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Richard Epstein on labor law, the 'menace' of the NLRB, and Boeing

Richard Epstein, the [Laurence A. Tisch Professor of Law at the New York University School of Law](#) and libertarian thinker, had the usual multitude of interesting things to say this afternoon at a Cato Institute forum on F.A. Hayek, with the most topical -- and non-academic -- being his critique of U.S. labor law, with an added denunciation of the National Labor Relations Board's recent complaint against Boeing. The NLRB's action is travesty and a menace, Epstein said.

The comments followed remarks by Bruce Caldwell of Duke, a Hayek scholar and editor, and George Soros of the Open Society Foundations. The discussions were moderated by Cato's [Ronald Hamowy](#), who received his Ph.D. at Chicago under Hayek and edited the new "[The Constitution of Liberty: The Definitive Edition.](#)"

Others are better equipped to comment on the major themes, including Soros' attempt to synthesize Hayek and Karl Popper while claiming the political extremes have distorted their ideas.

But Epstein's remarks on modern-day progressives, the National Labor Relations Act, and the NLRB's move against The Boeing Company were definitely timely (and easy enough to grasp). We've been reporting at [Shopfloor.org](#) on the [complaint](#) filed by the NLRB's acting general counsel, Lafe Solomon, against Boeing for adding production facilities in South Carolina instead of Washington. By locating in the non-union South Carolina instead of the Puget Sound area, Boeing was supposedly retaliating against the International Association of Machinists and Aerospace Workers and therefore committing an unfair labor practice.

Epstein:

Now the last point I want to make is a vehement attack on the progressive movement, precisely because it refuses, at least in its current incarnation, to consider one viable element, which is the deregulation of various markets in which state monopolies have been created. ...

[All] one has to do is to look at the situation of labor relations in the United States, where in the 1930s, what we did is we took competitive labor markets, where in effect wages systematically moved up with productivity, and productivity systematically moved up with intervention, all during the period in which the progressives denounced these markets as failures, and imposed a bilateral monopoly structure with heavy government regulation over it, such that massive discontinuities in the form of lock-outs and strikes would take place, with massive negative third-party situations, and backed this thing up with state power.

And then back this thing up with state power. To me, I can understand enormous disagreements, between us, for example (*gesturing toward Soros*) on how it is you deal with market failures associated with prisoner's dilemma games or the creation of natural monopolies. Those are open to question. But I cannot understand, nobody has been able to explain to me, why it is that the resources of the state should be used to shrink the total tide of productivity and create greater antagonisms across classes.

And I want you George to come out on the record now to come out and say you're in favor of the repeal of the National Labor Relations Act as something as we can both agree on. (*Laughter, applause.*) Seriously, I cannot think of anything you said that indicate Hayek was wrong when he said this was the kind of centralized authority that we ought to dread.

And it's a menace. When these guys take out after Boeing as they've done the last week, it is just a complete travesty, even under the current labor law, and politically it's the worst possible adventurism.

Soros declined the challenge, instead returning to his presentation's theme of Hayek and Popper each having half of the correct picture of the world.

POSTED BY CARTER WOOD AT 7:14 PM

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