Authorizing the Union: 
Secret Ballots and Worker Choice as a Contemporary Problem for Democratic Theory

Unions are attempting to “shred democracy” according to a campaign run by the anti-union group - The Centre for Union Facts. This charge is leveled against organized labor due to the union led push for labor law reform and passage of The Employee Free Choice Act (EFCA). Among other things, the EFCA would require mandatory recognition of unions formed by card-check authorization. This route to union recognition avoids the current National Labor Relations Board secret ballot process that unions claim is, in fact, undemocratic and exposes workers to employer intimidation. Conversely employers claim that allowing union recognition based upon a majority of workers signing authorization cards subject’s workers to union coercion.

The portrayal of unions as un-democratic by opponents of EFCA, presents proponents of the bill with a significant public image problem. It is a practice that has been common in prior deliberations about labor law in the US. Even though the Wagner Act held up unions and collective bargaining as democratizing forces, passage of the Taft Hartley amendments and the Landrum Griffin Act were aided by congressional investigations aimed at exposing the un-democratic nature of organized labor. The concept of democracy has, on balance, more often been claimed as a reason to regulate unions against their wishes than to pass legislation that they favor. So what of the contemporary controversy surrounding the EFCA and the claim that unions are acting undemocratically in seeking certification by card-check?

The debate raises many interesting questions about the meaning of democracy and the institution of the secret ballot. As Bernard Manin has recently shown, historically, the introduction of the election of representatives by secret ballot was among the institutional features that distinguished representative governance from democratic political systems. So while it is common in the contemporary era to equate democracy with election of representatives by secret ballot this view is hardly unanimous. Indeed, political theorists from J.S. Mill to Philip Petit have argued for the importance of public voting. So, are unions in fact “shredding democracy” or merely seeking to legitimate an alternative institution for democratic decision making?

In this paper I explore two questions that the controversy over the EFCA introduces. First, to what extent can union authorization elections be compared to elections for political office? In a representation election workers are choosing not representatives, but whether or not they would like to introduce a system of representation and collective bargaining into the workplace. In this sense union representation elections are much closer to the choice of a constitutional framework or governing regime. This shift in comparison introduces the possibility of a different set of considerations and criteria of evaluation. What place, if any, do elections and secret ballots have in establishing constitutional regimes?

Having questioned the election analogy, I would also like to consider its merits. If the purpose of a union representation election is to afford workers a “free choice” of whether or not to form a union, is a secret ballot in fact the ideal way in which to accomplish this? The NLRB, in the General Shoe case ruled that elections should be considered akin to laboratory experiments designed to determine the “uninhibited desires of employees.” Considering this standard, and the circumstances under which union elections are conducted, might the protections that secret ballot elections are thought to afford employees be subverted by the potential for employer coercion during the election campaign? This opens up the broader question as to precisely what kinds of protections secret ballots afford voters, and the circumstances under which secret ballots are preferable to alternate kinds of decision mechanisms that in fact we might better approximate democratic ideals.