, as well as past practices and proposed legislation aimed at supporting worker ownership in the manufacturing sector.

When contracting for goods and services, government at the federal, state, and local levels commonly grants preferences in favor of certain bidders to promote social policy goals. Preferences in favor of small businesses—predicated on beliefs about the significance of small business for maintaining a “competitive free-enterprise system,” promoting entrepreneurship and innova-

111 Birchall, supra note 108, at 155; but see Le Grand, supra note 97, at 14 (citing “US evidence” that “employee-owners generally do not sacrifice pay or benefits . . . and . . . are more likely . . . to have diversified retirement plans”).

112 Birchall, supra note 108, at 155–56; Cooper, supra note 100, at 6; Jonathan Bland, Co-Operatives UK, Variety to Get Serious: International Lessons for Developing Public Service Mutuals 19–22 (2011) (discussing importance of access to capital, successful organizational models, and other forms of legal and logistical support as factors in success of public service mutuals, and noting that “[t]he UK policy context does not emerge particularly well from the comparison with” similar programs in other European countries); Le Grand, supra note 97, at 20–21, 33–34 (describing “Social Enterprise Investment Fund” and “Mutuals Support Programme” intended to support financial and human capital capacities of new mutuals and recommending further efforts in that regard).

113 Cohen, supra note 58, at 54. By way of example, Cohen cites the emergence of workers councils during the events of May 1968 in France, a development that was “spontaneous in the sense that the official parties and unions never took the initiative.” Id. (quoting Daniel Singer).

114 Gluckstein, supra note 58.
tion, and spurring job creation—are well established and enjoy substantial popular support. Preferences in favor of minority- or female-owned businesses have been used as a tool for promoting equal economic opportunity. State and municipal governments grant preferences for businesses that are locally-based or employ local residents, to foster the development and stability of local economies.

In similar fashion, state and local governments could enact preferences in favor of worker-controlled entities when contracting for public services. Indeed, such preference would also advance the same policy goals underlying existing preferences for small, local, and minority- or female-owned businesses. By their nature, public service syndicates would be locally-based small enterprises, employing local residents, because “women and African Americans constitute a disproportionately large share of the state and local public-sector workforce,” policies favoring public service syndicates would also promote affirmative action goals. At the same time, unlike traditional preferences, public service syndicalism would also promote workplace democracy and worker empowerment.

Another way to support worker self-management in public services is through education and outreach to raise awareness of this model among workers and the general public, and technical assistance for workers starting or run-

116 See id. at 1078 (“The U.S. government has a long-established policy favoring small business by preferentially allocating government contracts to such entities.”); Max V. Kidalov, Small Business Contracting in the United States and Europe: A Comparative Assessment, 40 PUB. CONT. L.J. 443, 445–46 (2011) (“Throughout the twentieth and the early twenty-first centuries, the United States has been a global leader in small-business-friendly procurement policies.”).
ning public service syndicates. At least in the early stages, state and local
governments can provide these resources, either directly or through grants to
non-governmental organizations.\footnote{See Worker Ownership, Readiness, and Knowledge Act or WORK Act, S. 3421, 112th Cong. §§ 2(c)(1)–(2), (d) (2012) (establishing program within US Department of Labor to provide education, outreach, technical assistance, and training to support the creation of worker-owned enterprises, and providing for grants to fund such efforts).} As with contracting preferences, this
would not represent a radically new policy or government role, but rather a
refocusing of existing programs to include support for worker-controlled enter-
prises. As a network of public service syndicates develops, they will be able to
take on this role themselves, sharing information and advice based on their own
experiences.

Government can also provide direct loans, loan guarantees, or other forms
(establishing a unit within the US Treasury Department to provide loans for employee buyouts of existing private firms).} Once again, there is
precedent for this government role, for example in government programs that
provide start-up loans for small businesses.\footnote{See, e.g., SBA Loan Programs, U.S. SMALL BUS. ADMIN., http://www.sba.gov/loan programs (last visited Mar. 13, 2014).} Indeed, state and local govern-
ments have facilitated worker buyouts of private firms through loans and loan

Finally, tax law represents another vehicle by which government can sup-
port worker self-management in public services. Federal and state governments
can offer tax incentives for transferring managerial control\footnote{See I.R.C. § 4975(e)(7) (2012) (defining “employee stock ownership plan”); I.R.C. § 409 (2012) (establishing “[q]ualifications for tax credit employee stock ownership plans”).} in existing enti-
ties to workers,\footnote{See Dow, supra note 40, at 76–83. Proponents have commonly cited economic democracy and broader wealth distribution as justifications for according favorable legal treatment to ESOPs. See Michael W. Melton, Demythologizing ESOPs, 45 Tax L. Rev. 363, 366 (1990); Sean M. Anderson, Risky Retirement Business: How ESOPs Harm the Workers They Are Supposed to Help, 41 Loy. U. Chi. L.J. 1, 23 (2009). Anderson observes that more recent arguments in favor of ESOPs emphasize enhanced worker satisfaction, reduced labor-man-
agement conflict, and increased productivity, rather than economic democracy and equality.} and accord preferential tax treatment for public service
syndicates.
VI. Conclusion

In the current US political climate, the prospects of implementing a robust form of public service syndicalism will surely appear remote. Yet, the example of Britain suggests that at least measured steps in that direction might be politically feasible here. Particularly at the state and municipal levels, there may be opportunities to engage in “novel social and economic experiments” with worker-run public services. Through such experimentation, public services under worker control can serve as demonstration projects to promote workplace democracy and worker empowerment more broadly.

Anderson, supra, at 25. Because ESOPs do not necessarily entail majority ownership by employees, nor confer management rights to worker-owners, proponents of worker control regard them as limited at best. See Dow, supra note 40, at 81; Casebeer, supra note 4, at 7. Despite their limitations as an approach to worker control, however, ESOPs do highlight the possibility of using tax law as an instrument for encouraging alternative organizational forms.

127 See Running Government Like a Business, supra note 32, at 56 (commenting on the limited probability of success of more modest proposals to enhance “employee voice” within the existing framework of capitalist business organizations); Casebeer, supra note 4, at 8 (“[T]he ascendency of the political Right under the banner of the ‘Tea-Party’ in local and state government currently in the United States probably makes Community Syndicalism a political impossibility.”).