

Corporations Are Capital Unions and Unions Are Labor Corporations

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Abstract: The idea of labor republicanism holds that organized labor, and the activities associated with it, are justified on political grounds: without contestatory institutions such as the right to organize and the right to strike, workers are subject to domination, and such economic inequality leads to intolerable democratic inequality. As compelling as this view is, labor republicanism misses the mark because the case against unions is not framed in terms of republican conceptions of freedom, equality, or democracy but rests instead on libertarian and economic arguments. Specifically, the argument from contractual freedom is that unions trespass on employees' rights to work and employers' rights to hire and fire, while the argument from economic welfare is that unions produce frictions in labor markets that lead to efficiency losses. The paper demonstrates that the same arguments can be turned against corporations. It proposes a transaction cost economics defense of unions that shows that because corporations are to capital what unions are to labor, corporations and unions should stand or fall together. It also considers what a union ethics might look like.

Keywords: union; corporation; theory of the firm; transaction cost economics; union ethics

1. Introduction

In political theory, there has been a recent interest in the idea of “labor republicanism,” which holds that organized labor, and the activities associated with it, are justified on political grounds (Gourevich 2013). Workers require the right to organize and the right to strike, according to this view, because absent such contestatory institutions, workers are subject to domination (Gourevich 2016, 2018). Furthermore, the absence of strong unions also leads to morally intolerable economic and democratic inequality. Yet, the argument against unions is not framed in terms of political, republican conceptions of freedom, equality, or democracy. Instead, the argument against unions is usually framed in two, often coupled, claims: first, the arguments from contractual freedom, that unions trespass on people’s economic and contractual rights to work and employers’ rights to hire/fire (e.g., Friedman 1951; Hayek 1959; Baird 2000; Levine 2001); and second, the argument from economic welfare, that because of this trespassed right and the resulting friction in labor markets, there are widespread efficiency losses (e.g., Friedman 1962; Grout 1984; Reynolds 1987; Kaufman 2004). Defending unions on republican grounds is to essentially talk past the critics. From a purely political perspective, this appears a sort of impasse, leaving these liberal and economic criticisms intact. At best it raises the question of whether the gains in republican freedom are worth these costs. This may be the case, but we can also consider the problem from another direction: can one justify unions on the same terms that critics stake their claims, and therefore not cede this normative ground or raise such balancing questions?

Our argument here attempts to do this. We reconstruct the normative basis of unions on institutional, liberal, and economic grounds. We do this by looking to unions’ counterparts: business corporations. And we show that the same things that critics say about unions apply to

shareholders' relationships with business corporations: corporations bureaucratize and coordinate economic behavior in a manner that runs counter to the invisible hand of the market, which would lead us to think of them as decreasing market efficiency and contracting freedom.

Corporations are to capital what unions are to labor. If we are willing to accept the tradeoff between welfare and economic contracting rights in the corporation, we ought also to do so for unions as well. Indeed, we must, otherwise we unjustifiably give capital the right to collectively bargain in ways that we do not give labor.

However, insofar as the welfarist justification of corporations leads us to demand that they exercise various sorts of ethical restraint on corporate actors, we must do the same for unions. That is, accepting our justification of unions (instead of the more contestatory, agonistic defense inherent to the republican account) also requires tempering the sanguine way certain advocates of unionism may approach union behavior (Burns 2011; Connolly et al 2014). Just as corporations are (or ought to be) ethically restrained both in terms of how they govern themselves and how they conduct themselves in relationship to other actors, so too must unions be so restrained. If we want socially responsible corporations, we should want socially responsible unions. We conclude with a brief sketch of some of the sorts of ethical concerns that unions must consider.

2. Unions and non-domination

Alex Gourevitch's recent normative defense of the right to strike is a crucial development in the study of normative political economy. Unions and union activity are often defended on egalitarian terms: we require unions because unions help effect a just distribution of wealth in a society (Solow 2015). Gourevitch's argument does not require us to disavow such claims, but

attempts to complicate the question. Instead of asking a question of who gets what, Gourevitch (2016: 309) wants to ask “who gets to do what to whom?” in a particular economic order. Thus instead of a distributional approach to the question, Gourevitch shifts us toward to a relational approach, of the kind defended by Elizabeth Anderson (1999). In this light, it becomes less normatively significant whether or not strikes are, categorically, an effective and necessary tool for the achievement of just distributions of wealth, and more normatively significant whether or not they are effective and necessary for establishing more equal relations or, more accurately, pushing back against extant structures of domination.

The right to strike, then, on Gourevitch’s account, is fundamentally grounded not in economics but in politics. Even if we could achieve just distributional levels through, say, an expanded welfare state, we should still want workers to have an institutionally protected right to strike, because a right to strike protects workers from being subject to the arbitrary will of another. Freedom of contract does a poor job at this: while a worker may ostensibly have the right to leave some employer or another (although even this is not always functionally true), workers generally cannot stop working. Workers have the right to leave a job but not the labor market, and this fact leads them, as a class, to be structurally vulnerable to the capricious whim of employers, as a class. Since they can only resist their structural domination from within work, they need the right to strike: “The typical worker can quit the job, but she cannot quit the work. To avoid being exploited she turns the table: she quits working without quitting the job” (Gourevich 2016: 314).

The right to strike, then, is not actually a right to stop working, since that is a right anybody with basic formal liberal protections has. The right to strike is more like a right to *return* to working after unilaterally withdrawing one’s labor. Treating labor as a commodity will always

render an incomplete valuation of it when some possess productive capital and others do not; in such instances—which is to say, in basically all capitalist societies—workers are forced to sell their labor to employers. The ability to claim to a job while not actively working is a way of de-commodifying one's labor power and attenuating the employer's ability to take advantage (willingly or tacitly) of workers' necessary submission to their decisions. This is why, on Gourevitch's account, the right to strike is, fundamentally, a political right and not an economic one. It is aimed primarily at mitigating extant inequalities of status, with the secondary (happy) consequence of levelling out an asymmetric bargaining situation that allows workers to bring in more in wages and workplace conditions than they would otherwise be able to achieve.

3. Two arguments against unions

Consider this a political defense of striking, which might be matched with others regarding, say, the importance of labor's political representation. This is good as far as it goes, and we do not wish to challenge its conclusions or key features here. However, as a general defense of the right to strike, the argument faces a few shortcomings. First, institutionally, the argument is incomplete: a right to strike is functionally meaningless absent the institutional basis to exercise such a strike, which is to say absent unions and organized labor. One might riposte that the individual right to strike implies a prima facie justification for the institutional prerequisites to the realization of such a right. However, one would then have a defense of an institution based on one social value that may then be outweighed by its negative effects according to some other metric.

This leads to another way Gourevitch's account is limited: in offering a political justification of labor rights like striking, the approach begs the question that such an approach is

the right one. As Gourevitch (2018) himself notes, critics of strikes and labor actions generally base their claims on such republican ideas, but on liberal notions of property rights or contractual and associational freedom. Some even deny that workers are at any form of economic disadvantage (e.g., Shenfield 1984). As a consequence, Gourevitch's logic is unlikely to convince those opposed to the right to strike, since they reject such a political view of markets and economic rights in the first place, or those who deny the premise of the right in the first place. Perhaps such critics are just simply wrong, and the resulting foundational disagreements should be of no concern. But the critics' skeptical attitudes toward a political approach lead us to another concern. Even if Gourevitch's political argument in favor of unions and striking is correct, it does not mean it is dispositive. We might fully believe that workers' political and social status is important and at stake, and *also* worry about individuals' rights and other values. The political argument for labor rights adds an important weight on the scales, but does not seem to adjudicate the issue decisively.

What other values might we worry about with regards to unions? Criticisms generally comes in two flavors, economic and libertarian, which though often jumbled together, are worth stating separately. The economic criticism—which we can refer to the argument from economic welfare—is that unions (or at least their closed shop practices) cartelize labor, raise wages beyond their price-clearing levels, undermine labor market competition among workers, and introduce inefficiencies, bureaucratic drag, and deadweight losses into the economy. Unions not only lead to the decline in employment and output, they also diminish the employment prospects of nonunion workers (Kaufman 2004). This has the further effect of protecting underperforming or incompetent workers, who would otherwise lose out to the more qualified (Reynolds 1987; Levine 2001), and encouraging rent-seeking behavior, which, combined with the fact that union

contracts only cover a specific amount of time and people, creates the incentive for employers to underhire and underinvest in value-generating specific assets (Grout 1984; Bronars and Deere 1993). All the while, unions are exempt from antitrust laws (Baird 2000). The consequence of the undermining of competition by unions are therefore left unchecked.

The libertarian critic largely nods in agreement, but has distinct concerns. While the concern for liberty often dovetails with a concern for economic efficiency, they are not the same. Indeed, if we follow Robert Nozick's (1974) brand of libertarianism, the concern for economic efficiency or welfare is essentially ruled out as a "patterned" conception of justice. Instead, libertarians see unions as government-backed institutions that substitute individuals' freedom for organizational planning and coercion (Friedman 1951, 1962; Hayek 1959). Most specifically, it is an abrogation of workers' and employers' freedoms of choice and contract. To have any strength, unions must be able to override individual members' preferences and keep nonmembers from being able to work around the union (Levine 2001). The libertarian also worries that workers are compelled to pay dues to the union that represents them, whether they had the choice to refuse membership or not. Libertarians thus worry that unions levy taxes on individual workers who are *de facto* or *de jure* robbed of a choice not to pay them. The conclusion, from this perspective, is that while unions may serve laudable political and egalitarian goals in the form of republican collective freedom, they do so at the cost of sacrosanct individual liberties.

4. Capital unions

Defenders of unions would do well to take these criticisms seriously. Efficiency, as the planned socialist economies of the 20th century demonstrated by negative example, must be an important value even for egalitarian and left-wing political theories, as it directly bears on the welfare of

people (Hodgson 2018). Similarly, the contractual freedoms of workers and employers are things that any labor advocate must take an interest in, even and especially including worrying about these rights being trespassed by unions. Union support and membership are negatively affected by a perception that they are tyrannical and unresponsive to individual concerns. And as a matter of principle, the progressive and anti-domination worries that lead us to support unions should also lead us to worry about unions replicating those same dynamics. Unfortunately, labor history is replete with the interests and concerns of rank-and-file members being subjugated to those of the union brass, with an especially rough history of particular classes of members (e.g., women, African Americans, etc.) having their interests and voices being ignored.

On the other hand, these criticisms also seem to be overstated for ideological and political reasons. This becomes evident when we consider unions' counterparts: firms and, especially, business corporations. Economic analyses often refer to (union) workers and "employers," which, although not false as far as stylized accounts go, is misleading in that it gives the impression that unions are cartelizing labor against and at the expense of individual managers/employers. But of course, this is not really the case. The legal category of "employer" that has developed since the early 20th century is based on the idea of a company, not an individual (Prassl 2015; Deakin 2019). And with the exception of sole proprietorships, firms are generally sources of pooled capital and equity stakes that make decisions through an agent-manager—which is why Karl Marx (1894/1992) referred to joint-stock companies as enabling "socialized" or "social" capital. More to the point, when we start thinking about business corporations, we see that they are groups of individuals acting collectively and have legal standing as one thanks to supportive government action (Ciepley 2013; Gindis & Singer 2022). This is important because when we speak of unions, we should be thinking about collectivized

and government-supported institutions that pursue labor's interests, and when we speak of corporations, we should be thinking about collectivized and government-supported institutions that pursue capital's interest.

Viewing things in this manner makes us realize that corporate firms are subject to precisely the same criticisms as unions. As the economic theory of the firm developed following Ronald Coase (1937) has shown, firms are characterized by the supersession of the market's price mechanism, which they substitute with hierarchy and planning (Williamson 1975). Instead of allowing laborers to compete with individual capital-providers for the best terms, capital is pooled and directed through a centralized decision-making institution we call the corporation. In the same manner that economist critics claim that cartelization and disruption of market competition leads to bad incentives and disturbed price signals, there is reason to think that disrupting the competitive finance market for enterprise can incentivize managers to put in less effort than they might have otherwise (Gartner & Scharfstein 1994).

From the perspective of individual liberty, we see that corporations also subject individual capital investors from making decisions on their own; instead they are subject to the decisions of an often unaccountable executive. Think about how critics speak of the liberty problems that union faces. In the words of Mark Friedman (2015: 87): "if an employee ... prefers to negotiate her own terms, she is simply denied this right, which is manifestly unjust." But note that an individual shareholder has precisely the same attenuation of their ability to bargain. Capital providers cannot stake some claim to their individual contributions and try to negotiate with workers, suppliers, or customers on their own terms; they are subject to the decisions of the governing body, and any competition there might be among shareholders must be funneled through the governing body's (SEC-constrained) decision-making procedures.

Shareholder contributions are locked-in (Blair 2004) and become the purview of the corporate board's decision-making; the shareholders response to corporate decisions that they disagree with are exit or voice, but not withdrawal or individual bargaining. Similarly, potential capital-providers from outside the shareholding body are excluded from trying to negotiate or engage with the stakeholders of an enterprise without the shareholders' representatives.

In precisely the same way that unions cartelize labor, thereby subverting market competition, and institute hierarchical governance, thereby subjecting individual workers to the control of others, corporations do this with regards to shareholders. The analogy was noted by John R. Commons (1919). Corporations create a monopoly on investment for a particular enterprise. They further marshal state power in order to pool and lock-in capital, limiting shareholders' rights to choose. In a very real sense, corporations are essentially just unions of capital providers. Or, by the same token, we can think of unions as labor corporations. We can also adapt Henry Hansmann's (2013) terminology by thinking of business corporations as nonhuman capital cooperatives and unions as human capital cooperatives. Business corporations are cooperatives because investor-members have the right to share in the value created and the right to share some control (both under certain conditions). Unions are cooperatives because worker-members have the same key rights (under certain conditions).

5. The economic case for corporations and unions

Once we look at it this way, the economic and libertarian criticisms of unions appear less convincing. Libertarians generally do not worry about the freedoms of people who fall under the sway of the corporation, seeing them as voluntarily taking on such authority when they join the firm. This is of course the premise of the economic theory of the firm, most famously captured in

Armen Alchian and Harold Demsetz's (1972) observation that there is no real authority or fiat within the firm; there are just quid pro quo agreements, which capital and labor providers are free to exit. On the Coasean view, firms emerge as coalitions of input providers to reap the benefits of specialization and mitigate some limitations of the market (Alchian 1984; Demsetz 1995). Because of the costs associated with the discovery of prices, working out the details of contractual arrangements, and safeguarding asset-specific investments, markets will often overprice or underproduce various assets, goods or services. Firms economize on the costs of market contracting by replacing discrete commercial contracts with hierarchically managed incomplete contracts (Williamson 1985).

More precisely, Coase (1937) argued that contractual centralization is efficiency-enhancing because it reduces transaction costs: instead of bargaining with each other, input providers need to deal with a central agent (the "entrepreneur"). But Coase never said which resource owner among all the resource owners involved in production would/should take on the role of the central agent. For the Coasean setup to work, it does not really matter whether it is the provider of capital or the provider of labor or even an unrelated outside party that acts as the entrepreneur. The Coasean explanation is compatible with all organizational forms which centralize contracts and decision-making authority. Coase (1988) later noted that the emergence of the firm leads to the substitution of firm-consumer for input provider-consumer transactions. Consumers or other outside parties need only to bargain with the central agent. The simplification of the contractual structure is both internal (among the input providers) and external (with third parties).

The same arguments extend to unions. Like firms, unions emerge to economize on transaction costs: they have a central contractual agent to reduce the costs of inter-member and

third party transactions. Within unions, like within firms, the price mechanism is suspended and is replaced by hierarchy and planning. Both firms and unions are coalitions of input providers that foster and reap the benefits of specialization. And both need institutional arrangements to mitigate various contractual hazards. A hired worker bearing the cost of accumulating firm-specific human capital is in effect in a position of one who leases an asset to a firm (Furubotn & Richter 2005). The reward for this investment must be secured from a contractual wage paid over the lease interval. In principle, this wage stream should compensate the time spent working and the cover the appropriate rate of return on the worker's investment. While we can expect this type of capital-leasing arrangement to be concluded in a zero transaction cost environment, in the real world, where contracts are incomplete and other input providers (be it of labor or capital) are in a position to expropriate the quasi-rent created by the worker's investment, unless the opportunity for expropriation by others is limited, the worker is likely to bear significant costs to ensure a proper return on her sunk capital. In this context, whether or not the worker exercises her own hold-up power by threatening to withhold the asset (e.g. go on strike), underinvestment, which benefits no one, is likely. Institutional arrangements mitigating this effect will therefore be valuable.

Since asset owners can face a loss of opportunities from specialization (Rajan & Zingales 1998), they will only specialize if the benefits outweigh the opportunity losses. Certainly, the prospect of benefiting from one's own investments improves if the threat of expropriation by others diminishes. When workers set up, or join, a union they effectively task a third party to monitor and enforce contractual agreements on their behalf. Setting up a union reaps the benefits of specialization because the worker can now focus on human capital investments, productivity, and so on, instead of on the costly protection of those investments from others. This addresses, at

least in part, the underinvestment problem.

The existence of switching costs implies that the threat of exiting from the employment relationship will often be less credible. Alternative institutional arrangement, including a range of “voice” mechanisms, can emerge to govern intrafirm relationships (Hirschman 1970; Freeman and Medoff 1984). By enabling workers to speak in one voice, unions provide centralized voice services in bargaining with the employer. This greatly reduces the communication costs (Arrow 1974). Unions can also provide a range of intrafirm public goods, which would be less forthcoming through direct bilateral contracting, including increased safety, flexible work schedules, and other workplace conditions (Kaufman 2004). Similarly, by supplying a grievance system for employers and managers to work out problems, unions are able to reduce the transaction costs associated with access to external dispute-resolution mechanisms, which in turn reduces employee turnover and churn (Lewin and Boroff 1996). If disputes cannot be resolved internally, unions have standing to appear in court as singular parties. The centralized voice services unions provide are essential here too.

Furthermore, given the fact employers have this bureaucratic and organizational structure, institutionalizing labor in a similar fashion has an efficiency-enhancing quality. First, because the cartelization of capital allows employers to be monopsonistic with regards to their purchasing of labor, unionization corrects for this by responding in kind, thereby pushing employment contracts toward the more efficient, competitive rate (Kaufman 2012). Secondly, because managers are often able to take advantage of their position in a principal-agent relationship (Bebchuk & Fried 2003), unions’ ability to reduce organizational slack becomes an important concern from the perspective of efficiency. By extracting rents that might otherwise go to capricious expenditures, unions push firms to invest in productivity enhancement (Kaufman

2004). These are all examples of the more general point: for the same reasons that corporations' features of hierarchy, governance, asset lock-in, and centralized decision-making can be efficiency-enhancing, unions' use of similar institutional qualities can further extend such efficiency improvements, only on behalf of labor processes and labor relations.

Given these considerations, we join Mark Reiff (2020: 41) in concluding that corporations and unions ought to stand or fall together: "As far as suppressing anticompetitive behavior goes, firms and unions rise and fall together. Both are the products of agreements to band together to conduct certain business activities collectively in search of greater profits, both result in the withdrawal of certain resources from allocation by the price mechanism, and both result in an increase in prices of the factors of production under each particular association's control. Either they both exist, or neither do." Just as the economic argument for unions is the same as the economic argument for firms, the libertarian argument for unions must be the same as the libertarian argument for firms. Reiff resorts to the Nozickian argument, which starts from a libertarian utopia and asks what free individuals would agree to, to make this important point.

6. What this means for a normative theory of union activity

Of course, to say that unions can contribute to efficiency does not mean that they always will. In this way, the analogy between firms and unions goes further than indicated above. Surprisingly, this analogy was noted by Milton Friedman (1970) in his famous argument that firms have no ethical obligations other than the pursuit of profit. In his defense of this position Friedman noted that if we were to ask unions to pursue wage restraint out of a concern for social issues, we would not expect union members to comply, and nor would we see that as particularly laudable. He thus concludes that we "have the ironic phenomenon that union leaders—at least in the

U.S.—have objected to government interference with the market far more consistently and courageously than have business leaders.” Whatever the factual basis of this claim, there is evidence that unions often do take social responsibility into account (Dawkins 2010). But there is a more important normative point here. If we see unions and firms as mirror institutions, we might see their license to pursue pure organizational interest without constraint as resting on similar sorts of claims. If we find Friedman’s arguments for more-or-less unbridled corporate pursuit of profit wanting, then this raises a similar question with regards to unions. In what ways ought unions be constrained in the manner they pursue the interests of their members?

A framework for answering this question and formulating an approach to union ethics must do two things. The first is to articulate what the appropriate strategies are for unions to use when bargaining with, or contesting, the employer. Here, theories about businesses and their constrained ability to pursue profit are helpful. As advocates of the “market failures approach” to business ethics have argued (Heath 2014; Norman 2011; Néron 2016; Singer 2018), firms may pursue profit only by using strategies that do not undermine the efficiency-enhancing function that competitive profit-seeking is meant to serve. Firms, then, may pursue profit, but not by externalizing costs onto others or through activities other than those that contribute to the creation of economic value.

The analogous claim would be that unions may pursue their members’ interests, but not in ways that radically interfere with efficient creation of value. This is a slightly more complicated issue, since unions often pursue aims that are redistributive in nature; they seek to capture resources from the employer and give them to labor. While such redistribution may be fully just (and perhaps necessary for justice), it is not obvious how such activities cohere with a concern for value creation. An ethics of unions requires taking seriously the distinction between

rent creation and rent extraction (Aidt & Sena 2005). Resources should be spent that go to creating greater productivity with the proceeds going to labor (rent creation), in contrast to using resources to capture already existing rents (rent extraction), as spending money to capture existing rents is a straightforward efficiency loss. Of course, there may be egalitarian redistributive reasons for doing so, but these do not give carte blanche to unions. The adversarial relationship between unions and firms is governed by particular systems and rules, which unions (and firms) must respect both in letter and spirit. At the very least, this means that unions must abide by an ethical principle of good faith when they engage in the collective bargaining process, even if they are capable of legally acting in bad faith (Dawkins 2013).

The second thing a framework for union ethics would require is an ethical understanding of what unions owe their own members. It stands to reason that unions must treat their members equally. American labor law imposes a duty of fair representation on unions to prevent the exploitation of the minority by the majority (Gould 2013). This is analogous to the fiduciary duties imposed on boards. In principle, minority shareholders may sue directors for breach of fiduciary duties. Perhaps an ethics of unions premised on the principle that corporations and unions stand and fall together might emphasize the need for a similar possibility on the workers' part. In the earlier part of the 20th century, American unions could sue members for noncompliance with, for example, a strike order. From an ethical standpoint, it should probably be the other way round.

The fact that unions can achieve efficiency through the hierarchical organization of its members does not mean that anything they do to and for those members is justified. As A. J. Muste famously noted in 1928 (cited in Clark et al 2021), unions are most capable of challenging employers when they are militantly disciplined and organized like an army; but members are

entitled, and most loyal, to unions that are democratic. Unions thus must walk a fine line between, on the one hand, union efficacy and the institutional prerequisites of collective action—“leverage-centered unionism”—and, on the other, member enfranchisement and democratic decision-making—“worker-centered unionism” (Voss 2010). This question becomes even more pressing and difficult when we consider federated unions and think through what the relationship ought to be between a local and the national union.

At the very minimum, we might simply say that participation and democratic decision-making in unions are necessary, but also necessarily constrained by unions effectively discharging their function; insofar as union democracy increases union efficacy, there is no dilemma (Levi et al. 2009). But when these conflict, unions need not, and indeed ought not, pursue democracy to their own detriment. However, a more pressing issue for unions is that they treat their members equally both in terms of voice and pursuing their interests. This includes extant classes of oppressed groups—unions must create mechanisms to make sure they are not perpetuating the marginalization of women, racialized groups, sexual minorities, and so forth (Singer 2016). But unions also have to develop institutional mechanisms to make sure that members’ interests are being weighed equally, and that particular classes of workers are not privileged over others.

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