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# Book review: private government: how employers rule our lives (and why we don't talk about it), Elizabeth Anderson

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*Private Government: How Employers Rule Our Lives (and Why We Don't Talk about It)*, Elizabeth Anderson. Princeton University Press, 2017, xxiii + 196 pages.

Governments in many countries have often been authoritarian, controlled by individuals with the authority to command others and impose sanctions but unaccountable to those subjected to them. In many societies, citizens have fought to gradually democratise their government and abolish unaccountable authority. They secured political equality and prevented the most extreme forms of abuse and domination by establishing political and civil rights, they designed systems of checks and balances to hold government officials accountable, and they incentivised them to promote the public interest through universal suffrage.

In *Private Government*, Elizabeth Anderson proposes to extend these democratic ideals and institutional safeguards to the government of economic organisations. She contributes to a long and growing tradition of authors and active citizens in favour of democratic reforms in the economy, making the authority in workplaces accountable to workers and more responsive to their interests. Anderson illustrates employers' authority and capacity to rule workers' lives with troubling examples such as Walmart employees who are prohibited from exchanging casual remarks in order to avoid 'time theft' or Tyson's humiliating policy preventing its poultry workers from using the bathroom (xix). Drawing an analogy between states and firms, she suggests that if unaccountable authority is morally objectionable within states, it should also be morally objectionable within firms (xix).

A common objection – which can be called the 'libertarian' objection – consists in arguing that, contrary to our relations with the state, employment relations are not problematic because they result from free contracts on the market and economic organisations do not have any authority over workers since they remain free to exit the organisation whenever they want. Therefore, while limiting the power of state governments is justified, regulating free market transactions constitutes an illegitimate infringement on individual freedom. Anderson claims that we are ill-equipped to reply to this libertarian objection: 'We have the language of fairness and distributive justice to talk about low wages and inadequate benefits… But we don't have good ways to talk about the way bosses rule workers' lives' (xix-xx).

Anderson's Tanner Lectures delivered at Princeton University in 2015 – published in this volume along with comments by Ann Hughes, David Bromwich, Niko Kolodny, and Tyler Cowen – aim at answering the libertarian objection in two steps. In the first lecture, Anderson intends to demonstrate why the belief that individual freedom and free markets always go hand in hand is misguided. Early defenders of a free market may have had good reasons to believe that it would promote the freedom and independence of small proprietors' and put everyone on an equal footing. But the industrial revolution saw the rise of large organisations in which employers have a considerable and unaccountable authority over workers. As a result, Anderson argues in the second lecture that we need a language to think about how bosses rule workers' life. She proposes to think of firms as forms of 'private governments' unaccountable to the people they govern. She argues that their authority should be subjected to democratic safeguards similar to the ones expected in states such as the rule of law, substantive constitutional rights, and forms of representation giving a voice to the governed. In what follows, I summarise and discuss each of these two lectures. I conclude that further arguments are needed to justify Anderson's most ambitious democratic proposals.

## 1. FIRST LECTURE: WHEN THE MARKET WAS 'LEFT'

In the first lecture, Anderson provides an insightful excursion into the history of economic thought in order to explain the original appeal of free market ideals. Early modern England, as she underlines, 'was characterized by pervasive hierarchies of domination and subordination' (8). The King's authority over all property meant that customary property rights could be extinguished by law, leading to expulsions and expropriations. State monopolies, granted to cartels of merchants, along with tariffs and other mercantilist barriers to trade also threatened the independence of small traders and artisans, and reduced workers' self-employment opportunities and bargaining power (14-15). In this context, the Levellers of the English Civil War – most remembered for their constitutional demands to limit the power of the King, lords and parliament – and, later, authors like John Locke, and Adam Smith saw private property rights and free markets as tools to realise a 'free society of equals' (7-8). They envisioned the rise of small proprietors and small-scale enterprises run by independent artisans and merchants, able to make a living and to exchange goods on an equal footing (21).

As Ann Hughes notes in her comment (75-88), the reality of the economy in early modern England was more complex and far from the ideal envisioned by these authors. The burgeoning market order created inequalities and social polarisation and a large portion of the population often depended on public assistance. Yet, this does not undermine the validity of these authors' innovative idea that private property rights and free markets were necessary – if not sufficient – institutions to protect the freedom and independence of individuals. They even had good reasons to hope that – under the conditions they envisioned – free markets would increase individuals' freedom and promote equal status and standing (22).

The Industrial Revolution revealed that private property rights and free markets were not sufficient to secure individuals' freedom and protection from domination. Benefiting from economies of scale – as well as market failures such as high entry barriers in capital-intensive industries – economic organisations became large authoritarian hierarchies centralising production to the detriment of small-scale producers and self-employment opportunities (33). Workers' freedom, independence, and bargaining power decreased as the cost to exit exploitative workplaces increased and working conditions severely deteriorated (33-36). Anderson concludes that, in this new social context, the libertarian belief that individual freedom and unregulated markets always go hand in hand is mistaken. This calls for a language to think about how bosses dominate workers.

I think that this first lecture illuminates contemporary debates about freedom and markets and can foster understanding between left and right. Anderson explains the original appeal of libertarian, free market ideals to the ones on 'the left' who may sometimes disregard them too quickly. She also attempts to explain to those with 'right'-libertarian sympathies why their own values of freedom and independence are threatened by authoritarian organisations and their categorical opposition to market regulations and labour protections. In a world often divided along ideological lines, I think that Anderson's attempt at restoring mutual understanding should be saluted and emulated.

## 2. SECOND LECTURE: PRIVATE GOVERNMENT

In the second lecture, Anderson proposes to think of firms as forms of 'private governments'. According to her, 'government exists whenever some have the authority to issue orders to others, backed by sanctions' (42). Government can happen everywhere, not only at the level of the state, but also in firms, churches or families. Whether governments are 'public' or 'private' depends on whether they are accountable or not to the people they govern (43). State governments became public – instead of private – through gradual democratic reforms making their action more transparent and accountable to every citizen (44). However, she claims that most workplaces, in the United States at least, remain under the rule of private governments with substantial, unaccountable authority over the workers they govern (39).

Anderson's central argument stresses that both states' and firms' governments can threaten various aspects of individuals' freedom: their *negative freedom* from legal constraints, their *positive freedom* to pursue their projects, and their *republican freedom* from the domination of others. However, against libertarians, Anderson argues that state-enforced restrictions of negative freedom can be justified if they increase individuals' freedom in other respects. For instance, regulating employers' authority over workers and their capacity to impose sanctions for off-duty behaviour may restrict their negative freedom, but it can increase workers' positive or republican freedom (45-48). Therefore, if our goal is to promote individuals' overall freedom, state regulations can be justified when they free workers from firms' unaccountable authority. Anderson concludes by proposing four strategies do so. States should intervene to (*1.*) improve workers' freedom of exit; moreover, they should make sure that firms' governments are subjected to democratic safeguards similar to the ones expected in states such as a (*2.*) the rule of law, (*3.*) substantive constitutional rights, and (*4.*) forms of representation giving a voice to workers in their workplace (65-71).

## 3. FURTHER ARGUMENTS ARE NEEDED TO JUSTIFY ANDERSONS' MOST AMBITIOUS PROPOSALS

My comments focus on Anderson's central argument. While I share her conviction that states should intervene to democratise firms and make their government accountable to workers, Anderson's claims in *Private Government* are not sufficient to justify some of the most ambitious democratic reforms that she envisions such as (*4.*) democratic representation within workplaces. The four following claims explain why: *a.* negative freedom should be protected, *b.* restricting negative freedom is justified only if *necessary* to improve the distribution of overall freedom, *c.* democratic reforms within firms may not be *necessary* to improve the distribution of overall freedom, and *d.* these democratic reforms cannot be justified on relational egalitarian grounds. I conclude that further arguments are needed to justify Anderson's most ambitious democratic proposals. Let me discuss each claim in turn.

***a*. Negative freedom should be protected.** Anderson rightly argues that if our goal is to promote individuals' overall freedom, negative freedom should not be our only concern. Freedom can be defined as the capacity of an agent to realise a choice without constraint (MacCallum 1967: 314). The capacity of the agent (what Anderson calls 'positive freedom') depends on individuals' external resources, such as income and wealth, and internal resources, such as health. Potential constraints include legal constraints ('negative freedom') and non-legal constraints such as the domination of others ('republican freedom') (45). This means that negative freedom denotes nothing else but a subset of our overall freedom: it is merely the degree of legal constraint to which we are subjected. But, or course, this does not mean that negative freedom should not be protected at all.

State-enforced market regulations restricting negative freedom can be justified if they sufficiently increase the freedom of workers in other respects, i.e. their positive or republican freedom (46-48). However, it remains reasonable to think that state authorities should respect what John Rawls calls a general presumption of formal freedom or, in his words, a 'presumption against imposing legal and other restrictions on conduct without sufficient reason' (1993: 292). Among two sets of policies producing identical distributions of positive and republican freedom, authorities should surely choose the one restricting negative freedom the least. A presumption of formal freedom thus prevents unnecessary legal restrictions.

***b*. Restricting negative freedom is justified only if *necessary* to improve the distribution of overall freedom**. Why this raises a problem for Anderson's argument will become clear in the following example. Suppose that a democratic state government wants to implement an economic system that improves the distribution of overall freedom. As Rawls points out, we need to evaluate the system as a whole, not each of its parts in isolation: 'an institution may be unjust although the social system as a whole is not' for instance if 'within the structure of an institution or social system one apparent injustice compensates for another' (1971: 57). With this in mind, suppose that two systems produce an identical distribution of positive and republican freedom. One abolishes firms' private governments by making workplace authority accountable to workers. The second tolerates private governments within firms, but restores workers' positive and republican freedom by implementing a range of other policies such as redistributive tax-and-transfer schemes, support to unions, investments in social services, and so on. At first sight, there seems to be no way to choose between the two systems. However, suppose that the first system, heavily regulating firms in order to abolish private governments, restricts individuals' negative freedom much more than the second system. Now, the presumption of formal freedom requires choosing the second system because it avoids unnecessary legal restrictions.

***c.* Democratic reforms within firms may not be *necessary* to improve the distribution of overall freedom**. Anderson only succeeds at demonstrating that authoritarian hierarchies in workplaces cannot be justified merely on the libertarian ground that they result from free contracts on the market. Her demonstration that there is authority in workplaces and that workers' freedom of exit is limited is persuasive (37-41, 48-61). However, this is not sufficient to justify ambitious democratic reforms within firms since there may be alternative, less interventionist ways to promote workers' overall freedom.

Moreover, democratic states could justify tolerating firms' private governments on other grounds. As Niko Kolodny notes at the end of his comment, workplace governance may not be directly accountable to workers but it is subjected to state governments which are accountable to all citizens (107). Therefore, if state governments representing all citizens judge that, all things considered, tolerating firms' private government is acceptable, this could legitimise unaccountable authority within firms. Gregory Dow expresses this intuition very clearly: 'there might be good reasons for withholding control rights even when workers do want them. The interest of society as a whole may demand that other goals take priority, perhaps including efficiency goals' (2003: 42). For instance, a system tolerating firms' private governments may be more efficient and therefore improve states' revenue and their capacity to maximise the positive freedom of the least advantaged. In order to justify some of the most ambitious democratic reforms that Anderson envisions such as (*4.*) securing democratic representation in workplaces, she needs to demonstrate that these more interventionist reforms are absolutely *necessary* to improve the distribution of overall freedom.

***d.* These democratic reforms cannot be justified on relational egalitarian grounds**. Indeed, Anderson could deny that alternative policies – such as redistributive taxation, support to unions, and investments in social services – would succeed at realising a just society by arguing that authoritarian hierarchies would still create unequal relations. She famously argued that 'the point of equality' is not merely that resources or opportunities should be fairly distributed but that persons should stand as equals: 'Egalitarians seek a social order in which persons stand in relations of equality. They seek to live together in a democratic community, as opposed to a hierarchical one' (1999: 313-314).

One problem with this view is that, in a pluralistic society, public authorities should arguably refrain from making moral judgments about people's relations. They should not reject all forms of unaccountable authority on the mere ground that they create unequal relations. Indeed, even if this is not true for everyone, at least some people may reasonably prefer to work in authoritarian structures in exchange for other benefits such as higher wages, more flexible schedules, less responsibility and less risk. In his comment, Tyler Cowen may be overly optimistic about the quality of working conditions in modern corporations. Yet, he is right in claiming that some workers can prefer working for an authoritarian firm – thus sacrificing some republican freedom – in exchange for other benefits (108-116). One advantage of a distributive conception of justice – at least a resourcist one focusing on distributing polyvalent means to improve overall freedom – is that it refrains from making perfectionist moral judgments about the nature of social relations within organisations. In this view, if public authorities succeed at distributing overall freedom fairly by other means, there may be no need for democratic reforms within economic organisations, especially if they unnecessarily restrict negative freedom.

**To conclude**, Anderson succeeds at refuting the libertarian beliefs that freedom and free markets always go hand in hand and that authoritarian hierarchies can be justified on the ground that they result from free market contracts, but she does not succeed at justifying all the strategies that she envisions to free workers from firms' unaccountable authority.

Strategies (*1.*), (*2.*), and (*3.*) may be easier to justify. First, states could improve workers' freedom of exit by removing legal barriers to exit or by reducing exit costs (65) (a universal basic income could be one way to do so). This does not reduce the formal freedom of employers in any way and it improves workers' power to negotiate better working conditions. Second, states could limit employers' arbitrary power by imposing something similar to the rule of law in states. She argues that asking employers to respect due process before firing or sanctioning workers and giving workers recourse to contest decisions (which is often already the case) would not raise excessive obstacles to firms' normal operations (66-68). Third, a 'workers' bill of rights' may be necessary to protect workers from the most extreme infringements on their political rights such as privacy and speech (within and outside the firm), from sanctions for off-duty behaviour, and from discrimination on grounds irrelevant to the performance of their job. Similar rights are protected in many countries (68).

However, demonstrating that strategy (*4.*), requiring worker participation in governance at the firm level (69), is necessary to improve the distribution of overall freedom is much more difficult. This would require a thorough demonstration that alternative policies do not succeed at promoting workers' overall freedom, and that policies promoting democratic workplaces would succeed at doing so without causing important economic costs.

*Private Government* is a powerful and insightful book worth reading for any scholar and citizen concerned about domination in the workplace. Underlining unanswered objections does not aim at undermining the importance of this book. My aim is merely to encourage the quest for compelling arguments able to convince our fellow citizens to join this long but necessary journey towards economic democracy.

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## BIBLIOGRAPHICAL INFORMATION

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