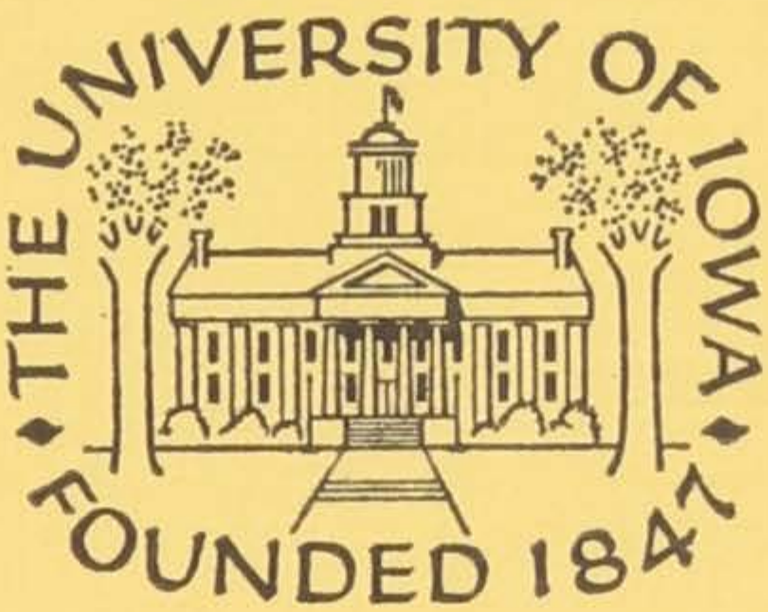
UNIONS AND FEDERAL ELECTIONS
A SOCIAL AND LEGAL ANALYSIS

by Irving Kovarsky



Reprint Series No. 21 1968

CENTER FOR LABOR AND MANAGEMENT
College of Business Administration
The University of Iowa, Iowa City, Iowa

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Reprinted from

SAINT LOUIS UNIVERSITY LAW JOURNAL

Vol. 12, No. 3, Spring, 1968

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IRVING KOVARSKY*

FRAMING THE PROBLEM

The complacency of the public is responsible for much of the delay, corruption and inefficiency in public life. Individual activitists and associations must assume some degree of political responsibility to assure honest and efficient government. The impact by individuals of ordinary means and influence on politics is nil, a fact which necessitates association and central direction. Although this association is essential, when the associative group turns its attention to a collateral issue a dissenter on that particular issue within the group faces a problem. It is at this juncture that courts are asked to step in and protect the individual within the association.

Unions, associations of workmen whose interests transcend the actual workplace, have been politically active in varying degrees since their formation. Unions have instigated or joined forces to introduce social and economic reform in the corporate plant and in the political stream. In fact, initially, political participation was necessary to assure union survival. Whatever the reason for political involvement, members may find union participation distasteful. Union participation in the political process to maximize honesty and efficiency is readily supported and justified; but when the watch-dog stage ends and political power is assumed, citizens become concerned about the watch-dog. At this stage even union endorsement of legislation is looked upon with suspicion. An avalanche of criticism flows, most frequently from those with opposing social views, when unions contribute financial support to a party or candidate.

Complaints have been made "that more than 60,000 full-time paid union officers have been concentrating on politics; 1,000 union newspapers have been turned into 'outright political propaganda sheets'; (and) 2-million campaign workers have been recruited . . . ."[1] Another reason for this four-bell alarm is the estimated 10 per cent of union dues that is spent politically.[2] Unions justify the expenditures on the grounds that individual members are not direct political contributors,[3] and unions must engage in politics.[4]

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* Professor of Business Administration, University of Iowa.

1. *AFL-CIO's Future Politicking Hangs on Election Outcome*, BUSINESS WEEK, Nov. 3, 1956, at 165.
2. White, *Why Should Labor Leaders Play Politics with the Worker's Money?* READER'S DIGEST Oct., 1958, at 157-58.
3. Stern, *A Cure for Political Fund-rasing*, HARPER'S MAGAZINE, May, 1962, at 59, 60.
4. Hinkle, *Union Bosses and Political Action*, VITAL SPEECHES, at 474-75.

At one time unions politically engaged could be ignored since they were, at best, only capable of minimizing the influence of the corporation. Somehow those finding the corporate image and viewpoint socially desirable foresaw catastrophe when unions began to flex political muscle (the opposite was also true—unions when impotent complained bitterly about corporate politicking). Those at ease with corporate power expressed alarm at the numeric and financial strength of unions at a time when the political battle was waged at near-equal strength. To assure a receptive ear, corporations exhibited concern for the union member who was a political dissenter, a concern hidden until unions attained legal respectability and economic and political strength. A point in evidence is the right-to-work laws favored by many corporate executives posing as the protectors of individualism, whereas in reality they are primarily concerned with their own self interest.

In a democratic society, organized adversaries with conflicting interests, real or imaginary, strive, in the public interest, to further a cause they endorse. The ability of a group to exercise influence depends to a large extent on its financial and numeric potential. Although those espousing the corporate cause are numerically inferior to unions, the former still wield greater financial potential. Political teams depend upon the mass medias of communication, newspapers, radio, and, even more, television, to elect candidates and gain sympathy. Medias of communication used to reach the electorate require large outlays of money, money which sometimes comes from union dues paid by political mavericks.

Living in an age where the large organization dominates every phase of life, critics, such as Mr. Justice Black, are interested in strengthening the position of the individual. Large corporations have the potential to damage the public interest, and the accelerated merger movement so noticeable since the end of World War II makes them even more powerful. Corporate growth has been frequently criticized,[5] but the legislative[6] and judicial[7] attempts to preserve competition have not noticeably hindered economic concentration. Although union growth has not been as spectacular as corporate growth, the day of the conglomerate union, with the few controlling the bulk of the membership irrespective of skill or industry, may be near. The success of federated bargaining with the General Electric Corporation may prompt the consolidation of seemingly unrelated unions. For those comfortable within the group, the large corporation and large

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5. MILLS, THE POWER ELITE (1959).
6. 15 U.S.C., §§ 1-27 (1964). These are the Sherman and Clayton Acts as amended.
7. United States v. Columbia Steel Co., 334 U.S. 495 (1948); United States v. U.S. Steel Corp., 251 U.S. 417 (1920); United States v. Times-Picayune Publishing Co., 345 U.S. 594 (1953); United States v. DuPont & Co., 351 U.S. 377 (1956).

union is not a threat. For the few who prize individualism—this tends to be a small number in spite of the frequency with which the cause of individualism is championed—the fear of the mammoth corporation and union is real.

Protecting the individual in a mass-oriented society carries some schizophrenic overtones for the jurist. Some people supporting individuality and not mass acculteration favor social legislation and reform which inevitably leads to institutional and governmental growth. The champions of individualism often support organizations sympathetic to social reform. For example, Mr. Justice Black, one of the strongest advocates of individualism, has often supported union power.[8] Big corporations and big unions are heralded as symbols of progress while, at the same time, flayed as usurpers of individual freedom. Irrespective of attitudes toward the large institution, organization is essential to effectively back desirable goals, and individuals will necessarily be subordinated. With all of its imperfections, the union is a more democratic institution than the corporation dominated by a few major stockholders controlling the Board of Directors. Jurists knowing the composite picture are consequently torn asunder when forced to choose between the individual and group.

Need for Union Participation in Politics

Unions in the United States were born and nursed in a hostile economic and legal environment.[9] Although it is fashionable to point to the absence of judicial sympathy in the past for unions and social reform, many overlook the role of the economist who contributed substantially to judicial attitudes by preaching *laissez faire* and absolute fluidity of wage and price until the birth of Keynesian doctrine. If flexibility is desirable, unions, it follows, are undesirable since they resist cuts and inflate wages. This type of economic thinking was reflected in our legislative, executive and judicial chambers; and unions had to engage in politics to assure "friendly" faces in office, an "enlightened" electorate and support for their legislative goals.

When Congress debated the Taft-Hartley Act, the members of the House Committee on Education and Labor consisted of 15 Republicans and 10 Democrats.[10] Of the witnesses appearing before the Committee, 55 represented employers or employers' associations while 27 represented the union point of view. Interestingly, only 14 testified who could be labeled impartial (whatever that means). The Senate Committee on Labor and Public Welfare consisted of 8 Re-

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8. Sinclair Ref. Co. v. Atkinson, 370 U.S. 195 (1962); Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957).

9. Loewe v. Lawlor, 208 U.S. 274 (1908); Duplex Printing Co. v. Deering, 254 U.S. 443 (1921); Millis & Brown, From The Wagner Act To Taft-Hartley 3-19 (1949).

10. Millis & Brown, *supra* note 9, at 365-67.

publicans and 5 Democrats.[11] Of the 97 witnesses appearing before the Senate Committee, 41 represented employers and employer associations while 31 carried the union torch. The element in Congress partial to industry is powerful and often antagonistic to organized labor.[12]

The Norris-LaGuardia Act,[13] Wagner Act,[14] and Taft-Hartley Act[15] state that unions are socially desirable. If socially desirable, unions must sometimes back political goals and candidates beneficial to the public. For example, union leaders supported the Civil Rights Act of 1964.[16]

Professor Barbash[17] advocates unlimited union participation in politics because:

1. Unions have a legitimate interest in the availability of jobs, an interest which requires political prodding.
2. To protect the physical safety of workers.[18]
3. To place a bottom on wages and limit hours of work.
4. To promote collective bargaining and voluntary arbitration and defeat legislation calling for compulsory arbitration.[19]
5. The workers need for job security and harnessing the impact of the free-rider.[20]
6. To provide political education for workers and encourage voting.[21]

In 1896, 80 per cent of those eligible managed to vote; by 1920, only 49 per cent voted.[22] Although the turnout is greater during a crisis,[23] there is a general need to push voters to the polls. Unions are selfishly motivated, but, nevertheless, perform a public service by encouraging voter participation.

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11. *Id.* at 374-75.
12. McAdams, Power and Politics in Labor Legislation 38 (1964).
13. 29 U.S.C. §§ 101-115 (1964).
14. 29 U.S.C. § 151 (1964).
15. 29 U.S.C. § 141 (1964).
16. Lockard, *The Politics of Antidiscrimination Legislation*, 3 Harv. J. On Educ. 3, 23 (1965).
17. Barbash, *Unions, Government, and Politics*, 1 Ind. & Lab. Rel. Rev. 66 (1947).
18. Section 502 of the Taft-Hartley Act supports a union walkout where the safety of workmen is endangered. Although safety is typically a subject for state regulation, the Wagner Act requires employers and unions to bargain over conditions of work, which includes worker safety. 29 U.S.C. § 158(d) (1964).
19. The recent legislation in the railroad industry is an example. Irrespective of the terms used to gain support for the legislation recently enacted by Congress to settle disputes in the railroad industry, it still comes to compulsory arbitration.
20. An example of this interest is the union effort to end right-to-work laws by eliminating section 14(b) of the Taft-Hartley Act. 29 U.S.C. 164(b).
21. *See also* Green, Labor and Democracy 13, 50 (1939).
22. Lipset, Political Man The Social Basis of Politics 185 (1960).
23. *Id.* at 195.

Additional reasons can be advanced to justify union participation in politics. Employer, professional, and other associations are active politically and encourage employee and member involvement; to counteract these forces, union participation is essential. Some employers encourage employee participation in politics as a means of combatting organized labor.[24] Although Mr. Berle has popularized the notion of the "corporate conscience," public spirit is absent where union strength is a concern.[25] Church influence in politics and lobbying is common throughout the world even though less marked in the United States than elsewhere.[26] A more recent concern attracting interest is the charitable foundation, endowed by corporations and individuals.[27] For example, the new Kennedy School at Harvard University has been called a political breeding ground to assist Senator Kennedy of New York as he moves for the presidency.[28] The covering blanket of education and research can disguise political involvement by a eleemosynary institution. Non-profit organizations are politically influential, particularly since foundation executives are often chosen for their well-placed "connections."

Unions should maintain a lively interest in elections because of the "soft touch" brought to politics by the professional huckster. A union can help to enlighten the electorate, to provide information that an enlightened electorate is entitled to. The successful campaigns master-minded by agencies convince the office-seeker that an airing of controversial subject matter is not in their own or in the national interest. The recent campaign of Governor Reagan of California is evidence of the "soft touch" of the professional campaign manager who swept under the carpet the right-wing views of his client to create a more moderate, middle-of-the-road image. Because candidates for public office carefully hide controversial opinions, unions perform a public service by calling attention to inconsistencies, highlighting voting records and economic and social positions. Unions and other organizations may exaggerate, which is hardly a public service, but the candidate has an opportunity to correct an erroneous impression.

A serious problem is the manner in which a newspaper can assassinate a candidate or party whose views or platform coincide with that of the union.[29] To counteract this force, unions must

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24. Taft, *Business in Politics?*, 48 NAT'L CIVIC REV. 517, 518 (1959).
25. BERLE, THE 20TH CENTURY CAPITALIST REVOLUTION, Ch. 3 (1954).
26. For an account of the political involvement of Cardinal Richelieu, see HUXLEY, GREY EMINENCE (1894).
27. REPORT OF THE SELECT COMMITTEE TO INVESTIGATE FOUNDATIONS, H.R. REP. No. 2514, 82nd Cong., 2d Sess. (1953).
28. I neither support nor reject the view that some members of the Kennedy School operate in the political sphere—I am only interested in pointing out the possible political use of such an organization.
29. In Chicago it was claimed that the newspapers drummed up baseless charges of voting frauds. *See, The Press and the Profs*, NEWSWEEK Feb. 27, 1961, at 63.

wage a concentrated battle. Newspapers claim political independence, but it is amazing how "events" force them to back Republican candidates.[30] For example, the now-defunct *New York Herald-Tribune* was "forced" to support the Nixon-Lodge presidential slate. Horace Greeley, who founded the *Herald-Tribune* in 1841, helped to shape the Republican Party in 1854; it should come as no surprise that Republican candidates are supported. The Scripps-Howard newspapers subscribe to the doctrine of political independence, but from 1936 to 1960 only Republican candidates were approved.

One author concludes:

> With the possible exception of the *New York Times*, papers favoring a Democratic or Republican candidate on the editorial page showed signs of the same type of favoritism on the news pages. This is important when more than eighty percent of the national newspapers favor the Republican Party on their editorial page.[31]

Newspaper coverage has been less than fair to unions by emphasizing strikes, violence, featherbedding, jurisdictional disputes, secondary boycotts, racial discrimination, etc., while avoiding the positive aspects of unionism.[32] Furthermore, union activity is given less newspaper coverage than commercial activity. To counteract the attitudes of the press, union leaders must enter the political milieu to protect their interests.[33]

Newspapers are subsidized by paying less-than-cost postal rates, justified as part of the educational process. A few newspaper chains receive as much postal subsidization as major political parties receive in contributions.[34] Without debating the validity of postal underwriting, public money helps to spread political views unpopular to many taxpayers. Should newspapers backed by public funds be permitted to influence voting while unions are denied the right to support a candidate?[35] The *Chicago Tribune* presents political views consistently unpopular in Chicago while union politicking seems to offend a small minority of union members and opponents. If the press was politically balanced and both parties equally favored over the long pull, mail subsidization would be unimportant politically. But most major newspapers favor the Repubican Party, which means that the Democratic Party does not get a "fair shake."[36]

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30. Liebling, *The Wayward Press*, NEW YORKER Oct. 29, 1960, at 146-47.
31. FOWSE, SLANTED NEWS—A CASE STUDY OF THE NIXON AND STEVENSON FUND STORIES, 127-28 (1958).
32. ZEIGLER, INTEREST GROUPS IN AMERICAN SOCIETY 134-35.
33. HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE EXPENDITURES, *Campaign Expenditures, Bhd. of Rd. Trainmen*, 79th Congress, 2d Sess., res. 645, pt. 6, at 262 (1946).
34. SHANNON, MONEY AND POLITICS, 96-97 (1959).
35. This factor should be weighed when constitutional issues are raised pertaining to individual freedom.
36. *Do Reporters Sell Out?* NEWSWEEK Aug. 6, 1965, at 83; BANFIELD, POLITICAL INFLUENCE 254 (1961); ROWSE, SLANTED NEWS—A CASE STUDY OF THE NIXON AND STEVENSON FUND STORIES 3, 11; *Should Unions Back Democrats With Money from G.O.P. Members?* SATURDAY EVENING POST Dec. 14, 1957, at 10.

Union leaders sometimes claim that political entanglement is demanded by members who want to be informed about issues, candidates, legislation, etc.[37] Union leaders must be service oriented to survive, hence housing, medical care, education, legal aid, etc., are frequently provided by the union. Political participation is then rationalized as a natural extension of the services rendered by unions. Whether member insistence upon union participation in politics is extensive is conjectural. Union members are part of a politically lethargic public and it is doubtful whether substantial numbers demand interest in public affairs. Furthermore, the servicing of union members in the political stream should only infrequently involve donations to parties. However, this does not mean that the union leader can ignore politics and retain member loyalty. The rank-and-file may find union leaders participating in the political stream more effective than those who are neutral.

The accelerated rate of technological change which has characterized our society within the past 20 years is another justification for union interest in politics. Although unemployment has been generally minimal during this span of time, the great increase in jobs has come in the white rather than the blue-collar categories at the rate of approximately six to one.[38] Most workmen belonging to unions fall in the blue-collar classification and unions, to retain power, must attract white-collar job holders. White-collar workers tend to follow the management point of view, a view more economically conservative than that favored by many union leaders. It is possible to take the position that a politically effective union could attract white-collar membership.

Money, technical competence and the ability to face challenge is essential in the political jungle. The Republican Party, the traditional beneficiary of industry support, has experienced less financial difficulty than the Democratic Party.[39] For election to the House of Representatives during the 1966 campaign, Republican national committees were ten times better off financially than Democratic committees; in the race for Senate, Republican committees held twice the sum of the Democratic committees. During the 1956 campaign for presidency, twelve families contributed $1,153,735, more than all unions combined.[40] Twenty-nine large oil companies contributed $344,097 to the Eisenhower war chest while 37 advertising agency executives donated $51,000 to the same cause; 47 underwriters of bonds gave $235,000 to the Republican Party and $2,000 to the Democratic Party. In 1964, the American Medical Association contributed $100,000

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37. Pincus, *The Fat Cats Are Hard to Find*, THE REPORTER Aug. 13, 1964, at 34.
38. BAERWALD, ECONOMIC PROGRESS AND PROBLEMS OF LABOR 17, Table 2-1 (1967).
39. Lardner, *Campaign Spending*, NEW REPUBLIC Oct. 8, 1966, at 9.
40. Carey, *Organized Labor in Politics*, 319 THE ANNALS 53, 59 (1958).

to the Goldwater campaign.[41] Union financial support is essential to put across an opposing political platform.

Political Allegiance and Its Format

Corporation executives and lesser lights indulge in politics with varying degrees of intensity and success; businessmen participating in politics are usually small operators or extremely wealthy.[42] Entrepreneurs encourage political participation with an invitation to join the "right side."[43] A large middle management, politically uneducated and disinterested, is untapped.[44]

Union leaders encouraging political participation aim at salaried and hourly workers not rated part of the management team. The union broadside hits a sizeable bloc, the worker and his voting family. These voters are amenable to union suggestion but they are not political followers. Members who vote tend to back the candidates of the Democratic Party even if unions remain neutral during an election. Union members are often apathetic and getting them to the polls is burdensome; in one election less than 40 per cent of the members registered to vote.[45] Yet members are concentrated in urban centers where aggregate strength is displayed if they will vote.

The sensitivity of the Democratic Party to union needs is not attributable to similarity of background—leaders of the Democratic Party hold substantial business interests.[46] Rather, the Democratic Party is more closely tuned to the needs of the city and the blue-collar worker than is the Republican Party. For example, in California, 25 to 50 per cent of its citizens registered to vote; approximately 20 per cent of those eligible to vote, 1,500,000, belonged to unions.[47] To encourage voting and defeat Republican candidates, the California Federation of Labor appropriated $500,000, and unions in Southern California added a like sum, an effort which lead to an increase of 660,000 registered Democrats.[48]

Union members and leaders are not a solid political bloc—some

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41. Pincus, *supra* note 37, at 36.
42. *Business Gets Political Urge*, Business Week, Oct. 11, 1958, at 125.
43. *Id.* at 128. One firm went so far as to forbid an official to stump for or run on the Democratic platform.
44. *Politics and the Corporation*, Fortune, Oct., 1958, at 103, 104.
45. Bruner, *Labor Should Get Out of Politics*, Harper's Magazine, Aug., 1958, at 21-22. Michigan was an exception because of the commitment of the U.A.W. to political activity. But only 20 percent of the membership of the Amalgamated Clothing Workers Union bothered to register, possibly because so many of them are immigrants.
46. Zeigler, *supra* note 32, at 132-33.
47. Velie, *How Unions Wield Political Power*, Reader's Digest, Feb., 1959, at 47, 48.
48. *Id.* at 50-51. Since part of the turn out was to defeat a right-to-work law proposed in California, a rallying point around which union support is easily mustered, part of the success of the union campaign must be attributed to the issue.

unions are politically more conservative than others. Those affiliated with the Plumbers, Printers and Pattern Makers unions tend to move in conservative directions.[49] In some instances, union members have shifted allegiance from the Democratic Party because of the help extended to the Negro (the Republican Party has also supported civil rights legislation). Union members have supported right-wing movements such as the John Birch Society, Americans for Constitutional Action, Christian Crusade, National Right-to-Work Committee, etc. Furthermore, political success does not follow union approval—in fact, union endorsement can lead to a negative vote. Economic factors such as job preservation, government contracts awarded to industry and welfare programming is often more helpful to the candidate than union approval (and union leaders endorse candidates following a welfare economic philosophy). Union leaders are aloof from politics when incumbents seeking re-election do not face serious competition and many candidates in primaries and elections do not face serious opposition.[50]

A slight switch in party allegiance was evident during the 1964 presidential election. Business leaders heretofore favoring Republican candidates shifted their support to the Democratic Party. As evidence of the turnabout, 69 per cent of all individual contributions of $500 or more went to Democratic Party committees while 28 per cent went to Republican Party committees.[51] The awarding of government contracts to private industry and the nomination of Mr. Goldwater could have convinced business leaders that their interests would be best served by the Democratic Party. If large donors can shift their political allegiance from the Republican to the Democratic Party, union members, possibly less tradition-bound than business leaders, can vote counter to the designation of union leaders.

The Political Scene

Candidates for office are professionals, proprietors, managerial employees or farmers; few low bracket wage-earners or farm employees seek positions of political influence.[52] The political welfare of union members suffers at this point—few in Congress have the same background. Background and party affiliation is important, helping to open receptivity to labor goals. Nevertheless, union leaders find a more satisfactory access to Democrats (except in the South) than

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49. Harris, *The Riddle of the Labor Vote*, Harper's Magazine, Oct., 1964, at 43-44.

50. *Hearings on S. 636 Before the Subcomm. on Privileges and Elections of the Committee on Rules and Administration*, 84th Cong., 1st Sess., at 163 (1955).

51. Alexander & Meyers, *The Switch in Campaign Giving*, Fortune, Nov. 1965, at 170.

52. Zeigler, *supra* note 32, at 132.

to Republicans,[53] even though the standard bearers of the former party are not union members.

Union leaders and members often display greater discord over the party to be supported than over legislative goals. Labor leaders find it distracting when legislative programs are supported while clashes develop where party backing is concerned. The backing of a candidate is often inseparable from support for particular legislation, something that dissident union members are unable to understand. What becomes important to the dissident, apparently, is party loyalty.

The recent attacks by the Supreme Court on the political underrepresentation of urban centers promise change beneficial to unions.[54] In state legislatures and the House of Representatives, disproportionate representation favors the corporation at the expense of the union. Associations representing the well-heeled farmer are numerous and legislators from rural areas are easily tuned to local needs.[55] The motif of these associations is similar to those representing corporations.[56] The unofficial coalition of farm and business interests tempers union power, which is city oriented. An excellent example is state support for education in New York—twice as much money is allocated for education to rural communities as to the urban centers.[57] Hearings in the House of Representatives pertaining to migrant labor shows the powerful reach of the farm association, particularly when compared to the manner in which the hearings were conducted by Senate committees.

Glossed over is the fact that party professionals and leaders really select the candidates. The parties in the United States were initially locally oriented, and, even to this day, are largely state controlled. In fact, national and state political organizations operate independently.[58] Congressional representatives must serve local interests, while much of their work day is spent on matters of national concern. In fact, separating matters of local and national interest is difficult. National conventions convened to select presidential can-

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53. McAdams, Power and Politics in Labor Legislation 31 (1964). This author concludes that most southern Democrats are probably beyond the reach of labor union leaders.

54. Baker v. Carr, 369 U.S. 186 (1962); Reynolds v. Sims, 377 U.S. 533 (1964).

55. Costikyan, Behind Closed Doors Politics in the Public Interest 42-3 (1966). The author, referring to the State of New York, says,

> The Republican Party leadership has repeatedly demonstrated its natural political interest in winning the mayoralty, but the rest of the party, dominated since World War II by upstate-oriented leadership . . . has been unprepared to threaten its upstate base by making the governmental moves that would give its New York City candidates the material with which to win.

56. Zeigler, *supra* note 32, at 186-87.

57. Costikyan, *supra* note 55, at 43.

58. Roche & Levy, Parties and Pressure Groups 153 (1964).

didates operate without state and federal regulation and a winning team, rather than public interest, is the major concern. The professional politician and "angel" are not union oriented. Money is a controlling factor in politics—those who anonymously control the financial purse help to name the candidates.

Mr. Lincoln ran for presidency without making public speeches and without leaving Springfield, Illinois. When Mr. Kennedy sought office in 1960, he made 360 speeches and toured 43 states.[59] All office seekers spent $165 to $175 million in 1960, with the presidential campaign alone costing $20 million.[60] In 1964 the cost of running for all public offices was placed at $200 million; in 1952 it was $140 million and in 1956 $155 million.[61] Without employer and union contribution, the Democratic Party would have been in even greater financial difficulty.

The AFL in 1906 spent less than $10,000 for political purposes.[62] Mr. LaFollette received considerable backing from the railroad brotherhoods in 1924.[63] But unions did not begin to make large contributions until the 1930's.[64] The U.M.W. contributed or loaned $486,288.55 to the Democratic party in 1936.[65] Additional sums were spent for advertising on radio, newspapers, billboards, etc. The New Deal saw the emergence of class-oriented politics, labor backing the Democrat Party and industry backing the Republican Party.[66]

The CIO, through the Political Action Committee (PAC), in

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59. *Id.* at 110.
60. *Id.* at 109.
61. CUMMINGS, THE NATIONAL ELECTION OF 1964, 158 (1966).
62. BORNET, LABOR POLITICS IN A DEMOCRATIC REPUBLIC 31 (1964).
63. *Id.* at 250.
64. ALINSKY, JOHN L. LEWIS, AN UNAUTHORIZED BIOGRAPHY 177-78 (1949):
> Everybody says I want my pound of flesh, that I gave Mr. Roosevelt $500,000 for his 1936 campaign, and I want quid pro quo. The United Mine Workers and the CIO have paid cash on the barrel for every piece of legislation that we have gotten. We have the Wagner Act. The Wagner Act cost us many dollars in contributions which the United Mine Workers have made to the Roosevelt administration with the explicit understanding of a quid pro quo for labor. These contributions far exceed the notions held by the general public or the press. Is anyone fool enough to believe . . . that we gave this money to Roosevelt because we were spellbound by his voice? It is common knowledge that we spent approximately three-quarters of a million dollars in the 1936 campaign. And you might be interested to know that the $500,000 direct contribution wasn't my price, but was the figure named by the White House. . . . The sums we spent in 1936 were not cash contributions that were made to the Democratic Party, but also were money expended in terms of salaries for organizers and other personnel who worked full time organizing and electioneering for Roosevelt. Radio time purchased, billboards, handbills, literature . . . did not come gratis.

65. *Id.* at 163. Curiously Roosevelt and Lewis parted ways in spite of the union financial support because of Roosevelt's intervention in the sit-down strike at the General Motors Corp.

66. WHITE & OWENS, PARTIES, GROUP INTERESTS AND CAMPAIGN FINANCE: MICHIGAN '56, at 12 (1964). In Michigan, the P.A.C. and the U.A.W. are identified with the Democratic Party. *Id.* at 20-23; Clover, *Political Contributions By Labor Unions*, 40 TEXAS L. REV. 665 (1962).

1944 became more politically active than ever before.[67] Guarding against the possibility of violating the federal law, the PAC spent its funds on political education rather than direct support to parties or candidates.[68] During 1944, the CIO and four international affiliates contributed $669,764.11 to the PAC and spent an additional $118,112.12 on primaries, state elections and conventions.[69] The PAC also organized the National Citizens Political Action Committee to solicit contributions from individuals and gathered $380,306.45.

The Republican Party consistently spends more money than the Democratic Party in presidential elections.[70] The Democrats in spite of union backing operate in the red, while the Republicans have known years of surplus. About $1 million of this money was spent on voter registration.[71] In 1964 the Democratic Party, raising more funds than ever before, spent one-half as much for pre-nomination and general election expenses as the Republican Party.[72] The 1964 senatorial race in New York between Kennedy and Keating cost $4 million.[73]

More union money is spent in federal elections than is acknowledged, money available to Democratic rather than Republican candidates.[74]

Further, the manner in which appointments are made to Congressional committees concerns unions; committee membership is sometimes "stacked" and opposing viewpoints restricted.[75] The system of seniority which helps to determine committee assignment spells trouble for unions. Southern Democrats often seek re-election without real challenge from a Republican candidate. The system of seniority means that public office-holders unsympathetic to unions control important committees.

Large corporations operate throughout the United States and the world. The state is incapable of effectively controlling corporations operating outside its geographic limits; in fact, the division of authority between state and federal government minimizes the effectiveness of federal regulation. Due to the limited effectiveness of state control and division of authority between state and federal government, much of the political activity of corporations (and unions) is unregulated. As long as politically oriented corporations cannot be

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67. S. REP. No. 101, 79th Cong., 1st Sess., Vol. 1, p. 20 (1945).
68. H.R. REP. No. 293, 78th Cong., 2d Sess., p. 7 (1945).
69. *Id.* at 21-23. The Smith-Connelly Act controlled political expenditures at this time.
70. CUMMINGS, *supra* note 61, at 161.
71. *Id.* at 185-86.
72. *Id.* at 183. Part of the reason for the big difference is that the Democrats already controlled the presidency.
73. Lambert, *Corporate Political Spending and Campaign Finance*, 40 N.Y.U.L. REV. 1033 (1965).
74. Alexander & Meyers, *supra* note 50, at 216.
75. WHITE & OWENS, *supra* note 66, at 8.

contained, unions cannot be expected to remain spectators.

Corporation executives in the automobile industry in Michigan are as deeply involved in politics as unions;[76] yet most of the publicity refers to union rather than corporate involvement.

The Pertinent Legislation

Background

Political, social and economic philosophy change slowly and the law eventually reflects the shifts. As stated by Mr. Justice Cardozo:

> The century had not closed, however, before a new political philosophy became reflected in the work of statesmen and ultimately in the decree of courts. . . . "The movement from individualistic liberalism to unsystematic collectivism" . . . brought changes in the social order which carried with them the need for a new formulation of fundamental rights and duties. . . . Courts know today that statutes are to be viewed, not in isolation . . . as pronouncements of abstract principles . . . but in the setting and the framework of present-day conditions, as revealed by the labor of economists and students of the social sciences in our country and abroad. . . .[77]

Until around the twentieth century, the Supreme Court was little concerned with individual rights.[78] In assessing Supreme Court decisions and legislative and executive goals up to that point, private ownership, a form of liberalism and individualism which was not changed until long after the corporate abuse of power became evident, was greatly encouraged and protected.[79] Only since the regime of Franklin D. Roosevelt has the Supreme Court disclosed a keen interest in group rights other than those of industry.[80]

Although not subject to the same political manipulation as the executive and legislative branches of government, the Supreme Court does affect long-range public policy. Members of the Supreme Court must coordinate the judicial process with changing social, political and economic conditions, a responsibility hidden in a jungle of legal terms and maneuvers. The Supreme Court is caught in the political process by the manner in which members are appointed, the submission of briefs *amicus curiae*, bar association pressures, outside reading interests, etc.[81]

Union financing in politics did not require much legal or constitutional consideration prior to 1930—unions were small, powerless and generally financially impotent. However, Congress as early as 1906 displayed an interest in individual and union contributions in federal

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76. Zeigler, *supra* note 32, at 253.
77. Cardozo, The Nature of the Judicial Process 76-82 (1921).
78. Frank, Marble Palace, The Supreme Court In American Life 183-84 (1958).
79. *Id.* at 224-25.
80. Westin, An Autobiography of The Supreme Court 29-30 (1963).
81. Shapiro, Law and Politics in The Supreme Court 7-14 (1964).

elections.[82] After sizeable union donations in 1936, a congressional committee recommended that unions, as well as corporations, be banned from making political contributions.[83] In fact, Senator Vandenberg, Republican from Michigan, offered a bill making it an unfair labor practice under the Taft-Hartley Act for unions to contribute to candidates seeking federal office.[84] Senator Vandenberg's proposal was politically "loaded" since unions in Michigan favored the Democratic Party which helped to enact the Norris-LaGuardia[85] and Wagner[86] Acts.

The effective use of radio by President Roosevelt in his famous "Fireside Chats" added a new dimension to the marketplace of politics and unions. The reach of radio went far beyond the old standby, the newspaper, and Republicans soon sought to counteract the favor with which the public accepted the "Fireside Chats." In 1936, the Columbia Broadcasting System (CBS) cut from the air a response by Senator Vandenberg to transcribed statements made by President Roosevelt.[87] Senator Vandenberg claimed equal time under section 315 of the Communications Act of 1934[88] and protested the censorship of station licensees. CBS noted that Senator Vandenberg was not a candidate for public office and, hence, not entitled to equal time.

Senator Tydings of Maryland sponsored a bill in 1939 outlawing the use of dues or contributions collected by any organization to support candidates not approved by the donor.[89] In 1940, Congress amended the Hatch Act to limit contributions by persons or organizations to any candidate for federal office or national committee to $5,000 a year.[90] Union spending was not checked because each local could contribute up to $5,000 to different candidates and committees.

By the Smith-Connally or War Labor Dispute Act of 1943 political containment was aimed at the United Mine Workers for striking during World War II.[91] This legislation placed unions on an even footing with corporations by prohibiting all contributions in federal elections. The wartime legislation expired in 1947 but it was never effective because only direct contributions were forbidden, but not other expenditures, and the prohibition did not apply to conventions and primaries.

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82. Note, *Section 304, Taft-Hartley Act: Validity of Restrictions on Union Political Activity*, 57 YALE L.J. 806, 807-10 (1948).
83. S. REP. No. 151, 75th Cong., 1st Sess., p. 135 (1937).
84. S. REP. No. 2712, 75th Cong., 1st Sess. (1937).
85. 29 U.S.C. §§ 101-115 (1964).
86. 29 U.S.C. § 151 (1964).
87. Peterson, *Political Broadcasts*, 9 J. OF THE FED. COMMUNICATIONS BAR ASS'N 20, 25-26 (1948).
88. 47 U.S.C. § 315 (1964).
89. 84 CONG. REC. 10436 (1939).
90. 18 U.S.C. § 608 (1948).
91. 57 Stat. 163. For a discussion of the act, see Kallenbach, *The Taft-Hartley Act and Union Political Contributions and Expenditures*, 33 MINN. L. REV. 1, 4 (1948).

Sides were quickly drawn when Congress considered section 304 of the Taft-Hartley Act[92]—Democrats generally disapproved of placing a damper on union contributions and expenditures while Republicans favored it. A few Democrats, as a substitute measure, supported the public disclosure of the source of funds rather than a complete ban.[93]

Senator Taft, prior to the passage of section 304 of the Taft-Hartley Act, stated:

> But the prohibition is against labor unions using their members' dues for political purposes, which is exactly the same as the prohibition against a corporation using its stockholders' money for political purposes, and perhaps a violation of the wishes of many of its stockholders.[94]

Senator Pepper saw the loophole in Senator Taft's rationale by noting that union members are less able to make financial contributions than stockholders.[95]

Section 304 forbids unions, corporations and national banks from contributing or making expenditures in national elections, primaries, caucuses, etc.[96] President Truman vetoed section 304.[97]

Section 304, an intentionally broad and sweeping prohibition of contributions and expenditures, handed the judicial branch of government a large assignment, without legislative guidance, to draw a line between educational, informational and forbidden involvement. Section 304 forbids contributions by a "labor organization," sweepingly defined as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." Despite the broad definition of a "labor organization," its meaning raises questions.[98]

Organizations of a religious, social, and educational nature are not barred from making political contributions by the proscriptions contained in section 304, but religious and social units act as bargaining representatives for employees.[99] A social or religious unit is not initially formed, "in whole or in part," as an employee representative and functioning as a union is a subsequent development rather than the basis for existence. If the definition of a "labor organization" is followed literally, social or religious entities representing em-

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92. 29 U.S.C. § 304 (1964).
93. Kallenbach, *supra* note 91, at 8.
94. 93 CONG. REC. 6440 (1947).
95. *Id.* at 6448.
96. Based upon the decision in *United States v. Classic*, 313 U.S. 299 (1941), Congress had the power to regulate primaries, caucuses, and conventions.
97. In fact, Mr. Truman vetoed the entire Taft-Hartley Act.
98. Burroughs Corp., 116 NLRB 1118 (1956); Steward Warner Corp., 123 N.L.R.B. 447 (1959); Pacqua, Inc., 124 N.L.R.B. No. 115 (1959).
99. NLRB v. Precision Castings Co., 130 F.2d 639 (6th Cir., 1942).

ployees can contribute to election war chests. But if Congress intended a broad condemnation of political activity by all types of organizations representing employees, it is possible to interpret section 304 in a manner which would prohibit contributions by religious or social organizations acting as employee representatives.

Section 304 forbids a "contribution or expenditure" in a federal election. A direct contribution of funds or the giving of an object of value to a candidate, party or committee was unquestionably prohibited by Congress. The term "contribution" is not defined and a question is raised whether corporation or union leaders who serve a party or candidate violate section 304. Various dictionaries refer to a "contribution" as a gift of money and extending the concept to an object of value, exchangeable for money, seems reasonable. However, the common or dictionary notion of a "contribution" does not extend to a donation of services. Even if a "contribution" was interpreted to prohibit services, circumvention is possible. If a candidate or party pays a corporation or union executive even a modest sum for services, a "contribution" has not been made. However, a union or corporation paying the salary of an executive who also receives modest remuneration from the party may violate the law either because of a "contribution" or "expenditure." If only the corporation or union pays the salary of an executive who serves politically, there still remains the possibility that a "contribution" or "expenditure" has been made. Cases of this type will be later reviewed, but the Supreme Court has not dealt with personal services under section 304.

Forbidding "contributions" to a political machine or candidate seems, on the surface, reasonable, necessary and not constitutionally questionable. Based on the notion that a recipient of a gift must be beholden to the bearer, forbidding a "contribution" to protect the public interest is not constitutionally difficult. Yet what cannot be directly channeled into a "contribution" can become an "expenditure" and the same problem of protecting the public is raised. There is a general overlooking of the plain fact that elected officials can be equally swayed by an "expenditure" or a "contribution." Yet the most difficult constitutional challenge is prohibiting an "expenditure." The rub is that effective freedom of speech and effective presentation of views necessitates an "expenditure" or "contribution" or both.

Section 304 does not define "expenditure" and a broad interpretation could lead to unreasonable or unnecessary suppression. Judicial entanglement is unavoidable since courts must draw a line between the different types of expenditures. Speech is entitled to the broadest protection, a goal which most would support. Few would also disagree with the prevailing constitutional view that speech should be suppressed only when absolutely necessary—determining whether there is a real need to suppress speech is the difficulty.

The First Amendment came into being because of the English experience with the Star Chamber and the suppression of political viewpoints. The First Amendment not only protects speech but the most effective presentation of views. Underlying some of the criticism is a desire to curb effective union speech rather than to completely suppress union views.

At the time of the conception of the First Amendment, oral, pamphlet, and newspaper comment were the methods of communicating with the voting public—radio and television were unknown. Speeches, pamphlets and newspapers are basically local means of communicating, and contact with another geographic section is limited. Radio and particularly television are the means to be used to assure widespread coverage.

The constitutional guarantee of speech is not limited to the natural person and extends to corporations and associations. This does not necessarily mean that an association is entitled to the same constitutional protection as the individual. The guarantees of the First Amendment are broad, but not absolute, and there are substantial differences between individual and group expression. Sufficient reason may exist to limit the speech of an association while the individual need not be placed under a similar restraint. For example, a group decision to follow a designated political course is rarely unanimous while the individual acts for himself. Yet the First Amendment does not distinguish between individual and group-sponsored speech. According to Professor Emerson:

> Both the general principle of association and the basic theory of expression support the proposition that associational expression should be entitled to the same complete protection as individual expression . . . . Thus associational expression is simply an extension of the individual right of expression and . . . should be free of governmental abridgment. The purpose of a system of freedom of expression—to allow individuals to realize their potentialities and to facilitate social change through reason and argument—cannot be effectively achieved in modern society unless free rein is given to association designed to enhance the scope and influence of the communication . . . .[100]

The position taken by Professor Emerson does not protect the dissenter in the large group. Professor Emerson's position, however, does not rule out the possibility that the dissenter should be protected within the group.

Another interpretative problem is whether section 304 prohibits the lending of money. Section 304 outlaws a "contribution or expenditure," but a loan, since it is returned to the lender, does not fall within this framework. The lending of money is a business transaction if the borrower pays the going rate of interest. However, the

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100. Emerson, *Freedom of Association and Freedom of Expression*, 74 YALE L.J. 1, 22 (1964).

lending of money could be treated as a "contribution or expenditure" if the borrower repays the principal without interest.

The reasons assigned for banning expenditures are interesting. The fact that dissident union members are forced to support a candidate not of their choice for public office has been mentioned.[101] Most states, as they may under Taft-Hartley,[102] permit a union shop agreement which requires membership in a union as a condition of continued employment and a few members may be forced to support a candidate chosen by the majority. However, the same legal conditions do not prevail if a union shop contract is not in force. Technically, a political dissident is free to withdraw from the union without fear of economic repercussion (this is, in reality, a simplification that is not meaningful in the day-to-day economic life of the dissident—a need to "live" with the group forces continued membership). This problem will be considered when the court decisions are reviewed.

Some fear union expenditures because the party and office-seeker is controlled by the donor. But expenditures for political purposes are more than a method of controlling the candidate—a candidate is backed because of the views he shares with the financial angel. Furthermore, publicity can whet the public interest in politics, a desirable goal in a democratic society. If views are to be publicly aired, associations, well-financed, must take the initiative. Individual union members cannot or will not participate in the political process by making contributions or expenditures. This lack of interest in public affairs is not, of course, reason to push members into the political stream by permitting union participation.

Individual contributions are not forbidden by section 304—there is only a $5,000 statutory limitation on the individual contribution designated in the Hatch Act. As a practical matter, the individual has free rein because donations can be made through different persons and to different committees. Section 304 does not consider individual contributions to a corporation or union which may then be earmarked for political purposes.

The Decisions

In considering a state statute similar to section 304, the Massachusetts Supreme Court indicated that legislation passed by popular initiative was a proper means of curtailing the political activity of a union.[103] Shortly after the Taft-Hartley Act was passed, an aroused union officialdom decided to test the constitutionality of section 304. The *CIO News*, published with funds taken from the general treas-

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101. 93 CONG. REC. 6440 (1947).
102. 29 U.S.C. § 158(a)(3) (1964).
103. Bowe v. Sec'y of the Commonwealth, 69 N.E.2d 115 (Mass. 1946).

ury, endorsed a Democratic candidate for federal office and an additional 1,000 copies were printed at a small cost.[104] After indictment, the defendants claimed that section 304, an unwarranted suppression of free speech, was unconstitutional. Section 304 forbids any type of "expenditure" and the district court declared it unconstitutional because the danger to the public from political manipulation was insufficient reason to justify the complete suppression of views.[105]

The union also contended that the legislation was unconstitutional because section 304 was a criminal statute and the crime was not specifically defined.[106] The district court did not rule on this defense because it declared section 304 unconstitutional under the First Amendment.

Mr. Justice Reed, presenting the leading viewpoint of the Supreme Court, was not certain of the source of the funds used to publish the newspaper—the funds could have come from subscriptions, donations or union dues.[107] Actually, the Supreme Court knew that dues supported the newspaper and *CIO* can be taken as authority for the notion that union newspapers, devoted to general news of interest to members, can be supported with union funds. In a concurring opinion, Mr. Justice Rutledge unequivocally declared that dues supporting a newspaper which backs a candidate for public office are legitimately used. Aware that a constitutional evaluation of section 304 was dangerous, Mr. Justice Reed chose to ignore it. Senator Taft felt that the discussion of candidates by union newspapers supported by voluntary contributions and not union dues was a legitimate use of union funds.[108] Senator Taft had expressed the view that, clearly, section 304 prohibited political support in a union newspaper[109] unless the comment appeared on the editorial page or only the voting record of a public servant was publicized.[110]

Mr. Justice Reed complicated the problem by stating that "a periodical financed by a . . . union for the purpose of advocating legislation advantageous to the sponsor or supporting candidates whose views are believed to coincide generally with those deemed advantageous to

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104. United States v. CIO, 77 F. Supp. 355 (D.D.C. 1948).
105. *Id.* at 358. The district court said:
> Inherent in the idea of collective activity is the principle that it shall be exercised on behalf of the organization pursuant to the will of the majority of its membership. . . . However, the provision prohibiting expenditures by labor organizations in connection with elections does not purport to affect only cases in which a minority of the membership, however small or great, is opposed to the expenditure. It covers all such expenditures in connection with federal elections. We cannot presume that substantial differences of opinion or desire exist in labor organizations with reference to matters concerning labor's welfare. . . .

106. *Id.* at 359.
107. 335 U.S. 106, 110-11 (1948).
108. *Id.* at 119.
109. 83 CONG. REC. 6436, 6440.
110. *Id.* at 6447.

such organization is on a different level from newspapers devoted solely to the dissemination of news but the line separating the two classes is not clear . . . ."[111] Evidently, a union or corporate house organ is to be placed on a different footing from a news medium servicing the public-at-large, but Mr. Justice Reed was unable to clearly distinguish the two forms of publication. What if political views were disseminated on a union-owned television or radio station open to all viewers? What if a union periodical is only devoted to political news? But the position taken by Mr. Justice Reed does stamp approval on union periodicals playing the political game on a part-time basis.[112]

Mr. Justice Reed correctly views a union (or corporate) newspaper and one serving the public in a different light. A public newspaper is theoretically obligated to present news in an impartial fashion while a union periodical serves member interest. As a practical matter, some newspapers serving the public-at-large are no less biased than a house organ.

Although *dictum*, Mr. Justice Reed felt that section 304 prevents unions from circulating pamphlets supporting an office-seeker.[113] Since Mr. Justice Reed threw so much doubt on the constitutionality of section 304, it is difficult to understand why he avoided consideration of the section. Merely because a problem involves a difficult decision is not reason to avoid the decision.

Mr. Justice Rutledge found the opinion of Mr. Justice Reed misleading and decided that unions can "take part in pending elections by publishing and circulating newspapers in regular course among their membership, although the costs of publication are paid from the union's general funds regardless of their source . . . ."[114] Now, the constitutionality of section 304 must be considered according to Mr. Justice Rutledge. Mr. Justice Reed did hold that Congress, per Article I, Section 4, can intercede in Federal elections: legislation prohibiting direct contributions to a candidate[115] and limitations on the sum that a candidate or party can spend[116] had already received constitutional approval. Mr. Justice Rutledge agreed with Mr. Justice Reed that freedom of speech should not be curbed unless absolutely necessary.[117] Section 304 does not point to the evil in need

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111. 335 U.S. at 122-23.
112. *Id.* at 123-24.
113. *Id.* at 122-23.
114. *Id.* at 122-23.
115. United States v. U.S. Brewers Ass'n, 239 F. 163 (W.D. Pa. 1916); Egan v. United States, 137 F.2d 369 (8th Cir. 1943), *cert. denied*, 320 U.S. 788 (1943); Ex parte Curtis, 106 U.S. 371 (1882).
116. State v. Kohler, 200 Wisc. 518, 228 N.W. 895 (1930); Adams v. Lansdon, 18 Idaho 483, 110 Pac. 280 (1910).
117. For a decision concerning an expenditure rather than a contribution which was prohibited and held to constitute an abridgement of speech, *see* State v. Pierce, 163 Wis. 615, 158 N.W. 696 (1916).

of correction, although the congressional hearings could clarify this point according to Mr. Justice Rutledge. He concluded that the evil Congress feared was the "expenditure" unduly influencing the public servant, but influence presented in the form of a valid argument is not necessarily evil.[118]

Mr. Justice Rutledge felt that the opinion expressed by Mr. Justice Reed was farcical because a burden was placed on each union to ascertain the will of a small minority of union members. Thus, if the purpose was to protect dissenting members, then the law should have been written so that dissident members could make their views known to the union.[119]

The public airing of views needs encouragement rather than containment and the spending of money to spread ideas and information is not injurious to the public. If unions effectively spread their views, those who disagree will be encouraged to take an opposing stand, a healthy development (providing the public relations approach to the dissemination of information was not so widespread). The possibility that a "contribution or expenditure" may require the return of a *quid pro quo* still remains, but that possibility exists irrespective of the source of the funds. When unions were politically and economically insignificant, there was reason to suppress the corporate "contribution or expenditure." Unions and corporations are currently capable of supporting conflicting political opinion which for the most part reaches a predisposed ear.

In *United States v. CIO*, the union spent $100, hardly a significant sum, to print and circulate the additional 1,000 copies of the periodical.[120] Rather than engaging in the confusing dialogue made part of the permanent record, the Supreme Court could have labeled this an inconsequential "expenditure" of no public concern.[121] Even if a few dissident members objected to the "expenditure," the fraction of the $100 that they contributed personally would only amount to a few pennies.

United States v. Painters Union[122] was similar to *CIO*, except that the union purchased space in a general newspaper and radio time to support a candidate. The district court ruled that section 304 prohibited the expenditure, and the rationale expressed in *CIO* was inapplicable since a house newspaper was used. The union in *CIO* printed an additional 1,000 copies for public distribution; *Painters Union* is similar because the newspaper was publicly distributed and $114.14 was spent

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118. 335 U.S. at 145-55.
119. *Id.* at 148-50.
120. Ruark, *Labor's Political Spending and Free Speech*, 53 NW. U.L. REV. 61, 63 (1958).
121. United States v. Construction and General Laborers Union, 101 F. Supp. 869 (W.D. Mo. 1951).
122. 79 F. Supp. 516 (Conn. 1948).

for the advertisement.[123]

The district court in *Painters Union*, testing the constitutionality of section 304, found it reasonable—the need to protect the elective process must be balanced against the right of expression—and freedom of speech is not absolute. The court felt that group expression requires more regulation than individual speech.[124]

The union argued that freedom of speech without a corresponding right to financially support its view is a meaningless guarantee. The district court felt that section 304 barred only a financial "expenditure" in the election process and the union could continue to support legislation or lobby. Appeals to reason are permissible while section 304 only bans "political reprisals," the key factor according to the court.[125] The pragmatist will experience difficulty separating "political reprisals" from appeals to reason. In fact the two are intertwined every time a union supports or disapproves of a candidate. Furthermore, "political reprisals" are not banned if the union does not spend money or, per *CIO*, union periodicals are used to support or knock a candidate.

On appeal, the district court was reversed because the sum spent was trifling.[126] The court of appeals relied on three factors to reach its decision: there is little difference between a union newspaper and newspaper serving the public, the sum spent was small and the union did not publish a newspaper. But there is substantial difference between a newspaper serving the public and one serving union members—the greater reach of a newspaper serving the public; the implied promise of a public newspaper to present news impartially; and there is little likelihood, even if a union newspaper reaches public hands, that it will be as influential as a newspaper serving the public.

CIO and *Painters Union* permit political support in public newspapers or house organs. Actually, *Painters Union* conflicts with *CIO* because the Supreme Court in the latter decided that there is a difference between a union newspaper and a general newspaper. Yet Mr. Justice Reed in *CIO* did say that the distinction between the two was sometimes blurred.

In *United States v. Construction and General Laborers Union*,[127] a union official on the payroll devoted considerable time to help elect a candidate. Additional union funds were spent to pay for the maintenance of an automobile used by the official. The court again relied on the minimal financial support provided by the union to justify the politicking and the encouragement of voting does not constitute financial support for any particular candidate. Actually, a union drive to

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123. 172 F.2d 854 (2nd Cir. 1949).
124. 79 F. Supp. at 522-524.
125. *Id.* at 523.
126. 172 F.2d 854 (2nd Cir. 1949).
127. 101 F. Supp. 869 (W.D. Mo. 1951).

get voters to the polls increases the probability that a Democratic Party candidate will win over a Republican Party candidate and, consequently, the union is favoring one candidate. The court, to justify its decision, felt that a literal interpretation of section 304 would jeopardize its constitutionality and that the rationale in *CIO* was being followed.[128]

Rather than sponsor a house newspaper, the union in *United States v. Anchorage Central Labor Council*[129] paid for a less costly weekly television program. The union was interested in reaching its members rather than the public—the sponsorship of a weekly program rather than a spot political program proved this—so that the court could not find a violation of section 304. What the court left unsaid was the greater effectiveness of television than newspapers in reaching union members and that unions are entitled to use the most effective means of communication.

The court found convincing the fact that voluntary contributions were used by the defendant to defray the television costs. As a practical matter, the court in *Anchorage* labeled support by locals as voluntary contributions. Whether individual members of locals might object to the "expenditure" was not considered. Where members volunteer funds to back politicking, the union does not violate section 304 although "a bona fide accounting" can be required and the "contributions or expenditures . . . (cannot) exceed the voluntary funds so designated . . . ."[130]

In *United States v. U.A.W.*,[131] the union sponsored a number of political telecasts during which Democratic Party candidates and union officials were interviewed. A constitutional convention convened by the union authorized payment for the telecasts out of general funds. Since the funds were not voluntarily contributed by union members, the government claimed that section 304 prohibited the expenditures.[132] The union countered, and the lower court agreed, that the program served to educate its members and a public media of communication can be used. Television is a valuable educational tool and unions are entitled to use the medium for this purpose.

On direct appeal the Supreme Court reversed the lower court and found a violation of section 304 because "(t)he evil at which Congress has struck . . . is the use of corporate or union dues to influence the public at large to vote for a particular candidate or particular party."[133] Mr. Justice Frankfurter distinguished *CIO* and *UAW* on

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128. *Id.* at 875-76.
129. 193 F. Supp. 504 (Alaska 1961).
130. United States v. Warehouse Workers Union, 47 L.R.R.M. 2005, 2007 (E.D. Mo. 1960).
131. 352 U.S. 567 (1957).
132. 138 F. Supp. 53 (E.D. Mich. 1956).
133. 352 U.S. at 589.

the ground that in the former the union periodical was only distributed to union members or subscribers. Unwilling to consider the constitutionality of section 304, Mr. Justice Frankfurter, who wrote the majority opinion, remanded the case to the district court to let the jury decide:

> . . . was the broadcast paid for out of the general dues of the union membership or may the funds be fairly said to have been attained on a voluntary basis? Did the broadcast reach the public at large . . . ? Did it constitute active electioneering or simply state the record of particular candidates on economic issues? Did the union sponsor the broadcast with the intent to affect the results of the election . . . ?[134]

Surely Mr. Justice Frankfurter knew the answers to the questions he raised.[135]

U.A.W. seems to reverse the stand taken by the court of appeals in *Painters Union* where it was decided that distinguishing between a union paper and general newspaper was impractical. Television, like a general newspaper, is a public media and a distinction is required. *U.A.W.* can be distinguished from *Anchorage Central Labor Council* because the union in the latter sponsored a weekly television program which was only occasionally devoted to politics.

Mr. Justice Douglas, joined by Justices Black and Warren, dissented in *U.A.W.*[136] Mr. Justice Douglas found the size of the audience irrelevant under the First Amendment since political speech is protected and a majority of union members can decide to support a candidate. Although Mr. Justice Douglas conceded that legislation might be necessary to protect dissident members, this was insufficient reason to stop a union from participating in politics.[137]

Section 8(a)(3) of the Taft-Hartley Act legitimizes the contractually negotiated union shop[138] unless a state right-to-work law

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134. *Id.* at 592.

135. In *State ex rel. Corrigan v. Cleveland-Cliffs Iron Co.*, 169 Ohio 42, 157 N.E.2d 331 (1959), an Ohio corporation contributed $500 to The Citizens Committee for City and County Issues in support of nine bond issues, three tax levies, and an amendment to the Ohio Constitution to be presented to voters for approval. The Ohio Supreme Court could not find a violation of the Ohio law which prohibited contributions to political organizations because the Committee was not a political organization and the issues to be voted upon could not be considered partisan. In *U.A.W.* the union spent the funds with a bias favoring one political party over another.

136. 352 U.S. 567, 594 (1957). Mr. Justice Douglas said,

> Making a speech endorsing a candidate for office does not deserve . . . to be identified with antisocial conduct. Until today political speech has never been a crime. The making of a political speech up to now has always been one of the preferred rights protected by the First Amendment. It usually costs money to communicate an idea to a large audience. . . . It would make no difference under this construction of the Act whether the union spokesman made his address from the platform of a truck, used a sound truck in the streets, or bought time on radio or television. . . .

137. *Id.* at 596.

138. 29 U.S.C. § 158(a)(3) (1964).

forbids it.[139] State right-to-work laws are inapplicable to rail and air carriers[140] because the Railway Labor Act authorizes the union shop everywhere.[141] Why right-to-work laws are permitted where the Taft-Hartley controls while those protected by the Railway Labor Act can negotiate a union shop contract in every state is not clear. Where a right-to-work law controls, members disagreeing with the political activity of the union are presumably free to withdraw without paying dues or jeopardizing their jobs. Theory and reality are often in conflict and economic and social pressures militate against dissidents leaving a union even in a right-to-work state. A valid union shop agreement forces all members to pay dues which can be used to support political activity approved by majority vote.

In *Hanson*,[142] the Supreme Court upheld the constitutionality of that part of the Railway Labor Act permitting the union shop in every state. Mr. Justice Douglas, who wrote the majority opinion in *Hanson*, indicated that the union shop agreement did not violate the First or Fifth Amendment, but monetary exactions other than dues or initiation fees could not be extracted as a condition of continued employment. But the Supreme Court in *Hanson* did not consider the legal impact of a union shop agreement approved by a majority on a minority who objected to the spending of union funds for political purposes.

The Supreme Court dealt with political expenditures and the union shop approved by the Railway Labor Act in *Machinists Union v. Street*.[143] A member refused to pay dues partly used to support union political activity that he opposed and it was claimed that the union shop was unconstitutional. The Georgia Supreme Court, affirming the decision of the trial court, agreed because freedom of speech was suppressed and property (dues) was taken without due process of law.

There is substantial support for the notion that those benefiting from union effort should pay the costs, a position taken in support of the constitutionality of the union shop. The rationale is based on the supposition that majority vote controls in all walks of life and a minority must bow to majority rule.

Writing the leading opinion among five, Mr. Justice Brennan did not indicate what union expenditures were politically proper. Mr. Justice Brennan did hold that union dissidents can select and use a

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139. 29 U.S.C. § 164(b) (1964).
140. Sandsberry v. Machinists Union, 295 S.W.2d 412 (Texas 1956); Ry. Employees Dept. v. Hanson, 351 U.S. 225 (1961).
141. 45 U.S.C. § 152 (1964).
142. 351 U.S. at 231-38 (1956). *See also* Looper v. Georgia Southern and Florida Ry. Co., 99 S.E.2d 101 (Ga. 1957); Sandsberry v. Machinists Union, 295 S.W.2d 412 (Texas 1956); Hostetler v. Railroad Trainmen Union, 183 F. Supp. 281 (Md. 1960).
143. 367 U.S. 740 (1961).

portion of their dues to back the candidate of their choice.

In a concurring opinion, Mr. Justice Douglas, adding to the approach he took in *Hanson*, stated:

> It may be said that the election of a Franklin D. Roosevelt . . . might be the best possible way to serve the cause of collective bargaining. But even such a selective use of union funds for political purposes subordinates the individual's First Amendment rights to the views of the majority. . . . As long as they (the union) act to promote the cause which justified bringing the group together, the individual cannot withdraw his financial support merely because he disagrees with the group's strategy. . . . But since the funds here . . . are used for causes other than defraying the costs of collective bargaining [the expenditure is improper]. . . .[144]

In his dissenting opinion in *U.A.W.*, Mr. Justice Douglas suggested that Congress should find a way to protect the political dissident in a union. But in his concurring opinion in *Hanson*, Mr. Justice Douglas approved of the court-fashioned remedy, allowing the dissident to use a portion of his dues to back a candidate of his choice.

Mr. Justice Frankfurter disagreed because dissident union members failed to establish impairment of speech and a union can participate in politics to promote collective bargaining.[145] The heart of Mr. Justice Frankfurter's position is that majority rule determines the course of action of any organization and, evidently, he saw no reason to make an exception in the political sphere.[146] When Congress approved the union shop, Mr. Justice Frankfurter felt that:

> . . . it seems rather naive for a court to conclude . . . that the union expenditures were "not reasonably necessary to collective bargaining or to maintaining the existence and position of . . . defendants as effective bargaining agents." The notion that economic and political concerns are separable is pre-Victorian. . . . It is not true in life that political protection is irrelevant to, and insulated from, economic interests. . . .[147]

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144. *Id.* at 778-79.
145. *Id.* at 797.
146. *Id.* at 808-10. Mr. Justice Frankfurter said:
> It is commonplace of all organizations that a minority of a legally organized group may at times see an organization's funds used for promotion of ideas opposed by the minority. . . . On the largest scale, the Federal Government expends revenue . . . to propagandize ideas which many tax-payers oppose. Or . . . many state laws compel membership in the integrated bar as a prerequisite to practicing law, and the bar association uses its funds to urge legislation of which individual members often disapprove. . . . To come closer to the heart of the immediate matter, is the unions choice of when to picket or get out on strike unconstitutional? Picketing is still deemed a form of speech, but surely the union's decision to strike . . . is not an unconstitutional compulsion forced upon members who strongly oppose a strike. . . .

But in Lathrop v. Donohue, 367 U.S. 820 (1961), the Supreme Court ruled that opinion was reserved as to whether lawyers could be made to contribute to an integrated bar association which supported political activities contrary to their beliefs.

147. *Id.* at 814-15. For cases showing the difficulty of trying to separate economic and political rights, see Rosen v. Painters Union, 198 F. Supp. 46 (D.C.N.Y., 1961); Salzhandler v. Caputo, 316 F.2d 445 (2d Cir. 1963); NLRB v. Longshoremens Union, 332 F.2d 992, (4th Cir., 1964).

Mr. Justice Black dissented because of the First Amendment, finding the union shop proviso unconstitutional, an unwarranted suppression of the rights of individual members holding different political views than the majority.[148] Mr. Justice Black differs from Justices Douglas and Frankfurter by favoring individual rights in the political stream over group rights. Mr. Justice Black found the union shop a form of compulsory unionism even though Congress stamped it socially desirable.

Mr. Justice Black presented the majority opinion in *Bhd. R.R. Trainmen v. Virginia*,[149] permitting unions to provide legal services for members. Although the point was not raised, suppose an individual union member objected to free legal services for members. Presumably Mr. Justice Black would not be troubled if a single member objected to legal services, the position Mr. Justice Frankfurter took in *Street*. Mr. Justice Black agreed with the majority opinion written by Mr. Justice Douglas in *Hanson* which constitutionally approved of the union shop under the Railway Labor Act. Either Mr. Justice Black found the union shop unconstitutional in *Street* because of the pressure on dissidents to back a candidate for public office not of their choosing or he has reversed the stand he endorsed in *Hanson*. Justice Douglas sought to balance group and individual interest in the political sphere while Justice Black ignores group interest in complete favor of the individual.

In *Hostetler v. Railroad Trainmen Union*,[150] a framework was provided to amplify *Street* by placing the burden upon the dissident member to inform the union that he objects to the political expenditure. The Supreme Court in *Hostetler* decided:

1. A dissident member need not name the political cause or candidate he disapproves of—notifying the union that he objects to the political expenditure is sufficient.
2. A dissenter, except under special circumstances, is not excused from paying dues while objecting to the union politicking.
3. After being notified of the objection, the burden shifts to the union to show the percentage of the dissidents' dues that are to be set aside to support another candidate.

The Supreme Court in *Railway Clerks Union v. Allen*[151] endorsed the criterion established in *Hostetler* when dissidents were not required "to allege and prove each distinct union political expenditure . . . it is enough that he manifests his opposition to any political expenditures by the union. . . ."[152] Since the union, and not the dissi-

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148. *Id.* at 799-797.
149. 377 U.S. 1 (1964).
150. 287 F.2d 457 (4th Cir. 1961), *cert. den.*, 368 U.S. 955 (1962).
151. 373 U.S. 113 (1963).
152. *Id.* at 118-19.

dent, "possesses the facts and records from which the proportion of political to total union expenditures can reasonably be calculated, basic considerations of fairness compel that they, not the individual employees, bear the burden of proving such proportion. . . ."[153] An injunction to relieve dissidents of the obligation of paying dues was denied.

The most recent Supreme Court bouts with unions in the "political thicket" revolve about the compulsory aspects of a union shop. In *Street* and *Allen*, the Supreme Court did not consider politicking together with an illegal union security agreement, an agency or maintenance-of-membership agreement, or a collective bargaining agreement which called for a form of union security. The pressures toward group conformity are such that a union member with a different political viewpoint will seldom object to majority policy. External dissension is frowned upon in every organization, however democratic, although internal bickering is more acceptable. But the rationale expressed in *Street* and *Allen* seems inapplicable where a union shop agreement is not in effect. It is possible that *Street* and *Allen* would control where a form of union security other than the union shop is contracted for or an illegal union security agreement is negotiated.

Some Afterthoughts

The Federal Government is an amalgamation of economic and political interests trying to function as a political whole. The Supreme Court in recent years has shown greater concern for the individual than the group which to some extent conflicts with the concept of majority rule. To protect the individual, the State must legislatively and, more frequently, judicially tug at entrenched corporation and union interests. To preserve its power, the union and corporation push at the economic and political conglomeration described as the State. When one power structure seeks to promote an economic or political change, some association, union, or corporation (but rarely an individual) supports or fights the proposal. In terms of freedom for the masses, it is the association, seldom the individual, which assumes the leadership. The working man would be lost in the political shuffle without the union.

In an ideal democracy, citizens are interested and participate in the broad spectrum of politics. Today, many citizens refuse or are unable to participate in government. Further, the sheer weight of numbers prevents the most effective type of individual participation. The nonparticipating or dissident is part of the community and the concept of majority rule, sometimes called the common will, is essential to permit group or individual operation. Any other approach would mean chaos.

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153. *Id.* at 122.

Private groups sharing political, economic and social interests reconcile conflicting views by following majority rule, the same procedure followed by the legislative and judicial branches of government. Members are typically caŭght up in "bread and butter" unionism and seek to promote a variety of welfare programs. These goals, whether desirable or not from the public viewpoint, interest the union member. Many of these goals need political backing and unions try to present a united front as a display of strength and exhibition of need. To the extent that organized labor strives for unanimity, the vocally dissident member faces internal difficulty. The dissident must be protected, particularly since few have the stomach for fighting the ruling machine.

The current political and constitutional dilemma forces the judiciary to choose between two legitimate points of view—there is right in the group and individual view. Mr. Justice Black's philosophy puts him in the camp of the individual without overt concern for the union. Mr. Justice Frankfurter saw majority rule as the only means of union participation in politics, obligating dissenters to go along with the crowd. Mr. Justice Douglas becomes a middle-roader, a position rare for him, who concedes the need for majority control within the union while favoring the protection of the political dissenter.

The union is an urban power and relatively impotent in the hinterland. While disproportionate representation continues to favor the less populated area, union politicking cannot be as successful as some maintain. In fact, in rural areas union political involvement may handicap the party or candidate it supports. Based upon recent Supreme Court decisions[154] which will ultimately lead to increased political power for the large centers of population, it may be more imperative than before that political dissension within unions be adequately protected; in fact the framework provided in *Hostetler* and *Allen* may prove inadequate. The big city and union vote favors the Democratic Party and members with a Republican Party orientation need encouragement to preserve a two-party political system. The Republican Party, except in a few isolated incidents, grudgingly parts with its conservative traditions and its political potency will be further reduced when reapportionment is fully realized. The Republican Party must, eventually, adopt platforms more closely tuned to the needs of the urbanite. If the Republican and Democratic Party standard bearers pull closer together in their social and economic platforms (I discount campaign propaganda where the candidates, on paper, are much alike), then voting preferences, more than ever before, will depend upon party allegiance and less on differences in

154. Baker v. Carr, 369 U.S. 186 (1962); Reynolds v. Sims, 377 U.S. 533 (1964).

economic and social goals. The political party of the future must more truly reflect the thinking of the urbanite, whose views are currently reflected by union leaders; political dissension in unions will become more important when reapportionment becomes a reality. The 1960 federal elections show that labor contributed handsomely to the liberal Republicans bidding for seats in the Senate.[155]

Many blue collar workers are politically unsophisticated and disinterested. Furthermore, the current Madison Avenue approach to politics makes it difficult to determine what a candidate stands for. In a mass-democracy, the individual is often passive, convinced that he can do nothing to influence a change.[156] A union serves the public interest by providing members with voting information and by indicating preferences. Employers currently pushing greater employee involvement in politics are seeking converts from "heretical" political positions to fight union power.[157] There is some feeling that unions must become more, not less, politically active.[158]

The political power of unions in an urban environment is often exaggerated. In the 1960 federal elections, the Teamsters union contributed to the defeat of 40 members in the House of Representativs—only one lost.[159] In Iowa, some labor leaders are reported to be politically apathetic.[160] Top labor leaders frequently disagree about which candidate should be backed. Without a big issue, union attempts to gather political support is frequently wasted. In fact, prosperity robs the labor movement of the big issues which arouse the concern of members. Unions have succeeded in getting voters to the polls but its ability to elect a particular candidate is exaggerated. Some claim that encouraging the participation of blue collar workers in the voting process is undesirable because:

1. People not anxious to vote are satisfied with the *status quo*.
2. Uneducated workers are not equipped to make valid political judgments.[161]

But the turnout of a large vote at the very least makes the politician more responsive to public will and unions perform a public service by arousing interest in the election process. And too many underestimate the political savvy of the blue collar worker.

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155. Alexander, *Financing The 1960 Elections*, in STUDIES IN MONEY IN POLITICS 48 (Alexander ed. 1965).

156. LIPSET, TROW AND COLEMAN, UNION DEMOCRACY 11 (1956).

157. *The Case of the Part-Time Politician*, 40 HARV. BUS. REV. 14, 24 (January, 1962); ENGLER, THE POLITICS OF OIL, 368; *Report of the Special Committee to Investigate Compaign Expenditures*, Campaign Expenditures Committee, Union Cal. No. 804, H.R. REP. No. 2517, at 52, 82nd Cong., 2nd Sess., (1953).

158. Bartlett, *How Rank and File Leaders View Union Political Action*, 17 LAB. L.J. 483 (1966).

159. Alexander, *supra* note 155, at 73.

160. Bruner, *Labor Should Get Out of Politics*, HARPER'S Aug. 1, 1958, at 21, 23-26.

161. LIPSET, POLITICAL MAN, THE SOCIAL BASIS OF POLITICS, 228.

A realistic appraisal of the political scene since 1935 shows a shift from a corporation and farmer dominated society to a sharing of political power between corporation, farmer, union and other special interest associations.[162] The sharing of power means political battles fought on more near-equal terms. The growth of union prestige has led to public concern with the political freedom of the union member, a concern, surprisingly, seldom displayed for individuals in other associations. For example, a lawyer or doctor belonging to a bar or medical association abides by a majority rule (if that) and individual rights are ignored. Curiously, the local and not the national union leader calls most of the political shots, while in the corporation and other associations top leaders call the tune. The wide diffusion of opinion and power of local leaders means that there should be less political fear of unions than of corporations. The rank-and-file is better protected when local leaders publicize their political views —if a majority does not share the same views, local leaders can be defeated.[163] All-in-all, the individual is better protected in the union than in other groups and it is in many ways strange that the Supreme Court creates a special set of rules for unions. If the political power of labor and management is well distributed, the legislation and Supreme Court decisions controlling the political participation of unions and corporations is in need of change.

Most union leaders are democratically elected and the unsatisfactory can be removed from office.[164] If unions remain active in politics, members must be informed and discussion encouraged in order to protect internal democracy. Discussion and review of position may be the key democratic element rather than a public concern with union support for a particular candidate or party. A lack of internal political discussion can usually be attributed to the apathy of members rather than an absence of union democracy. There is, in fact, a positive correlation between member participation in union affairs and interest in public politics.[165]

Section 501(a) of the Landrum-Griffin Act[166] tags the union leader with fiduciary responsibility and, possibly, a failure to follow the political mandate of the majority could be controlled when union money is spent.[167] In addition, section 9(e) of the Taft-Hartley Act

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162. Odegrad, *Political Parties and Group Pressures*, 179 THE ANNALS 68, 75 (1935).

163. Most union members probably share the political views of their leaders. *See* KORNHAUSER, SHEPPARD & MAYER, WHEN LABOR VOTES 196; Bartlett, *How Rank and File Leaders View Union Political Action*, 17 LAB. L.J. 484.

164. COOK, UNION DEMOCRACY: PRACTICE AND IDEAL, 9-10 (1963).

165. *Id.* at 154.

166. 29 U.S.C. § 501 (1964).

167. In Pfoh v. Whitney, 62 N.E.2d 744 (Ohio Ct. of Appeals, 1945), a past president of the union was expelled who supported Wilkie for the presidency of the United States after the membership voted to support Roosevelt. This case, however, did not arise under the Landrum-Griffin Act.

permits the decertification of a union by majority vote.[168] Furthermore, under doctrine enunciated in *Hughes Tool Co.*[169] and *Syres*,[170] a union unfairly representing a minority of its members can lose the right of representation. A union bargaining for employees and controlling the arbitration procedure owes a duty, per *Hughes* and *Syres*, to act fairly. Presumably a union which unfairly engages in politics could be decertified under *Hughes* and *Syres*. According to *Hughes* and *Syres*, the unhappiness or injury to a few does not render the union subject to legal process as long as it engages in fair play. Yet, the union in the political realm must follow a standard of absolute equality rather than basic fairness. This, of course, raises the basic question of whether the rationale expressed in *Hughes* and *Syres* is applicable to protect a political dissenter. Collective bargaining and day-to-day representation is geared to fairness while union participation in politics is a matter of individual choice, a position endorsed by the Supreme Court.

Unions control the initiation fees and dues paid by members.[171] Members can approve an increase in fees and dues to provide a political kitty, an increase legally difficult to set aside unless the purpose was clearly established. On the other hand, union members cannot be forced to pay a special assessment when a union shop contract is in effect.[172] Since union membership is required only when a union shop contract is in effect, presumably the courts will not question fees or dues raised to support union politicking. As already indicated, there are pressures other than the union shop which keep members within the union fold.

Trying to contain political expenditures is an almost hopeless task. Ignoring the constitutional dilemma surrounding section 304, corporations and/or unions use the following means to pour money into the political stream:

1. Increasing salaries, bonuses or padding the expense accounts of employees who then use the additional funds for political purposes.
2. Paying for "goodwill" advertisements in political journals or "public interest" advertisements in newspapers.
3. Soliciting contributions through newsletters to shareholders.

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168. 29 U.S.C. § 159(e) (1964).
169. 147 N.L.R.B. No. 166 (1964).
170. 223 F.2d 739 (5th Cir. 1955); *rev. per curiam*, 350 U.S. 892 (1955).
171. Kovarsky, *Dues, Initiation fees and Union Security*, LAB. L.J. 867 (1959).
172. Int. Harvester Co., 95 N.L.R.B. 730 (1951); NLRB v. Die and Tool Makers, 231 F.2d 298 (7th Cir. 1956), *cert. den.* 352 U.S. 833 (1956).
173. King, *Corporate Political Spending and the First Amendment*, 23 U. PITT. L. REV. 847, 870 (1962).

4. "Educating" employees and members.[173] Drawing a line between political support and political education is an impossible task.
5. Writing off contributions as an operating cost.[174]
6. Regulating by state corporate or union politicking. Section 304 applies only to an election for federal office and a contribution, for example, made in a gubernatorial race could free state funds for use in a federal election.[175]
7. Lending corporate or union officials to candidates or parties. For example, former Vice-President Nixon shopped for a law firm which would allow ample time for his political interests.
8. Supporting election campaigns by deficit financing. Section 304 seems to bar contributions during the primary and election period but subsequent expenditure is unmentioned. Section 304 speaks of a "contribution or expenditure in connection with any election to any political office . . . primary . . . or political convention or caucus . . . ." Deficit financing takes place only after the election is over. For example, the Democratic Party was in debt for $3,820,000 during the 1960 elections, a sum which was later repaid.[176] To date, the courts have not tested the applicability of section 304 to deficit financing.

Unions are becoming increasingly important as stockholders and, in some instances, unions constitute an important source of investment capital. The public has something to fear if two important structures in our society, corporations and unions, join hands because they share similar financial interests. And mutual interests make strange bedfellows. Although the corporation is not permitted to engage in political activity, its leaders may and it is unrealistic to assume the corporation interest is not a motivating factor. If a union is an important shareholder, corporation executives will avoid political participation when viewpoints clash. The full participation of labor and management in politics safeguards the public interest simply because of the increased probability that differences will be aired. With one side impotent or with management and union political amalgamation, the public faces danger.

Unions, it seems to me, cannot be constitutionally stopped from criticizing candidates or parties; in fact, section 304 prohibits positive support and not criticism. If criticism cannot and is not contained, it is strange, at least to some extent, that positive promotion is pro-

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174. *Hearings on H.R. 804 & H.R. 1483 Before the Subcommittee of the Committee on Labor*, 78th Cong., 1st Sess., at 71 (1943).
175. Raugh, *Legality of Union Political Expenditures*, 34 S. CAL. L. REV. 152, 153 (1961).
176. Alexander, *supra* note 155, at 79.

hibited. Effective criticism can be as costly as the positive support of a candidate or party. It seems doubtful that an individual union member could claim the return of a part of his dues by disagreeing with union criticism directed at one party or candidate. In reality, the active support of one candidate is an open criticism of his opponent.

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