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Firm Authority and Workplace Democracy: a Reply to Jacob and Neuhäuser

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Workplace democracy, which is attracting renewed political and philosophical interest, is often advocated on two intertwined views. The first is that the authority relation of employee to firm is akin to that of subject to state, such that reasons favoring democracy in the state likewise apply to the firm. The second is that, when democratic controls are absent in the workplace, employees are liable to objectionable forms of subordination by their bosses, who may then issue arbitrary directives on matters ranging from pay to the allocation of overtime and to relocation and promotion.

Daniel Jacob and Christian Neuhäuser (2018) have recently submitted these views to careful criticism in this journal.[1] Jacob and Neuhäuser (JN, for short) argue, on the one hand, that the parallel between firms and states is unwarranted. For, unlike managerial authority, state authority is final. The state grants firms their legal status and subjects their authority to its regulations, which citizens in democracies already control, such that they could render democracy in the workplace mandatory if they wish. They also argue, on the other hand, that suitable workplace regulation alongside meaningful exit options may suffice to prevent, with no need for democratization, objectionable forms of workplace subjection. Neither view offers, they resolve, compelling reasons to believe that justice requires that firms be democratic.

I here inspect these criticisms in turn, and offer reasons for skepticism. A preliminary contention, before starting off, is that, on their definition, democracy requires that all those involved in a decision wield an equal say. Cooperativism, where all workers hold equal rights over board decisions, would make the cut. But other forms of workplace participation, like works councils or codetermination, where workers share board representation with shareholders, would not. This definition is insufficiently inclusive, however. It yields false negatives not just because cooperatives routinely comprise non-workers with board representation, workers without it, and uneven allocations of voting rights. Applied to the political realm, it also renders polities that depart from strict equality in voting, like those with first-past-the-post voting systems or with representation of states instead of individuals at federal level,

[1] All page references are to this article, where they mainly target Landemore and Ferreras (2016), regarding the first view, and Breen (2015) and González-Ricoy (2014a), regarding the second. They also consider a third view, according to which meaningful work may require workplace democratization, which I here put aside due to space constraints.

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undemocratic. Moreover, most of the contributions that JN target hold a more inclusive definition, one on which codetermination and cooperativism are forms of workplace democracy on a continuum. For the sake of the argument, however, I here follow their definition and assume that only cooperativism qualifies as workplace democracy proper.

1 Firm/State Analogy

The first view that JN inspect is that that managerial authority is similar, and similarly objectionable when democratic controls are missing, to the kind of authority that state officials wield. For example, Anderson (2017) has argued along these lines that corporations are dictatorships writ small, for civil liberties inside them are often severely limited, behavior exactingly monitored, and noncompliance can result in instant exile. And Dahl (1985: 112) famously argued that managerial power and state power are similar enough such that "*If* democracy is justified in governing the state, then it must *also* be justified in governing economic enterprises."

JN believe that the analogy is unwarranted—enough so to dispose of Dahl's inference rule. Unlike firms, they note, states wield final authority. Sovereign states have ultimate power to determine which rules are binding, and overriding of non-state rules and directives, within their jurisdiction. Firms, by contrast, are largely creatures of state power, which grants their legal status and constrains the permissible content of their directives. The normative upshot of this disanalogy, JN contend following McMahon (2008), is that "If private companies operate within a democratic state that regulates their actions, then it is legitimate for these companies to exercise authority within the limits set by these democratic regulations" (932). If, for example, lawmakers with final authority to command firm democratization are democratically elected by and accountable to citizens, and decide not to command it, then there is "not a requirement of justice to democratize firms," JN claim, or not one that may be grounded on the purported parallel between firms and states.

This is an important issue, one that is often neglected.[2] So, by raising it, JN usefully contribute to ongoing debates on the normative status of firms and their appropriate regulation. Indeed, it may have weightier implications than JN claim. The fact that states, unlike firms, wield ultimate authority also entails that no higher court of appeal is available to their subjects (Kolodny 2014: 306). Arguably, this renders the absence of democratic controls over bosses' directives less objectionable. For, unlike in the case of state directives, which have final authority, in the case of bosses' directives a higher court of appeal is available.

Two reasons command skepticism about the significance of this difference, however. One is that whatever requirement of justice to democratize firms may exist, such requirement is not removed, or not entirely so, by the democratic provenance of the decision not to discharge it. Democracies may no doubt legitimately choose not to render democratization of firms mandatory, just as they may legitimately regulate marriage, schooling, or religious practice in various ways that do not include democratization. But whatever requirement of justice may exist in these realms does not hang, or not entirely so, on the democratic credentials of the policymaking that yields their regulation, and cannot be entirely disposed of by such credentials.

[2] Exceptions include Walzer (1983), González-Ricoy (2014b), Kolodny (2014), and Cordelli (2017).

Second, and more important, it is doubtful that the fact that firms lack ultimate authority, and that employees can resort to a higher court of appeal, suffices to block the firm/state analogy, rendering nondemocratic managerial authority unobjectionable. For hence claiming yields unwarranted results when we replace the state with lower state levels as the benchmark for comparison, as Dahl (1985) and Walzer (1983) noted. It entails that democracy in such levels, like municipalities or states in federations, is superfluous once democracy at the upper level is in place and a higher court of appeal exists. But this is unwarranted. For, despite the upper-level regulations to which they may be submitted, municipal and state officials have authority that is to some extent open-ended and discrete from that of upper-level officials. And the same is true of firms, whose authority over employees is by definition open-ended to adapt with flexibility to the innumerable contingencies of the productive process. Once the state bestows separate authority on lower levels, be they public or private, their democratic provenance and regulation falls short of rendering such authority entirely unobjectionable (González-Ricoy 2014b; Cordelli 2017). Democratic accountability to their subjects is also required, in the body politic and in the firm.

2 Objectionable Interference

The second view that JN examine is that, when democratic controls are absent, employees are liable to arbitrary forms of interference, as republican proponents of workplace democracy often hold (Breen 2015; González-Ricoy 2014a). When they are not accountable to workers, bosses may capriciously allocate overtime and reschedule their working hours, subject them to verbal abuse or silent treatment, discriminate against them in promotion and compensation, or relocate them with no prior notice. And they may also arbitrarily affect their off-hour lives, such as when workers are denied promotion or assigned unpleasant tasks for their off-duty religious activities or Facebook posts (Anderson 2017). On this view, democratization is required to ensure that workers' interests are appositely tracked in intrafirm decisions and to minimize arbitrary managerial authority, on the clock and off duty. The view, which has spurred substantial discussion in recent years, is not new. Marx, for example, championed cooperativism for having shown that the "despotic system of the *subordination of labour* to capital can be superseded by the republican … *association of free and equal producers*" (cit. Leipold 2017: 180).

JN remain unpersuaded. They first separate out objectionable forms of arbitrary interference from unobjectionable ones, and claim that only arbitrary forms of interference that trespass important aspects of workers' lives and integrity are objectionable. It is subjection to such forms of arbitrary interference that republicans should only worry about, they also claim. Now, it is not entirely clear which forms of arbitrary workplace interference count as unobjectionable, as JN offer no example other than a fanciful case of two philosophers being disturbed by a loud family in the park, a case that involves neither cooperation nor power imbalances, as employment relations do. And it is also moot that arbitrary interferences that do not trespass workers' integrity, like not being permitted to chew gum at work or to wear a skirt just because your boss dislikes it, with no economic rationale, are entirely unobjectionable. These forms of arbitrary interference are no doubt less objectionable than others, such as being denied promotion or assigned unpleasant tasks for your race or gender. But it is unclear from JN's analysis why they should be considered unobjectionable and unworthy of being addressed, as republicans commonly think that all forms of arbitrary interference ideally should.

Let us nonetheless assume, for the sake of the argument, that it is possible to separate out unobjectionable forms of arbitrary interference from objectionable ones, and that we should only care about the latter. JN next argue that objectionable forms of arbitrary interference by bosses may be avoided with no need for workplace democratization. When meaningful exit options and suitable workplace regulations are in place, they argue, objectionable forms of arbitrary interference are unlikely. Meaningful exit options are available, in turn, when generous welfare provision, perhaps including an unconditional basic income, is in place, such that the costs of quitting are less cumbersome. The idea presumably is that meaningful exit options pose a de facto check on managerial authority. For, on pain of failing to attract valuable workers or seeing turnover rates raise, bosses then face a powerful incentive not to abuse their authority. Suitable workplace regulations, on the other hand, include institutionally guaranteed basic labor rights and legal instruments to enable worker voice in firm decisions, like works councils and codetermination.

2.1 Exit Rights, Workplace Regulation, and Workplace Democracy

To inspect these alternatives to workplace democratization, a clarification is first in order. JN hold that proponents of workplace democracy often neglect the importance of valuable exit options to counter objectionable interference, such that they envisage workplace democratization as a suitable replacement for the absence of said options (934). However, it bears clarifying that none of the contributions that JN target neglects the importance of valuable exit options or thinks that workplace democracy could compensate for the absence of such options (Anderson 2017; Breen 2015; González-Ricoy 2014a). They rather hold that valuable alternatives are necessary, albeit insufficient, to avoid abusive interference. They are insufficient, they hold, because factors other than lacking valuable alternatives may lock workers in all the same, including emotional ties to coworkers and customers, quasi rents that seniority and firm-specific skills may yield, and the significance of work for social esteem and self-respect, such that ceasing to work may not be worth considering for most workers, even if a generous basic income was on supply (see also Hsieh 2005). But the need for means other than the existence of valuable alternatives, they hold, does not render freedom to quit and the need for such alternatives superfluous. For they are critical, for the reasons noted above, to counter objectionable deployment of the workforce, in nondemocratic and democratic firms alike.

Next consider workplace regulation—or "workplace constitutionalism," as it is sometimes referred to—which JN contend may suffice, in tandem with valuable exit options, to avoid objectionable managerial interference. JN assume, as all proponents of workplace democracy they target also do, that employment contracts are particularly incomplete: instead of attempting to specify the terms of the relationship for every possible state of the world, they bestow on employers the authority to direct workers as the unspecified contingencies of the productive process unfold. JN also accept that employers are thereby able to abuse such authority, arbitrarily interfering with workers' integrity as a result. But they hold that comprehensive regulation of the relationship "ensures that the remaining scope of arbitrary interference is not objectionable, because it does not harm or threaten to harm workers" (936). Now, workplace regulations, including anti-discrimination law, "for cause" dismissal, health and safety standards, collective agreements, and effective unions are no doubt indispensable to mitigate managerial abuses. No proponent of workplace democracy claims otherwise. But are they enough?

A first concern is that separating managerial discretion and abuses thereof, such that workplace regulation prevents objectionable forms of arbitrary interference but not permissible

ones, is not easy. Take a personal assistant's contract. Should the lawmaker stipulate, and could courts enforce, that her boss may permissibly ask her to hire a singer for a party but not a stripper, to get him lunch but not weed, to perform unpleasant tasks but not purposely unpleasant tasks, to observe a dress code but not to hide a crucifix, a tattoo, or a wedding ring?[3] The concern is not just that attempting to foresee every conceivable abuse would be unrealistic, costly for workers to litigate, and difficult to enforce by a court. It is also that regulatory checks may prevent some but not all abuses, given the complexity of production and the incomplete nature of employment contracts—unless the right that yields these abuses is removed in the first place. You can't have your regulatory cake and eat it too.

A related concern is that workplace regulation, if fully comprehensive, may cancel the reason why firms exist in the first place (Singer 2018). On the Coasian view that JN endorse, firms emerge because replacing market exchanges between independent contractors with an administrative hierarchy, where workers are hired and the employer is granted open-ended authority to direct them as contingencies arise, is often more efficient. An exacting specification of the terms of the relationship, including a legal obligation that contracts be detailed about workers' tasks, as JN (935) suggest, would render employers' authority drastically less open-ended, inducing them to resort to the market.

A third concern is that codetermination, which JN favor over workplace democracy as a means to "make sure that [workers'] voices will be heard and interests represented" (935), may not be entirely appropriate to this effect. Available evidence, which I have surveyed elsewhere (González-Ricoy 2018), is mixed. But various studies on the German model of codetermination—the existing variant most favorable to workers, as they share board representation with shareholders on a near-parity basis—find small or no incidence on issues presumably of interest to workers, like pay, capital intensity, or having more lines of business to diversify the risk of job loss in the event of firm failing.

To sum up, attempting to foresee, regulate, and sanction every conceivable managerial abuse is unrealistic and probably counterproductive—and forms of participation short of workplace democracy, like codetermination, may fall short of securing that workers' interests be appositely tracked. Workplace democratization does not neglect the importance of other instruments, like basic labor regulations as well as securing that valuable exit options be available, to check objectionable interference by bosses. It rather seeks to combine them, like constitutional democracy does in the political realm, with direct accountability of management to those subject to their authority, such that bosses have appropriate incentives to include workers' interests in intrafirm decisions—and to do it as the innumerable eventualities of production unfold, rather than at the outset of the relationship.

3 Conclusion

JN's criticisms of parallel-based and republican views that justice requires firm democratization are unpersuasive, I have argued. This, however, does not yield an indefeasible case for workplace democracy. For justice may also require that alternative goals that may pull in an opposite direction, like occupational choice or economic efficiency, be likewise pursued. And feasibility considerations should also be factored in, as JN aptly note. The two views they

[3] On these and related issues regarding religious freedom and free speech in the workplace see, respectively, Vickers (2008) and Barry (2007).

target offer, in brief, compelling but pro tanto reasons for workplace democratization, reasons that need to be balanced against competing claims that justice and political opportunity may also make.

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