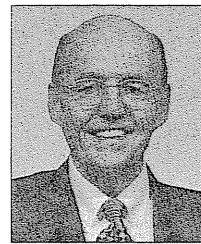


The Government-Created Right-to-Work Issue

BY CHARLES W. BAIRD



The principles involved in right-to-work laws are identical with those involved in [workplace antidiscrimination laws.] Both interfere with the freedom of the employment contract, in the one case by specifying that a particular color or religion cannot be made a condition of employment; in the other that membership in a union cannot be.

—MILTON FRIEDMAN, 1962

Since Friedman penned those words in *Capitalism & Freedom* (p. 115), union apologists have claimed him as an ally in their campaign to ban right-to-work (RTW) laws in the United States. Section 14(b) of the National Labor Relations Act (NLRA) permits states to pass RTW laws, which prohibit employers and unions from agreeing to include union-security clauses in their collective-bargaining agreements. A union-security clause forces all workers represented by a union to pay fees (dues) for its services. Unions have attempted unsuccessfully to repeal Section 14(b) since its enactment in 1947. Now the National Right to Work Committee is attempting to get Congress to enact a National Right to Work Act. Are RTW laws consistent with the freedom philosophy?

If unions were voluntary associations that represented only their voluntary members, and if bargaining were wholly voluntary, there could be no classical-liberal objection to a union agreeing with a willing employer to adopt a union-security clause. The employer and the union would be free to choose whether to bargain over and to consent to such an arrangement, and workers would be free to choose, on an individual basis, whether to accept employment on such terms. Such is the com-

mon law of contracts. Under these circumstances a classical liberal should oppose RTW laws.

However, under Section 9(a) of the NLRA, American unions are not organizations that represent only their voluntary members. If they are certified by majority vote among workers in a bargaining unit they become the exclusive (monopoly) bargaining agents of all workers in the unit, whether individuals agree or not. Individuals are even forbidden to represent themselves. This is usually justified on grounds of “workplace democracy.” As F. A. Hayek wrote in 1949 (“The Intellectuals and Socialism”), this is an example of “making shibboleths out of abstractions.” The First Amendment

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forbids deciding which church to attend on the basis of a majority vote enforced by government. Likewise, the First Amendment’s principle of freedom of association forbids deciding which representative will represent all workers on the basis of a majority vote enforced by government. Democracy is a form of government. Government cannot rightly impose democracy on private decision-making. In the private sphere of human action, an individual’s associations should not be subject to majority vote. Exclusive representation should be repealed.

Correctly understood freedom of association in private affairs has two parts: First, any person has a fundamental right to associate with any other *willing* person or persons for any purpose that does not trespass against the fundamental rights of third parties. This is often called the positive right of freedom of association. Second, any person has a fundamental right to *refrain* from


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This non-mainstream, economically literate treatment of business and regulation is the book's greatest strength.

In foreign policy, Schweikart and Allen are controversial, but always interesting. For example, they call actions in Mexico and Oregon in the 1840s "a pair of the most spectacular foreign policy achievements in American history." (A good case can be made that our policy in this era was unnecessarily bellicose.) The authors also denounce communism ("just another political system") and laud Ronald Reagan for his Strategic Defense Initiative (SDI). They quote approvingly Vladimir Lukhim, former Soviet ambassador to the U.S., who said, "It's clear SDI accelerated our catastrophe by at least five years."

On the Civil War, Schweikart and Allen praise Lincoln for his unionism and for promoting emancipation. They disagree with the libertarian school, led by scholars such as Jeffrey Rogers Hummel in *Emancipating Slaves, Enslaving Free Men*, which argues with some validity that the Civil War set dangerous precedents for transferring authority to the central government.

Schweikart and Allen avoid the tendentiousness and simple-mindedness of most texts. People are complicated, and the authors let us know that: Calvin Coolidge encouraged limited government, but at the same time supported high tariffs; Reagan was on target with SDI, but "made a serious error" when he sent peacekeeping troops into Lebanon; our Declaration of Independence enshrined natural rights, but we denied them for a century or more to most black Americans.

In explaining the success of the American experiment, Schweikart and Allen, unlike many others, point not to vast fertile land and abundant raw materials, but to "more important qualities: initiative, inventiveness, hope, optimism, and, above all, faith." Also, ever since the arrival of the Puritans, Americans have had the vision that they were to be a "city on a hill," or to a later generation that broke from England, the "last best hope for mankind." Such a vision, the authors argue, help make America greater than the sum of its parts, its resources and its people—"a beacon of liberty." 

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