

FREEDOM AND EQUALITY: IN THE WORKPLACE

Posts in this series. This post is updated from time to time with additional resources.

Elizabeth Anderson's book *Private Government: How Employers Rule Our Lives (and Why We Don't Talk about It)* is in part an application of her ideas about freedom and equality. Here's a review in the *New Yorker*. Anderson takes a broad view of government. From the review:

If you exercise “public government,” you allow the people you rule to have a say in how they are governed; if you wield “private government,” the rules are not up for debate. In public government, decision-making is everybody's business—the government “belongs” to everyone, like a public park. In private government, it belongs to the governor, as his or her private possession.

We saw this broad view with Bruce Scott here, and with Michel Foucault here. In Anderson's terminology, the workplace is a private government, one in which workers have no say, and are subject to coercion, humiliation and domination at the whim of their employers. There are examples in the review, but you can find all you want with a bit of googling.

A contrasting view is set out in a book by John Tomasi in his book *Free Market Fairness*. Tomasi is a professor of political philosophy at Brown University. Anderson and Tomasi participated in a symposium on Tomasi's book; here's the introduction. Anderson wrote this, and Tomasi replied with this. Here's Tomasi's description of his book:

In *Free Market Fairness*, I argue that justice requires that our social

institutions show respect for citizens as responsible authors of their own lives. Choosing whether to join a democratic workplace (that may offer lower pay) or a non-democratic workplace (where pay may be higher) seems to me a choice that we should seek to empower individual citizens to make for themselves. Democratic workplace requirements would deny workers a choice that many workers might reasonably make: namely, to choose a job that pays a higher wage rather one that offers the experience of democratic control. And many citizens might reasonably make that choice, not out of greed or moral stupidity, but as an expression of their own values and in pursuit of a life plan that is precious to them.

The first thing to note is that Tomasi is trying to argue that *Lochner v. New York*, 198 U.S. 45 (1905) should be reinstated. *Lochner* concerned a New York law that prohibited bakers from working more than 10 hours a day and 60 hours a week. The state of New York argued that this was a proper use of the police power, the general power of a state to protect the health and safety of bakery workers exposed to flour dust and physical exhaustion.

In a 5-4 ruling, SCOTUS decided that this statute interfered with the freedom of contract of the worker protected by the Fifth and Fourteenth Amendments. The case made it difficult for governments at every level to protect the health and safety of workers. It stood for 30 years until the Court decided a series of cases rejecting the idea that freedom of contract was a constitutional right, implicitly but not directly overruling *Lochner*. Tomasi's view would require reinstating *Lochner* or a Constitutional Amendment.

The two papers cited above take a different approach to Tomasi's argument. These are dry arguments addressing complex issues of human

life: the social relations between capitalists and workers in the workplace. Tomasi wants to leave these mostly unregulated, the standard libertarian approach. Anderson says that unregulated relationships will lead to relations of domination and oppression.

In the real world, Anderson has the better argument. We've all seen skin-crawling stories of workplace oppression practiced by US companies. We know that governments have been moving in the libertarian direction for over 50 years. That sounds like an empirical test showing that Anderson is right and Tomasi is wrong. Tomasi can't refute that factual argument. Here's his position:

Abstracting from the complicated facts of particular societies, my hope is to identify the institutional forms that might best express the commitment of citizens to live together as free and equal self-governing agents. My main thesis, of course, is that market democratic regime-types—democratic laissez-faire and democratic limited government—express that moral commitment more completely and more attractively than do social democratic ones—liberal socialism and property-owning democracy. So my argument is an exercise of normative identification that is conducted at the level of ideal theory.

He admits that he can imagine a society in which the workplace liberties that make up his preferred world, his rules of free market fairness, could "...leave workers vulnerable to the coercive abuses of the sort that worry Anderson." But instead of dealing with the real world test, he constructs an imaginary world, with an imaginary problem. He eventually admits that the possibility that the "lofty ideals of free market fairness cannot be achieved".

Resolving the disagreement

Tomasi's argument proceeds at a very high level of abstraction. He gives us a clue about his personal predilections when he tells us:

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I read this to say he doesn't think people should be pushed around by government, dominated, as Anderson would say. Anderson adds this to our understanding of his position:

Tomasi argues that rights to economic liberty should be constitutionalized, with economic regulations subject to a high level of judicial scrutiny. Considerations of social justice may sometimes override economic freedom—but only if judges approve.

If that's right, it seems to mean that Tomasi wouldn't mind being pushed around by judges. He accepts one form of government, but not broad legislative or administrative regulation unless that is checked by some form of unaccountable official. I assume he thinks judges would agree with his predilections.

I understand Anderson's view in favor of broad social democracy. Her starting point, the social contract, has deep roots in US politics. She is willing to trust in the judgment of her fellow citizens to a much greater extent than Tomasi, and is unwilling to submit much to the decision of unaccountable officials, whether in private or public government.

One way to evaluate the normative superiority of one or the other view might be to ask each to describe the kind of person who would thrive in their respective regimes. I've read enough Anderson to suggest she would answer that human

nature resists domination and humiliation. People want to have a say in decisions about themselves and their projects, including their work.

I can't answer for Tomasi. I have no idea if there are people who would accept domination, humiliation, or unreasonably dangerous working conditions for higher wages. I also don't understand why that has to be a choice in a democracy. I think it's horrifying to allow employers to pay more so they can dominate or humiliate their workers, or subject them to unreasonably dangerous conditions. Maybe I just don't understand libertarians, but I'm not willing to spend any more time thinking about them.