

What is the Moral Problem with Private Tyranny? Is Contract to Blame?

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- John Gardner, [The Contractualisation of Labour Law](#), in *Philosophical Foundations of Labour Law* (Collins et al., eds., 2019)
- Hugh Collins, [Is the Contract of Employment Illiberal?](#), in *Philosophical Foundations of Labour Law* (Collins et al., eds., 2019).

Both of the first two chapters of this new edited volume—The Contractualisation of Labour Law by John Gardner and Is the Contract of Employment Illiberal? by Hugh Collins—grapple with the structure of employment relationships and how they relate to their legal form. (We are lucky to have had another important recent treatment of this question by Elizabeth Anderson in *Private Government* (2017).)

John Gardner does not ask precisely the question of my title, but he does offer an answer to it. Gardner is primarily critical of a trend toward what he sees as the contractualization of labour, which he regards of a more general trend toward the contractualization of relationships generally. Tracing our obligations back to contract, he argues, tends to lead us to think that our contracts are the reason we owe other people what we owe them. We also tend to look at our contracts as the fountains of obligation, rather than the nature of our relationships with other people.

Gardner does not resist—or advocate for—any particular legal change. His is mostly a cultural lament. His target is the contractual model of employment, which is taken to justify authoritarianism at work and the idea that “work is there to pay for the life of the worker without being part of that life.” We tend now, he argues, to lose sight of how one’s role as a worker and her employment relationship can play a meaningful part in an employee’s life.

Gardner comes at the problem of authoritarianism at work indirectly. He suggests that the emphasis on contract and its content-independent reasons for employer authority tend to distract from the matter of whether authority is well-used, which turn on the content-dependent reasons for an employee’s substantive obligations. Neither the reasons relating to the employee’s own life plan, such as a desire to put her talents to good use, nor the reasons relating to the employer’s purposes, such as the need to get some task done, are relevant to the employee’s obligations under contract. Those derive just from the fact that she is being paid; so as long as she is paid, anything can be asked of her. The employer has no duty to use his authority reasonably, at least in a popular imagination that has fully contractualized employment (Gardner, Pp. 43-44.) The problem with the resulting private tyranny in Gardner’s picture is that it leaves employees lives empty. Most of their day is spent earning compensation; work just makes it possible to live and at best to pursue life projects in the few remaining hours outside work. The charge is subtle, but yes—contract is to blame.

Hugh Collins comes at the question of private tyranny more directly. He begins with the observation that “[t]he contract of employment embraces an authoritarian structure that appears to be at odds with the commitment in liberal societies to values such as liberty, equal respect, and respect for privacy.” (Collins, P. 48.) Collins concludes by the end that there is indeed “an inherent tension between some liberal values and the institution of the contract of employment that can only be resolved by labour law adopting a particular, worker-protective, legal framework for employment relations.” (Collins, P. 51.)

Collins is not concerned that workers submit to their employers on the latter’s terms. He finds more problematic the subordination of employees to employers on a daily basis as an instrument for the latter’s ends. It is not just that the

employer has coercive power by way of threatening termination; by virtue of their contract, the employer exercises practical authority over the employee. Finally, the open-ended nature of the employee's obligations gives the employer a kind of lesser "prerogative power," or wide managerial discretion.

Collins suggests that one problem for liberalism arises from the fact that civil liberties, like the right to speech, become subject to employer permission. There is also a contingent but serious risk that managerial discretion will be dominating. Finally, the different levels of esteem associated with the status of employer and employee, respectively, conflict with a principle of equal respect. Collins concludes that we need restrictions on the content of employees' obligations, restrictions on employers' restrictions of civil liberties, and restrictions on discipline and dismissal. Collins' account of the conflict between liberalism and modern employment is more direct than Gardner's but he similarly concludes that the employment contract as we know it is illiberal. However, he is more sanguine about the power of legal reform to redeem it. While Gardner sees the problem as an ideological one that doctrinal changes cannot undo, Collins suggest that concrete limits on employers can make the employment contract just.

First and foremost, these essays are an essential read because they grapple deeply with a pervasive moral challenge to modern society. If we cannot justify the private tyranny that is modern employment for most Americans (and most people generally—note both Gardner and Collins are British), one of the basic structures that most concretely shapes our everyday lives is unjust. It is hard to know where to start with such a problem. Gardner's analysis takes as its object the individual relationship of employment and what it means for individual employees. It is a depressing analysis. Collins studies features of employment from a more social or systemic perspective. His analysis is not quite as depressing but it is not happy either. Between the two of them, they capture a lot about what is wrong with private tyranny. This reader is sympathetic to some of Collin's prescriptions but is persuaded by Gardner that they would not sufficiently temper private tyranny at work, or ensure that work is more than just a means to live. We might hope, though, that even if most employees cannot find meaning in their relationships with their employers, they might still find satisfaction in other dimensions of employment, including relationships with co-workers, customers and the actual work, whether manual or intellectual. We might need to hear next from psychologists, or just more people, about whether we are capable of separating out the contractual and noncontractual dimensions of work life in this way.

Additi Bagchi, *What is the Moral Problem with Private Tyranny? Is Contract to Blame?*, JOTWELL (October 1st, 2019)(reviewing John Gardner, [The Contractualisation of Labour Law](#), in **Philosophical Foundations of Labour Law** (Collins et al. eds., Oxford U. Press, 2019); Hugh Collins, [Is the Contract of Employment Illiberal?](#), in **Philosophical Foundations of Labour Law** (Collins et al. eds., Oxford U. Press, 2019)), <https://contracts.jotwell.com/?p=789&preview=true>.