

CHRISTOPHER MCMAHON

# Authority and Democracy

*A General Theory of Government  
and Management*



PRINCETON LEGACY LIBRARY

## AUTHORITY AND DEMOCRACY

STUDIES IN MORAL, POLITICAL,  
AND LEGAL PHILOSOPHY

*General Editor: Marshall Cohen*

A list of titles in the series  
appears at the back of the book

# AUTHORITY AND DEMOCRACY

A General Theory of Government  
and Management

*Christopher McMahon*

PRINCETON UNIVERSITY PRESS  
PRINCETON, NEW JERSEY

Copyright © 1994 by Princeton University Press  
Published by Princeton University Press, 41 William Street,  
Princeton, New Jersey 08540  
In the United Kingdom: Princeton University Press, Chichester, West Sussex  
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

McMahon, Christopher, 1945–

Authority and democracy : a general theory of government and  
management / by Christopher McMahon.

p. cm. — (Studies in moral, political, and legal philosophy)

Includes bibliographical references (p. ) and index.

ISBN 0-691-03662-4 (cloth)

1. Authority. 2. Democracy. 3. Management—Employee participation.

I. Title. II. Series.

HM271.M39 1994

350—dc20 94-1366 CIP

This book has been composed in Palatino

Princeton University Press books are printed on acid-free paper  
and meet the guidelines for permanence and durability of the  
Committee on Production Guidelines for Book Longevity of the  
Council on Library Resources

Printed in the United States of America

1 3 5 7 9 10 8 6 4 2

Princeton Legacy Library edition 2017

Paperback ISBN: 978-0-691-60321-6

Hardcover ISBN: 978-0-691-65465-2

*For Ruth McMahon and Janine Scancarelli*



# CONTENTS

PREFACE	xi
ONE: INTRODUCTION	3
Management and Government	4
The Public and the Private	7
Managerial Democracy	10
Two Rejected Theses	15
Political Philosophy or Business Ethics?	19
<i>Part I: Authority in General and in Government</i>	23
TWO: AUTHORITY	25
Power and Authority	25
Subordination and Authority	27
Autonomy and Authority	33
The Priority of Right to Directive Power	38
The Varieties of Authority	41
Agency and Authorization	47
THREE: MORAL PRINCIPLES AND SOCIAL FACTS	52
The Ontological Status of Organizations	52
The Structure of the Problem	52
The Alternatives	57
The Moral Status of Organizations	61
The Morality of Individuals	69
Morally Important Social Values	74
Liberalism and Communitarianism	78
The Moral Good	82
FOUR: THE JUSTIFICATION OF AUTHORITY	85
E-Authority	86
The Varieties of E-Authority	86



## CONTENTS

Moral Authority	92
The Strength of E-Authority	95
P-Authority	96
The Ground of Promissory Obligation	96
The Strength of P-Authority	98
C-Authority	102
The General Basis of C-Authority	102
The Game-Theoretic Structure of Cooperation	108
The Justification of C-Authority: Incremental Goods	116
The Justification of C-Authority: Step Goods	118
The Strength of C-Authority	121
Political Obligation	123
Raz's Service Conception	126
<b>FIVE: DEMOCRACY</b>	128
Direct Democracy: Preliminaries	133
Democracy and Preference	135
The Fairness of Democracy	137
Political Liberalism	142
Democracy and Judgment	143
Epistemic Democracy	144
Consensus	148
Democratic Legitimacy	150
Democracy and Expertise	158
Democracy and E-Authority	159
Representative Democracy	162
Conclusion	165
 <i>Part II: Managerial Authority</i>	 167
<b>SIX: MANAGEMENT AND MORALITY</b>	169
The Moral Dimension of Management	169
Fairness	171
Morally Important Social Values	174
Social Values and Organizations	174
The Value of Social Prosperity	178
The Limits of Specialization	184
Employer Rights	185
Do Managers Exercise Authority?	188
Do Managers Issue Directives?	188
Do Employees Disagree with Management?	191

## CONTENTS

SEVEN: MANAGERIAL AUTHORITY AS P-AUTHORITY	194
Preliminary Objections	196
The Limits of P-Authority: Fairness	202
Initial Considerations	202
The Strength of a Promise to Obey	203
The Limits of P-Authority: Morally Important Social Values	207
Collective Wrongdoing	207
Reasons and Wrongdoing	211
Collective Wrongdoing as Collective Failure to Desist	214
Producing an Alternative Incremental Good	216
Producing an Alternative Step Good	221
Unions and Preventing Wrongdoing by Others	223
Conclusion	229
EIGHT: MANAGERIAL AUTHORITY AS C-AUTHORITY	231
C-Authority and P-Authority	232
Managerial Authority and Rational Cooperation	236
The Structure of Organizational Cooperation	241
C-Authority and Unions	249
C-Authority and Power	252
C-Authority and Property	256
NINE: MANAGERIAL DEMOCRACY	258
Constitutional Accountability	259
The Democratic Limitation of Democracy	262
Investment	266
Expertise	272
Constitutional Choice	279
Federalism	285
Conceptual Change	289
WORKS CITED	293
INDEX	303



## PREFACE

Radical political theory gives the concept of power pride of place. It views society as an arena of clashing interests, in which contending groups seek to marshal power to dominate others as interest dictates. More sophisticated theories of this sort view the power at the disposal of dominant groups as encompassing not only the ability to promise rewards or threaten punishments but also generally accepted ideas, including moral ideas. By assimilating morality to power, however, these theories limit what they can sincerely say about the good society, as Marx's sketchy descriptions of communism attest. Indeed, the radical ideal sometimes seems to be a utopian fantasy, a world in which no one has power over anyone else or all have the power to get everything they want.

If we ask what distinguishes moderate political theory from radical political theory, one plausible answer is that moderates give a central role to the concept of legitimate authority. Accepting authority involves deferring to the assertions or directives of various individuals or groups, including, in the case of democratic authority, groups of which one is a member and whose authoritative communications one helps to generate. In embracing the idea that such deference can be legitimate, moderates show that they think that not all subordination is domination. Sometimes there are good reasons for it from the standpoint of those in subordinate positions. They can live better with deference of certain kinds than without it. This means that for moderates, the good society is not one in which nobody has power over anybody else, but rather (to oversimplify a bit) one in which power does not exceed legitimate authority.

The authority of individuals or groups is not the only form of authority that moderates acknowledge. They also accord authority to morality. They regard our basic moral ideas, if not the specific moral conventions accepted at a given time and place, as legitimately constraining what we may do.<sup>1</sup> One of the most interesting

<sup>1</sup> For discussion of the authority of morality see Butler (1983), esp. sermon 2, and Scheffler (1992), chap. 5.

## PREFACE

questions for moderate political theory concerns how clashes between the authority of particular individuals or groups and the authority of morality are to be resolved. What should one do when a particular authority that one regards as legitimate directs something that seems morally wrong, or when one judges that there are good moral reasons for resisting a particular authority?

The topic of the moral limits of legitimate authority has received much attention in the case of governments, but governmental authority is not the only sort of authority exercised by particular individuals or groups that moderates regard as legitimate. They are also prepared to accord this status to managerial authority, the authority of the managers of nongovernmental organizations.

Unlike governmental authority, there has been little discussion of what makes managerial authority legitimate. One of the reasons for this, I believe, is that it has been thought that since nongovernmental organizations are voluntary associations, consent theories of legitimate authority are straightforwardly applicable to them. Their members can be regarded as having promised to obey those who occupy managerial offices within the organization. One of my goals in this book is to show that this way of understanding legitimate managerial authority is tenable only if one supposes, contrary to fact, that there are seldom good moral reasons for questioning what managers direct. When the possibility of conflict between morality and managerial authority is fully appreciated, we are forced to reconsider what makes this form of authority legitimate. As we shall see, the answer has implications for the sorts of institutional structures in which managerial authority can appropriately find expression.

This book has two parts. The first provides an account of authority in general and, specifically, in government. It distinguishes three kinds of authority—the authority of experts, authority grounded in a promise to obey, and authority that facilitates mutually beneficial cooperation within a group—and examines the considerations that justify them. It also develops an account of democracy as reflexive authority, the collective exercise of authority by those subject to it. The second part applies the results of the first to the phenomenon of managerial authority.

The title of the book may suggest a contrast between authority and democracy as two different ways of directing the actions of groups, but this is not my intention. I believe that in large groups, at least, democracy is best viewed as a way of exercising authority. The account of democracy as reflexive authority that I present is of interest for two reasons. First, although the best recent work on authority is

## PREFACE

primarily concerned with the authority of governments or the state, it is surprisingly silent on the topic of democracy. It says virtually nothing about whether, and if so why, the democratic exercise of authority is preferable to its nondemocratic exercise. One of the objectives of the first part of this book is to remedy this defect. Second, interesting light is shed on democracy when it is viewed as a way of exercising authority. My account of democracy as reflexive authority can be distinguished both from views that justify democracy by reference to the idea that people have a right to participate in decisions that affect them and from theories of "deliberative democracy" that understand democracy in terms of a deliberative process that aims at a consensus.

I have characterized the first part of the book as a discussion of authority in general and of authority in government. It is a discussion of authority in general because many of the issues addressed may be applied to all the settings in which authority is found. And it is a discussion of authority in government because it covers essentially the same ground as recent accounts of the authority of governments or the state. Some topics that would have to be treated in a full-scale discussion of the authority of governments, for example, the nature of law and its authority, are omitted. Given the discussion of democracy it contains, however, the first part actually provides a more complete treatment of the authority of governments than other recent accounts. The authority of governments might also be called political authority, although for reasons that will become clear as we proceed, I believe that in important respects managerial authority deserves the label "political" as well.

The principal goal of the second part of this book is to determine whether nongovernmental organizations should be democratically managed by their employees. The central case deals with large business corporations, but the account is meant to be general, encompassing such institutions as hospitals and schools as well. I argue that managerial authority is best regarded not as the authority of a principal over an agent but rather as authority that facilitates mutually beneficial cooperation among employees with divergent aims. And the results of the first part are invoked to establish that if managerial authority is understood in this way, there is a presumption that it should be democratically exercised by the employees. The case for managerial democracy is presumptive only, however. The book concludes by considering whether certain countervailing considerations—in particular the desirability of securing investment by nonemployees and the need to utilize technical expertise effectively—are capable of rebutting the presumption in favor of

## PREFACE

democracy. I argue that while these considerations have some force, it will seldom be sufficient to justify institutional structures that give employees no role at all in formulating ultimate managerial policy.

My intellectual debts are acknowledged in the footnotes. My work was supported by a sabbatical quarter from the University of California, Santa Barbara, and by a fellowship from the National Endowment for the Humanities. I also thank the College of William and Mary and its philosophy department for extending me library privileges during the 1991–1992 academic year, and Lesley Beneke for editorial assistance.

## AUTHORITY AND DEMOCRACY





## C H A P T E R   O N E

### INTRODUCTION

This book is an essay in political philosophy. It depicts government and management as two components of an integrated system of social authority that is essentially political in nature. A variety of issues relating to authority and democracy are discussed, but the principal goal is to determine when the democratic exercise of authority, both in government and in nongovernmental organizations, is appropriate.

In the first part of the book I consider what kinds of authority there are, which of them can be exercised democratically, and what supports their democratic exercise. This discussion of authority in general is, at the same time, a discussion of the governmental case, since it is conducted in the same conceptual space as the best recent discussions of political authority.

The second part of the book is concerned with managerial authority and managerial democracy. Most writers who advocate the democratic management of nongovernmental organizations by their employees base their case in some way on the value of participation. Thus, Marxists, who regard human flourishing as self-realization through labor, typically hold that self-realization is more complete when workers participate in the decisions that determine how their work will be organized. This approach, however, confronts the problem that many people do not care about participating on a regular basis in the decision making that guides their work.<sup>1</sup> Rather, they see their work as a way of financing self-realizing activities that take place in other contexts.

Arguments for democracy in the political sphere, that is, arguments for democratic government, usually do not depend on the value of participation. Instead, they claim that only democratic governments can hold legitimate political authority. In the second part of this book, I take a similar approach to the problem of managerial

<sup>1</sup> For related discussion, see Arneson (unpublished), esp. sect. 7, and Arneson (1987).

## CHAPTER ONE

democracy. I address the question of whether democracy is required if managerial authority is to be appropriately exercised. This involves examining different ways that managerial authority might be justified and considering their implications for managerial democracy.

That authority is exercised by governments and that some consideration must be given to how it might be justified are not controversial claims. This is familiar ground in political philosophy. Much less familiar is the idea that there is a problem about how the authority of managers might be justified. Thus I devote the remainder of this introductory chapter to the managerial case, presenting some of the themes of the discussion of managerial authority in Part II. Part I, the discussion of authority and democracy in general and in government, begins with the account of the concept of authority in Chapter Two.

### *Management and Government*

One of the principal problems of political philosophy is the justification of government, that is, of political authority. A justification of political authority would provide an answer to the question: Why obey the law? Of course, one reason is that if one does not, one may be punished. But this reason comes into being only after government is in place, and thus cannot justify the existence of government. A justification of political authority must provide a reason for obeying the law that operates even when there is no threat of punishment for violation. If such a reason can be found, it may be possible to regard the punitive power of at least some governments as a social mechanism for forcing people to do what they have, independently of this power, sufficient reason to do.

Since the collapse of the idea that governments get their authority from God, one of the most important strategies for justifying political authority has been to suggest that if government did not exist, it would be necessary to invent it. Writers taking this approach argue that, without government, social life would be marked by chaos or inconveniences of certain kinds and that everyone would regard the elimination of these conditions by a government as worth the monetary and other costs entailed. To use the image historically associated with this approach, the people in a territory that lacked a government would find it in their interests to enter into a social contract to constitute themselves as a political society and establish a government. Further elaboration of the idea that we can see why political authority is justified by reflecting on what life would be like without

## INTRODUCTION

it enables us to distinguish between better and worse forms of government. The better forms are those that better promote (in a particular social context) the ends that justify establishing a government.

My goal in the second part of this book is to investigate the parallel problem of the justification of managerial authority. A justification of managerial authority would provide an answer to the question: Why obey one's employer? The answer seems obvious to most people: because he, she, or it is paying one to obey. And they might add that, unlike nation-states, corporations are voluntary organizations, so if one does not want to implement a particular managerial directive, one can (and should) quit.<sup>2</sup>

I do not believe that this answer is satisfactory. The account of managerial authority that I provide explains why, proposes what I regard as a better answer, and traces its implications for current economic institutions. The argument is complex, but the basic idea is easily stated. While it would doubtless be morally impermissible to continue to accept pay from an employer while disobeying managerial directives for purely selfish reasons, the situation is more complicated when one's reasons for disobeying are moral. Suppose, for example, that some civilian employees of the German State Railroad during World War II had been ordered by their superiors to facilitate the conveying of detainees to concentration camps, but they discovered that without any risk to themselves, they could allow some of the detainees to escape en route. Moreover, they knew that if they were to quit, they would be replaced by people who would comply fully with the directives of the railroad's managers. I suspect that virtually everyone today would agree that the appropriate course of action for employees in this position would be to retain their jobs and continue to accept their pay—in part to meet their needs and in part because to decline it would arouse suspicion—while disobeying their bosses.

I argue that this case, while extreme, is by no means anomalous. Employers in modern societies routinely make decisions that are appropriately assessed on moral grounds, and where the employer is a large organization, the consequences, good or bad, of its decisions are typically much greater than those of the decisions of isolated individuals. But not all of the employees of a particular employer will find the employer's policies morally acceptable. Thus, for some employees at any given time, and for virtually all at some point

<sup>2</sup> A common theme in discussions of authority is that the exercise of authority in voluntary organizations is unproblematic. Thus, attention has focused on the authority of the state.

## CHAPTER ONE

in their working lives, to comply with managerial directives will be to contribute to a moral or political agenda that they do not share. As the above example shows, this problem arises whether the employer is a publicly or a privately owned enterprise. To be sure, only the largest organizations will make decisions that have moral implications at the national or international level. Yet, even the actions of small firms can have moral implications at the local level. While the fact that one is being paid is a good moral reason for complying with a managerial directive, then, it may conflict with other morally relevant considerations that count against compliance. And sometimes these considerations will be strong enough to justify continuing to accept pay while disobeying managerial directives.

Of course, the policing of the work force by employers usually makes keeping one's job while disobeying managerial directives impossible. This police power derives from the fact that the law gives employers the virtually absolute right to exclude from their property anyone they choose. Like the threats that governmental officials can make, however, the threat of being excluded from one's workplace does not provide the sort of reason for obedience that can justify the authority of managers. A justification of managerial authority must provide a reason for complying with managerial directives that is prior to and independent of the employer's legal powers. If such a reason can be found, we can consider whether the legal powers that employers possess can be defended as a social mechanism for forcing employees to do what they have, independently of these powers, sufficient justification for doing. Our objective, then, is to find a reason for complying with managerial directives that is independent of the threats managers can make to recalcitrant employees, and that operates not just sometimes, for some employees, but routinely for all. If the fact that one is being paid is not this reason, what does justify managerial authority?

My answer is similar to that provided by the contractarian tradition in political philosophy. If every employee who disagreed on moral grounds with the policies of his or her employer disobeyed managerial directives, the result would be economic chaos. Like political authority, then, managerial authority can be justified as eliminating a certain kind of chaos. This answer gives employees sufficient reason to comply with most managerial directives that they find morally questionable, while leaving room for disobedience in such extreme cases as that of the German railway workers.

If we accept this answer, however, we must reexamine the powers that the law accords to managers. If the task performed by managers is the same as that performed by governmental officials—that is, to

## INTRODUCTION

eliminate certain obstacles that would otherwise confront groups of people trying to live what they regard as morally acceptable lives—management and government are appropriately viewed as two aspects of a larger system of authority with a single rationale. And the legal powers given to managers, including the legal property rights they exercise, will have to be adjusted to reflect this understanding of their role.

### *The Public and the Private*

The foregoing points can also be made by saying that on the view that I present, the idea that government and management fall on different sides of the public-private divide—that is, that managers work in the “private sector”—becomes dubious. The claim that management is private reflects a view of the public-private distinction according to which actions are public if they employ publicly owned resources and private if they employ privately owned resources. But if, as I have suggested, legal property rights cannot be taken as morally basic, we need another way of making the distinction.

One way of drawing the line that might place management and government on the same side would be to regard the defining feature of public authority as the application of coercive power. The state, our paradigm of a public entity, is often defined, following Max Weber, as an organization that possesses a monopoly on the legitimate use of coercion in a certain territory.<sup>3</sup> The essence of permissible private activities, by contrast, is that they are not coercive. But some writers, especially in the socialist tradition, have claimed that management, like government, involves the application of coercive powers. Their argument asserts that humans must have access to productive resources in order to live—or to live well—and this enables those who have the legal right to control access to such resources, in the form of employment, to force those who do not own them to do what they want. If this is correct, management is relevantly similar to government.

This way of making the public-private distinction is, however, open to the same objection as the first we considered. To justify authority, we need a reason for subordinates to comply with authoritative directives that is independent of and prior to any legal powers, coercive or otherwise, that a given authority may possess. And it would be desirable to have a definition of public authority

<sup>3</sup> See Weber (1947), pp. 154–57.

that is tied to how authority is justified rather than to the power that a particular society's laws or conventions confer on those exercising authority in certain contexts. The "contractarian" justification of authority provides one such definition. Following it, we can define the public sphere of human life as the sphere of those social mechanisms that make it possible for people with conflicting aims, especially moral aims, to live together. I argue that the managers of nongovernmental organizations play this sort of public role. The private sphere then becomes the sphere of association among people with coincident aims.

A contractarian justification of authority has implications for issues such as the accountability of managers. In large, contemporary organizations, governmental and nongovernmental, decision makers are accountable to those who choose them. Thus, in contemporary democracies, few if any decisions are made directly by citizens. Government is "by the people" to the extent that the people choose the top-level, political decision makers. Similarly, decision makers in the nongovernmental organizations are accountable to those who choose them. The question is, Who does this?

Most important nongovernmental organizations in contemporary capitalist societies have a certain legal form, that of the corporation. Legally, a corporation is a locus of legal rights and duties that are independent of the legal rights and duties of the natural persons associated with it. It can enter into contracts, and sue and be sued, in its own name.<sup>4</sup> But a corporation can act only through the people associated with it, and the law divides them into various groups: shareholders, a board of directors, senior executive officers, and other employees. The shareholders of a corporation have the legal right to determine, by voting, who the directors will be and to make decisions bearing on what philosophers would regard as corporate identity and survival—decisions concerning merger, sale, and dissolution, for example. Boards of directors have the right and duty to make decisions regarding basic business policy, such as what dividends to declare. They also hire the senior executive officers of the corporation. The senior executives manage the day-to-day opera-

<sup>4</sup> I often use the terms "organization," "corporation" and "firm" interchangeably, but strictly speaking, they have different meanings. "Organization" is a sociological term referring to a group with an internal decision-making apparatus. "Corporation" is a legal term having the meaning just specified in the text. "Firm" is an economic term referring to an entity that buys in order to sell—either what has been bought or something made out of what has been bought. An organization need not be a corporation or a firm, a corporation need not be an organization (it could consist of only one person) or a firm, and a firm need not be an organization or a corporation. Still, in the typical case, a nongovernmental organization is both a corporation and a firm.

## INTRODUCTION

tions of the corporation, including the hiring and firing of the rest of the employees. The senior executive officers and other employees are agents of the corporation, but the board is not the agent of the shareholders. The shareholders do not have the same rights with respect to the board that principals typically have with respect to agents.<sup>5</sup>

The decision making that takes place in most corporations usually does not conform to this legal model, however. Membership on boards of directors is typically controlled not by the shareholders but by the board itself. Although shareholders must vote each year to determine board members, it is very difficult and expensive for any shareholder who wants to replace the slate of directors proposed for election by the current management to contact all of the other shareholders, or enough to secure a majority of voting shares for an alternative slate. The annual election usually endorses the choices of those presently running the corporation. Similarly, the actions of boards of directors are typically controlled by the senior executives. Boards meet infrequently and do not have as much knowledge of the issues confronting the corporation as the senior executives. Thus, the control of most corporations—or at least those that are not “closely held” by a small group of shareholders—is actually in the hands of the senior executive officers. Because senior executives are usually members of the board, however, we may continue to speak of the board of directors as the locus of ultimate managerial authority, bearing in mind that a subgroup within the board often controls the rest.

When we apply the test of accountability proposed above—that decision makers are accountable to those who choose them—to the top managers of corporations, then, we find that these decision makers are accountable only to themselves as a group. In the normal course of events, decisions regarding membership in what is in fact the ultimate decision-making unit, the board of directors, are made by those who are already members, either through decisions to hire or fire those upper-level managers who are also members of the board or by proposing for endorsement by the shareholders a certain slate of candidates. In general, we can say that membership in the group of top-level economic decision makers in our society is determined like membership in a club: Those who are already members decide who will join or be removed. One of the tasks of this book will be to determine whether this way of selecting top-level, economic deci-

<sup>5</sup> See Eisenberg (1976), pp. 1–6. The legal relations described are, of course, those that obtain in the United States.



sion makers is compatible with their role as wielders of a certain kind of public authority.

### *Managerial Democracy*

The idea that managers are public officials, or that corporations play a quasi-governmental role or have some of the properties of a state, is not new, but it is usually formulated differently from the way that I formulate it here. In my view, if productive organizations are like states, their citizens are the employees. The usual way of making the point that corporate activities have a public aspect, however, is to note that these activities affect the lives many different “publics”—most importantly, shareholders, employees, consumers, suppliers, and neighbors of corporate facilities—and thus cannot be regarded as the private concern of those who own or operate corporations.<sup>6</sup> To be sure, some have argued that corporate managers should consider only the interests of the shareholders,<sup>7</sup> but many commentators have taken it for granted that corporate decision making should give weight to the interests of other groups as well.

It may seem that giving weight to the interests of other publics or constituencies or “stakeholders” is possible only to the extent that firms operate in noncompetitive industries; in competitive industries, the requirement of survival drastically limits options. Less stringent oligopolistic competition is the norm in many industries, however, and even where firms do not have a financial cushion that allows them to promote actively goals that conflict with profit seeking, hard thinking can often reveal ways of making economic survival compatible with the satisfaction of various moral demands. It should also be noted that there will be times when it would be better, morally, for a firm to go out of existence than to do what is necessary to survive.

The suggestion that managerial decision making must balance the claims of various constituencies provides a provisional way of interpreting my earlier assertion that to comply with a managerial directive is often to contribute to a moral or political agenda that one does not share. An employee may disagree with the weighting of the claims of the various affected groups that underlies a particular managerial policy or decision. A more sophisticated account of the moral dimension of management is provided in Chapter Six.

<sup>6</sup> For a good exposition of this view, produced at the high point of post-World War II complacency about the American economy, see Mason (1959), especially the essays by Mason, Chayes, Rostow, Brewster, Kaysen, and Latham.

<sup>7</sup> See M. Friedman (1979).

## INTRODUCTION

Given that the interests of various constituencies must be taken into account, there are three main mechanisms by which this can be accomplished. A society can rely on the top management of a corporation to give the various interests affected by their decisions the morally appropriate weight. Or, it can devise mechanisms by which representatives of the affected groups—or those other than the shareholders, for whom such a mechanism already (in theory, it least) exists—can participate in corporate decision making. Or, it can legally regulate the operations of corporations to secure corporate actions that give appropriate weight to the various competing interests.

Democratic principles seem to give some support to one or the other of the latter two suggestions, but in fact both are problematic. Participation by representatives of the various affected groups—through membership on boards of directors—is usually advocated as a way of empowering various relatively powerless people. But the most important shareholders, customers, suppliers, or neighbors of a corporation are often other corporations, and providing for the participation by corporations—that is, their managers—in each other's decision making would certainly not be a way of making a self-selected managerial elite more responsive to the concerns of ordinary people.<sup>8</sup> The third suggestion also faces a problem. Since virtually all important managerial decisions have a moral dimension, to place all morally laden decisions in the hands of regulatory agencies would be to place general management in their hands, with the result that the benefits of economic decentralization associated with a system of independent corporations would be lost.

There is a deeper philosophical issue that counts against "stakeholder" participation in corporate governance. The suggestion that representatives of such groups should participate is associated with a widely held, but I believe fundamentally mistaken, conception of democracy. This is the view that democracy requires that, or is more fully realized to the extent that, people have a say in what affects them. A little reflection shows that this is not a principle that we accept in the political sphere. Virtually everyone in the world is affected by the foreign policy decisions of the U.S. government, but we do not suppose that they therefore have a right to participate in making these decisions or in choosing those who make them. They have a right that their morally legitimate claims be taken into account by those who formulate the foreign policy of the United States, and this may imply a duty on the part of policy makers to give

<sup>8</sup> I take this point from Eisenberg (1976), p. 21.

them a hearing, but they do not have a right to be among those who make the decisions by which this policy is formulated. Only the citizens of the United States have this right.

Citizens have the right to formulate foreign policy, or to choose who will formulate it, because the laws and policies of their country organize their collective actions—organize what they collectively do and allow. This yields the following general principle: The people who have a right, under democratic principles, to participate in a decision are not those who are affected by it but those whose actions are guided by it. That is, if the possession of authority is a matter of having a right to direct the actions of some group, democracy is *reflexive authority*—the generation of authoritative directives by those who will be subject to them. The say in determining a group's decision that democracy confers is a say in determining what one will do or allow as a member of a group. This point can also be made by regarding democracy as group autonomy. When an autonomous individual makes the decisions that will guide his actions, all those potentially affected have a right that their legitimate claims be taken into account, but the final decision is his alone. Similarly, when an autonomous group of individuals performs a collective action, those potentially affected have a right that their legitimate claims be taken into account, but the final decision is for the members of the group alone.<sup>9</sup>

This point does not count against the third of our proposals for insuring that corporations take into account the interests of all affected parties. The legislation enacted by a government determines what the individuals in a given territory will, as a political society, do or allow. Thus, those affected by corporate actions can participate in determining these actions by participating in the generation of regulatory legislation—that is, if they are citizens of a political unit that encompasses the corporate activities that affect them. In so acting, they are not, in the first instance, participating in the control of what affects them but rather in the control of what they do or allow as a political society. If regulation by the larger society is not total, however, so that nongovernmental organizations function to a certain

<sup>9</sup> If democracy were a matter of having a right to a say in what affects one, it would replace moral deliberation as the vehicle by which the interests of affected others found expression in the decision making of agents. Instead of deciding what the applicable moral reasons required, one would simply solicit the votes of all affected parties. Or at least this would be so for parties capable of participating in a democratic process; morality would remain the vehicle by which the interests of those affected were conveyed to decision makers when the affected parties were incompetent, or members of future generations, or animals. We shall consider these issues in more detail in Chapter Five.

## INTRODUCTION

extent as independent loci of decision and action, democratic principles do not support participation in organizational decision making by affected parties viewed simply as such. In this case, the decisions in question do not guide their actions.<sup>10</sup>

It seems, then, that the least attractive of the possibilities for securing attention to the interests of the various groups affected by organizational actions, namely, counting on managers to act responsibly, cannot be dispensed with entirely. But our survey of democratic possibilities overlooked one option. If micromanagement of corporations by agencies of democratically elected governments is undesirable and participation by representatives of various affected groups constitutes a misunderstanding of the requirements of democracy, then we must indeed rely on those who manage corporations to assess responsibly the claims of the various groups affected by corporate actions. We need not, however, understand this set of managers as simply the board of directors and the senior executives. We can design corporations so that they are managed democratically by their employees, or, more realistically, so that managers are accountable to and chosen by the employees.

If democracy is to be introduced into corporate affairs, this is the form it should take: the democratic management of corporations by their employees. Democracy is reflexive authority, that is, the exercise of authority by those who are subject to it, and those who are subject to managerial authority are the employees. Of course, it would be morally incumbent on employees, as the ultimate corporate decision makers, to consider the effect of corporate actions on other groups. The democratization of management does not alter the fact that these other groups have a right that their legitimate claims be taken into account.

There is no reason to suppose that an arrangement in which the decisions left open by regulation are made democratically by a firm's employees would be worse from the standpoint of consideration of the claims of the different affected groups than one in which these decisions are made by a self-appointed elite. The members of such elites may have greater expertise than most employees in a variety of technical matters relevant to the management of a firm, which has a bearing on the appropriateness of managerial democracy. But it is highly implausible that professional managers have greater *moral* expertise than ordinary employees. Therefore, the quality of the

<sup>10</sup> The encompassing political society could order participation in managerial decision making by representatives of affected groups if it thought that *its* aims would be best achieved by such measures.

consideration given to the interests of various affected groups cannot be a reason to favor management by a self-appointed elite over management by the employees or their representatives.

One of the most striking facts about corporate governance is that it is not, at present, democratic. A variety of explanations might be offered for this, some reflecting the conviction that legitimate social purposes are served by the absence of democracy in nongovernmental organizations, others reflecting the conviction that the absence of democracy in such organizations is a manifestation of a conspiracy by a ruling class to maintain its privileges. I consider arguments for curbing managerial democracy in Chapter Nine. For present purposes, the important point is that *if* corporate management is to be democratized, the group to whom corporate decision makers should be accountable—the group that should get to choose these decision makers—is the employees. They are the people whose actions are guided by managerial directives.

The picture that emerges from the considerations in this section is that of a federal system in which profit-seeking firms and other nongovernmental organizations such as hospitals and schools form, along with state and local governments, subordinate loci of political decision making. Like the idea that corporations have a public character, the idea of “corporate federalism” is not new.<sup>11</sup> But again, my way of formulating it is different. As previously formulated, the main point of the analogy is that if corporate managements are to be viewed as analogous to governments, they should be regarded as analogous to state or provincial rather than national governments. They should be regarded as possessing the sort of public authority that is itself subordinate to a higher authority that can regulate its exercise. With this I am in complete agreement.<sup>12</sup> The above considerations, however, enable us to make the analogy more specific and judge the employees of a corporation, rather than the shareholders or the other “stakeholders” as its citizens. It is they who, like the citizens of a state or municipality, have their actions organized by the relevant form of authority, and it is they who should constitute the voting population if corporate “states” are to be democratically managed.

The integrated framework of public authority mentioned earlier is, then, to be understood as a federal system. A federal system is

<sup>11</sup> See Brewster (1959), pp. 72–84.

<sup>12</sup> In my view, even multinational corporations should be regarded as subordinate loci of decision making in a federal system. The divisions of such firms that operate in other countries are subordinate nongovernmental organizations in those countries, participating with the local governments in a single system of public authority there.

## INTRODUCTION

not just a nested hierarchy of governments that perform the public function of making cooperation among people with conflicting conceptions of the moral good possible within a given territory. It also contains organizational “governments” that make possible cooperation among people with conflicting views about what constitutes morally acceptable conduct in their working lives.

### *Two Rejected Theses*

The disenfranchisement of all corporate constituencies but the employees—their exclusion from participation in managerial decision making except through the medium of regulation by the political societies of which they are citizens—might be accepted with respect to consumers, suppliers, and neighbors but not with respect to shareholders. Shareholders own the productive resources that the employees put to use, and this seems to give them a legitimate say in the management of firms.

As we have seen, shareholders often have little actual say in the management of corporations, and it can be argued that respect for their interests does not require that they have a say. Where developed capital markets exist, shareholders have the option of selling any shares they may hold in a firm whose performance they find unsatisfactory. To invoke a well-known distinction, they do not need voice because they can exit.<sup>13</sup> From the moral point of view, however, shareholders are the owners of a corporation, and the fact that it is their property that is being put to use by the employees seems to entitle them to a say in management if they want one. Moreover, one could argue that the moral basis of the authority of managers is the property rights of the shareholders—reworded, managers have the authority to manage because they exercise the property rights of the shareholders. One of the standardly acknowledged incidents of ownership, the right to manage, is the right to determine who will use a particular item and how they will use it; and managers can be regarded as exercising this right for the owners.<sup>14</sup> But if the authority of managers is grounded in the fact

<sup>13</sup> See Hirschman (1970). As presented by Hirschman, voice is more a matter of complaining to decision makers than exercising a constitutional right to participate in decision making.

<sup>14</sup> For an account of the incidents of ownership see Honoré (1961). For our purposes, the most important are the right to use, the right to possess (to exclude others), the right to manage (the power to permit use and contract for use), the right to the income derived from productive use, and the right to the capital (the right to alienate, modify, or destroy).

that they exercise a property right of the owner-shareholders, it would seem that the shareholders should be free to exercise this right themselves if they so choose.

The thesis that property rights confer a right to direct the actions of employees is an instance of a broader thesis that I call the thesis of the moral unity of management. According to this thesis, the same basic moral consideration underwrites, and confers legitimacy on, both of the two main aspects of the management of a productive organization: the management of property (or capital) and the management of personnel (or labor). In the version we are now examining, property rights in productive resources are held to justify personnel management as well as property management. This view should not be understood as peculiar to defenders of capitalism. Defenders of socialism often seem to accept it as well, supposing that if management must be public to be legitimate, all that is necessary to achieve managerial legitimacy is the institution of public ownership of productive property.

Feudal conceptions of property may have satisfied the thesis of the moral unity of management. As property in land was understood at that time, it carried with it with it a right to direct, in certain respects, the actions of those living on the land.<sup>15</sup> But property rights as they are now understood force us to reject the thesis of the moral unity of management. The "right to manage" that forms a part of our concept of ownership cannot be regarded as a right to direct the activities of others.

This can be seen as follows. What is in some respects the central incident of ownership, the right to possess, is the right to exclusive physical control of something.<sup>16</sup> The emphasis here is on "exclusive." Central to ownership is the right to exclude others from contact with an item. Ownership thus gives the owner of an item the right to control the uses to which others put it in the sense that he may veto any use of it proposed by someone else. But it does not give him the right to tell anyone to put that property to the use that he wants. It is not a right to command labor. My ownership of my car, for example, gives me the right to tell someone who is driving it to refrain from certain courses of action—to exclude them—but it does not give me the right to direct her to do anything with it. If she

<sup>15</sup> As Parsons puts it: "under feudalism it was impossible to simply 'own' land in the modern sense. The holder of a fief was, in the German terms, not merely a *Grundbesitzer* but necessarily also a *Grundherr*. That is to say, what we treat as property rights, and political jurisdiction (in certain respects) were inseparable" (1947, p. 43).

<sup>16</sup> See Honoré (1961), pp. 113–15. Honoré calls the right to possess "the foundation on which the whole superstructure of ownership rests" (p. 115).

## INTRODUCTION

refuses to do what I want, I can order her out of the car. And I can leave her with only one option (if she wants to stay in the car) by vetoing all others. But my property rights do not constitute a moral reason for her to take that option. If she is disinclined to, she can simply leave. Similarly, property rights in productive resources cannot provide a moral basis for managerial authority, understood as the authority to tell employees what to do, as opposed to what to refrain from doing.<sup>17</sup>

The moral disunity of management has been overlooked because property in productive resources confers power. Humans must have access to productive resources, at least in the form of employment, in order to live well, and this gives an owner of such resources the ability to force nonowners to do what he tells them to by threatening them with unemployment if they do not. In the terms of the example above, nonowners do not want to be ordered out of the car. But the *de facto* power to direct the actions of employees that arises from the combination of the moral right of owners to exclude nonowners with the contingent fact that humans need access to productive resources in order to live well is not a *right* to direct their actions and thus does not in itself constitute legitimate authority.

Management, then, understood as the direction of the actions of employees, takes place within a practical space—a set of alternatives—determined by what the owners of the productive resources involved will allow. But something other than property rights is required to establish a license to tell employees to bring about one of these alternatives. From the standpoint of the individual or group holding the right to determine how the employees will act, owners holding a right to veto certain uses of the productive property employed are simply another constituency whose legitimate claims must be taken into account in determining what the organization—that is, the employees—will do.

Of course, nothing in this account of the moral basis of management precludes the same individual or group from holding both the right to manage the property and the right to manage the personnel. Nonemployee owners could hold a right to direct the actions of

<sup>17</sup> It may be useful to make this point another way. A right to direct actions could be either categorical or hypothetical. A categorical right to direct would be independent of the wants or desires of the person directed. A hypothetical right to direct, by contrast, would be a right that was conditional on the other person's wanting to do something. Property does not confer a categorical right to direct but does seem to confer a hypothetical right. If someone wants to drive my car, I have a right to tell her how to do it. But this right is essentially a right to prohibit uses. What I am doing when I rightfully tell her how to drive my car is rightfully leaving her with only one option by which she can satisfy her wants by driving my car.



employees as well, at least if managerial democracy was not required, and employees could own the resources with which they work. The point is simply that a given individual or group needs *two moral licenses* to run a productive enterprise.

Support for the contention that property management and personnel management are normatively distinct can be found in the law. The law does not regard managers as having a right to direct the actions of employees by virtue of the fact they exercise the legal property rights of the owners. Rather, the authority of managers over employees is grounded in the law of agency; employees are agents of their employers. A relation of agency is created when one party, the agent, consents to act on behalf of and under the direction of another party, the principal, and the principal consents to having the agent's actions count as the principal's for legal purposes—primarily purposes of assessing liability. The principal may be either a natural person or an organization.<sup>18</sup>

The law, then, does not regard the two parts of management as having a unified normative basis. As I have already indicated, however, from the standpoint of an inquiry into the legitimacy of authority, legal relations are not fundamental. They are social conventions of a certain kind the acceptability of which depends on their having an adequate moral justification.<sup>19</sup> Thus, we cannot simply take the legal view of the normative basis of personnel management at face value.

This brings us to the second of the theses that I reject, the mirror thesis. According to the mirror thesis, the legal picture of the relations between individuals in a productive organization mirrors the underlying moral relations. Sometimes the legal considerations that govern a particular action—the legal rights and duties that the people acting in that area have—mirror exactly, or at any rate very closely, the underlying moral considerations. Thus, murder is against the law and is also morally impermissible. But sometimes laws are justified not as mirroring an underlying moral reality but simply because the system of conventional rights and duties that

<sup>18</sup> Legal acceptance of the normative disunity of management is revealed by Honoré's account of the right to manage as a property right. It is, in part, a power to contract with nonowners for certain uses by them of an item. But the power to contract is not itself a contractual right. The contract must be struck.

<sup>19</sup> For the purposes of this book, I adopt a positivist account of law according to which laws need not reflect moral requirements to count as valid. The law is simply a system of conventional rules distinguished from other such systems by its structure, the most notable feature of which is a rule of recognition by means of which those conventional rules that are to count as laws are identified. See Hart (1961), esp. Chaps. 5 and 6.