“Regulating Legitimate Authority in Work Relationships”

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REGULATING LEGITIMATE AUTHORITY IN WORK RELATIONSHIPS

Stephen Nayak-Young

§ I. Introduction

In this paper, I discuss possible justifications for workplace authority, i.e., the authority that work law permits employers to exercise over their employees in work relationships. This continues a project I began in a previous paper and that I will pursue further in subsequent papers. In this paper, I discuss two influential and prevalent theories of legitimate authority, namely, consent theory and Joseph Raz’s “normal justification thesis,” and apply them to the context of workplace authority. Although this exercise provides some insight, it does not provide a satisfactory justification, so I go on to discuss two further possible grounds of justification, which I call the “apprentice model” and the “opportunity model.” I eventually conclude that of all these possible grounds of justification, the “opportunity model” is the most promising, but it still leaves many questions unanswered.

§ II. Why I Think This Matters

In the interests of clarity and candor, I will say upfront why I think it is important to examine whether or to what extent workplace authority could be justified. As will become evident, I am not invested in defending the current regime of market production, organization thereof in firms, and/or the staffing of firms with employees. Instead, I think this topic is worth exploring for two reasons:

1. There may well be a better alternative to offering the traditional work relationship, in which the master/employer has authority over the servant/employee. Indeed, that
doesn’t seem particularly unlikely. Nonetheless, we have a pragmatic interest in exploring what could be worthwhile about the relationship because there is no realistic prospect for its replacement in the near future, or at least, so it seems to me. Instead, it seems likely that any changes we see in the work relationship as it is defined under current work law will be in the form of gradual adjustments.

2. Relatedly and more importantly, exploring how workplace authority might appear in its most justifiable form could help us to identify the ways in which it is least justified. Doing so could provide arguments and impetus for positive change in the nature and extent of the authority granted to employers, which is currently excessive by any measure and disproportionate to whatever its legitimate – or perhaps, at best, _least illegitimate_ – ends might be.

§ III. Review of Revising Roles

This paper continues a project I began in an earlier paper, “Revising the Roles of Master and Servant: A Theory of Work Law (hereafter, “Revising Roles”). In “Revising Roles,” I critically examine the claim that work law is best conceived as part of contract law, arguing that doing so is neither descriptively nor normatively instructive. Rather than understanding work law as a set of restraints on freedom of contract, I argue that we should see it as creating and defining special relationships, much like the codified definitions of marriages and business partnerships. I trace the development of work relationships through the common law of “master and servant” and their more recent statutory modification and argue that the history and present form of work

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law are not consistent with the contract-centered view of work law as “interfering” with an otherwise free labor market.² In addition, I set the stage for a future paper – this paper – advancing the positive argument that since work relationships permit employers’ exercising authority over workers, a just body of work law should permit only legitimate exercises of authority while minimizing overreaching by employers.

“Revising Roles” was the first installment in an ongoing project in which I aim to develop and defend a distinctively “relational” theory of work law. “Revising Roles” contributes to this project for the most part by critiquing a rival, contract-centered view that I attribute to a hypothetical dialectical opponent. This dialectical opponent essentially holds that we should understand and regard work law as a specialized branch of contract law. This view has at least one real-life proponent,³ but rather than focusing my argument on one specific theorist, I prefer to oppose something like a hypothetical construct of a view. I take this view to be implied by a more prevalent and broader class of views about the overwhelming importance and explanatory power of economics – i.e., money, contracts, commerce, and theories related thereto – in law, the social sciences, politics, and many other arenas.

In addition, this dialectical opponent is motivated by the intuition that arms-length contracts between free and independent contractors are essential to the pursuit of maximal individual freedom. One particularly enthusiastic statement of this view comes from Sir Henry Maine, who famously wrote that “the movement of progressive societies has hitherto been a movement from status to contract.”⁴ Importantly, this view is not only descriptive but also

³ Id. at 1120-21 (“Basically, labor law is a complex bundle of restraints on freedom of contract in the labor markets.”).
⁴ Sir Henry Sumner Maine, “From Status to Contract,” in Ancient law, its connection with the early history of society and its relation to modern ideas 99, 99-100 (1917) (“The movement of the progressive societies has been
evaluative and normative, i.e., Maine and his followers believe not only that the movement from status to contract has occurred, but also that it has been of great value to the “progressive” societies in which it has occurred and that we have a moral responsibility to maintain and advance this great transformation.

Whatever its progeny, I hold that this status-to-contract view is profoundly mistaken, at least as applied to the specific context of work law and the relationships it creates and regulates, so my earlier paper was written largely in a negative mode. That is, I began my efforts to develop a theory of work law by arguing that an opposing view, which I called the “freedom-of-contract” view, was both inaccurate and normatively misleading, especially when compared to the “work relationship” (“WR”) view, which I advocate and will continue to develop in this paper. However, the current argument will be in a more positive mode, i.e., I will say quite a bit more about what the WR view is and how it can help us identify which aspects of work law are justifiable, desirable, or otherwise. In particular, I will examine the extent, if any, to which workplace authority can be justified.

§ IV. Two Theories of Legitimate Authority Applied to the Workplace

As I argued in “Revising Roles,” it seems that an essential part of the employment relationship created and regulated by work law is that the entity occupying the role of “employer” (formerly “master”) is understood to be permitted to exercise authority over the
person occupying the role of “employee” (formerly “servant”). By asserting this, I do not mean to imply that work law could not create and regulate different work relationships – e.g., by prohibiting wage labor or facilitating the establishment of worker-owned cooperatives – or that the current arrangement is anywhere near ideal. I mean only to appeal to the common-sense understanding that the employer is the “boss,” and anyone who accepts a job with a given boss understands that such acceptance implies that the employee will follow the employer’s orders, within reasonable limits. I should hasten to add that accepting this implication does no normative work with respect to justifying the creation and persistence of work relationships which imply such authority. So far, this authority, as described, is no more than a brute fact of employment as most people understand it.

I will begin my investigation of how we might assess the legitimacy of workplace authority by discussing two prominent theories of legitimate authority – Consent Theory and Joseph Raz’s “normal justification thesis” – and applying them in the context of the workplace.

A. Consent Theory

For some reason, consent theory has long bedeviled discussions of what is or isn’t fair in work relationships. Even though we know – or ought to know – that consent has only limited justificatory powers, there are many, many people who would argue – or even take for granted – that the employee’s consent to accept employment and remuneration from the employer constitutes all the justification one could need for the employer’s exercising authority over the employee (within reasonable limits, of course). After all, nobody put a gun to the worker’s head and forced her to accept a job against her will! But consent theories of legitimate authority, notwithstanding their longevity and popularity, are subject to several serious criticisms, which
one might summarize as follows: Consent theories provide a simple answer to the question of legitimate authority, but not a complete or satisfying one.

Nonetheless, there is at least one reason for thinking that consent theory might be especially well-suited to arguments justifying workplace authority, namely, because applying it in that context easily evades one of the most compelling criticisms of consent theory. This criticism – first raised by Hume, followed by many others – is that there is no actual consent in, say, the case of citizens who are born into a given state and thereby become citizens who are subject to its laws. No matter how powerful one supposes the justificatory abilities of consent, it seems difficult to bring these abilities into play where no consent has been given. The response to this attack is typically to attempt to fashion a satisfactory theory of “implied consent,” which has proved difficult, to say the least.5

But when we apply consent theory to workplace authority, it seems that no such criticism could apply. No acceptably just system of work law would allow employers to force employees to accept employment without their consent, so when workers enter the role of “employee,” we have actual consent. Accordingly, we might think that consent theory could be more promising with respect to workplace authority than with political authority. Is the employee’s consent to enter the work relationship sufficient to justify the authority exercised over her within it?

The answer to this hypothetical query is “no,” and it is important to be clear about why this is so. Note first that although an employee does consent to accept employment and remuneration from the employer, doing so in no way implies that she also consents to comply with whatever orders the employer sees fit to give her. Nobody thinks this is the case, which is why we are always careful to add the caveat “within reasonable limits” when we say that the employer has authority to give orders to his employees. That much is obvious, but I want to

5 [Cite Herzog, etc.]
make the further point that approaching the question in this way leads us to make a misleading error with respect to the nature of the consent the employee gives when she accepts a job – i.e., to what the employee consents.

Rather than consenting to do what the boss says – within “reasonable limits,” perhaps to be determined by the parties ex ante, ex post, or even ad hoc – the employee instead consents to enter the work relationship and occupy the role or status of “employee” within it. The work relationship is created and regulated by the work law of the society in question, so the employee does not have to – indeed, may not lawfully choose to – rely on the employer’s or her own interpretation of the “reasonable limits” that curtail the employer’s authority. Work law sets the limits on the authority, and the employee consents to enter the work relationship under those terms, i.e., those set by the society’s current work law regime.

In other words, the employee consents to enter a work relationship governed by a system of work laws. The employee no doubt hopes that the system of work laws in question will be as just as possible and will require the employer’s permitted authority to be narrowly tailored to that which is necessary to realize the legitimate aims of the work relationship the system of work law creates and regulates. But the employee also knows that it is far from guaranteed that his hopes in this regard will be realized. It is an entirely contingent matter whether or to what extent the society in question is justified in enacting its particular regime of work law and – thereby – creating its particular form of work relationship. The fact that the employee consents to enter the relationship does nothing to justify the fact that the relationship was presented to her as a reasonable option by the state she inhabits. The state is responsible for enacting justifiable work laws and ensuring that the work relationships it provides as options for its citizens are justifiable.
This, we should note, contrasts with much of our talk about which exercises or grants of authority are legitimate or how authority can be justified, in which we often assume that a sort of “pairwise” justification that arises – or fails to arise – between the purported holder of the authority and the purported subject. This does not seem to be the case in the context of the authority exercised within work relationships. Instead, the work relationship is a creature of the state, and it is the state’s responsibility to ensure that the work relationships it permits under its laws are just. The employer does not have to justify choosing to take on the role of “employer” under the state’s laws any more than the employee has to justify choosing to accept the role of “employee.” As I’ll discuss below, I think there is at least one exception to this general rule, namely those sorts of work relationships that are best understood, in a sense I will explain, as similar to apprenticeships. But for the most part, since the state sets forth the definition of “work relationship” and the rules governing such relationships, we must look at what justifies the state’s permitting the work relationship in question to be offered as an option to its citizens in order to investigate whether or not the authority permitted within the work relationship is legitimate or justifiable.

For these reasons, I believe that the employee’s consent to accept the proffered option of a work relationship can do little, if any, justificatory work with respect to the authority granted to employers within the relationship. As all reasonable persons (i.e., apart from one version of Robert Nozick and perhaps some other immoderately enthusiastic libertarians) would readily agree, if the state permitted would-be slavemasters to offer slavery to interested workers, and a given worker consented to accept such an offer, the worker’s consent would do nothing to justify

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[Cite Herzog’s Happy Slaves.]
holding the worker to that bargain and insisting that she accept slavery. The analogy with slavery might seem heavy-handed, but the point I intend it to illustrate is sound.

B. Raz’s Normal Justification Thesis

I will now turn to discussing Joseph Raz’s influential “normal justification thesis” (hereafter “NJT”), which Raz states as follows:

[T]he normal way to establish that a person has authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly.7

In other words, according to the NJT, legitimate authority is ordinarily justified by the putative authority’s ability to advise and guide the subject so he is more likely to succeed at what he has independent reasons to want and pursue. The NJT has been subjected to extensive criticism by Darwall, Hershovitz, and others, and much of the criticism has concerned the seemingly poor fit between the NJT and several paradigm cases of authority, including authority in the workplace. This is problematic for Raz because most authority theorists – including Raz himself – hold that any adequate analysis of the concept “authority” should be able to explain the authority we attribute to parents, experts, employers, and military commanders, as well as the authority of the state. Leaving aside the fraught question whether the NJT can explain why some instances of political authority can be justified, its application to the context of workplace authority can seem especially odd, for several reasons.

First, much the same argument I offered to dispense with consent theory might apply to the NJT in this context. The authority granted to an employer in a work relationship comes largely predefined by the state, so we should look to the state’s reasons for creating the work

7 Raz 1986, p. 53.
relations it offers as options rather than to each specific employer’s conduct. As I will discuss below, I think this argument leaves room for the NJT to do some justificatory work, but I want to note this potential problem with application at the outset.

Second, employers often want to hire people who know better than they do how to conform to the requirements of reasons that apply to the employer alone. It seems prima facie misguided to assert that the employer’s authority is justified because she can help advise and guide the employee when the opposite is often the case, i.e., the employer hires an employee with a particular set of skills so that the employee can help advise and guide the employer.

Third, even when the employer does have superior expertise with respect to the tasks the employee will perform, as is often the case, the main point of the advice and guidance the employer offers is not to help the employee conform to reasons that already apply to her, but rather to help the employee accomplish the employer’s ends, and this is apparently true whether or not the employee has independent reasons to pursue such ends. If this is the usual case in work relationships – i.e., that the employer typically provides guidance to further his own ends, without regard to those of the employee – then the NJT seems unlikely to be satisfied. But is this an accurate assessment of the reasons that do or could bear on many people who accept employment?

This is difficult to answer because at least some – perhaps most or all – reasons that apply to a given person are agent-relative, and this seems especially likely to be the case with respect to what work one has reasons to perform. In other words, even if every agent, without exception, has reason – perhaps the same reason – not to commit murder, not every employee has reasons to advance his employer’s aims that are independent of his desire to remain employed and receive a paycheck. However, if we abstract ourselves from instances of specific tasks, jobs, or even
careers, perhaps we could assert with some plausibility that each person has reasons independent of the work relationship(s), if any, to which he is a party to pursue and develop proficiency in a vocation or take part in a project that is productive, creative, or otherwise fulfilling, but which he could not pursue on his own. I think there is something to this idea, and I will discuss this point further in the next section. However, even if we accept that each person has reason to pursue a vocation, we could not rest sanguine with the assumption that each person who is employed by an employer will have reasons to pursue a vocation that her current employment advances.

For example, if David has reasons to pursue a career in the arts but not in customer service, it is unclear that his employment as a busser of tables will in any way help him develop as an artist. That’s not to say that it couldn’t – perhaps David will write a novel or song about his experiences in restaurant work – but there’s no guarantee that this employment will have any relevance to any vocation David might have reason to pursue. Moreover, if the value to his career rested on the mere fact that his experiences in bussing served as artistic inspiration, it isn’t clear how the employer’s guidance and advice could have any causal link to this fortunate outcome.

In short, the mere possibility that the employee might be developing as a person or learning valuable skills by following the employer’s directions seems far too contingent a ground for justifying authority in work relationships. At best, it could be a partial justification for some of the authority in some work relationships, but this is all the NJT offers, and this seems to fall far short of an overall justification of the authority granted to employers in work relationships. The authority granted to an employer in a work relationship comes largely predefined by the state, and it is offered to achieve what the state takes to be the legitimate aims of permitting the work relationship to persist under its laws. It is these legitimate aims, if anything, that will justify
the authority the employer exercises, rather than the possibility that what transpires within the relationship might constitute a fair exchange of guidance for obedience.

§ V. How Might Workplace Authority Be Justified?

A. Money Matters

As I argue above and in “Revising Roles,” the function of work law is and should be to define and regulate the nature of permissible work relationships. In addition, the roles of master/employer and servant/employee, as they have developed in contemporary work law, are premised on the right of the employer to have some limited authority over employees. Accordingly, one of work law’s principal purposes should be to ensure that no more authority is exercised by masters/employers than that which could be justified by the value of permitting this sort of governance relationship to persist. If we want to leave behind the implications of the titles “master” and “servant,” it stands to reason that we will need self-consciously to re-examine the nature of the roles to which they refer. But how might we determine what authority is legitimate and how could we keep excesses of employer’s governance within justifiable bounds?

In “Revising Reasons,” I ventured a preliminary sketch of a possible justification that drew heavily on the work of R. H. Coase. Coase argues, in his seminal article “The Nature of the Firm,” that modern systems of production seem to require that employers have authority over their employees within firms. This argument is based on the premise that relying entirely on the market and price mechanism to organize “factors of production” would significantly increase costs by requiring near-constant negotiation and re-negotiation of a protracted series of contracts.

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8 See Ronald H. Coase, The Nature of the Firm, 4 Economica 386 (1937); see also Friedrich Engels, On Authority, in 4 Friedrich Engels and Karl Marx, The Marx-Engels Reader 731 (1978) (“Wanting to abolish authority in large-scale industry is tantamount to wanting to abolish industry itself, to destroy the power loom in order to return to the spinning wheel.”).
between the various, ever-changing group of “factors” involved in each project. Therefore, capitalist systems of production rely heavily on organizing production within firms, and firms, in turn, rely heavily on the internal systems of governance made possible by our current, status-based work law. Following Coase, I argued that the socially valuable goal of maintaining efficient production might give us strong reasons to continue to allow employers to retain and exercise a broad “right of control” over their employees within firms.

In retrospect, I think my reliance on Coase was excessive, and I hope to mend that mistake in this paper. Much of the feedback I received with regard to “Revising Roles” concerned the emphasis my fledgling normative argument appeared to place on money, efficiency, and/or distributive justice. On the one hand, some commenters suggested that I had paid too little attention to work law’s aim to bring about increased distributive justice while focusing solely on work law’s regulation of work-relationship dynamics. On the other hand, some have pushed back on my seeming over-reliance on Coase’s purely efficiency-based argument for allowing these relationships involving authority – perhaps even “authoritarian” relationships, in some cases – to persist. The worry here is that I might – but should not – be attempting to establish the legitimacy of authority in work relationships on either or both of the following grounds:

1. If, as Coase asserts, the underspecified authority in the employer-employee relationship is necessary to the firm-based market economy, then the persistence of

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9 Id. at 390-91 (“The main reason why it is profitable to establish a firm would seem to be that there is a cost of using the price mechanism. The most obvious cost of ‘organising’ production through the price mechanism is that of discovering what the relevant prices are. This cost may be reduced but it will not be eliminated by the emergence of specialists who will sell this information. The costs of negotiating and concluding a separate contract for each exchange transaction which takes place on a market must also be taken into account.”)
the relationship promotes economic efficiency in some general sense (e.g., Pareto efficiency). Therefore, the authority in such relationships is justified.

2. If the worker would be better off if she received the money the employer offers in exchange for submitting to the employer’s authority than she would otherwise, then she can rationally agree to exchange her obedience for money, and a just work law could entail that she be bound by the agreement.

I find both these arguments as unsatisfactory – and indeed, distasteful – as my interlocutors do. However, I think, nonetheless, that considerations of money, economic efficiency, and/or distributive justice could well play some justificatory role in a proposed defense of employers’ exercise of authority.

How do I propose to talk my way out of this? First, I will echo my doctoral committee chair, Elizabeth Anderson, who always steadfastly insisted that arguments based on efficiency are normatively empty. I agree with her, in the following sense: Until we know what other good (or bad) some act or policy will promote or make possible, the mere fact that more money would be produced somewhere if the act or policy is permitted than if it were not can carry no moral weight. Indeed, if some source of increased Pareto efficiency were to worsen, say, distributive injustice, that effect would constitute a ceteris paribus reason to oppose whatever produced the increased efficiency. That said, we can bear these considerations in mind while simultaneously recognizing that money can be exchanged for goods and services, which can in turn improve the well-being of members of society if such goods and services are fairly distributed. I will discuss this further below.
Second, and relatedly, I certainly do agree that one of the central aims of work law is and should be to promote distributive justice. Accordingly, if the persistence of the employment relationship enables a given society to continue to enjoy the benefits of a firm-based market economy, i.e., increased economic efficiency and this efficiency results in improved distributive justice – not just slightly higher incomes for the worst-off, but actual steps in the direction of a robust and defensible form of economic and distributive justice – than the increased efficiency resulting from the persistence of work relationships in which employers are understood to have authority over employees would be _ceteris paribus_ justificatory with respect to the authority relationship in question. But reaching this possible justificatory status requires a number of “ifs” and “thens,” such that any argument I offer based on considerations of efficiency will bear no resemblance to the two discredited arguments I mention above.

With those caveats in place, I will now turn to my positive project examining the nature and extent to which the exercise of authority in work relationships can be legitimate. Since the two most prevalent theories of legitimate authority, i.e., Consent Theory and Raz’s NJT, seemed largely inapplicable to the context of workplace authority, I will propose two new possible grounds of justification. The first ground is what I will call the “apprentice model,” and it is largely based on the benefits that flow to both parties when the master’s authority can be justified at least in part because it is likely to result in significant gains in training and experience for the servant. The second ground is what I will call the “opportunity model,” and it is based on the various benefits to all concerned – i.e., most members of society, but especially employers, employees, and consumers – that emerge from the large-scale societal practice of allowing this form of work relationship to persist. These two grounds frequently interact, but I believe they are distinct and will therefore discuss them separately.
B. The Apprenticeship Model

As I mentioned in my discussion of the NJT, although I think it cannot provide an overall justification for workplace authority, there is something to it. The first ground of possible justification I will discuss is the “apprentice model” (AM), and this bears some obvious resemblance to the NJT as it might be applied to workplace authority. AM is best understood by comparison to some idealized set of assumptions about apprenticeship relationships. In apprenticeships, the apprentice agrees to take on the role of a subordinate worker in a skilled master’s employ. Ideally, the master will benefit from the apprentice’s labor, while the apprentice will benefit by receiving training and experience in the master’s trade or craft. The master is permitted the authority to direct the apprentice to work as needed, so long as the master’s commands are kept within reasonable limits and the apprentice ultimately benefits from the training she receives. This does not mean, however, that only those sorts of work that are relevant to the apprentice’s training in the master’s trade or craft may legitimately be commanded by the master. Instead, most apprenticeships are understood to involve a good deal of floor-sweeping, tea-making, and other menial tasks. In just apprenticeships, i.e., those which are nearest to the conditions we might identify as ideal, the legitimacy of the authority relationship seems to arise from a long-term exchange of services needed by the master in return for training and experience needed by the apprentice.

Apprenticeships are not nearly so common now as they were in previous centuries, though they are still prevalent in the training of carpenters, plumbers, and other skilled tradespeople. However, many early-career professionals work in relationships that are in many

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10 Although I say, above, that we would do well to change the roles in work relationships so that the names “master” and “servant” no longer apply to the parties to such relationships, I will still use those terms in some cases. In this case, “master” seems appropriate for thinking about an idealized apprenticeship situation, in which the boss is not only in charge, but also a “master” of the skills she teaches the apprentice.
ways similar to apprenticeships, e.g., law firm associates, graduate students, and medical students and early-career physicians. AM is perhaps most apt for examples like these, but I intend to use AM as a possible ground of justification more broadly, such that we could point to it as a possible source of legitimate authority in any work relationship in which the servant gains valuable skills and experience that he could not – or not so quickly, thoroughly, etc. – acquire outside a work relationship in which his work is closely supervised by a master.

For what it’s worth, I think AM is an appealing and compelling ground of justification when it applies. However, like the NJT and for the same reasons, AM cannot serve as an overall justification for workplace authority. This is because AM is only a feature of some work relationships, while authority is a feature of all relations between employer and employee, so AM cannot be said to offer even partial justification for the exercise of authority in all work relationships. However, in cases like those I list above, we might think that AM could serve to make some of the especially exacting levels of authority in these jobs to be legitimate where they might not be otherwise.

To offer a personal example, when I was a junior associate in a law firm, two partners came to my office just as I thought I was wrapping up, around 6 p.m., and described a significant task they wanted me to do. They advised me that I would probably be there until 3 a.m., or perhaps later. I replied that this was OK because I didn’t have any plans I couldn’t break, and at this remark, the two lawyers burst out laughing. This was funny to them because they weren’t asking me if I would stay, they were telling me what I was going to do, and they didn’t care whether this was OK with me. Sometimes, when I tell people who have not worked in law firms such anecdotes, they react with shock and disapproval, and I agree that the behavior I describe was not beyond reproach. However, the opportunity to be an associate in a law firm – working
on interesting cases, receiving expert training, etc. – straight out of law school, when I didn’t actually know how to be a lawyer, was significant. In other words, the partners were probably out of line for laughing at me and thereby belittling me, but it’s not so clear to me that they were out of line in ordering me to work ‘til all hours to finish an assignment, to “micro-manage” my work with often-exasperating fastidiousness, or to become invested in my success such that they gave praise when I did well and expressed displeasure when I disappointed them.

Something similar may be true of medical residents, who are fresh out of medical school and must complete a residency program before they can be licensed physicians. Residents’ hours are notoriously long – a recent improvement to their situation imposed a maximum of 80 hours per week, where before there had been no real cap on hours. Their work also involves high stakes, and this, along with their heavy workload, can lead to high levels of stress, anxiety, and other burdens. Nonetheless, these residents really are not ready to be independent doctors, and the training they receive is invaluable, so perhaps more exacting demands on their lives could be justified based on AM than if they were based on other considerations alone.

Accordingly, I think we should be open to the possibility that in work relationships where AM applies, this “extra” form of justification might render acceptable exercises of authority that would not be acceptable otherwise. Where the training involved is extensive, it arguably requires a significant allotment of authority to the employer, but it also benefits both parties. It benefits the employer by providing him with an increasingly valuable “human resource,” and it benefits the employee to the extent that she is able to gain transferable skill and experience and develop proficiency in a chosen vocation. Wherever such training and experience provides benefits comparable to those realized by masters and servants in ideal apprenticeship relationships to both
parties in a given work relationship, the authority exercised therein could receive some justification from AM.

C. The Opportunity Model

However, not all work relationships provide the sorts of benefits envisioned by AM. In many cases, employers simply want employees to perform menial, unpleasant, or difficult tasks with which the employer has little experience and no training or skill to impart. In such cases, the servant must arrive with the relevant training or acquire it on the job by herself. For example, most janitorial and other maintenance positions within a firm that does not provide janitorial services (e.g., a bank, school, or department store) seem to involve simple exchanges of labor for money, with little attention to training the servant in anything beyond firm-specific procedures.

If so, we might have reason to think that such work relationships are all illegitimate, at least if we agree with the intuition I discussed at the beginning of this section, i.e., that the exchange of benefits – monetary or otherwise – for service and obedience seems insufficient for a satisfactory justification for workplace authority. Carrying this intuition further, we might be inclined to think that authority in a work relationship could only be legitimate where the benefits to all concerned – including society as a whole as well as the parties to the relationship – arise from the nature of the relationship, rather than what the employee can expect to receive in exchange for entering the relationship. If so, then perhaps all workplace authority stands unjustified, and we have reason to abandon the old model, with its roots in master-servant law, in favor of something radically different. For my part, I have no quarrel with the idea of overhauling our entire approach to production, cooperation, and remuneration, but I think there is still a possible ground of justification for workplace authority that doesn’t conflict with the
intuition that it could not be justified solely on the basis of the exchange of benefits for obedience.

As I indicated with the heading of this subsection, I want to argue for a ground of justification that I will call the Opportunity Model (“OM”). Essentially, OM is premised on the idea that workplace authority could be justified in virtue of the opportunities it makes available to those persons who are interested in choosing them. Of course, not just any opportunities would do, and I don’t intend the sheer numbers of opportunities – whether such numbers are great or small – to do much, if any, justificatory work. Instead, I propose that the state could be justified in continuing to offer its citizens the option to occupy the role of “employer” or “employee” in work relationships if, by permitting such relationships to persist, the state is thereby ensuring access to opportunities that are desirable to many people.

It is clear enough why the option of being in a position of authority with respect to others could be desirable to those who choose to occupy the role of “employer” within a work relationship. By way of illustration, consider William Blackstone’s description of the master-servant relation:

*Th[e relation] of master and servant;* which is founded in convenience, whereby a man is directed to call in the assistance of others, where his own skill and labour will not be sufficient to answer the cares incumbent upon him.

As Blackstone suggests, the master has big plans and incumbent responsibilities, and he needs other people to help him succeed in his big plans. Moreover, it would be especially useful to him if he could issue orders to those people, within reason, which he could expect those others to obey. Of course, taking on servants might also increase one’s responsibilities, as one thereby enters a relationship with them, which is regulated by the relevant work law. If that work law imposes heavy costs or onerous duties on the master, it might eventually seem to be more trouble
than it is worth. But if the employer decides that the requirements of work law are not too burdensome, she could seek others to help her in whatever venture she has in mind.

What is often more difficult is to see why choosing to be under the authority of an employer, without reference to the benefits received in exchange, could constitute a desirable option for the employee. Blackstone may be helpful here, as well, if we consider his reference to the “cares incumbent upon” the master. Such cares are often extremely distasteful and unwelcome to people who are not disposed to take them on and/or wish to devote their energies elsewhere. If we did not make available the option to join someone else’s firm, but the structure of our society remained familiar in the sense that people still needed to perform work of some sort in exchange for the money they need to live their lives, we would effectively require everyone to take part in management. Not everyone wants to devote her energies to entrepreneurial ventures or the management thereof.

In response, one might ask why we would not, instead, adopt some form of workplace democracy. This seems like a wonderful idea, but it isn’t necessarily an alternative to most current systems of work law. Instead, it could be an improvement added to the traditional work relationship that counteracts some of the all-too-common tendency for employer overreaching with respect to workplace authority. For example, German firms are now required to have a minimum percentage of workers’ representatives as voting members on their boards of directors. This intervention ensures that no important decisions affecting workers will be made without the input of workers, whose interests and opinions will be promoted and communicated by their representatives. Nonetheless, workers in German firms receive orders and are subject to the authority of management in most day-to-day matters relating to their job duties. Moreover, the workers can all be represented in important decisions, but they are not required to become
involved in airing grievances, making arguments, or communicating via – or as – representatives to any greater extent than they choose. Workplace democracy, in the sense of requiring firms to give employees an opportunity to be heard and to influence decisions about the running of the firm, would not necessarily supplant workplace authority or the traditional employer-employee work relationship.

However, there are certainly forms of organization that we might take to fall into the category of “workplace democracy” that would, indeed supplant the traditional work relationship. For example, if work law required a perfectly representational democracy within firms – e.g., one person, one vote, no matter who provides the capital or writes the business plan – then it seems unlikely that the status quo of workplace authority could long persist. Even more clearly, if work law prohibited all forms of organization within firms except for worker-owned cooperative firms, we would rightly anticipate radical changes in workplace authority. But as I said at the outset, I have a pragmatic interest in discussing work law as it is now and as it is likely to be for the foreseeable future. For my part, I will be pleasantly surprised but not shocked if I see the U.S., Canada, and other capitalist democracies give the recently adopted German form of “workplace democracy” a try in my lifetime. Until then, I think it’s worth talking about what’s better and worse about the behavior of bosses, in addition to discussing the more ideal worlds to which we could or should aspire.

Lastly, before I leave the topic of OM, I will cautiously point to another opportunity the persistence of the work relationship: the opportunity to make more money and live in a richer society with robust public benefits. That is, it is at least possible that in addition to offering a variety of potentially-desirable opportunities through diversification of responsibilities, firm-based economies might also contribute to a larger pool of resources from which the entire society
could benefit. Thus, the work relationship upon which firms are reliant might help offer workers the opportunity to enjoy a higher standard of living than if they could not choose this option.

To spell this out, suppose for the sake of argument that, as Coase and other economists argue, it is true that something like the current regime of firm-based market capitalism greatly increases economic efficiency. Coase argues that authority relationships are necessary for the efficient operation of firms because they allow owner-managers to avoid the costs associated with using the price mechanism instead of the work relationship, i.e., by forming a protracted series of contracts with independent contractors to perform any and all tasks necessary for the running of the firm. If this account is roughly true, then we might find some amount of justification for workplace authority by pointing to the improved standard of living, economic benefits, and taxation in furtherance of improved public goods made possible by a market-driven economy dominated by firms.

Whether or not this account and the economic claims driving it are true is an empirical matter, and I don’t have much to contribute to the elucidation or resolution of this matter. But if it is true that the firm-based economy leads to significant efficiency gains when compared with other salient options, and it is true that firms rely on the traditional work relationship, then allowing such relationships to persist could have economic benefits for the entire society. However, as I cautioned above, when we turn to this sort of justification, it can only carry normative, justificatory weight if the efficiency gains it promises are realized in ways that benefit all members of the society. If, instead, the work relationship only – or vastly disproportionately – benefits only some of those affected (e.g., employers and consumers) as a result of its persistence, then the authority in question could not gain any justification from these economic considerations.
§ VI. Conclusion

I undertook this discussion of workplace authority in the hope that I could determine whether it could be justified, and if so, to what extent and under what circumstances. I did so not because I am much devoted to preserving such authority, but in the hope that by identifying what is best and worst about the persistence of authority-based work relationships, I could help contribute to arguments for their incremental improvement or at least provoke much-needed discussion of these matters. As it stands, our modern work law oversees an incrementally modified version of the master-servant relation we inherited from Blackstone’s time, and although it has certainly improved, it nonetheless extends far too much authority to employers, and it is past time we subjected that to more critical scrutiny.

As it stands, I am unsure whether what I have contributed in this work constitutes a blueprint for possible justification of workplace authority, a demonstration that it cannot be justified, or neither. I first canvassed what I take to be the two most prevalent theories of legitimate authority, namely consent theory and Raz’s “normal justification thesis,” and found neither was particularly applicable to the workplace context. In the case of consent theory, even though the employee gives actual consent to enter the work relationship, she thereby only consents to enter a relationship, while the responsibility for ensuring that the work law governing such relationships lies with the state. The NJT has more to offer, but it can only offer a partial or further justification for workplace authority, where and to the extent that the authority relationship facilitates significant training and mentoring of the sort we would expect to find in an ideal apprenticeship.

Finally, I offered the “opportunity model” as a source of possible justification for workplace authority. I believe OM is the most promising source of an overall justification for a
state’s or society’s decision to enact or continue a system of work law that creates, defines, and regulates something resembling the traditional work relationship and thereby makes it available as an option to its citizens. Suppose, if you will, that the law governing these relationships could be carefully crafted so as to confine state grants and employer exercises of authority to only that which is necessary to achieve what we take to be the legitimate aims of employer-employee relationships. If that were true, then a given society could reasonably decide that a work law allowing the persistence of workplace authority is justified when it provides significant opportunities to interested citizens and economic and other benefits to the society as a whole. This, obviously, raises at least as many questions as it answers, so I can’t claim to have wrapped up the problem I set for myself, but I will consider matters improved if what I say herein stimulates further thought and discussion with regard to workplace authority.