

In the Name of Liberty: The Argument for Universal Unionization, By Mark R. Reiff (2020) Cambridge: Cambridge University Press, 432 pages. ISBN: 978-1-10884-978-4

Andrea Talarico

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of public sector bargaining, the primary focus was on strikes and dispute resolution. Gould captures the legal developments signaling harder times for public sector unions in the wake of the Great Recession, the 2010 elections, fiscal crises and austerity measures targeting wages, pensions and health care benefits. As noted above, another major setback for public sector unions was the *Janus* decision affecting the payment of union dues.

Gould notes public-interest law directly affects “the substantive terms of the employment relationship”, but is distinguishable from earlier chapters that largely deal with the balance of power in labour-management relations under the NLRA. As such, it represents the “new frontier” in labour law and may already dwarf “more traditional labor law as the twenty-first century unfolds”. There is ample reason to believe the “new frontier” may expand based on recent events. For example, Covid-19 likely will lead to new safety and health regulations, reforms for long-term care workplaces and front-line workers, and an increase in disputes involving the right to refuse unsafe work. As well, employment discrimination, probably “the most litigated area of public-interest labor law” will be influenced by social developments, e.g., rising racial tensions and the “Me Too” movement.

The new chapter on professional sports is a valuable addition to the sixth edition. It traces the history of professional sports unions, contrasts the “personalities” and militancy of the respective unions, and highlights differences in player compensation schemes across professional sports. Although economic issues always appear to be the focal point of collective bargaining, Gould reviews a broad range of other controversial issues such as personal conduct rules and drug testing. He also discusses two other issues likely to attract future litigation, namely compensation for university athletes and concussion inju-

ries for current and former collegiate and professional athletes. Cheating, e.g., the recent sign-stealing incidents in baseball, represents another frontier for litigation.

On a personal note, the review of the transition from antitrust exemption to collective bargaining in major league baseball omits one important development, namely the pivotal role of Marvin Miller, who became the Executive Director of the players’ union in 1966. In addition to negotiating the first collective agreement in professional sports, he had a huge influence on many of the legal cases discussed in the book, e.g., free agency, and contributed to changes in labour-management relations in other professional sports. Although Miller was blacklisted for many years by the baseball establishment, his achievements were finally recognized when he was inducted into the Baseball Hall of Fame in 2019. The historical significance of Miller’s contribution to professional sports should be recognized in the next edition of the book.

In the final analysis, this book is very readable and should appeal to academics, students, industrial relations practitioners, and anyone interested in the distinct aspects of American labour law.

Joseph B. Rose

Professor Emeritus
McMaster University
Hamilton, Ontario, Canada

In the Name of Liberty: The Argument for Universal Unionization

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In his recently published book, Reiff proposes a case for universal unionization based not on the effects of unionization but on freedom; a defense of universal unionization that is said to be moral rather than consequentialist. In a context of declining unionization rates (in both Canada and the United States) and a rise in “Right to Work”

legislation (as seen in Wisconsin, for example), to argue for universal or compulsory unionization is quite bold. Nonetheless, Reiff makes a compelling case, which is made even more original by using freedom as its focal point rather than equality.

In the Name of Liberty is divided into three essays of unequal length, supporting his argument that “every firm must have a union, and every government employer too, and that such unions are to be treated as a basic institution that we all bear an obligation to provide”. Though Reiff writes from an American perspective using mostly American examples, each essay can be of value to Canadian scholars and this review shall use several Canadian examples to illustrate Reiff’s points.

In the first and shortest essay entitled “A Libertarian Argument for Unions”, Reiff imagines how business would be conducted in a libertarian utopia. Reiff examines whether unions would spontaneously arise by first wondering what private enterprise would look like in such a utopia. According to the author, firms would be likely to arise, i.e. enterprises organized in hierarchical structures where numerous employees perform specialized and complementary tasks. Because firms would try to minimize transaction costs, some would grow quite large. The larger the firm, the stronger the incentive for workers to band together to negotiate as a group, possibly even hiring professionals to bargain for them.

According to Reiff, libertarians who oppose unions also tend to be economic neoliberals, which seems, to the author at least, inconsistent. After all, if one opposes regulation by government, one should oppose government intervention in worker activities. Thus, unions would be part of even the most libertarian utopia.

The second essay entitled “The Union as a Basic Institution of Society” is both the longest and most compelling. According to Reiff, the goal of the essay is to

provide “a moral theory for understanding the role that unions should play in the contemporary liberal capitalist state”. If society is viewed as having three levels (a basic structure, its basic institutions, and the output of said institutions), unions should be considered a basic societal institution, i.e. an institution that is necessary to make the basic structure more likely to be just. To determine if the union is a basic institution, focus should not be placed on specific rights, which unions may support or infringe upon (an approach which Reiff calls post-institutional). Rather, the focus of inquiry should be on the general rights (namely freedom and equality) from which other rights derive.

From here, Reiff turns his attention to three forms of liberty: negative, positive and republican. Reiff’s argument is firmly based in the concept of Republican liberty, that is to say the Roman concept of not being subject to another’s arbitrary will. If left unchecked, the firm represents a threat to Republican liberty, which can be countered through universal unionization. Reiff echoes the idea made famous by Elizabeth Anderson that employers can be viewed as private totalitarian governments. Thus, according to the author “unions are a necessary institution if employees are to resist the kind of arbitrary treatment that is within the firm to impose”.

The third essay in the collection is entitled “In Defense of Public Sector Unionization”. Reiff begins by addressing the main arguments made by those who call for a differentiation between public sector unionization and private sector unionization. He begins by noting that though public agencies are not motivated by profit, they are under constant pressure to reduce costs, thereby impacting public sector workers. Furthermore, through the lack of competition in a given geographical area “buying” a particular kind of labour, public agencies can act as monopsonies. Thus, the need for

an agent (in this case, the union) to act as an internal check of managerial behaviour increases. Finally, Reiff addresses the fact that the public sector employs more groups that have been historically subject to discrimination. Here, he turns again to liberty. When public sector wages are cut, minority groups and women are deprived of opportunity. According to Reiff: "This is not, moreover, an affront only to equality. Because discrimination is also a form of arbitrary treatment, it is also an affront to republican liberty".

In the second part of the essay, Reiff addresses arguments in favour of smaller government (which falls outside the scope of this review) and addresses questions relating to essential services, an issue dealt with extensively by the Supreme Court of Canada in *Saskatchewan Federation of Labour* (2015).

In addition to the sheer originality of the argument presented, Reiff's well-argued work is a welcome contribution to the existing literature on trade union freedom in part because of its focus on republican freedom rather than on equality. However, it can be argued that this insistence on republican freedom may actually be similar to both Anderson's concept of democratic equality and the Supreme Court of Canada's view of equality as an underlying *Charter* value.

In the Canadian context, the right to bargain collectively and the right to strike are both protected under freedom of association. The Supreme Court of Canada's freedom of association cases have frequently raised the question of equality which the Court has generally avoided either by examining a broader concept of equality as a value underlying the *Canadian Charter of Rights and Freedoms* (rather than a right protected by the *Charter*) or by ignoring the equality argument entirely. The question of whether the constitutional protection of collective bargaining rights is best addressed through equality or free-

dom of association has been the subject of much scholarly debate. Perhaps, as we will explore shortly, both sides of this debate have merely been looking at two sides of the same coin.

In 2007's *Health Services* case, the Court recognized that a constitutional protection of collective bargaining existed in part because protecting collective bargaining was consistent with certain values which were said to be underlying to the *Charter*. A reading of the majority's description of these values (particularly autonomy, democracy and equality) shows a commitment to dialogue and a recognition that through collective bargaining employees gain a say into decisions that affect a fundamental facet of their existence. In short, it can be said that the court recognized that collective bargaining decreased the likelihood of employees remaining subject to the arbitrary will of employers (republican freedom as argued by Reiff) or oppressive social relationships (Elizabeth Anderson's democratic equality).

Perhaps, it is time to take a leaf from Reiff's work to settle the debate. Viewing freedom (particularly republican freedom) as a pre-institutional right or an underlying *Charter* value, we can reconcile visions of freedom and equality in the workplace. If freedom is freedom from arbitrary will, it is also protection against discrimination (i.e. obtaining equality).

In conclusion, the originality of *In the Name of Liberty* goes well-beyond the boldness of the argument for universal unionization. Collective bargaining is not viewed as a practice to improve wages or working conditions, but as an emancipatory practice of benefit to all in even the most libertarian society. To bargain collectively is not to fulfill a statutory requirement, but to fully practice freedom to contract.

Andrea Talarico

Lawyer and Doctoral Candidate
University of Ottawa
Ottawa, Ontario, Canada