

THE ORIGINS AND IMPACT OF DEREGULATION

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In the last few years, deregulation by the federal government, whether by statute or by administrative procedure, has been used to eliminate and to weaken rules, or to reduce enforcement activity in the field of labor standards. Regulation has been a means of limiting unbridled competition which can lead to disorganization in particular industries and to wasteful, duplicating efforts. Likewise, it has been the means to protect workers against exploitation. Regulation has a long history dating back to medieval guilds which operated on a local scale, and to mercantilist governments which operated on an international level. In the United States, industries which might be logical candidates for regulation in the interests of the consumer—such as airlines, railroads, trucking companies, banks, etc.—have been in a hybrid state where they remain privately owned but operate under government regulation.

Other articles on this subject will detail the impact of deregulation on collective bargaining in both the public and private sectors, and the role of the National Labor Relations Board, the Congress and the courts. Therefore, it would not be amiss for me to set the problem in what I see as its proper historical perspective. Let's begin with Friedman's Folly.

The contemporary philosophy of deregulation can be traced to a thin and mean-spirited volume written by Milton Friedman: *Capitalism and Freedom*.¹ In this work, Friedman drew on the earlier concepts of Hayek and von Mises, whose thinking he enhanced and brought into the current scene. Not only is Friedman today's leading monetarist but, equally important, the chief theoretical spokesman for deregulation. Two decades ago Friedman outlined the concepts of deregulation which have been popularized by the Reagan Administration. The basic lesson he began to teach in the early 1960's and the lesson which is being put into practice today is, in Friedman's words, that "the scope of government must be limited,"² and more

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1. MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* (1962).

2. *Id.* at 2.

than that, "a major aim of the liberal [!] is to leave the ethical problem [of freedom] for the individual to wrestle with."³

From this starting point flows a series of so-called libertarian views which directly relate to the efforts now being made to weaken or to eliminate, in the name of deregulation, many of our nation's structural supports.

Listen to Saint Milton:

on minimum wages: "The effect of the minimum wage is therefore to make unemployment higher than it otherwise would be."⁴

on fair employment: "Fair employment practice commissions . . . clearly involve[s] interference with the freedom of individuals to enter into voluntary contracts with one another."⁵

on social security: "[The social security program] involves a large-scale invasion into the personal lives of a large fraction of the nation without . . . any justification . . ."⁶

on organized labor: "Unions have . . . harmed the public at large and workers as a whole by distorting the use of labor . . ."⁷

on the role of government: "[W]e needlessly intensify it [the role of government] by continuing the present widespread governmental intervention in areas unrelated to the military defense . . . free institutions offer a surer, if perhaps at times a slower, route to the ends they seek than the coercive power of the state."⁸

Such is the theory. In the real world, the facts are different. In the real world, regulation, and particularly regulation of labor standards and relationships, have developed to lend a touch of balance and equity to relationships which otherwise are based on *unequal* strength among the parties—unequal strength in bargaining, in setting minimum standards of wages and hours, and in safety and health. The regulation of collective bargaining relationships, for example, involves balancing inequalities where, by and large, the parties are in fact unequal in strength.

Where properly exercised, regulation helps to insure maximum freedom. If the strength of workers and employers were, in fact, in balance, negotiations and relationships could be freely conducted. Where one side or the other has unequal power, however, freedom of

3. *Id.* at 12.

4. *Id.* at 180.

5. *Id.* at 111.

6. *Id.* at 182.

7. *Id.* at 124.

8. *Id.* at 202.

action truly lies with only that party. Freedom has little meaning without the ability to exercise it.

The impact of regulation carries far beyond the immediate parties to such regulation. Many decisions are continuously made in light of existing regulations. Decisions on where to locate a business, for example, may be made on the strength of a community's existing transportation services. A worker may decide on a career or a choice of employer on the basis of the apparent stability of an industry or the likelihood of receiving a pension.

Friedman's views on government regulation made their expected ripple in the academic community two decades ago. Today, they have been elevated and become the rationale for federal policies of deregulation. But, the true purpose of the current wave of less regulation is not theoretical. The hidden agenda of this movement is to destroy the social contract which for many decades helped raise the standards of life for all of our people.

Deregulation in recent experience generally has been a traumatic event. It has appeared suddenly and has overturned practices established over long periods of time. Much of the deregulation has been too recent for a reliable body of statistical information to quantify its impact. Yet, we have a number of clues as to its effects.

The first major deregulatory action in the current era was the passage of the Airline Deregulation Act of 1978.⁹ After years of Civil Aeronautics Board control over routes, fares and service, airlines were given the freedom to select the routes they would fly, and the prices they would charge. New airlines were free to enter markets. The ostensible purpose of this statute was to increase consumer choice.¹⁰ However, the result has been chaotic. First, there was a rush to provide additional—and often unneeded—service to the so-called glamour markets. For example, seven lines instead of three now serve the Los Angeles-New York market with 48 percent more seats made available. This has occurred at the expense of smaller, short-haul markets. Service has continued to smaller cities but it is subsidized by taxes. Fares show even less resemblance to actual costs than before. High competition on certain routes has forced fares down to non-profitable levels, while fares to less popular destinations have skyrocketed.¹¹

9. Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705 (codified at 49 U.S.C. § 1301) (Supp. II 1978).

10. *Id.*

11. MELVIN A. BRENNER, AIRLINE DEREGULATION: A REVIEW AFTER TWO YEARS (1981) (available from Melvin A. Brenner Associates, Connecticut).

Airline deregulation also has had a clear impact on employees. Non-union airlines have sprung up and entered markets once served by unionized carriers. Unionized employees have lost jobs and pension rights in the process. Others have been pressured into give-backs or forced to take non-union jobs. In the name of "freedom," living standards and working conditions have been negatively affected.

A similar situation in the trucking industry occurred when the Motor Carrier Act of 1980¹² was signed into law. Interstate Commerce Commission control over routes and tariffs was weakened. New carriers now can enter existing markets and non-union firms now can underbid unionized firms. Exemptions from regulation were broadened. Again, the result was a loss of work and a loss of pension rights for the unionized drivers. The International Brotherhood of Teamsters conducted a survey of its locals in April 1981, less than one year after passage of the deregulation act, and found that 22 percent of its members employed under the National Master Freight Agreement and the Chicago Trucking Agreement were on layoff. The Teamsters Union believes that the number of layoffs exceeds the impact of the recession and is due to deregulation. Gains for the economy as a result of this action are highly doubtful.¹³

Under the Reagan Administration, deregulation has taken a different turn. There has been less emphasis on specific industry deregulation and more emphasis on doing away with the regulations adopted over the years to protect workers and consumers. This has been in line with the Administration's philosophy to maximize the freedom of business to operate as it wishes without regard to injury caused to others. The deregulatory process, however, has not been publicly justified in terms of this basic philosophy. Publicly, the Administration asserts that it will eliminate waste and unnecessary costs to the industry—presumably, but not actually, resulting in gains to the consumer—and in cutting the budgets of federal agencies. To see how Friedman's Folly has been applied so far by the current Administration, particularly as it affects labor policy, it would be helpful to look at some of the areas of deregulation which affect the worker and labor relations directly:

Occupational Safety and Health — In the guise of eliminating unnecessary costs of employers, the nation's OSHA program has been

12. Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat 793, (codified at 18 U.S.C. § 1114; 49 U.S.C. § 10101) (Supp. IV 1980).

13. International Brotherhood of Teamsters, Final Report, Layoffs and Employment, Motor Carriers of General Freight and the Regulated Trucking Industry, (April 1981) (unpublished).

progressively gutted. The budget has been cut by about \$50,000,000. Twelve area offices and twenty-nine district offices have been closed. Inspections have been cut by 20%. Nearly three-quarters of all manufacturing firms are exempt from inspection. "Walkaround pay" to assist inspections has been eliminated.¹⁴ OSHA officials are further weakening standards by putting a price tag on diseases like cancer by applying cost effectiveness analyses to them.

Labor Standards — An attempt was made by the Department of Labor to rescind regulations prohibiting industrial homework in seven largely-related industries where it had been banned for forty years. If the attempt had been successful, it would have increased the number of sweatshops and child labor law violations, and further exploited the growing number of undocumented workers in this country. Union shops would thereby be at a competitive disadvantage, and union strength slowly would be destroyed. Ultimately, industrial homework was permitted by the Labor Department in one industry (knitted outerwear industry) and this retrogressive step is now under court challenge by the ILGWU and other interested parties.¹⁵

Enforcement — The enforcement staff of the Wage and Hour Division, a staff that was already far too small to carry out its legislative mandate, was cut by one-third. This was remedied slightly by additional Immigration and Naturalization Service Inspectors.¹⁶

Government Contracts — Proposals also have been made that would weaken seriously the regulation of government contracts. Prevailing wage determinations under the Davis-Bacon Act,¹⁷ for example, would be computed in a manner which would lower wage standards and reduce reporting requirements.¹⁸ The Walsh-Healy Act¹⁹ would be amended to permit ten hour workdays without overtime instead of the present eight hour day, and provisions of the Service Contract Act would be weakened.²⁰

Trade Adjustment Assistance — The temporary assistance given to workers, who lost their jobs as a result of governmental policies which encourage imports, has been all but gutted by revised statutory and regulatory limitations.²¹

14. *Federal Regulations*, THE AFL-CIO AMERICAN FEDERATIONIST, February, 1982, at 25.

15. *Id.* at 26.

16. *Id.*

17. 46 Stat. 1494 (1931) § 1, 40 U.S.C. § 276a (1976).

18. *See supra* note 14 at 26-27.

19. 29 U.S.C. § 557, 41 U.S.C. §§ 35-45 (1976).

20. *See supra* note 14 at 27.

21. *Id.* at 31.

Federal Mediation and Conciliation Service — Budgets cuts have served to reduce the staff of the FMCS approximately 30%. Changes also are proposed for providing arbitration. Similar proposals have been made at the National Mediation Board.²²

Civil Rights — Many changes have been made which weaken the Department of Labor's Office of Federal Procurement Policy's ability to enforce compliance by federal contractors.²³

To judge the impact of less regulation, one must look not only at what it has been but also at what it is going to be if the trend remains unchecked. A fascinating and frightening agenda for the future of deregulation will be found in a recent study by Professors Heldman, Bennet and Johnson: *Deregulating Labor Relations*.²⁴ An illustrative example is one of their simple and stunning conclusions: "The most comprehensive strictures are found in the National Labor Relations Act and its amendments so that repeal of this legislation would be required, simply because partial approaches would be very difficult in practice."²⁵

In labor relations and labor standards, the rationale for deregulation is couched in terms of waste, inefficiency, and competition. The real object, however, is simply to make even more unbalanced the already unbalanced, and to give management more and more and the worker less and less. In that perspective, the ultimate impact of less and less regulation as that process is now being applied and planned—and the reaction to that process—can be nothing less than revolutionary, in the worst possible sense. What I find disquieting—unnerving—even terrifying about these developments is that they tear at the delicate and fragile tissues of our society's infrastructure; the structure by which our version of a democratic capitalism has been able to survive so far, and somehow deal with vicissitudes of all types, unbalances of all types, injustices of all types. Destroy that infrastructure and you have the most dangerous of prospects. Eliminating duplication and waste is one thing; but, the across-the-board attack on governmental regulation is unwarranted.

In a society regulated only by the market place, manufacturers don't take care of the environment, sellers don't take care of consumers, and employers don't take care of workers. Government, therefore, has an important obligation to redress the imbalances in

22. *Id.* at 27.

23. *Id.* at 28.

24. DAN C. HELDMAN, JAMES T. BENNET, & MANUEL H. JOHNSON, *DEREGULATING LABOR RELATIONS* (1982).

25. *Id.* at 162.

our economic system. To achieve this obligation, the regulating process is absolutely essential—and no more so than in maintaining labor standards and free collective bargaining.

