Rights in the Workplace: A Nozickian Argument

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ABSTRACT. There is a growing literature that attempts to define the substantive rights of employees in the workplace, a.k.a. the duties of employers toward their employees. Following Nozick, this article argues that — so long as there is a competitive labor market — to set up a class of moral rights in the workplace invades workers' rights to freely choose the terms and conditions of employment they judge best.

There is a growing literature that attempts to define the substantive rights of workers in the workplace, a.k.a. the duties of employers toward their workers. Thus it has been proposed that employers have (at least prima facie) duties to provide workers with meaningful/fulfilling/self-actualizing work, some degree of control over work conditions, advance notice of plant closures or layoffs, due process before dismissal, etc. (See, for example, Goldman, 1980; Schwartz, 1984; Donaldson, 1982; Werhane, 1985).

The argument of this paper is that in a competitive labor market these standards are superfluous and, indeed, may interfere with workers' rights to freely choose their terms of employment. Furthermore, these supposed moral rights in the workplace may come at the expense of non-consenting third parties — like other workers or consumers.

Nozick on meaningful work

Since my argument basically extends Nozick's (1974, pp. 246 ff) discussion of meaningful work, let us start with that. Assuming that workers wish to have meaningful work, how does and could capitalism respond? Nozick notes that if the productivity of workers rises when the work tasks are segmented so as to be more meaningful, then individual employers pursuing profits will reorganize the production process in such a way out of simple self-interest. Even if productivity were to remain the same, competition for labor will induce employers to reorganize work so as to make it more meaningful.

Accordingly, Nozick says, the only interesting case to consider is the one where meaningful work leads to reduced efficiency. Who will bear the cost of this lessened efficiency? One possibility is the employer. But the individual employer who unilaterally assumes this cost places himself at a competitive disadvantage and eventually — other things equal — will go out of business. On the other hand, if all employers recognize their workers' right to meaningful work (and if none cheats), then consumers will bear the cost of the industry's reduced efficiency. (Presumably, too, we would have to erect trade barriers to exclude the products of foreign producers who do not provide their workers with meaningful work, otherwise they would drive the domestic industry out of business).

What about the workers? If they want meaningful work, they will presumably be willing to give up something (some wages) to work at meaningfully segmented jobs:

They work for lower wages, but they view their total work package (lower wages plus the satisfactions of...
meaningful work) as more desirable than less meaningful work at higher wages. They make a trade-off... 

Nozick observes that many persons make just such trade-offs. Not everyone, he says, wants the same things or wants them as strongly. They choose their employment on the basis of the overall package of benefits it gives them.

The market for meaningful work

Provided that the firm’s lessened efficiency is compensated for by lower wages, then the employer should be indifferent between the two packages (meaningful work at lower wages or less meaningful work at higher wages). Indeed, if workers prize meaningful work highly, then they might be prepared to accept lower wages than are necessary simply to offset the firm’s lower productivity. In that case, entrepreneurial employers seeking higher profits should be expected to offer more meaningful work: they will, by definition, reduce labor costs by an amount greater than the output lost because of less efficient (but more meaningful) production methods. In the process, they will earn higher profits than other firms (Frank, 1985, pp. 164-5).

In other words, there is a market for meaningful work. The employer who can find the combination of pay and meaningful work that matches workers’ desires most closely will obtain a competitive advantage. Thus Goldman (1980, p. 274) is wrong when he claims that “profit maximization may . . . call . . . for reducing work to a series of simple menial tasks.” On the contrary, profit maximization creates pressures on employers to offer workers meaningful work up to the point where workers would prefer higher pay to further increments of meaningfulness. Goldman’s claim holds only if we assume that workers place no value at all on the intrinsic rewards of their work.

To “legislate” moral rights in the workplace to a certain level of meaningfulness, then, would interfere with workers’ rights to determine what package of benefits they want.

Extending the logic (1): employment at will

In her discussion of employment at will (EAW), Werhane (1985, p. 91) says “[i]t is hard to imagine that rational people would agree in advance to being fired arbitrarily in an employment contract.” According to her estimate, only 36% of the workforce is covered by laws or contracts which guarantee due process procedures with which to appeal dismissal. Werhane regards EAW as a denial of moral rights of employees in the workplace.

But, is it inconceivable that a rational worker would voluntarily accept employment under such conditions? Presumably, if the price is right, some workers will be willing to accept the greater insecurity of EAW. This may be particularly true, for example, of younger, footloose and fancy-free workers with marketable skills. It is also likely to be truer in a metropolitan area (with ample alternative employment opportunities) than a small town and when the economic outlook is good.

Likewise, some employers may value more highly the unrestricted freedom to hire and fire (smaller businesses, for example) and may be willing to pay higher wages for that flexibility. There may be other employers — larger ones in a position to absorb the administrative costs or ones with more stable businesses — who will find it advantageous to offer guarantees of due process in return for lower wages. Such guarantees are also more likely to be found where employees acquire firm-specific skills and so where continuity of employment is more important (Williamson, 1975).

According to this logic, wage rates should vary inversely with the extent of these guarantees, other things equal. In other words, workers purchase their greater security in the form of reduced wages. Or, put another way, some firms pay workers a premium to induce them to do without the guarantees.

If employers were generally to heed business ethicists and to institute workplace due process in cases of dismissals — and to take the increased costs or reduced efficiency out of workers’ paychecks — then they would expose themselves to the pirating of their workers by other (less scrupulous?) employers who would give workers what they wanted instead of respecting their rights.

If, on the other hand, many of the workers not currently protected against unfair dismissal would in fact prefer guarantees of workplace due process — and would be willing to pay for it — then such guarantees would be an effective recruiting tool for
an entrepreneurial employer. That is, employers are
driven by their own self-interest to offer a package
of benefits and rights that will attract and retain
employees. If an employer earns a reputation for
treating workers in a high-handed or inconsiderate
way, then he (or she) will find it more difficult (or
more expensive) to get new hires and will experience
defections of workers to other employers.

In short, there is good reason for concluding that
the prevalence of EAW does accurately reflect work-
ners' preferences for wages over contractually guaran-
teed protections against unfair dismissal. (Of course,
these preferences may derive, in part, from most
workers' perceptions that their employers rarely
abuse EAW anyway; if abuses were widespread, then
you would expect the demand for contractual guar-
antees to increase).

Extending the logic (2): Plant closure/layoff notification

Another putative workplace right is notice of im-
pending layoffs or plant closures. The basis for such
a right is obvious and does not need to be rehearsed
here. In 1988 Congress passed plant-closing notifica-
tion provisions that mandate 60-days notice. Earlier
drafts of the legislation had provided for 6 months'
advance notification.

But the issue of interest here is employers' moral
responsibilities in this matter. The basic argument is
by now familiar: if employers have not universally
provided guarantees of advance notice of layoffs,
that reflects employers' and workers' choices. Some
workers are willing to trade off job security for
higher wages; some employers (e.g., in volatile busi-
nesses) prefer to pay higher wages in return for the
flexibility to cut costs quickly. If employers have
generally underestimated the latent demand of
workers for greater security (say, as a result of the
growing of the baby boomers), then that presents a
profit opportunity for alert employers. At the same
(or lower) cost to themselves, they should be able
to put together an employment package that will
attract new workers.

A morally binding workplace "right" to X days'
notice of a layoff would preempt workers' and
employers' freedom to arrive at an agreement that
takes into account their own particular circum-
cstances and preferences. In Nozick's aphorism, the
"right" to advance notice may prohibit a capitalist act
between consenting adults.

It would mean, for example, that workers and
managers would be (morally) barred from agreeing
to arrangements that might protect workers' jobs by
enhancing a firm's chances of survival. This might be
the case if, say, the confidence of creditors or inves-
tors would be strengthened by knowing that the
firm would be free to close down its operations
promptly if necessary.

Likewise, the increased expenses associated with a
possible closure might deter firms from opening new
plants in the first place — especially in marginal areas
where jobs are most needed. In that case workers
won't enjoy the rights due them in the workplace
because there won't be any workplace. As McKenzie
(1981, p. 122) has pointed out, "[r]estrictions on plant
closings are restrictions on plant openings."

The effects of rights to notice of layoffs are not
limited to the workers. If resources are diverted from
viable segments of a (multiplant) firm in order to
prolong the life of the plant beyond its useful eco-
nomic life, then the solvency of the rest of the firm
may be jeopardized (and so too the jobs of other
workers).

If the obstacles to plant shutdowns are serious
enough and if firms are prevented from moving to
locations where costs are lower, then (as McKenzie,
p. 120, points out) "Workers generally must pay
higher prices for the goods they buy. Further, they
will not then have the opportunity of having paying
plants moving into their areas. . . . " And if such
restrictions reduce the efficiency of the economy as a
whole (by deterring investment, locking up resources
in low-productivity, low-wage sectors of the eco-
nomy), then all workers and consumers will be
losers. Birch (1981, p. 7) has found that job creation
is positively associated with plant closures: "The
reality is that our most successful areas [at job
creation] are those with the highest rates of innova-
tion and failure, not the lowest." Europe has exten-
sive laws and union agreements that make it pro-
hibitively expensive to close plants, order layoffs or
even fire malingerers and, not coincidentally, it has
barely added a single job in the aggregate in the
1980's (as of 1987). Europe's persistent high unem-
ployment is usually attributed to such "rigidities" in
its labor market — what the London Economist
picturesquely terms "Eurosclerosis."
It may be objected by some that workers’ “rights claims cannot be overridden for the sake of economic or general welfare” (Werhane, 1985, p. 80; see also Goldman, p. 274). This is probably not the place to debate rights vs. utilities, but this discussion raises the question of whether workplace rights may sometimes violate the rights of third parties (other workers, consumers).

Respecting workers’ choices

The argument of this paper has been that to set up a class of moral rights in the workplace may invade a worker’s right to freely chose the terms and conditions that he (or she) judges are the best for him. The worker is stuck with these rights no matter whether he values them or not; they are inalienable in the sense that he may not trade them off for, say, higher wages. We might not be willing to make such a trade, but if we are to respect the worker’s autonomy, then his preferences must be decisive.

Along the way the paper has tried to indicate how competition between employers in the labor market preserves the worker’s freedom to choose the terms and conditions of his employment within constraints set by the economy. This competition means that employers’ attempts to exploit workers (say, by denying them due process in the workplace without paying them the “market rate” for forgoing such protections) will be self-defeating because other would-be employers will find it profitable to bid workers away from them by offering more attractive terms. This point bears repeating because many of the accounts of rights in the workplace seem to assume pervasive market failure which leaves employers free to do pretty much what they want. Any persuasive account of such rights has to take into account the fact that employers’ discretion to unilaterally determine terms and conditions of employment is drastically limited by the market.

References


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