

The Republican Case for Workplace Democracy

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Abstract: The republican case for workplace democracy (WD) is presented and defended from two alternative means of ensuring freedom from arbitrary interference in the firm—namely, (a) the right to freely exit the firm and (b) workplace regulation. This paper shows, respectively, that costless exit is neither possible nor desirable in either perfect or imperfect labor markets, and that managerial discretion is both desirable and inevitable due to the incompleteness of employment contracts and labor legislation. The paper then shows that WD is necessary, from a republican standpoint, if workers' interests are to be adequately tracked in the exercise of managerial authority. Three important objections are finally addressed—(i) that WD is redundant, (ii) that it is unnecessary provided that litigation and unionism can produce similar outcomes, and (iii) that it falls short of ensuring republican freedom compared to self-employment.

Keywords: workplace democracy; republicanism; exit rights; workplace regulation; unionism; self-employment

1. Introduction

The Great Recession has awakened the interest in workplace democracy once again. Even though the call for workplace democracy (henceforth “WD”) was a usual battle-cry and a much-researched topic in the 1970s and 1980s, since the early 1990s it has attracted little attention from workers and scholars alike.¹ However, the greater resilience of cooperatives to the crisis has strengthened their presence in the world economy, arousing interest in this and other forms of WD once again.²

The very idea of WD is elusive. It has historically developed into many different forms, including cooperatives, workers' councils, the Israeli kibbutzim, the German co-determination system, or the U.S. Employee Stock Ownership Plan. However, it can be defined across five

¹See Drew Christie, “Recent Calls for Economic Democracy,” *Ethics* 95 (1984): 112-28.

²See Johnston Birchall and Lou Hammond Ketilson, *Resilience of the Cooperative Business Model in Times of Crisis* (Geneva: International Labor Organization, 2009); Russell Lansbury, “Workplace Democracy and the Global Financial Crisis,” *Journal of Industrial Relations* 51 (2009): 599-616.

dimensions of worker control—namely, the degree of control exercised over the firm (information, consultation, co-decision, full control), its level (task, department, establishment, corporate HQ), its range (strategic issues, nonstrategic issues), its form (direct, representative), and its agent (permanent workers, all workers). In this paper, the following minimal definition is used:³

Workplace democracy: A form of managerial organization in which workers have control rights over the management of the firm.

A number of arguments have been advanced for and against WD. Among the former, it has been argued that WD reduces agency loss; that it brings about lower unemployment rates; or that it can lead to greater political engagement. Among the latter, it has been argued that democratic firms suffer from serious efficiency failures related to decision-making costs, employment rigidities, and the raising of capital; that risk-averse workers prefer to diversify their portfolio instead of investing their savings in a single firm; or that a mandatory WD would trump the right to occupational choice.⁴

These and some further arguments need to be addressed if a conclusive case for WD is to be made. The scope of this paper is more limited. It draws upon republican political theory as revitalized over the last three decades, and considers whether WD is necessary to ensure workers' freedom from arbitrary exercise of managerial authority. Compared to other issues such as criminal law, welfare provision, or global justice,

³These dimensions are adapted from Mick Marchington and Adrian Wilkinson, "Direct Participation and Involvement," in Stephen Bach (ed.), *Managing Human Resources: Personnel Management in Transition* (Oxford: Blackwell, 2005), chap. 15. For a sample of notably diverse definitions, see Robert Dahl, (1985) *A Preface to Economic Democracy* (Berkeley: University of California Press, 1985); Samuel Bowles and Herbert Gintis, "A Political and Economic Case for the Democratic Enterprise," *Economics and Philosophy* 9 (1993): 75-100; Nien-hê Hsieh, "Survey Article: Justice in Production," *Journal of Political Philosophy* 16 (2008): 72-100. For an exhaustive overview of existing forms of WD, see Gregory K. Dow, *Governing the Firm: Workers' Control in Theory and Practice* (Cambridge: Cambridge University Press, 2003).

⁴For recent overviews of the normative debates, see Dow, *Governing the Firm*, chap. 2; Hsieh; "Survey Article: Justice in Production"; Axel Gosseries and Grégory Ponthière (eds.), "La démocratie d'entreprise," *Revue de philosophie économique* 8, no. 2 (2008); Iñigo González-Ricoy, "Democratizar la empresa: Un análisis desde la filosofía política," *Revista de estudios políticos* 148 (2010): 45-69. For attempts to integrate the normative debates on WD into a broader political-economic analysis, see David Ellerman, *Property and Contract in Economics: The Case for Economic Democracy* (Oxford: Blackwell, 1992); Kevin A. Carson, *Organization Theory: A Libertarian Perspective* (Charleston, S.C.: BookSurge, 2008); Dow, *Governing the Firm*; David Schweickart, *After Capitalism*, 2nd ed. (Lanham, Md.: Rowman & Littlefield, 2011).

contemporary republican theory has left the organization of the workplace largely unaddressed.⁵ For example, in his contribution to a symposium on “The economic implications of republicanism,” Philip Pettit focuses on three features of the market (“property, exchange, and regulation”), leaving the workplace virtually unaddressed.⁶ Given that workers spend almost one third of their adult lives in their workplaces, and that their jobs dramatically affect their well-being,⁷ the general neglect of labor issues by contemporary political philosophers is certainly surprising. Yet, as Alex Gourevitch has pointed out, the neglect is the more surprising among contemporary republicans, given that the republican idea of freedom historically emerged in opposition to slavery, and that labor issues were central to classic republicanism.⁸

The present article aims to fill this gap. It makes a twofold contribution to the analysis of republican freedom in the workplace. It first assesses the availability of exit rights and workplace regulation as a means of ensuring republican freedom in the workplace, and shows that they both fall short of doing so. Second, it shows that WD is required to ensure this, and compares it to a number of further alternatives, including litigation, unionism, and self-employment. The paper is divided into five further sections. Section 2 introduces the republican framework used throughout the paper. Section 3 shows the forms of arbitrary interference that are likely to appear in the firm and the inadequacy of exit rights and workplace regulation in addressing them. Section 4 unpacks the republican case for WD. Section 5 addresses three important objections. A conclusion closes the paper.

⁵Notable exceptions include Antoni Domènech, *El eclipse de la fraternidad* (Barcelona: Crítica, 2004); Nien-hê Hsieh, “Rawlsian Justice and Workplace Republicanism,” *Social Theory and Practice* 31 (2005): 115-42; Christopher McMahon, “The Indeterminacy of Republican Policy,” *Philosophy & Public Affairs* 33 (2005): 67-93; Alex Gourevitch, “Labor and Republican Liberty,” *Constellations* 18 (2011): 431-54.

⁶Philip Pettit, “Freedom in the Market,” *Politics, Philosophy & Economics* 5 (2006): 131-49, p. 132.

⁷For example, in Europe almost as many employees die on average due to fatal injuries in the workplace as citizens die due to intentional homicide (there were 2.5 fatal accidents per 100,000 persons employed in 2008 and 3.5 intentional homicides per 100,000 inhabitants in 2011). See, respectively: Eurostat, *Europe in Figures: Eurostat Yearbook 2012* (Luxembourg: Publications Office of the European Union, 2012), p. 190; United Nations Office on Drugs and Crime Homicide statistics, at <http://www.unodc.org/unodc/en/data-and-analysis/homicide.html> (accessed July 6, 2013).

⁸Gourevitch, “Labor and Republican Liberty,” p. 431.

2. Republicanism

The republican tradition of political thought is concerned with freedom as nondomination as its central political value.⁹ Since the goal of this paper is to explore the implications of the republican conception of freedom for workplace governance, rather than to provide a defense of such a conception, this section is limited to briefly describing its two key elements, and thus leaves aside a number of important concerns flagged by critics.¹⁰ (Readers familiar with the republican conception should be able to skip this section and go directly to section 3.)

To introduce the republican conception of freedom, let us compare it, as is customary, to its liberal counterpart. According to the latter, an agent is free if and only if she is not interfered with—be it by actions, coercive threats, or manipulation—in her choices and actions. Republican authors have stressed two counterintuitive implications that are relevant for present purposes. First, a slave with a benign master may be free, to some extent, as long as her master forgoes interfering with her choices. Second, any form of interference—and notably of legal interference (say, a ban on slavery)—reduces by definition the freedom of the agent on whom the interference is visited, however apparently justified such interference may be.

Republican freedom, by contrast, is defined as nondomination, with domination being *the capacity to interfere arbitrarily* with the choices and actions of another agent. The classic instance of unfreedom is slavery, in which the slave lives under the ever-present threat of being interfered with arbitrarily, that is, without her master having to track the slave's interests. From a republican standpoint, the capacity of the master to interfere arbitrarily diminishes the ability of the slave to define and pursue her ends with self-confidence. Since the slave is aware that her master enjoys an ever-present position to interfere whenever she deviates from her preferences, the choices of the former are likely to conform to the preferences of the latter. In short, from a republican standpoint, the freedom of the slave is diminished not only by the extent to

⁹Full-blown accounts of the republican tradition include: Philip Pettit, *Republicanism* (Oxford: Oxford University Press, 1997); Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1999); Domènech, *El eclipse de la fraternidad*; Frank Lovett, *A General Theory of Domination and Justice* (Oxford: Oxford University Press, 2010).

¹⁰For such concerns, see: Robert E. Goodin, "Folie républicaine," *Annual Review of Political Science* 6 (2003): 55-76; Matthew Kramer, *The Quality of Freedom* (Oxford: Oxford University Press, 2003); Ian Carter, "How are Power and Unfreedom Related?" in Cécile Laborde and John Maynor (eds.), *Republicanism and Political Theory* (Oxford: Blackwell, 2008), chap. 2.

which she is arbitrarily interfered with, but also by the capacity of the master to do so, regardless of whether such capacity is eventually exercised or not.¹¹

To see this, consider the case of a woman who depends on her husband as her only source of income. Further assume that the latter agrees to share his income with her and to make all household decisions on a basis of parity. If the husband uses his economic position to impose his interests, this will certainly diminish his wife's freedom. Yet, even if he does not, his economic position will also affect the wife's behavior regarding those decisions involving spending. From a republican standpoint, the wife's liberty is affected even when she is not actually interfered with.

Let us turn now to the second difference between the republican and the liberal definitions. Just as unfreedom without interference is possible under the former yet not under the latter, so too is interference without unfreedom. This is the case when the interference exercised is non-arbitrary. To see this, consider the following example:

Tanya lives in a small, newly created country in Eastern Europe. Perhaps the most important issue in the region is the treatment of a disenfranchised minority that lives throughout the country. Tanya truly dislikes the minority and wants to further damage them if she can. While public opinion concerning the minority varies greatly, the government has taken the side of the minority. Consequently, a ban has been placed on any action or public speech that is intended to hurt the disenfranchised minority. In other words, the government has made laws against hurting the minority, but Tanya wishes she could hurt them.¹²

Jonathan Phillips presented subjects with this case and asked them if they considered that the ban diminished Tanya's freedom or not. Interestingly, the mean response was closer to "Not at all" than to "Completely."¹³ This finding is consistent with the republican conception of freedom (though Phillips analyzes it differently). According to this conception, interference can occur without substantial loss of liberty when it

¹¹Here I take the stand of Skinner rather than of Pettit. The intuitive idea is that the slave's freedom is certainly diminished by the very possibility of her being interfered with, as both Skinner and Pettit believe. But, pace Pettit, her freedom is also diminished when she is actually interfered with arbitrarily, or when such interference is more likely to happen. See Skinner, *Liberty Before Liberalism*, and Philip Pettit, "Keeping Republican Freedom Simple: On a Difference with Quentin Skinner," *Political Theory* 30 (2002): 339-56.

¹²Jonathan Phillips, "Freedom: Morality and Folk Intuitions," p. 14; see link at <http://publicreason.net/2009/02/27/ppps-freedom-morality-and-folk-intuitions/>.

¹³The survey covered 67 undergraduate students, and the mean responses were scored on a scale from 1 ("Not At All") to 7 ("Completely"). This case obtained a 3.53. See Phillips, "Freedom: Morality and Folk Intuitions," p. 15.

prevents agent A (say, Tanya) from interfering with the choices and actions of agent B (say, the disenfranchised minority) arbitrarily, that is, without being forced to track the interests of B.¹⁴ Such interference may diminish to some extent A's freedom, for it thwarts her choices and actions. Yet it does not do so completely if it forces A to track the interests of B and, accordingly, interferes with A's choices and actions non-arbitrarily.¹⁵

The republican tradition has identified nonarbitrary interference with the rule of law being in place, that is, with the existence of stable and publicly known legal rules, as a means to nonarbitrarily constrain the ability of powerful parties to impose their will and to force said parties to track the interests of all involved. Of course, legal rules can be arbitrary themselves when they are arbitrarily adopted or enacted, as will become clear in section 3.2. However, when they are not, they need not trump freedom; they rather enable it. Republican freedom is then defined as "immunity by the law," rather than as "immunity from the laws," as James Harrington famously put it.¹⁶

As we shall see below, this element of republican freedom is crucial because it could allow, and indeed require, forms of interference in the workplace (resulting, for example, from rules internal to the firm or from labor legislation enacted by state agencies) that may not diminish the freedom of the managers and workers on whom they are placed. In what follows, I turn to the forms of domination that are likely to occur in the workplace and to the forms of nonarbitrary interference that may be justified to address them.

3. Republicanism in the Workplace

Put briefly, in the liberal conception a person is free if and only if she is not actually interfered with in her choices and actions. By contrast, here is the republican conception:

¹⁴Philip Pettit, "Republican Freedom: Three Axioms, Four Theorems," in Laborde and Maynor (eds.), *Republicanism and Political Theory*, chap. 4, p. 117.

¹⁵Such interference does not ensure that the interests of the latter are adequately tracked merely because they are taken into account, for if someone is looking for a way to hurt someone else (as in the case of Tanya), she might keep track of what her victim prefers and systematically attempt to thwart each of her goals. It does ensure that such interests are adequately tracked when it forces the interferer (say, Tanya) to take the interests of the interferee as having the same normative weight as her own interests.

¹⁶James Harrington, *The Commonwealth of Oceana and A System of Politics*, ed. J.G.A. Pocock (Cambridge: Cambridge University Press, 1992).

Republican freedom: X is free iff she enjoys immunity against the possibility of being arbitrarily interfered with.

Now, what forms of arbitrary interference are to appear in the firm? And how are they to be addressed from a republican standpoint? In contrast to self-employment, the employment relationship consists in the voluntary subordination of the worker to the command of the employer regarding the material details of the job. Continued interference in the form of commands and supervision is, thus, unavoidable. Now, republicans need not worry about this form of interference as long as it is adequately checked, that is, as long as the employer is forced to track the interests of the employee.

Forced labor and child work are often presented as the most obvious instances of workers subject to arbitrary interference.¹⁷ Yet arbitrary interference may also take place in uncoerced, yet inadequately checked, working environments. Nien-hê Hsieh lists three levels of decision-making in which this can occur: (a) decisions directing a worker to perform a certain task or to limit her performance, such as favoritism in allocating work and overtime or verbal and physical abuse in supervision; (b) decisions affecting not the particular actions of the worker but the conditions under which such actions are performed, such as capricious rescheduling of working hours, discrimination in promotion and compensation, or assignment of hazardous tasks; and (c) decisions that are made neither directly about the worker nor about her working conditions, but nevertheless affect her as a side effect, such as investment policies, production planning, or relocations.¹⁸

Arbitrary decisions at these three levels can be and are often made by employers and managers. Since they occur in the setting in which people spend one third of their adult lives and can dramatically affect them and their families, they raise a sensible concern. What is to be done about them? As we have seen, from a republican standpoint the goal is not to reduce the existence of managerial authority, but only its arbitrary exercise. In turn, adequate immunity will be ensured as long as employers, directors, and first-line managers are forced to track workers' interests. However, this aim can be achieved in a number of possible ways. Let us consider the two main available alternatives in this section and turn to a third one—namely, WD—in section 4.

¹⁷They include violations of two of the fourfold set of fundamental labor rights included in the ILO's 1998 "Declaration on Fundamental Principles and Rights at Work," the major international consensus document on the issue.

¹⁸Hsieh, "Survey Article: Justice in Production," p. 122, and "Rawlsian Justice and Workplace Republicanism," p. 91.

3.1. Exit rights

A first response to potential arbitrary interference in the workplace is that in free labor markets employees can always quit their job if they are treated capriciously. As Richard Arneson puts it,

the freedom of the individual on a modern labor market willy-nilly confers on each person a considerable degree of *control* in the form of exit rights ... One can generally escape the reach of ... unwanted policies by quitting one's job and taking another.¹⁹

Employers are aware of this. Accordingly, they have a strong incentive to track the interests of their employees and behave nonarbitrarily. Consider two versions of this response—a strong version and a weaker one.

According to the strong version, little is to be done apart from ensuring that markets remain competitive and workers can freely exit their jobs. Arbitrary interference could have been the norm under the British Master and Servant Acts, when employees could be prosecuted for quitting their jobs. And it is so nowadays in markets of prostitution and forced labor, in monopsonistic labor markets, or in cases in which illegal immigrants work under the threat of being reported and repatriated. These are all instances of compulsory or quasi-compulsory labor, in which workers can be arbitrarily interfered with. However, this need not be the case in free, competitive, and full-clearing labor markets. In these markets, workers use their right to quit as an implicit, yet ever-present, threat against ex post managerial decisions—that is, decisions not contractually specified at the outset of the relationship—that could lead to arbitrary interference.

The weak version, by contrast, assumes that power asymmetries can arise in free labor markets. And it argues in favor of making exit as costless as possible by modifying the background conditions under which the employment relationship takes place. Measures such as the state provision of unemployment benefits, public health care, or a universal basic income, in addition to further and more radical measures that may modify the whole structure within which firms operate, could alter such conditions and reduce exit costs, thus balancing power asymmetries between employers and employees.²⁰ According to Brian Barry, for example, a basic income “is the most practicable (perhaps the only practi-

¹⁹Richard Arneson, “Democratic Rights at National and Workplace Levels,” in David Copp, Jean Hampton, and John E. Roemer (eds.), *The Idea of Democracy* (Cambridge: Cambridge University Press, 1993), chap. 3, p. 139.

²⁰I am grateful to an anonymous reviewer for pressing me to expand this version of the argument.

cable) way of counteracting the excessive power of employers over workers.”²¹

Let us now assess the ability of exit rights to ensure that employers and managers adequately track workers’ interests. To be sure, exit rights are necessary for doing so, yet they turn out to be insufficient, at least, for three reasons.

First, imperfect labor markets do have involuntary unemployment. This, in turn, has disciplinary effects over employed workers by making it costly for them to quit (since they would not be in a position to find another job easily). Further, Carl Shapiro and Joseph Stiglitz show that under conditions of imperfect information, involuntary unemployment also obtains in perfectly competitive markets, which need a sufficiently large unemployment rate to remain competitive.²² It is thus mistaken to say, as the strong version of the exit rights argument does, that employees can use the right to quit as a credible threat against arbitrary interference. Further, since unemployment has consequences for the self-esteem of unemployed workers, this problem also affects the weak version of the argument. Even under background conditions that may dramatically improve their bargaining position, unemployment is likely to serve as a disciplinary device. As a result, employers are likely to remain unforced to adequately track the interests of their employees and are *eo ipso* likely to be able to act arbitrarily, at least to some extent.

Second, even if labor markets cleared, there are additional exit costs that can lock in employees.²³ Four stand out: (i) sunk costs incurred by workers in developing firm-specific human capital (the so-called too-much-invested-to-quit effect); (ii) workers’ integration in the network of coworkers, customers, and so on, that a job provides, and that may become a central part of their lives; (iii) searching and transition costs from one job to another; and (iv) psychological costs of quitting work altogether—work being a relevant source of self-respect.²⁴ Again, since these costs are likely to apply under the conditions specified by both the strong

²¹Brian Barry, *Why Social Justice Matters*. (Cambridge: Polity Press, 2005), p. 212.

²²Carl Shapiro and Joseph Stiglitz, “Unemployment as a Worker Discipline Device,” *American Economic Review* 74 (1984): 433-44.

²³Jon Elster and Karl Ove Moene, “Introduction,” in Jon Elster and Karl Ove Moene (eds.), *Alternatives to Capitalism* (Cambridge: Cambridge University Press, 1989), p. 6; Henry Hansmann, *The Ownership of Enterprise* (Cambridge, Mass.: Harvard University Press, 2000), p. 71. Hsieh, “Rawlsian Justice and Workplace Republicanism,” pp. 129 ff.

²⁴On normative issues related to work and self-esteem, see: Adina Schwartz, “Meaningful Work,” *Ethics* 92 (1982): 634-46; Richard Arneson, “Meaningful Work and Market Socialism,” *Ethics* 97 (1987): 517-45; Jeffrey Moriarty, “Rawls, Self-Respect, and the Opportunity for Meaningful Work,” *Social Theory and Practice* 35 (2009): 441-59.

and the weak argument, it turns out that none of them is likely to provide a sufficient check on employers' ability to arbitrarily interfere with the choices and actions of their employees.

Third, even if exit were costless, job alternatives for workers may be as despotic, unregulated, and arbitrary as their current job. For example, if gender discrimination is pervasive across the economy, then being able to costlessly quit may be of little value for women, and background economic justice may not be able to adequately address the problem. As an analogy, consider an archipelago of countries that were ruled by dictators who, nevertheless, enforced an open borders policy. Would their power become any less arbitrary just because citizens could costlessly exit their countries and enter a country that is equally dictatorial?²⁵ Adam Michnick, the Polish democratic dissident, was once presented with a similar counterfactual, to which he replied with the following:

If forced to choose between General Jaruzelski and General Pinochet, I would choose Marlene Dietrich. The alternative is absurd and irrational. It offers me the choice, as I fight for democracy in a dictatorial system, of sitting in prison either as a Communist or as an anti-Communist.²⁶

Caveat: while these three reasons show that, although probably necessary, exit rights alone may not be sufficient to prevent arbitrary interference, they may apply very differently within and across firms, as well as across time and place. For example, while an experienced surgeon in Rotterdam may be able to find a similar job just by walking across the street, an unskilled worker in bankrupt Detroit may find it very difficult to do so. In short, employers may have an uneven capacity to interfere arbitrarily with the various subsets of employees under different circumstances. Now, even though employees who possess scarce and valued skills may be de facto immune to arbitrary interference, employees who lack such skills are not, as Robert Dahl points out.²⁷ Hence, additional means to exit rights may not be necessary for the former, just as Warren Buffet may not need voting rights to have de facto political influence. Yet, they may be necessary for the latter.

²⁵I owe this example to Axel Gosseries. A similar case can be found in Philip Pettit, "Law and Liberty," in Samantha Besson and José Luis Martí (eds.), *Legal Republicanism: National and International Perspectives* (Oxford: Oxford University Press, 2009), chap. 1, p. 52.

²⁶Quoted in Alexander S. Kirshner, "Proceduralism and Popular Threats to Democracy," *Journal of Political Philosophy* 18 (2010): 405-24, p. 411.

²⁷Robert Dahl, "A Right to Workplace Democracy? Response to Robert Mayer," *The Review of Politics* 63 (2001): 249-53, p. 252.

3.2. *Workplace constitutionalism*

As we have just seen, some authors argue that WD is unnecessary because exit rights are enough to protect employees from arbitrary interference. Similarly, some authors argue that WD is unnecessary because workplace regulation provides a sufficient check on the exercise of managerial authority—call this option *workplace constitutionalism* (henceforth “WC”). Some neo-republicans embrace this position. Richard Dagger, for instance, considers that republican policies would require a regime that “constrains the discretion of managerial decision-making.” However, he argues, it “will not get so far as to require workplace democracy, in which workers participate directly in the governance of the firm.”²⁸

WC proposes the sort of regulation that we currently find, somehow or another, in our advanced economies in the form of international labor standards, workers’ constitutional rights, and professional and craft standards. As we have seen in section 2, republican freedom requires the existence of stable and publicly known legal rules that constrain the ability of powerful parties to arbitrarily impose their will. As a result, such regulations are justified, and indeed required, from a republican standpoint insofar as they reduce managerial discretion and, accordingly, managers’ ability to make arbitrary decisions, including sexual harassment, racial discrimination in compensation and promotion, or assignment of hazardous and humiliating tasks.

Unlike the exit rights argument, WC is not aimed at establishing the right of employees to costlessly quit, so they can use it as an implicit threat in their daily relation with managers. Rather, it attempts to set clear and specific standards to which managers have to conform in the exercise of their authority, in order to reduce their discretion. This appears to be a better means to prevent arbitrariness since, as Randy Hodson demonstrates, the likelihood of arbitrary interference is much lower when command and/or supervision is indirect and standardized (e.g., through bureaucratic rules or craft and professional criteria), rather than direct and personal.²⁹

Under WC, the authority of employees and managers is not ruled out. They still have ample margin to run the firm as they deem appropriate. Yet, they have to conform to a number of rules that reduce their discretion in the exercise of their authority and, accordingly, the *possibility* of

²⁸Richard Dagger, “Neo-Republicanism and the Civic Economy,” *Politics, Philosophy & Economics* 5 (2006): 151-73, p. 162.

²⁹Randy Hodson, *Dignity at Work* (Cambridge: Cambridge University Press, 2004), p. 88.

arbitrariness. For example, employers and managers can of course decide whether employee A will transport some merchandise to either Philadelphia or Pittsburgh, or whether employee B rather than employee C will be promoted. But they cannot require employee A to drive above the number of hours permitted by the health and safety regulation statute, just as they cannot violate the anti-discrimination law in promoting employee B rather than C.

To be sure, discretion need not amount to arbitrariness. Employers can certainly behave responsibly and be responsive to the interests of their employees. However, as we have seen in section 2, republicanism is not only concerned with actual arbitrariness, but also with its possibility. Now, since WC appears to provide immunity from both actual and possible arbitrariness, it might seem that WC is sufficient to ensure republican freedom in the workplace. However, a number of problems regarding WC arise. These are analyzed in detail in the next section. For now, and in order to introduce such reasons, consider the following counterintuitive implication of WC.

Assume that legal protections alone could ensure immunity from arbitrary interference within the firm, and consider next the political sphere. If that were the case, why should we have a quarrel with nonparliamentary constitutional monarchy à la Bismarck? In such a regime, citizens' rights are entrenched in a constitutional text that constrains the authority of the king. Yet, they are disenfranchised, or the parliament lacks meaningful legislative force. Now, that is the situation we have nowadays in most firms, and the one WC recommends—a situation in which workers enjoy both civil rights (e.g., they cannot be discriminated on grounds of religion, race, or gender) and social rights (e.g., they enjoy paid holidays or a minimum wage), but lack the right to have a say in managerial decisions. In most firms, shareholders and their managers thus act as nondemocratic constitutional kings.

The next section will discuss the reasons why democracy, and not only constitutionalism, is as much needed in the firm as in the political sphere. Before turning to those reasons, though, let me briefly address a methodological concern related to the analogy between constitutional monarchy and WC used here, and between the right to exit the state and the right to exit the firm used in section 3.1, in the example of the archipelago of dictatorships.

Despite its extensive use, the analogy between firms and states—the so-called “parallel case argument”—has not gone without controversy.³⁰

³⁰The label comes from Joshua Cohen, “The Economic Basis of Deliberative Democracy,” *Social Philosophy and Policy* 6, no. 2 (1989): 25-50. The argument can be found in: Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York:

The main criticism is that firms and states are too different for the analogy between them to hold. It has been argued that firms are voluntary associations while states are not, that firms are for-profit while states are not, that firms are meritocratic while states are not, and that managers have power over employees but not *Herrschaft*, as public officials do. Certainly, if we consider these differences, the analogy may not apply. However, it may apply if we isolate one variable, namely, the existence of arbitrary interference in the absence of adequate checks in both domains. And that may be enough for present purposes, given that the goal of this paper is *only* to assess how the workplace should be organized if our goal were only to eliminate arbitrary interference in the firm. Now, we should bear in mind that this methodological decision implies that until properly balanced against the rest of the relevant variables, any conclusion reached under these conditions will only provide a pro tanto reason for WD.³¹

4. Workplace Democracy

Republican freedom is not an all-or-nothing matter, and workplace regulation, as much as the right to exit, are likely to be *necessary* to ensure it in the workplace. The goal of this section is to show that they are, nonetheless, *insufficient* to ensure such freedom in the workplace. It proceeds by showing the deficiencies of WC and how WD may address them. Let us begin by introducing the following requirement of republican freedom:

Political participation: X enjoys immunity against arbitrary interference only if she is granted and regularly exercises a set of political rights that allow her to influence and contest the decisions affecting her.

Contrary to what some contemporary commentators have written, in the republican tradition, political participation is *not* considered a necessary condition of freedom as nondomination merely because it is intrinsically valuable.³² Rather, the main reason for this requirement is that im-

Basic Books, 1977); Dahl, *A Preface to Economic Democracy*; and Kory P. Schaff, "Democratic Rights in the Workplace," *Inquiry* 55 (2012): 386-404. For a detailed defense, see Iñigo González-Ricoy, "Firms, States, and Democracy: A Qualified Defense of the Parallel Case," *LEAP—Law, Ethics & Philosophy*, forthcoming (2014). For a critique, see Claudio López-Guerra, "Against the Parallel Case for Workplace Democracy," *Revue de philosophie économique* 8 (2008): 11-28.

³¹I thank Geneviève Rousselière for pressing me to clarify this point.

³²As Skinner recalls with reference to classic republicanism, "the writers I am considering never suggest that there are certain specific goals we need to realise in order to

munity against arbitrary interference can only be ensured when stable and publicly known *nonarbitrary* legal rules are in place. Participation in the law-making process by those against whom the law is enforced is thus necessary—among other means, such as the separation of powers—to prevent the law from becoming arbitrary.³³

This is so for two reasons. First, only political participation can ensure that all citizens' interests are equally considered in the legislative process. Second, active participation is required not only at the outset of the legislative process, but also at the enactment stage. Even if the first condition were satisfied through citizens' consent to, say, a constitutional text, its content would have to be applied to particular and unforeseeable cases. This is why active and permanent participation of the citizenry is needed both at the law-making and enactment stages. As John Rawls thoughtfully argued,

[u]nless there is widespread participation in democratic politics by a vigorous and informed citizen body ... even the best-designed political institutions will eventually fall into the hands of those who hunger for power and military glory or pursue narrow class and economic interests ... If we are to remain free and equal, we cannot afford a general retreat into private life.³⁴

These two reasons apply similarly to the elaboration and enforcement of workplace regulation. According to the first reason, employees ought to take part in the elaboration of workplace regulation. Otherwise, such regulation is likely to become arbitrary. Consider the case of guest workers who lack political rights in their host countries. For example, Filipina domestic workers have to sign a two-year contract to migrate to Hong Kong. Further, they are also required to leave the country within two weeks after being fired, and they cannot sign another contract if they quit. As Hodson argues, these legal requirements are among the major reasons why Filipina maids accept constant abuses.³⁵

An adequate protection against the possibility of arbitrary interference requires workplace regulation. However, such regulation can be arbitrary itself. This is likely to be the case unless those against whom it is enforced enjoy and exercise the right to influence its drafting, as the case of

count as being fully or truly in possession of our liberty.” “[They] merely argue that participation ... constitutes a necessary condition of maintaining individual liberty.” Quentin Skinner, “The Paradoxes of Political Liberty,” in *The Tanner Lectures on Human Values* (Salt Lake City: University of Utah Press, 1986), pp. 227-50, at p. 240; *Liberty Before Liberalism*, pp. 74-75 n. 38.

³³See Pettit, “Law and Liberty,” pp. 53 ff.

³⁴John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, Mass.: Harvard University Press, 2001), p. 141.

³⁵See Hodson, *Dignity at Work*, pp. 96-97.

the Filipina maids shows. In short, there is a clear republican case not only for workplace regulation, but also for workers' rights to participate in its elaboration.

It could be argued that this reason justifies democracy at the constitution-making stage and in the political realm, but not in the workplace. A possible reply is that it may also provide an indirect justification of WD due to the side effects that this may have in terms of increasing citizens' engagement in the political realm, as Carole Pateman and Ronald Mason have famously championed.³⁶ According to the so-called "spillover thesis," workers' participation in the workplace can improve their participation in politics beyond the workplace. However, as recently noted by Neil Carter, the existing evidence on the relationship between WD and political participation is far from conclusive. For example, a study carried out by Edward Greenberg et al. using a sample of 1,247 workers of democratic and nondemocratic companies shows that the relationship is much weaker than the one advanced by Pateman and Mason.³⁷

Consider now the second, more promising, reason, according to which active and permanent participation is required in order to prevent the arbitrary enforcement of the existing legislation. Arbitrary interference can be anticipated, and thus prevented, to some extent at the outset of the employment relationship. However, employment contracts, as much as workplace regulations, are unavoidably incomplete. As Oliver Hart puts it regarding the parties to the contract, they cannot specify "precisely what each of their obligations is in every conceivable state of the world."³⁸

Two relevant implications follow. First, it would be impossible, or prohibitively costly, for the parties to the agreement to make their contract complete—much more so in large firms and complex and often unpredictable economic environments. Second, even if it were possible, some flexibility is desirable to adequately address day-to-day unforeseeable contingencies. For these two reasons, the parties do not try to specify ex ante all possible contingencies. Rather, the employee agrees to subordinate to the authority of the employer and, even though their relation-

³⁶See Carole Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970); Ronald Mason, *Participatory and Workplace Democracy* (Carbondale: Southern Illinois University Press, 1982).

³⁷See Neil Carter, "Political Participation and the Workplace: The Spillover Thesis Revisited," *The British Journal of Politics & International Relations* 8 (2006): 410-26; Edward Greenberg, Leon Grunberg, and Kelly Daniel, "Industrial Work and Political Participation: Beyond 'Simple Spillover,'" *Political Research Quarterly* 49 (1996): 287-304.

³⁸Oliver D. Hart, "Incomplete Contracts and the Theory of the Firm," *Journal of Law, Economics, & Organization* 4 (1988): 119-39, p. 121.

ship is subject to an ongoing process of negotiation that may alter its terms, the employer retains residual decision-making rights, that is, the final say over decisions that have not been specified at the outset of the relationship. However, the fact that employers are granted residual rights raises a sensible concern from the republican standpoint—namely, the *possibility* of arbitrary decisions resulting from the exercise of such rights.

Let us turn now to WD. As we have seen, WC attempts to reduce arbitrary interference by means of ex ante regulating employers' discretion. However, comprehensive regulation is neither possible nor desirable given the very nature of the employment contract in large firms and complex economies. WD, by contrast, does not attempt to constrain managerial discretion.³⁹ Rather, it is only aimed at reducing the *arbitrary exercise* of such discretion by means of incorporating the interests of workers (i.e., those against whom firms' decisions are enforced) into the decision-making process internal to the firm. It does so by granting workers a binding say both over the firm's decisions and their enforcement. In so doing, WD not only ensures that workers govern themselves—something that that they could be said to do indirectly insofar as their elected representatives participate in the drafting of the labor legislation. It also ensures that they continue to do so across a range of nonactual circumstances that cannot be advanced by such legislation.⁴⁰

Two important remarks are in order. First, alternative participatory means, such as those advanced by “best practice” human resources management, may also provide workers with a say at some levels and regarding some tasks of firms' decisions. These may include semi-autonomous teams, problem-solving groups, or even joint consultative committees. Depending on their scope, level, and form, they may provide incipient forms of WD. However, two crucial issues should be kept in mind—(i) whether these means are regarded as rights or as prerogatives, and (ii) whether their outcomes are regarded as binding on managers or as merely advisory. When these measures are in place as actionable rights and their outcomes are binding on managers, then they may be close to

³⁹This does not mean, of course, that decisions in democratic firms should not be constrained by the legal framework within which they operate. For example, from a republican standpoint, workers of a cooperative should not be able to decide democratically to lower the salary of some members of the cooperative below the legal minimum wage, or to deny membership on the basis of racial or gender discrimination. More on this in section 5.1.

⁴⁰For this requirement, see Nicholas Southwood, “Democracy as a Modally Demanding Value,” *Nous*, published online 15 April 2013, DOI: 10.1111/nous.1.

WD, and be effective in ensuring that managers track workers' interests adequately.

Also note that the reason to grant workers a binding say is not necessarily that there are conflicting interests that need to be balanced. In the presence of information asymmetries, participation would still be necessary to track workers' knowledge and expertise even if such conflicts did not arise. In firms in which division of labor and expertise is pervasive, workers inevitably retain knowledge both about their interests and about how to improve their tasks and the overall functioning of the firm. Alternative devices to binding control rights (e.g., surveys, suggestion schemes, quality circles) are often used to track this knowledge. However, as theorists of descriptive representation often point out, those who are in a position to make decisions tend to understate this asymmetry and take for granted the interests and beliefs of those against whom decisions are enforced. A binding say in the decision-making process of the firm corrects this bias by forcing directors and managers to take workers' interests and beliefs into account.

5. Objections

So far I have argued that both exit rights and WC fall short of ensuring workers' republican freedom, and that WD is also necessary to ensure it. In order to clarify my argument and to adequately address its limitations, consider three objections—namely, that WD is redundant, that it goes too far provided that litigation and unionism can produce similar goals, and that it falls short of ensuring republican freedom compared to self-employment.

5.1. Redundancy

It might be objected that WD adds little to WC. In the latter, workers already enjoy ample control rights at the political level, and have a say in the elaboration and enforcement of workplace regulation.⁴¹ Consider three responses to this concern.

First, even if this is the case, a difference of *scope* between WC and WD still holds. As an analogy, consider the difference between democratic rights at the state and municipal levels. It seems obvious that enjoying democratic rights at the state level is not a sufficient reason to prevent citizens from enjoying such rights at the municipal level too, given that decisions that affect them are also made at the latter level.

⁴¹I thank Richard Bellamy and an audience in London for raising this issue.

Mutatis mutandis, workers may well enjoy democratic rights at the political level, but that does not make democratic rights within the firm any less relevant.

Second, given that people spend most of their daytime in the workplace, it is unreasonable to think that participation in the political sphere can replace participation in the workplace. Further, participation may be more effective in the workplace than in the political sphere, being that the impact of each vote, ideally, is $1/n$ (where n = the number of participants in the decision, and with n being much larger in the political sphere than in the workplace).

Third, WD is a form of managerial organization that can, of course, be arbitrary, or arbitrarily enforced. For example, a majority of workers in a cooperative can use their voting rights to dismiss a minority, thus increasing their per capita revenue, or to hire nonmember employees above the maximum permitted working hours. This is why there are good republican reasons for a multilevel form of WD, in which decisions internal to the firm are constrained by decisions made at the sector, state, and international levels. From a republican standpoint, WC has to be complemented by WD as much as WD has to be constrained by WC.

5.2. Litigation and unionism

It might be further objected, on more pragmatic grounds, that litigation and strong unionism could better ensure that workers' interests are rightly tracked.⁴² This is a complex and empirical issue that cannot be conclusively addressed independently of the background on which firms, courts, and unions operate. The proper balance between WD, litigation, and unionism is inevitably context-dependent. However, a tentative response may be advanced.

Consider litigation first. Even though litigation is an essential resource of last resort to address violations of workers' rights and collective agreements, it presents at least three difficulties. First, it addresses workers' concerns *ex post* rather than incorporating them into the decision-making procedure internal to the firm. Of course, the very prospect of litigation creates strong incentives for managers to observe the existing labor legislation *ex ante*. Yet it does not force them to track the interests of workers, since, as we have already seen, the law need not track the interests of workers unless they have a binding say over the law-making process at all or most levels. Second, litigation is carried out before courts, which, unlike boards in democratic firms, are not elected

⁴²I thank Daniel Attas and Volkan Gul for raising this issue.

by workers and thus have a weaker incentive to track their interests adequately. Finally, reliance on legal means for the protection of workers' rights may be prohibitively costly, which may discourage workers from bringing suit against their employers. Employers, in turn, may discount this behavior.

As for trade unionism, even though trade-offs with WD can certainly arise,⁴³ this tension is largely apparent. They are, in fact, mutually required in two senses.

On the one hand, unionism turns out to be insufficient to adequately address arbitrary interference in the workplace for two main reasons. First, in the absence of a formal and binding voice mechanism internal to the firm, unions do not ensure that workers' interests will be adequately tracked, as WD does. Accordingly, the influence of unions depends on their de facto and variable power. As an analogy, consider the disenfranchised members of a polity, who may well organize to lobby MPs and influence the law-making process. However, they are disadvantaged in relation to the enfranchised population, who enjoy de iure and permanent means to elect MPs (in addition to their ability to lobby them). Second, unions have a strong incentive to act in favor of their affiliated members at the expense of non-union members, while WD distributes control rights equally and on a one-worker-one-vote basis.

On the other hand, in the absence of strong and well-functioning unions (as is nowadays the case in most Western countries, at least in those without the Ghent system), WD may be ineffective in adequately tracking workers' interests. This problem is especially pressing in large democratic firms, in which time-consuming decisions have to be made about complex issues, such as investment policies, production engineering, or budgetary planning. In such cases, without the presence of well-equipped unions, formal control rights may be of little value. As LAB, one of the largest trade unions of the Basque Country, put it in 1992 regarding the Mondragón cooperatives:

The absence of syndicates in the cooperatives has negative repercussions for workers. Workers lack an organizational form, and the directors of the cooperatives take advantage of this fact by making substantial changes in working conditions (increasing work pace, changing schedules, abusing temporary contracts, etc.) which would not so easily be accepted by workers in private firms.⁴⁴

⁴³See Karl Ove Moene, "Strong Unions or Worker Control?" in Elster and Moene (eds.), *Alternatives to Capitalism*, chap. 5.

⁴⁴Quoted in Sharryn Kasmir, *The Myth of Mondragón* (Albany: State University of New York Press, 1996), p. 190.

5.3. *Self-employment*

Finally, it might be objected that WD falls short of ruling out arbitrary interference in the workplace compared to self-employment. Given that democracy (in the workplace and elsewhere) cannot fully eliminate domination, the best means to ensure freedom from arbitrary interference would consist of uprooting the very source of domination in the workplace—namely, the existence of managerial authority.

This is a very sensible concern.⁴⁵ Consider two plausible ways of addressing it. A first response—yet, as we shall see, not a completely convincing one—consists in saying that there is a crucial difference between self-employment and the three alternatives discussed in this paper, and that the former is beyond the scope of this article because of this difference. According to this argument, WD, exit rights, and WC advance different forms of reducing the arbitrary exercise of managerial authority. Self-employment, by contrast, rules out managerial authority in the first place. Put differently, while the former three alternatives provide an answer to the question of how managerial authority should be exercised, self-employment provides an alternative to managerial authority altogether.

In order to see the plausibility of this response, consider domination within the family as an analogy. The abolition of the family would surely avoid the problem of arbitrary interference in this sphere. However, according to this response, this would only raise the normatively important and unavoidable question of how the family ought to be organized in order to minimize domination where families do exist. Given that domination is by definition a relational phenomenon, the issue of how to organize social relations and the issue of whether this or that precise social relationship should be allowed in the first place are conceptually different and nonreducible to each other.

However, this response is not completely convincing, since the following reply can be advanced. If our goal is to reduce arbitrary interference in the workplace, then there is no reason why we should accept the exercise of managerial authority in the first place, given that domination cannot be completely ruled out where such authority is exercised. Similarly, self-employment should not be discarded, given that it is a form of labor in which managerial authority is not exercised and, accordingly, arbitrary interference is absent by definition.

Of course, it might be further replied that self-employment is not a realistic alternative to fully address the issue of domination in the workplace in our advanced economies. However, two problems arise

⁴⁵I am grateful to an anonymous reviewer for raising this concern.

with this reply. First, as a matter of fact, self-employment proves to be a more feasible alternative than WD. For example, self-employment in OECD countries accounted for 16.8 percent of total employment in 2005.⁴⁶ Even though there is no reliable source with aggregated data, democratically run firms are much more marginal. In France, for example, jobs provided by cooperatives amounted to only 3.5 percent of total employment in 2010.⁴⁷ Second, and more importantly for present purposes, if self-employment is to be assessed—and discarded—on the basis of variables other than the reduction of domination in the workplace (e.g., its economic effects, its stability, its feasibility), then WD should also be assessed according to these variables. However, the scope of this paper has been limited from the outset to the protection of republican freedom in the workplace, other things being equal. Accordingly, discarding self-employment for reasons of feasibility would be arbitrary.

Consider now a second, more plausible, response. It consists in admitting that if our goal is to reduce arbitrary interference in the workplace, then republicanism should ideally recommend an economy based on self-employment and WD only as a second best alternative. This response is, in fact, more consistent with the history of republican thought. Few of us would nowadays see employment as a relationship of domination by definition, including many neo-republicans.⁴⁸ Yet, classic republicans considered wage labor as unfree labor almost as a matter of definition. They defined self-employed workers as *sui iuris*, as self-standing independent workers, and they compared them to salaried workers, who were defined as *alieni iuris*, as dependent on their employers and destined to be dominated by them. For example, Cicero defined the wage received by manual laborers as “a pledge of their slavery.”⁴⁹ Similarly, in defining who should be enfranchised, Kant clearly distinguished between self-employed and employed workers (and contended that only the latter should be granted citizenship): “In cases where [a citizen] must earn his

⁴⁶Organisation for Economic Co-operation and Development, *OECD Factbook 2011-2012: Economic, Environmental and Social Statistics* (OECD Publishing, 2012), p. 161.

⁴⁷International Cooperative Alliance, “Cooperatives Facts & Figures” (2013), <http://ica.coop/en/whats-co-op/co-operative-facts-figures> (accessed March 17, 2013).

⁴⁸Two exceptions include David Ellerman (2005) “*Translatio* versus *Concessio*: Retrieving the Debate About Contracts of Alienation with an Application to Today’s Employment Contract,” *Politics and Society* 33(3): 449-480. Carole Pateman (2002) “Self-Ownership and Property in the Person: Democratization and a Tale of two Concepts,” *Journal of Political Philosophy* 10(1): 20-53.

⁴⁹Marcus Tullius Cicero, *De Officiis*, trans. Walter Miller (Cambridge, Mass.: Harvard University Press, 1913), p. XLII.

living from others, he must earn it only by *selling* that which is his, and not by allowing others to make use of him.”⁵⁰

In short, it might be argued that self-employment is not only a better means to rule out domination in the workplace, compared to WD, but also a more consistent one from the standpoint of classic republicanism. However, this response need not be at odds with the first response.

On the one hand, it is certainly plausible to argue that if the elimination of domination is our only goal, then ruling out managerial authority, as self-employment does, turns out to be preferable to WD, WC, and exit rights. On the other hand, however, it is equally plausible to argue that the latter three alternatives address an issue that is conceptually different from the one addressed by self-employment. While self-employment addresses the issue of whether managerial authority should be exercised in the first place, WD (as well as WC and exit rights) addresses the issue of how managerial authority should be exercised where managerial authority does exist. Given that the goal of republicanism is not to rule out interference—but rather to ensure that where interference takes place it is not arbitrarily exercised—the distinction remains important. Hence, republicanism might ideally recommend ruling out the exercise of managerial authority in the first place. Yet, in those cases in which managerial authority is exercised, WD turns out to be the best means to reduce its *arbitrary exercise* compared to WC and exit rights, as sections 3 and 4 above have shown.

6. Conclusion

This paper has presented and defended the republican case for WD vis-à-vis exit rights and workplace regulation. First, it has shown that costless exit is neither possible nor desirable in either perfect or imperfect labor markets. Second, it has shown that comprehensive workplace regulation is neither possible nor desirable. Accordingly, these means may be necessary, yet they are insufficient, to prevent arbitrary interference in the workplace. Finally, the paper has shown that WD is neither redundant nor unnecessary compared to alternative means, such as litigation and unionism. But it has also shown that it is the preferable option from a republican standpoint only where managerial authority is exercised, given that self-employment is a form of labor in which managerial interference—and, thus, the possibility of managerial *arbitrary* interference—is absent ex hypothesi.

⁵⁰Immanuel Kant, *Political Writings*, ed. Hans S. Reiss (Cambridge: Cambridge University Press, 1970), p. 7.

This paper has focused exclusively on the protection of republican freedom in the workplace. Since its scope is limited, further research is required. A number of additional variables—including the feasibility, efficiency, and externalities of democratic firms—should be carefully considered if a conclusive case for WD is to be made.⁵¹

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