

Little Republics: Authority and the Political Nature of the Firm*

Iñigo González-Ricoy

Universitat de Barcelona

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Business corporations, we often hear, are political entities akin to the state in many respects, including their revenue, workforce, influence, and internal powers. This should come as no surprise. For early corporations like the English East India Company and modern constitutional republics were both modeled on the medieval chartered town and granted similar powers, such as the authority to pass regulations, command, adjudicate, sanction, and even to imprison and wage war.¹ Corporations, Blackstone noted, are “little republics.”²

Present-day corporations no doubt wield more limited powers than the East India Company did. But their parallels with the state, and in particular as to the authority that business managers and state officials exert, are still significant, as some argue and I will here defend in qualified form. One implication of this view is that if the relation of

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¹ David Ciepley, “Beyond Public and Private: Toward a Political Theory of the Corporation,” *American Political Science Review* 107, no. 1 (2013): 139-58; “Is the US Government a Corporation? The Corporate Origins of Modern Constitutionalism,” *American Political Science Review* 111, no. 2 (2017): 418-35.

² William Blackstone, *Commentaries on the Laws of England in Four Books* (Philadelphia: J.B. Lippincott, [1753] 1893), 468.

employee to firm is akin to that of subject to state, then the theory of the firm as a nexus of purely private, authority-free contracts may err. Another is that corporate authority may then be, absent accountability to its subjects, as objectionable as unaccountable state powers, such as those that autocracies wield. And considerations favoring democracy in the state may likewise apply to the workplace. Corporations in laissez faire capitalism, Elizabeth Anderson has accordingly argued, are dictatorships writ small.³ For civil liberties inside them are heavily constrained, behavior is minutely monitored, and failure to obey can result in instant exile.

Efforts to model the normative standing of the firm on that of the state are not new.⁴ Yet it has not been until recent years that a complete political theory of the firm has been attempted⁵—a view that is germane to recent analyses of managerial authority as a form of public authority, to calls for workplace democratization based on the firm/state analogy, to republican approaches to the firm, and to claims that corporate law be subsumed within the scope of public law.⁶

³ Elizabeth Anderson, *Private Government. How Employers Rule Our Lives (and Why We Don't Talk about It)* (Princeton: Princeton University Press, 2017), 37-41.

⁴ See, for example, James G. March, “The Business Firm as a Political Coalition,” *Journal of Politics* 24, no. 4 (1962): 662-78; Michael Walzer, *Spheres of Justice* (New York: Basic books, 1983); and Robert A. Dahl, *A Preface to Economic Democracy* (Berkeley: University of California Press, 1985).

⁵ Jeffrey Moriarty, “On the Relevance of Political Philosophy to Business Ethics,” *Business Ethics Quarterly* 15, no. 3 (2005): 453-71; Pierre-Yves Néron, “Business and the *Polis*: What Does it Mean to See Corporations as Political Actors?,” *Journal of Business Ethics* 94, no. 3 (2010): 333-52; Ciepley, “Beyond Public and Private;” Iñigo González-Ricoy, “Firms, States, and Democracy: A Qualified Defense of the Parallel-Case Argument,” *Law, Ethics and Philosophy* 2 (2014): 32-57; Anderson, *Private Government*; Isabelle Ferreras, *Firms as Political Entities: Saving Democracy Through Economic Bicameralism*. (Cambridge: Cambridge University Press, 2018); Abraham Singer, *The Form of the Firm. A Normative Political Theory of the Corporation* (New York: Oxford University Press, 2019).

⁶ See, respectively, Christopher McMahon, *Public Capitalism. The Political Authority of Corporate Executives* (Philadelphia: University of Pennsylvania Press, 2012); Karl P. Schaff, “Democratic Rights in the Workplace,” *Inquiry* 55, no. 4 (2012): 386-404; Antoni Domènech, *El eclipse de la fraternidad*

For all its relevance for the parallel to hold true, however, these analyses rarely inspect the nature of corporate and state *authority*—understood, as I here will understand it, in its empirical or *de facto*, rather than its moral, sense: as the ability to issue commands whose content is generally, if not exceptionlessly, conformed to.⁷ For example, in the most complete study of the firm/state analogy to date, H el ene Landemore and Isabelle Ferreras examine the main objections to the analogy, with only the entry and exit conditions of employment relations bearing on this matter.⁸ And those who focus on the nature of corporate authority often assume, with little further inspection, that the kind of authority that managers and state officials wield is similar, as both can issue commands backed by sanctions, overlooking important discontinuities between the two.

Yet, to examine how compelling the analogy between firm and state is, we do not only need to look into whether corporate authority and civil authority are similar. We also need to inspect whether they are similar enough in those aspects of the authority relation that could generate a *pro tanto* requirement that corporate authority be subjected to similar regulations to those legitimate states abide by, including rule-of-law constraints, civil liberties, and accountability to subjects. In particular, we need to examine the specific aspects of civil authority that, while deemed crucial for yielding a requirement of this kind in the state, are often considered alien to, or very differently present in, the workplace.⁹

(Barcelona: Cr tica, 2004); Kent Greenfield, *The Failure of Corporate Law* (Chicago: University of Chicago Press, 2006).

⁷ Niko Kolodny, “Rule Over None II: Social Equality and the Justification of Democracy,” *Philosophy & Public Affairs* 42, no. 4 (2014): 287-336, 295; Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), 26-27.

⁸ H el ene Landemore and Isabelle Ferreras, “In Defense of Workplace Democracy: Towards a Justification of the Firm-State Analogy,” *Political Theory* 44, no. 1 (2016): 53-81.

⁹ Jan Narveson, “Democracy and Economic Rights,” *Social Philosophy & Policy* 9, no. 1 (1992): 29-61; Richard Arneson, “Democratic Rights at National and Workplace Levels,” in *The Idea of Democracy*, ed.

Four putative differences between corporate and state authority are relevant, each prompting a separate argument against the analogy. First, while both state officials and employers wield sanctioning powers, only the former can permissibly use, or threaten to use, physical coercion in order to elicit compliance (the *argument from coercion*). Second, while citizens fail to choose the state jurisdiction in which they are born, and can only emigrate by incurring high costs, employees voluntarily submit to bosses' authority and can walk away with ease (the *argument from entry and exit costs*). Third, while state authority is sweeping, profoundly affecting a broad range of basic interests, employers can merely issue directives over a narrow domain, affecting basic interests less severely (the *argument from breadth and depth*). Finally, while the authority of sovereign states is final, the firm's authority is constrained by and subordinated to it. Moreover, in the case of incorporated firms, the authority that their management wields is also a creature of the state, which grants the legal personhood of the corporation and its powers (the *argument from final authority*).¹⁰

Given that each of these arguments may undermine, if not entirely dispose of, the parallel between firm and state, we need to carefully inspect them and their consequences,

David Copp, Jean Hampton, and John E. Roemer (Cambridge: Cambridge University Press, 1993); John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996); Claudio López-Guerra, "Against the Parallel Case for Workplace Democracy," *Revue de philosophie économique* 9, no. 1 (2008): 11-28; Kolodny, "Rule Over None II;" Daniel Jacob and Christian Neuhäuser, "Workplace Democracy, Market Competition and Republican Self-Respect," *Ethical Theory and Moral Practice* 21, no. 4 (2018): 927-44; Roberto Frega, "Against Analogy: Why Analogical Arguments in Support of Workplace Democracy Must Necessarily Fail," *Democratic Theory* 7, no. 1 (2020): 1-26.

¹⁰ Business firms and corporations are distinct. The term "firm" loosely refers to business organizations in their numerous varieties, whereas "corporation" technically refers to the legal person that structures the activities and powers of certain firms. Jean-Philippe Robé, "The Legal Structure of the Firm," *Accounting, Economics, and Law* 1, no. 1 (2011): 1-86; Ciepley, "Beyond Public and Private," 142-45. The distinction is generally of little import here, so I will use the terms interchangeably. Where I do not, as in section 5, I explicitly refer to incorporated firms.

if any, for how workplace governance should be regulated. Thus, after unpacking the two dominant views of the employment relation in the next section, sections 2-5 examine these arguments in turn. I argue that although there surely are differences between Saddam Hussein and Montgomery Burns, as Pierre-Yves Néron puts it, such differences fail to undermine the analogy, either because they are not significant enough to do so, or because the particular feature on which they hinge is not decisive for how authority, in the state and in the firm, should be regulated to be legitimate.¹¹ A *pro tanto* requirement exists, I thus claim, that corporate authority be held to regulations comparable to those that legitimate states satisfy, including civil liberties, rule-of-law constraints, and accountability to subjects. In undertaking this task, this article seeks to contribute not only to recent work on the political theory of the firm and workplace justice, but also to broader normative debates over which particular features of authority, in the state and elsewhere, are necessary or sufficient to prompt a requirement that those who wield it be held to regulations of the above kind.

The conclusion I draw is liable, however, to an important criticism, which section 6 addresses. Given that firms, unlike states, exist because they yield more efficient economic outcomes than market exchanges between independent contractors do, efficiency considerations override, or significantly constrain, the regulatory requirements that the firm/state analogy prompts. My response, in brief, is that, although considerations of efficiency should critically inform how firms are regulated, they need not defeat such regulatory requirements, and not just because many have null or even positive economic effects. Efficiency assessments are themselves constrained by independent considerations of justice, which in the case of the employer-employee relation are particularly weighty and hard to defeat.

¹¹ Néron, “Business and the *Polis*,” 338.

1. Two views of the employment relationship

Before inspecting the arguments against the parallel between the relation of employee to firm and that of subject to state, it is worth clarifying the former relation by comparing it to market exchanges between independent contractors. In a typical workplace, rank-and-file employees are on the receiving end of a hierarchy of command, from the corner office to the shop floor, in which bosses wield control over the material details of their job. Managers direct janitors and assemblers, cashiers and couriers, harvesters and stevedores by establishing when, where, and with whom they should perform which tasks, with employees obeying, when disagreement arises, on pain of demotion or dismissal.

What sort of relationship is this? Responses to this question come in roughly two forms. The first comprises views that conceive of intrafirm relations as essentially different from market exchanges between independent contractors, including self-employed workers.¹² On this view, employees work under someone else's authority, whereas independent contractors organize their schedule as they see fit and do their job with no direction from others, like their suppliers and customers, with whom they trade. In principle, nothing forbids production from being entirely undertaken through market

¹² Ronald H. Coase, "The Nature of the Firm," *Economica* 4, no. 16 (1937): 386-405; Oliver Williamson, *Markets and Hierarchies* (New York: Free Press, 1975); Eric Van den Steen, "Interpersonal Authority in a Theory of the Firm," *American Economic Review* 100, no. 1 (2010): 466-90. Within philosophy, see Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988); Nien-hê Hsieh, "Rawlsian Justice and Workplace Republicanism," *Social Theory and Practice* 31, no. 1 (2005): 115-142; Anderson, *Private Government*; Julian Jonker, "The Workplace as a Cooperative Institution," unpublished manuscript. This distinction is also central to much classic thinking about work, including that of Cicero, Harrington, Smith, Kant, and Marx. Kant, for example, distinguished workers who sell "that which is his" from those "allowing others to make use of him" (and defended that only the former be enfranchised). Immanuel Kant, *Political Writings*, ed. Hans S. Reiss (Cambridge: Cambridge University Press, 1970), 7.

exchanges, in a series of one-off contracts where independent contractors buy inputs and produce an output that is sold to other contractors at the next stage of production. Yet, on Ronald Coase's influential view of the firm, if production solely occurred through market exchanges, the parties would have to renegotiate the terms of the exchange whenever an alteration in market conditions were to arise.¹³ The transaction costs of such renegotiation, including those of discovering what the relevant prices are, of negotiating, signing, and enforcing new contracts, and of any opportunistic behavior of the relevant parties, could be significantly reduced by replacing such exchanges with an administrative hierarchy, so that labor inputs are internalized—to wit, employees are hired—and a manager, or a chain of managers, wields open-ended authority to direct and redeploy workers as customers line up, machinery breaks down, coworkers call in sick, and other contingencies of production unfold. Firms arise in a market economy, then, when the transaction costs of using market exchanges between independent buyers and sellers for production are higher than replacing them with intrafirm command by an employer. “If a workman moves from department *Y* to department *X*,” Coase reckons, “he does not go because of a change in relative prices, but because he is ordered to do so.”¹⁴

On this view, then, what characterizes the firm is the authority of the employer, whose directives are backed by a particular bundle of sanctions. In entering the firm, the worker offers, in exchange for a salary, to conform to the employer's directives and to supply an adequate level of effort. But compliance and effort are difficult to measure and costly to enforce by a court. So internal enforcement mechanisms are used to minimize shirking.¹⁵ Some are positive, like promotion or pay raises. And others are negative, including the

¹³ Coase, “The Nature of the Firm;” Williamson, *Markets and Hierarchies*.

¹⁴ Coase, “The Nature of the Firm,” 387.

¹⁵ Samuel Bowles and Herbert Gintis, “A Political and Economic Case for the Democratic Enterprise,” *Economics and Philosophy* 9, no. 1 (1993): 75-100, 80-81.

power to dismiss, but also to reduce hours, cut wages, assign unpleasant tasks, give the silent treatment, or transfer to distant locations. On this view, what characterizes the firm is, in brief, that it comprises open-ended authority, which employers exert backed by the threat of penalty.

On these two matters—commanding powers and sanctioning powers—a second cluster of views, notably including the theory of the firm as a nexus of contracts, starkly departs from the first. Start with commanding powers, which are here conceived of as alien to the firm. As Alchian and Demsetz famously put it:

“It is common to see the firm characterized by the power to settle issues by fiat, by authority ... This is delusion. The firm ... has no power of fiat, no authority, no disciplinary action any different in the slightest degree from ordinary market contracting between any two people ... Telling an employee to type this letter rather than to file that document is like telling a grocer to sell me this brand of tuna rather than that brand of bread. I have no contract to continue to purchase from the grocer and neither the employer nor the employee is bound by any contractual obligations to continue their relationship.”¹⁶

The firm is nothing more, on this view, than a bundle of contracts between suppliers of inputs, including capital and labor, akin to market exchanges.¹⁷ And no intrafirm authority as such exists. Bosses no doubt wield power over their staff, just as customers

¹⁶ Armen Alchian and Harold Demsetz, “Production, Information Costs, and Economic Organization,” *American Economic Review* 62, no. 5 (1972): 777-95, 777.

¹⁷ “The private corporation or firm is simply one form of legal fiction which serves as a nexus for contracting relationships,” as claimed by Michael C. Jensen and William H. Meckling, “Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,” *Journal of Financial Economics* 3, no. 4 (1976): 305-360, 311.

wield power over the grocers from whom they buy. For bosses can influence employees' behavior so as to get them to act as they wish, just as customers can influence the grocers from whom they shop. But neither bosses nor customers wield authority. True, employees only have one job whereas grocers have a thousand customers, so the impact on a grocer of being "fired" by one of their customers is incomparable to the impact on an employee of being fired by their boss.¹⁸ But employees, like customers, voluntarily enter contractual relations and can walk away anytime and with no reason offered, wholly at will.

Moreover, while bosses, like customers, wield sanctioning powers, these are no monopoly of the employer. Indeed, on this view, bosses' and employees' sanctioning powers are often deemed symmetrical. For employees can "fire" their bosses, by quitting their jobs, just as bosses can fire employees. "The employee 'orders' the owner of the team [of production]," Alchian and Demsetz add, "to pay him money in the same sense that the employer directs the team member to perform certain acts. The employee can terminate the contract as readily as can the employer."¹⁹

What these two views—the authority-based view and the contract-based view—normatively entail, however, is not obvious. Certainly, on the authority-free, purely contractual view of the firm, regulatory constraints on intrafirm relations, including basic labor rights, are typically seen as a breach of contractual freedom, and as a hindering of market efficiency, and are accordingly resisted. Yet it is simply untrue that the Coasian, authority-based view necessarily entails a more considerate approach to regulatory constraints. Some have no doubt used this view in favor of such constraints, sometimes including a request that corporate authority be subjected to democratic control. But others

¹⁸ Oliver Hart, "An Economist's Perspective on the Theory of the Firm," *Columbia Law Review* 89 (1989): 1757-74, 1771.

¹⁹ Alchian and Demsetz, "Production," 783.

have used it to uphold the unfettered authority of employers, backed by employment at will, and to oppose, by appeal to economic efficiency, antidiscrimination laws, health and safety standards, or board-level employee representation.²⁰ The basic idea is that checks on managerial authority would reintroduce some of the costs that lead firms to replace market exchanges in the first place, yielding outcomes that are inferior not just for the firm, but also for the economy as a whole. The rationale is, in brief, efficiency-based. For instead of invoking freedom of contract to oppose workplace regulations, as nexus-of-contracts and libertarian theorists sometimes do, antiregulatory proponents of the Coasian view invoke economic efficiency (more on this in section 6). But the normative implications they draw are similar.

To assess the firm/state analogy, we hence need to examine the particular forms of authority, if any, that employment relations involve. And we also need to inspect whether such authority appropriately resembles state authority, so as to generate a *pro tanto* requirement to subject firms to regulations like those that legitimate states satisfy. I will proceed by considering four central traits of state authority: its coercive nature, its nonvoluntary character, the breadth and depth of its effects, and the final legal standing of its directives.²¹ The reason why I single out these traits is that, although they are often

²⁰ Among the former, see Bowles and Gintis, “A Political and Economic Case;” Hsieh, “Rawlsian Justice and Workplace Republicanism;” and Iñigo González-Ricoy, “The Republican Case for Workplace Democracy,” *Social Theory and Practice* 40, no. 2 (2014): 232-254. Among the latter, see Richard Epstein “In Defense of the Contract at Will,” *The University of Chicago Law Review* 51, no. 4 (1984): 947-982 and Richard A. Posner, *Economic Analysis of Law* (New York: Wolters Kluwer Law & Business, 2014). For an attempt to integrate the two approaches, see Singer, *The Form of the Firm*.

²¹ See the bibliography inspecting each of these in the relevant sections below. For general discussion, see Christopher W. Morris, *An Essay on the Modern State* (Cambridge: Cambridge University Press, 1998), ch. 2; Kolodny, “Rule Over None II;” Chiara Cordelli, “Democratizing Organized Religion,” *Journal of Politics* 79, no. 2 (2017): 576-90; Iñigo González-Ricoy and Jahel Queralt, “Political Liberties and Social Equality,” *Law and Philosophy* 37, no. 6 (2018): 613-38.

deemed crucial for rendering state authority objectionable if unsuitably justified and regulated (the rationale often being that state authority may otherwise be arbitrarily deployed or thwart basic interests), they are also often considered to be lacking, or very differently present, in the firm—to the point, nexus-of-contracts theorists reckon, of questioning whether intrafirm authority exists to begin with.

To illustrate the task ahead, it is useful to bring up the all-subjected principle, which says that all those who are subjected to state authority should be granted a democratic say over its decisions, and which some have sought to extend from the state to the workplace, on the assumption that employees are similarly subjected to intrafirm authority.²² Here I will make little use of this principle, as it fails to target regulatory requirements, such as civil liberties and rule-of-law constraints, that are central to our analysis. But the difficulties that extending the principle to the workplace encounters are instructive. For if the firm's authority relation to its employees is noncoercive, easy to elude, narrow in scope, and subordinated to an upper authority that citizens in democracies already control, then it is unclear whether employees are subjected to such authority in the way required by the principle, and the firm/state analogy may seriously err. We need to closely inspect, in sum, each of these purported differences, which the remainder of this article does.

2. The argument from coercion

We start off with what is often considered the chief attribute of state authority: coercion. Some may argue that conceiving of *de facto* authority as sufficing to generate a

²² Joshua Cohen, "The Economic Basis of Deliberative Democracy," *Social Philosophy & Policy* 6, no. 2 (1989): 25-50; Andreas Bengtson, "Where Democracy Should Be: On the Site(s) of the All-Subjected Principle," *Res Publica*, Online First.

requirement that those who wield it be held to controls comparable to those states are held to, including accountability to subjects, is not discriminating enough. It yields false positives. For realms like the family or the church, where authority is likewise exerted, need not be illegitimate absent safeguards that are as exacting as those that legitimate states observe. The absence of democracy in families and houses of worship, for example, does not prompt a legitimate complaint, or not one that is as stringent as the complaint that the absence of democracy in the state prompts.

So perhaps the reason why the state, to be legitimate, requires especially demanding justification and safeguards is that it is coercive.²³ More precisely, the state is coercive in a physical and monopolistic sense in which corporate authority, or authority in the family or church, is not. No third party within its purview—barring those authorized by the state itself, such as private security companies, and with significant constraints anyway—can exert physical coercion. “The coercive nature of law,” Edmundson states while describing this view, “sets the bar of legitimacy at a higher level than is normally necessary for the legitimacy of individual or concerted private activity.”²⁴

Those who point to this difference between the state and other realms, including firms, are surely onto something. Yet, to assess the argument from coercion, according to which the difference undermines the analogy between firm and state, we need to undertake two tasks. First, we need to define and compare more closely corporate and state coercion. Second, we need to inspect whether force is required in the first place to generate a requirement that those who are in positions of authority be liable to regulatory norms that are as exacting as those legitimate states satisfy.

²³ Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986), ch. 3; Rawls, *Political Liberalism*, 136-37.

²⁴ William A. Edmundson, *Three Anarchical Fallacies* (Cambridge: Cambridge University Press, 1998), 90.

Start, however, with Alchian and Demsetz's more radical claim that employers and employees wield comparable sanctioning powers. Unlike state officials and subjects, whose sanctioning powers are uneven, on this view, employees can "fire" those from whom they draw a paycheck, by giving notice, just as employers can fire employees. "The employee can terminate the contract," they argue, "as readily as can the employer."²⁵ But this is imprecise at best. Employees can no doubt quit. And this option may sway, depending on each party's bargaining position, how employers behave. But quitting is different from firing an employer while staying in the firm. The sanctioning powers that employers and staff wield are unequal, and their relation is nonreciprocal, because employers can remove employees from their position in the firm, whereas the opposite is not true.

Let us now turn to our first task: are the sanctioning powers that *business managers* and *state officials* wield comparable? A common response is that state officials' directives are coercive, whereas directives issued by managers are not. But, depending on what we mean by "coercion," an admittedly elusive term, this is questionable. On Nozick's classic analysis, for example, we can say that P coerces Q when she credibly communicates to Q that she intends to bring about some undesirable consequence if Q does A and, at least partly as a result of this threat, Q does not do A.²⁶ On this view, bosses routinely coerce employees into attending to customers, mopping floors, or climbing scaffolds, which employees do, at least in part, to avoid the undesirable consequences that their boss could bring about should they retort, like Herman Melville's Bartleby does, that they would prefer not to.

²⁵ Alchian and Demsetz, "Production," 783.

²⁶ Robert Nozick, "Coercion," in *Socratic Puzzles* (Cambridge, Mass.: Harvard University Press, 1997), 16-22.

Bosses can bring about two types of negative consequences (which need not always be made explicit, as they are typically common knowledge). One type includes consequences in which potential rewards, like promotion or pay raises, are denied. But, given that such consequences fail to make employees worse off than they were before, if we take their current situation as the relevant baseline, it is debatable whether they really are coercive. Consequences of another type are less contentious. For these involve outright penalties, such as reducing employees' hours, cutting their wages, demoting them, assigning them purposely unpleasant tasks, transferring them to distant work locations, and ultimately dismissing them. The threat of dismissal is, in fact, the example that Nozick himself uses to illustrate coercion: "You threaten to get me fired from my job if I do A, and I refrain from doing A because of this threat ... I was coerced into not doing A."²⁷

The crucial point, however, is not whether bosses' powers really are coercive. The point is whether the negative consequences that they can bring about in order to carry out their threats are comparable to those that public authorities can bring about, given that demotion or dismissal is where disobeying your boss gets you at worst, whereas physical force is what you may get when you disobey the state. The state can send men with guns if you hesitate to abide by its orders, Jan Narveson argues, while firms cannot.²⁸ It can imprison you for certain felonies, while firms cannot. And it can give you the death penalty, at least in some places, while firms cannot. The reason why this kind of coercion is special, and arguably undermines the firm/state analogy, is that physical force preempts any other type of consideration, including attempts at rationally persuading others, which is why we have reason to be especially reluctant to bestow this kind of authority on people

²⁷ *Ibid.*, 16.

²⁸ Narveson, "Democracy and Economic Rights," 53.

over whom we have no control. What renders state coercion special is, in brief, that it is backed by a power to subject others to physical force—a power that nullifies, *manu militari* if need be, competing reasons for action that those on the receiving end of the authority relation may have. “Everyone has a plan until they get punched in the face,” as Mike Tyson’s dictum has it.

But is this power always, or necessarily, more preemptive than alternative sanctioning powers? Maybe physical force is special, and fatal to the firm/state analogy, because it is primitive: the kind of sanction that even a child or an animal can grasp.²⁹ But there are small children who, given the choice, accept spankings over groundings. Not to mention martyrs. And in the Middle Ages, excommunication would have been weightier than physical punishment.³⁰ This is not to say that force does not render compliance more likely. Sometimes, in fact, it entirely removes the option of doing otherwise, like when the state incarcerates you. But, when a choice is available, the threat of force is neither necessarily a game stopper nor always more preemptive than threats that do not involve force.

There are really two issues here, one comparative and the other not. The comparative issue is that, although threats that involve no physical force (like those bosses make) may display varying degrees of success in securing compliance, depending on the person and the circumstances, they may often be as preemptive as those involving force, as I have argued. The second issue is if threats that involve no force, regardless of how they compare to threats that involve force, may be preemptive enough to generate a requirement that they be likewise constrained. I think that, at least in some cases, they are—in the sense that if the state coercive toolkit only included this kind of threat, then

²⁹ Kolodny, “Rule Over None II,” 307.

³⁰ I am grateful to an anonymous reviewer for this suggestion.

some constraints, albeit perhaps less exacting ones, would be warranted all the same. Threats of dismissal are a case in point. Given how unemployment bears on people's interests—for it may yield destitution, ostracism, depression, and “scarring” effects that extend throughout workers' careers—it is not just that threats of dismissal may be as preemptive as some forms of force. They are also preemptive enough to generate a *pro tanto* requirement that at-will termination, whereby an employer can discharge an employee for no reason and without warning, be barred.

More fundamental, however, is our second task. Assume that there are relevant differences between how preemptive corporate and state sanctioning powers generally are. Is physical force, or coercion *simpliciter*, necessary to prompt a requirement that extant authority be subjected to regulatory controls, including democratic ones? I think not. Otherwise, a range of state decisions that involve no force, or coercion for that matter, would be permissibly exempted—implausibly—from regulations such as civil liberties and democratic control. This is true of symbolic actions, such as when the state makes a public apology.³¹ And it is also true of a range of nonsymbolic state actions, like decisions to alter the physical environment or to make use of state property.³² Despite the fact that no coercion or force is involved in such decisions, none of the above regulations seems to be any less required to render them legitimate.

Moreover, suppose the state needed no coercion whatsoever to elicit compliance, in the unlikely but conceivable event that its laws were wholly just and that no motivational shortage among those duty-bound by them existed.³³ Given that state directives would nonetheless bear on people's interests, and would do so in an ongoing and pervasive way,

³¹ Cordelli, “Democratizing Organized Religion,” 580.

³² Kolodny, “Rule Over None II,” 307.

³³ Christopher W. Morris, “State Coercion and Force,” *Social Philosophy & Policy* 29, no. 1 (2012): 28-49, 35.

as I argue below, a requirement of the above kind, and in particular for democratic control over such directives' content, would exist all the same.

Permission to use force is, in brief, sufficient yet unnecessary for yielding a requirement that extant authority, in the state and elsewhere, be checked. This is not to say that differences between how preemptive state and corporate sanctioning powers are should not inform their suitable regulation. In principle, sanctioning powers that involve force require, if they are to be permissible, more exacting regulation. But, given that they are sometimes no more preemptive than those involving no force, and that the latter are often preemptive enough anyway, we have reason to think that suitable regulation, including rule-of-law principles of publicity, prospectivity, stability, and due process, should likewise apply to employers' powers over pay, promotion, and rescheduling—as collective agreements, professional and craft standards, or norms of indirect, bureaucratic management often do.³⁴ This is particularly true of firing. Given how profoundly joblessness affects basic interests, and how unequal the “firing” powers of bosses and employees are, a *pro tanto* requirement that at-will dismissal be unavailable exists.

Recall, however, that although similarities and differences in how preemptive the sanctioning powers of state and firm are should no doubt bear on their regulation, they fail to wholly determine this matter. For permission to use force is, to repeat, unnecessary to prompt a requirement that those in positions of authority, in the state and elsewhere, be held to suitable controls. Perhaps, though, what makes the state special is not force but rather that its authority, unlike that of employers, is not voluntarily consented to and is harder to escape, as we will discuss next.

3. The argument from entry and exit costs

³⁴ Randy Hodson, *Dignity at Work* (Cambridge: Cambridge University Press, 2004), ch. 4.

“The most significant disanalogy between states and firms is voluntariness,” Richard Arneson suggests.³⁵ The reason, Arneson and others argue, is that entry and exit conditions in these realms importantly differ.³⁶ On the one hand, employees can shop around among potential employers, and sign a contract whereby they willingly submit to an employer’s authority, whereas most citizens fail to choose the state where they live and never explicitly consent to its authority. On the other, employees can quit their jobs with ease, whereas citizens can only emigrate, if at all, by incurring high costs.

The significance of this difference, some argue, is that free exit imposes a *de facto* check on bosses.³⁷ For, on pain of losing or failing to attract valuable workers, and of incurring recruitment and training costs, they have an incentive not to abuse their powers in deploying workforce. Exit can serve, as Albert Hirschman argued in his classic analysis, as a substitute for other mechanisms, like voice, to channel discontent and alter managerial behavior.³⁸

Yet the significance of the difference is also, and more fundamentally, that when people freely join an association and can leave it at will, by staying they can be taken to consent to its terms. It is not just that free entry and exit render unfettered or unaccountable authority permissible, such that one’s complaint is forfeited when subjection to such authority is self-imposed, as one can always “vote with one’s feet.” “If the capitalist economy is a sphere of voluntary private interactions,” Bowles and Gintis

³⁵ Arneson, “Democratic Rights at National and Workplace Levels,” 139.

³⁶ Moriarty, “On the Relevance of Political Philosophy,” 459; Singer, *The Form of the Firm*, 140.

³⁷ Robert S. Taylor, *Exit Left: Markets and Mobility in Republican Thought* (Oxford: Oxford University Press, 2017), ch. 3.

³⁸ Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, Mass.: Harvard University Press, 1970), 30 ff.

ask, “what is there to democratize?”³⁹ It is also plausible to claim, as Alchian and Demsetz and Kolodny do, that the freer the entry and exit conditions are, the less it is a relation of authority to begin with.⁴⁰ If you can freely enter and exit a slave contract, Kolodny reckons, it is unclear whether you really are a slave.

To assess the argument from entry and exit conditions—according to which disparities between firms and states in this regard undermine the analogy between the two—we need to do two things. We first need to inspect how marked such disparities are. And we also need to ask whether free entry and exit would render authority relations entirely unobjectionable, such that regulatory norms would no longer be warranted to begin with.

Start with disparities in entry and exit costs.⁴¹ The first observation to make is that, although it is generally costlier to emigrate than to change jobs, the difference is often overdrawn. Migrants no doubt encounter formidable legal, linguistic, financial, and emotional barriers. And emigrating typically entails switching jobs anyway, whereas one can more easily change jobs without changing countries. But leaving a job is not without costs either. Although employees can no longer be criminally prosecuted for quitting, as Master and Servant laws once allowed, labor market concentration, high unemployment, or noncompete agreements, which prevent employees from starting or joining a competing firm within certain geographical and time boundaries, may make the decision not to quit less than wholly voluntary (although not necessarily in a way that would render

³⁹ Bowles and Gintis, “A Political and Economic Case,” 97.

⁴⁰ Alchian and Demsetz, “Production,” 777; Kolodny, “Rule Over None II,” 304.

⁴¹ Additional analyses include Dahl, *A Preface to Economic Democracy*, 113-16; Hsieh, “Rawlsian Justice and Workplace Republicanism,” 127-34; Tom Malleson, “Making the Case for Workplace Democracy: Exit and Voice as Mechanisms of Freedom in Social Life,” *Polity* 45, no. 4 (2013): 604-29; González-Ricoy, “Firms, States, and Democracy,” 47-50; Landemore and Ferreras “In Defense of Workplace Democracy,” 67-69.

the labor contract morally nonbinding). And, even in free and fully clearing labor markets, further factors may lock workers in, including existing ties to coworkers and customers, searching and transition costs, and quasi rents that seniority often yields.

A second observation is that the ease to change jobs may be of little value, and insufficient to render the choice to stay wholly voluntary, when worthy options are lacking. If, for example, racial discrimination is rampant, then having many options may be of little solace to workers of color, who may expect no improvement from changing their jobs. And other options may be unrealistic for most. Self-employment, for example, not only typically involves cumbersome financial barriers. The self-employed make less money on average, work longer hours, bear greater mental hazards, and are at greater risk of becoming jobless than employees.⁴² And the more radical option of quitting work altogether is even less realistic, not just because it hinges on welfare policies, perhaps including a basic income, whose supply is often scant. Such policies would no doubt increase workers' reservation wage, making it easier to quit if abused. But given the nonpecuniary goods that work often gives access to, including self-realization and social contribution and recognition, we have reason not to favor this possibility, even if possible.⁴³

Some may argue that job alternatives, as well as entry and exit costs, greatly differ across workers, industries, and countries. Unskilled call operators and farm grooms may

⁴² David Blanchflower, "Self-Employment: More May Not Be Better," NBER Working Paper No. 10286 (2004); Reto Odermatt, Nattavudh Powdthavee, and Alois Stutzer, "Are Newly Self-Employed Overly Optimistic about Their Future Well-Being?," *Journal of Behavioral & Experimental Economics* 95 (2021): 101779. For a normative discussion of these and other effects of self-employment, see Iñigo González-Ricoy and Jahel Queralt, "No Masters above: Testing Five Arguments for Self-Employment," in *The Politics and Ethics of Contemporary Work: Whither Work?*, ed. Keith Breen and Jean-Philippe Deranty (London: Routledge, 2021).

⁴³ See Anca Gheaus and Lisa Herzog "The Goods of Work (Other Than Money!)," *Journal of Social Philosophy* 47, no. 1 (2016): 70-89.

toil under the thumb of abusive foremen, whereas engineers and physicians with scarce skills may use their ability to easily change jobs to *de facto* constrain abuses, whether or not workplace safeguards are in place. But firms are not unlike the state here.⁴⁴ For while garden-variety citizens face high costs of emigration, some privileged ones, like Gérard Depardieu, who could leave France after swiftly obtaining Russian citizenship in 2013, can costlessly do so. And just as the existence of advantaged citizens like Depardieu does not render checks on civil authority trivial for most citizens, given the average costs of emigrating, the existence of skilled workers who can effortlessly change jobs does not render checks on corporate authority trivial, given the costs of quitting and the absence of worthy alternatives that most workers endure.

Our second task, however, is more fundamental. To assess the significance of entry and exit costs, we do not need to ask whether such costs are identical in firms and states. To repeat, they are not. What we need to ask is how tightly entry and exit costs correlate with how objectionable authority relations are. Is it the case that the easier it is to enter and exit an authority relation, the less objectionable the relation generally is, and the less stringent the reasons to regulate it are? This view is not implausible. Think of boxing or BDSM, for example. Impermissible as they may be absent free entry and exit, they are faultless when such conditions obtain.

But do these relations generalize? I think not, although not because they involve no authority. Boxing might not involve authority. But sexual submission to a bondage rigger or a dom certainly does. The reason why these relations are special, and fail to generalize, is another—namely, that they involve episodic, one-off encounters, rather than an ongoing, sustained relationship.⁴⁵ When authority relations are ongoing, rather than

⁴⁴ Landemore and Ferreras, “In Defense of Workplace Democracy,” 68.

⁴⁵ Niko Kolodny, “Is There an Objection to Workplace Hierarchy?,” unpublished manuscript, 10-11.

episodic, entry and exit costs no longer determine, although they may temper, how objectionable particular authority relations are. To illustrate, compare two dictatorships, both equally ruthless. One, however, applies a hands-off border policy, whereas the other enforces exacting border controls to prevent people from fleeing the country. Now, although exit from the first country is significantly less costly than it is from the second, this difference does not render the more permissive satrap less obnoxious than her more controlling peer to an equally significant degree. Nor does it render the requirement that her authority be checked less stringent to an equally significant degree.

Or compare, less outlandishly, towns and states in their entry and exit conditions. Although the costs of moving to and away from them are significantly lower in towns than in states, this difference does not render the requirement to regulate political authority less stringent in towns than in states to an equally significant degree. There are two reasons, I submit, why differences in entry and exit conditions in towns and states do not translate into identical differences in how objectionable their authority is, if unchecked—each of which is independently necessary for this outcome. One reason is that basic interests are at stake in either realm. In general, people can leave their town with ease. But, as long as they stay, they are subject to a local government whose policies pervasively affect their basic interests. Now, it may be objected that pervasiveness is necessary, but insufficient, to render unchecked authority objectionable. For BDSM may also pervasively affect some basic interests without this prompting a requirement for regulations, other than securing that entry is voluntary and that exit is readily available for the involved parties. So, a second, and more distinctive reason is that in towns and states, but not in BDSM, authority relations are ongoing, rather than sporadic. The authority of a bondage rigger or a dom is limited to the moment in which one is in the dungeon of a fetish club. The authority of local and national governments, by contrast,

applies to the extended periods of time that people reside in a town or country, and applies from dawn to dusk each day.

It is surely moot whether employers' directives affect employees' interests as severely as municipal and state directives affect subjects' interests, as we will discuss in the next section. But the employment relation is, if anything, a paradigmatic case of an authority relation that is ongoing, sustained over time. Unlike market exchanges between independent contractors, whose interactions are one-off, employees submit to the employer's authority during their entire working day and for the duration, often years, of the relationship. So, if we replace the state as a benchmark for comparison with the town, whose entry and exit costs are closer to those of firms, and whose authority relations are similarly ongoing, then the requirement to subject municipal authority to suitable controls likewise applies to the firm.⁴⁶

To sum up: entry and exit are less costly in the firm than in the state. But they are costly anyway for those who toil on, rather than own, the means of production. Their interests are affected, in addition, in a pervasive and ongoing way that renders unfettered intrafirm authority, if not as objectionable as unfettered state authority is, objectionable enough even when changing jobs is not as costless as emigrating. The practical bearing of this view is not, then, that abusive management should be addressed with the sole goal of securing costless exit, as some have argued.⁴⁷ Reasons to uphold a right to freedom of movement in the state should no doubt inform how we address phenomena that hinder freedom to take and quit jobs, including discrimination in hiring and firing, noncompete clauses, barriers to self-employment, and monopsony in labor markets. But, as I have argued, ease of entering and exiting does not render unchecked authority relations

⁴⁶ Dahl, *A Preface to Economic Democracy*, 114.

⁴⁷ Taylor, *Exit Left*, ch. 3.

unobjectionable, and wholly costless exit is impracticable anyway. So, means comparable to those in place in legitimate states to keep abusive management at bay, and to enable collective voice with no need to resort to exit, and in particular rights to unionize and strike, are also warranted.⁴⁸

Moreover, some have argued that it may not always be in the best interest of employees, or necessary to render a choice voluntary, to have more, rather than less, exit options.⁴⁹ If we have reason, then, to *sometimes* allow workers to contractually renounce some exit options when joining a firm—for example, in order to credibly signal commitment to a particular firm, or to facilitate firms’ investment in human capital—then how internally regulated this relation is becomes all the more relevant.

4. The argument from breadth and depth

A third putative difference is the greater breadth and depth of state authority in comparison with corporate authority—a difference that, according to the argument we will now inspect, significantly informs how objectionable the exercise of either type of authority is when unchecked. Both civil and corporate authority are ongoing, rather than sporadic, as argued in the previous section. But state authority, according to the argument from breadth and depth, is distinctively sweeping and pervasive.⁵⁰ For state officials can

⁴⁸ Alex Gourevitch, “Quitting Work but Not the Job: Liberty and the Right to Strike,” *Perspectives on Politics* 14, no. 2 (2016): 307-23; Simon Birnbaum and Jurgen de Wispelaere. “Exit Strategy or Exit Trap? Basic Income and the ‘Power to Say No’ in the Age of Precarious Employment,” *Socio-Economic Review* 19, no. 3 (2021), 909-27.

⁴⁹ Serena Olsaretti, “Freedom, Force and Choice: Against the Rights-Based Definition of Voluntariness,” *Journal of Political Philosophy* 6, no. 1 (1998): 53-78. On noncompetes, see Harrison Frye, “The Ethics of Noncompete Clauses,” *Business Ethics Quarterly* 30, no. 2 (2020): 229-249.

⁵⁰ Thomas Christiano, *The Constitution of Equality* (Oxford: Oxford University Press, 2008), 81-82.

issue directives over a wide-ranging set of issues, thus profoundly affecting the basic interests of subjects. Business managers, by contrast, wield authority over a more restricted domain, and affect employees' basic interests less severely, so the absence of checks is arguably not nearly as objectionable.

This view is contentious, however. For corporate authority is inevitably open-ended. Employers' commanding powers are no doubt limited by social norms and legislation: employees are not expected to donate their kidneys to their bosses or engage in criminal activity by order of their superiors. And employers' commanding powers are likewise limited by the terms of the employment contract. But, these limits notwithstanding, labor contracts are by definition incomplete, not just because it would be prohibitively costly for the parties and the lawmaker to attempt to foresee the terms of the exchange for every conceivable state of the world, and for courts to enforce them.⁵¹ They are also incomplete in order to swiftly adapt to the countless contingencies of production, in such a way that, if rendered exhaustive, they would remove or drastically reduce employers' authority, canceling the reason why firms exist in the first place. "Wanting to abolish authority in large-scale industry," Engels argued, "is tantamount to wanting to abolish industry itself."⁵² To avoid having to renegotiate the terms of the relationship every time a contingency arises, employment contracts are left incomplete, and residual authority—to wit, authority over those aspects of the relationship that remain contractually unspecified—is granted to the employer. And although the firm's boundaries are not neat, economic interactions become more firm-like precisely as the range of contractually unspecified actions that the employer may request from the employee expands.

⁵¹ Bowles and Gintis, "A Political and Economic Case," 79-80.

⁵² Friedrich Engels, "On Authority," in *The Marx-Engels Reader* (New York: W.W. Norton, 1978), 731.

But is corporate authority as sweeping as state authority? And does it as profoundly affect basic interests? To assess how the argument from breadth and depth bears on the firm/state analogy, these are two questions that we need to ask.

Take breadth first. Bosses' authority no doubt fails to extend to some domains that are central to state authority, like the power to tax. But its purview is extensive, when unbridled, and often more so than state authority is.⁵³ Consider various basic rights and liberties whose role in constraining state authority is essential, and whose presence in unregulated workplaces is scarce, especially in small firms, where command and supervision tends to be personal.⁵⁴ Some are procedural. Although managers typically give workers a schedule to follow, no rule of law exists within many firms. For bosses may change their instructions anytime, with no prior notice, no reason offered, and no possible appeal. Rights to personal integrity are often imperiled on the job, too, such that unregulated management can yield greater risks for workers' physical and mental health. And the same goes for civil liberties and personal autonomy. Employees are not only ordered around regarding where, when, how, and with whom they do their job. They are also routinely subjected to pervasive surveillance, including videotaping, inspections of phone conversations, and sensor tracking of their food intake and daily steps. Other civil liberties are also curtailed in unfettered workplaces, including those of not having to hide one's sexual orientation, religious commitments, or political views. And although employers cannot command employees when they are off duty as thoroughly as they do on the clock, their authority often extends beyond working hours, like when they deny promotion for their off-duty religious activities or Facebook posts, or ask them to attend

⁵³ Anderson, *Private Government*, ch. 2; Chris Bertram, Alex Gourevitch, and Corey Robin, "Let it bleed: Libertarianism and the workplace," *Crooked Timber*, July 1, 2012 <http://crookedtimber.org/2012/07/01/let-it-bleed-libertarianism-and-the-workplace/>

⁵⁴ Hodson, *Dignity at Work*, 88 ff.

political rallies in their free time. No wonder, in brief, that Anderson has referred to unregulated firms as dictatorships writ small, given how sweeping bosses' commanding powers then are.⁵⁵

But can these powers affect basic interests as *profoundly* as those of state officials? In one sense, they surely can. For the employment relation entails that employees' ends are largely replaced, for a period of time, with those of the employer. It is not only that employers can tell instructors what to teach, attorneys who to represent in court, and ranch laborers how to treat animals. It is also that, unlike states, which are not entitled to assign ends, as they are meant to merely enable that citizens pursue their own ends, employers can *permissibly* assign ends to employees.⁵⁶ But, in another sense, it is highly doubtful that bosses' commanding powers can affect basic interests as profoundly as public authorities can. For, although bosses can ban employees from wearing a wedding ring, a crucifix, or a political badge on the job, they cannot ban same-sex marriage, religious confessions, or political parties, as states can (although liberal ones often do not).

This is not to say, however, that bosses cannot affect employees' basic interests profoundly enough, and sometimes as profoundly as states do, so as to prompt a *pro tanto* requirement that their authority be subjected to checks that force them to suitably consider, or at least do not thwart, such interests. For the workplace is not just another realm among others in people's lives. At work is where most people spend half of their waking day, more time than anywhere else. It is where they are subject to pecuniary and other decisions, like those about schedule and relocation, that crucially define their material ability to build friendships and families and to partake in civic and political life.

⁵⁵ Anderson, *Private Government*, 37-41.

⁵⁶ Rawls, *Political Liberalism*, 41-42; Kolodny, "Is There an Objection to Workplace Hierarchy?," 10. See, however, Moriarty, "On the Relevance of Political Philosophy," 458-59.

And it is where they pursue other interests, like socialization, social contribution, recognition, and self-realization, which are often difficult to fulfil outside work.⁵⁷

What this entails for how corporate authority is best regulated, however, is not obvious. The analogy with state authority yields reasons to restrain employers from issuing directives with no economic rationale or that may trespass employees' basic interests, as collective agreements, antidiscrimination law, professional and craft standards, and health and safety regulations pursue. But the analogy fails to favor a comprehensive regulation of workplace relations, such that, for example, what employees may be asked to do be contractually specified, as some advocate.⁵⁸ Attempting to foresee every eventuality would be unrealistic, costly to litigate, and hard for courts to enforce. And it would likewise hamper managers' ability to swiftly adapt as contingencies unfold, including redeploying staff when absentees need to be replaced or demand fluctuates, which is precisely what leads firms to produce economic outcomes that, as set forth in section 1, are superior to those that market transactions between independent contractors yield. We have reason to think, then, that basic liberties and procedural constraints should be complemented with means to channel worker voice, so that bosses retain residual authority, while suitable incentives not to abuse it are in place at the same time.

5. The argument from final authority

What about the final standing of state authority, which sovereign states claim? State directives, we often hear, sit at the top of the normative hierarchy. They are superior to,

⁵⁷ Gheaus and Herzog, "The Goods of Work;" Jon L. Pierce and Donald G. Gardner, "Self-Esteem within the Work and Organizational Context: A Review of the Organization-Based Self-Esteem Literature," *Journal of Management* 30, no. 5 (2004): 591-622.

⁵⁸ Jacob and Neuhäuser, "Workplace Democracy," 935.

and sometimes constitutive of, every directive that non-state bodies, including firms, may issue. In the case of incorporated firms, this is true in a particular sense. For state regulations not only constrain, and nullify when in conflict, corporate norms and directives. Business corporations as such, including their distinctive traits, such as limited liability or assets lock-in, are creatures of the state. Unlike proprietorships or partnerships, whose existence is grounded in natural persons, corporations are legal persons, which the corporate charter of the state grants.⁵⁹ In other words, the corporation and its authority, including the powers to command, supervise, and sanction, are not just constrained by existing state regulations. They are created by the state, which grants the legal personhood of the corporation and its powers, and constrains the content of its directives.

There are two reasons why the superior standing of state authority makes it arguably special, such that it undermines, and perhaps disposes of, the parallel with corporate authority. First, the fact that sovereign states, unlike firms, wield final authority entails that no higher court of appeal is available to its subjects.⁶⁰ This difference arguably renders the absence of checks on how authority is deployed more objectionable in the state than in the workplace. For the directives that companies issue can be appealed in a higher court, whereas sovereign states' directives, whose authority is nullifying of any competing directive that lower authorities within its jurisdiction may issue, cannot.

Second, the fact that the state constrains firms' authority, and in the case of corporations ultimately creates its powers, exerts an additional moderating effect on any legitimate complaint that the absence of checks on such authority, including democratic ones, may prompt. It may be argued that, in a sense, workers in democratic countries already have a say, *qua* citizens, over firm decisions. For those in charge of the norms

⁵⁹ Robé, "The Legal Structure of the Firm," 7-13; Ciepley, "Between Public and Private," 142-45.

⁶⁰ Kolodny, "Rule Over None II," 306.

that ultimately govern firms' authority, including whether employees should have a say over such decisions, are elected by and accountable to them. As McMahon argues regarding workplace democratization, "any moral considerations that support democratic decision making apply categorically only at ... the level of ultimate political authority. This means that ultimate political authority could conclude that the public good would be served by allowing forms of corporate governance in which employees have little or no democratic control over the directive to which they are subject."⁶¹ In democratic states, workers already elect and can bring to account those who wield final authority to mandate, for example, that board-level employee representation be in place. If they eventually decide not to, then the absence of such representation arguably prompts a weaker complaint, if any.

But this is incorrect, for two reasons.⁶² It first bears noting that subjecting state authority to democratic control need not render the upshot of its decisions democratic. For example, if the people, acting by majority vote, were to appoint an all-powerful, unconstrained president with life tenure, the resulting presidential office would be perhaps legitimate, yet not *eo ipso* democratic or unobjectionable.⁶³ By the same token, democratic control over laws regulating firms should no doubt inform how objectionable managerial authority is. But it fails to render management, if all-powerful and unaccountable to its subjects, democratic or unobjectionable, however immaculate the democratic credentials of the state that grants its authority may be. One thing is the democratic pedigree of the procedures whereby a form of government, civil or corporate, is established, which no doubt informs how objectionable said form of government is.

⁶¹ McMahon, *Public Capitalism*, 93. See also Jacob and Neuhäuser, "Workplace Democracy," 932.

⁶² I first sketched these reasons in Iñigo González-Ricoy, "Firm Authority and Workplace Democracy: A Reply to Jacob and Neuhäuser," *Ethical Theory and Moral Practice* 22, no. 3 (2019): 679-84, 680-81.

⁶³ Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999), 255-56.

Quite another is its nature—whether democratic, oligarchic, or dictatorial—which depends not on its provenance but on its internal attributes.

Second, and more substantively, although ultimate subjection to democratic state control has a moderating effect on how objectionable lower forms of nondemocratic authority may be, it does not make them unobjectionable. Claiming otherwise would entail that democracy at lower state levels, such as towns, is trivial once democracy is in place at the upper level—which seems as unwarranted with regard to towns as it is with regard to corporations. For, however established and ultimately constrained by the state they may be, both a mayor and a CEO wield commanding powers that are to some extent discretionary—in addition to ongoing, sweeping, and exacting, as argued above—and distinct from of those that the state wields.

In brief, once an organization below the state wields discrete authority, the fact that it is held to, or created by, the final and nullifying authority of the state, is insufficient to render its authority unobjectionable if unsubmitted to appropriate checks, including accountability to its subjects. Claiming otherwise would, in fact, undercut the need for such checks in the state itself when its sovereignty is partly handed over to supra-state bodies, as occurs in the European Union in relation to basic powers, such as monetary policy and human rights adjudication, over which member states have no final authority. None of this entails, however, that the complaint that discretionary authority prompts when unchecked—whether it be of the state, the town, or the firm—is best answered by seeking to drastically diminish, if not remove, such discretion, for the reasons of efficiency that I sketched in the previous section and will more fully develop in the next.

6. The efficiency objection

So far I have argued that, despite variations in coerciveness, avoidability, scope, and legal standing, corporate and civil authority remain comparable enough to generate a *pro tanto* requirement to subject firms to regulatory norms comparable to those that legitimate states abide by. But this conclusion prompts an important—albeit unconvincing, as I will argue—objection. Given that firms, unlike states, exist because undertaking production through the open-ended authority of an employer often yields more efficient economic outcomes, which stand to benefit everyone, than doing so through market exchanges between independent contractors, considerations of economic efficiency should decisively guide how firms, unlike states, are regulated—overriding, or significantly constraining, any regulatory requirement that may restrain the open-ended authority of employers, including those that the firm/state analogy prompts.⁶⁴

Before we turn to the reasons why this objection misses the mark, as I will argue, it is worth considering how firms may contribute to overall economic efficiency and why, on this view, efficiency requires that firms be subjected to little regulatory restraint. In taking goods and services out of the economy as factors of production to return them as new goods and services that people value more, firms contribute to overall economic efficiency—yet not directly. Managers do not, and could probably not, pursue the efficiency of the economy as a whole as they conduct a firm. They do so as a byproduct of seeking profit in competition with other firms. To cut a long story short, when suppliers compete with other suppliers to sell to purchasers, and purchasers compete with other purchasers to buy from suppliers, the prices at which goods are traded reveal, under suitable market conditions, the relative supply and demand for specific goods and

⁶⁴ Epstein, “In Defense of the Contract at Will;” Posner, *Economic Analysis of Law*. More moderate variants include Joseph Heath, *Morality, Competition, and the Firm* (Oxford: Oxford University Press, 2014) and Abraham Singer, “The Political Nature of the Firm and the Cost of Norms,” *Journal of Politics* 80, no. 3 (2018): 831-44.

services. As prices change, market competition compels profit-seeking firms, under suitable conditions, to direct resources to their most preferred social use, thus minimizing that goods and services that no one wants are produced at the expense of goods and services that people want.

Given that suitable market conditions are typically lacking in real markets, proponents of the efficiency objection often accept that firms be held to *some* legal regulations.⁶⁵ For, when market imperfections such as asymmetric information, externalities, or market power exist, competition between profit-seeking firms no longer improves overall economic outcomes. Firms may then exploit consumers' poor knowledge to sell defective products, dump toxic waste into the atmosphere, or abuse their market power to impose extortionate rates on loans. But, other than regulations aimed at correcting market imperfections, proponents of this view are wary of legal regulations on firms and, in particular, on the open-ended authority of employers. The basic idea, set forth in section 1, is that such regulations would reintroduce some of the costs that render firms superior to producing goods and services through one-off market transactions, yielding outcomes that harm not only, and not primarily, individual firms but also the economy as a whole. For example, in their influential analysis of codetermination, a form of board-level employee representation that proponents of the firm/state analogy often champion as a means to channel worker voice,⁶⁶ Jensen and Meckling predict that

“workers will begin ... transforming the assets of the firm into consumption or personal assets ... It will become difficult for the firm to obtain capital in the private

⁶⁵ Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962), 28; Heath, *Morality, Competition, and the Firm*, 34. See, however, Posner, *Economic Analysis of Law*, 343.

⁶⁶ Anderson, *Private Government*, 70, 143. See, however, Ferreras, *Firms as Political Entities*, 171-72.

capital markets ... The result of this process will be a significant reduction in the country's capital stock, increased unemployment, reduced labor income, and an overall reduction in output and welfare."⁶⁷

Should we conclude, then, that efficiency considerations excuse firms from the regulatory requirements that the parallel with the state prompts? I think not, for three reasons. To start, the very appeal to economic efficiency to discredit regulatory norms on how firms are governed should probably be forsaken. For efficiency assessments accept the existing endowments of property rights as the normative baseline against which competing corporate governance setups are assessed.⁶⁸ But the very governance setups that capital ownership grounds, which often bestow on employers unfettered authority over workers, is precisely what the analogy between the firm and the state contests.

Second, even if we accept the existing endowments of property rights as the appropriate normative baseline, many of the regulatory norms that the firm/state analogy favors involve no overall economic costs. For some seek to root out managerial abuses, such as sexual harassment and favoritism, that have no economic rationale to begin with. And others may have null or even positive economic effects, as research on antidiscrimination policies and employment protection legislation suggests.⁶⁹ A case in point is codetermination, which, as noted above, is often criticized on efficiency grounds.

⁶⁷ Michael C. Jensen and William Meckling, "Rights and Production Functions: An Application to Labor-Managed Firms and Codetermination," *Journal of Business* 52, no. 4 (1979): 469-506, 504.

⁶⁸ Anderson, *Private Government*, 143.

⁶⁹ John J. Donohue III, "Is Title VII Efficient?," *University of Pennsylvania Law Review* 134 (1985): 1411-31; Harry Holzer and David Neumark "Assessing Affirmative Action," *Journal of Economic Literature* 38, no. 3 (2000): 483-568; Simon Deakin, "The Law and Economics of Employment Protection Legislation," in *Research Handbook on the Economics of Labor and Employment Law*, ed. Cynthia L. Estlund, and Michael L. Wachter (Cheltenham: Edward Elgar, 2012).

Contrary to predictions that it could lead to disinvestment, reduced innovation, lower productivity, and ultimately poorer aggregate economic outcomes, recent empirical studies suggest that such costs are nonexistent. If anything, codetermination, which various European countries mandate, increases capital formation, innovation, and output per worker.⁷⁰

Finally, even when tradeoffs between regulatory requirements and economic efficiency could arise, such that certain regulations could harm the economy as a whole, considerations of efficiency need not always prevail.⁷¹ For the idea that firms contribute to economic efficiency, including the permission to maximize profit in competition with other firms, is itself constrained by independent considerations of justice that most of us already accept. Arguably, that is why sweeps no longer claim that legal prohibitions on sending children up chimneys undermine efficiency, even in the event that removing such prohibitions could yield benefits (say, for consumers) that could compensate for the costs that losers would bear. What we need to ask, then, is not whether considerations of economic efficiency override regulatory requirements when trade-offs exist, but which requirements, if any, they override.

Efficiency considerations may no doubt favor that some productive processes be undertaken under the open-ended authority of a person or a group. For replacing one-off market exchanges with an administrative setup in which someone wields open-ended authority to direct workers as contingencies unfold often yields, to repeat, more efficient economic outcomes that stand to benefit everyone. But, although efficiency

⁷⁰ Simon Jäger, Benjamin Schoefer, and Jörg Heining, “Labor in the Boardroom,” *Quarterly Journal of Economics* 136, no. 2 (2021): 669-725; Kornelius Kraft, Jörg Stank, and Ralf Dewenter, “Co-Determination and Innovation.” *Cambridge Journal of Economics* 35, no. 1 (2011): 145-72; Jarkko Harju, Simon Jäger, and Benjamin Schoefer “Voice at Work,” NBER Working Paper No. 28522 (2021).

⁷¹ I thank Andrew Williams and Nien-hê Hsieh for comments on what follows.

considerations may justify the open-ended authority that characterizes firms, they do *not* justify that such authority be unfettered or unaccountable to those subject to it. They do not justify it not only because, as we have seen, many of the regulatory requirements that the firm/state analogy prompts do not undermine efficiency, and may actually boost it, but also because such authority, when unfettered and unaccountable to those subject to it, can be easily abused, prompting a legitimate complaint. And this complaint is particularly weighty, such that it cannot be easily answered by countervailing outcome-based reasons, if any, of economic efficiency.⁷² For the authority relation of employer to employee is, as I have argued, particularly coercive, hard to elude, exacting, and discretionary—or enough so anyway to warrant its being held to regulatory requirements that are similar, and similarly weighty, to those that states are held to, such that workers cannot be demoted for wearing a crucifix or a political badge, see their work hours routinely altered on short notice or be fired for no reason, have their food intake and daily steps sensor tracked, have no say over board decisions on plant closures and relocations, or risk losing their hearing, inhaling toxic fumes, or developing an anxiety disorder because their company cuts back on health and safety procedures. Such requirements are not infeasible. But they are particularly weighty and, in those case in which exempting firms from some of them could improve overall economic outcomes, not easy to defeat.⁷³

⁷² For discussion, see López-Guerra, “Against the Parallel Case,” 22-23; Lisa Herzog, “What, if Anything, Can Justify Limiting Workers’ Voice?,” in *The Routledge Handbook of Philosophy, Politics, and Economics*, ed. C.M. Melenovsky (London: Routledge, forthcoming), §3; Kolodny, “Is There an Objection to Workplace Hierarchy?,” 17-18.

⁷³ A rejoinder is that, regardless of how stringent such regulatory requirements may be, they are importantly limited by the competitive pressures that firms are liable to—not from other firms, for, if applied uniformly, no regulation would disadvantage any particular firm relative to other firms, but *from the market itself*. If firms exist because they economize on transaction costs that market transactions involve, Abraham Singer has argued, then they need to remain more expedient than market contracting is, lest production be outsourced to the market, with poorer overall economic outcomes. But we should probably reject what this

None of this entails, to repeat, that considerations of economic efficiency are of no significance. For efficiency is, as I have argued, a moral standard that should importantly inform how we regulate firms. This is why workers' interest in avoiding fickle management, for example, is probably better served, in terms of overall economic outcomes, by means other than seeking to contractually specify what workers may be asked to do in every eventuality. For, as argued in section 4, this would drastically hinder managers' ability to swiftly redeploy staff when coworkers call in sick, machinery breaks down, or demand fluctuates. And it is for similar reasons that workers' interest in having a say in firm governance is probably better served, in terms of lowering the decision-making costs that often burden labor-managed firms' performance, by representative rather than direct forms of worker voice, including the delegation of extensive powers to elected managers and the appointment of committees with agenda-setting power.⁷⁴ Considerations of efficiency may, in brief, not easily excuse the regulatory requirements that the firm/state analogy prompts, in those cases in which doing so could improve overall economic outcomes. But they are surely vital for guiding how to best institutionalize such requirements.

7. Conclusion

view entails, in terms of the regulations we may permissibly subject firms to. For if the reason to excuse firms from certain regulatory requirements is that “normative ideals like worker management can end up incentivizing market actors to resort to private contracting instead of taking on the firm,” as Singer argues, then this incentive could be partly offset, *if* the relevant regulatory requirements are weighty enough, by rendering market contracting costlier—as governments sometimes do when they hold “gig” companies that outsource labor inputs, like Uber or Glovo, to employer liabilities and labor protections akin to those that conventional companies are held to. Singer, “The Political Nature of the Firm and the Cost of Norms,” 836.

⁷⁴ Henry Hansmann, *The Ownership of Enterprise* (Cambridge, Mass.: Harvard University Press, 1996), 98 ff.; Gregory Dow, *Governing the Firm: Workers' Control in Theory and Practice* (Cambridge: Cambridge University Press, 2003), 204-05.

Growing concern about corporate power has prompted an interest in regulatory norms to constrain managers' authority—norms that, political theorists of the firm argue, should parallel norms applicable to the design of state authority. According to four arguments I have inspected, however, the traits that warrant the state's being held to such norms are lacking, or very differently present, in the firm, rendering the parallel between firm and state inapt. I have argued that such differences, although sometimes significant, fail to undermine the parallel, either because they are not significant enough to do so, or because the particular trait on which they hinge is not decisive, in the state and in the firm, to resolve whether such regulatory norms are warranted.

None of this entails that norms applicable to the design of state authority can be directly exported to the firm, and not just because the peculiarities of each realm regarding the traits we have inspected, as well as considerations of efficiency, should inform the particular norms that better fit each of them. We should also be careful in moving from general normative requirements, such as civil liberties and accountability to subjects, to questions of institutional design, which philosophers can only work out in tandem with social scientists. The task ahead is sizable. But the growing body of political analyses of the firm shows how profitable the comparison between the firm and the state can be.