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Legislation and judicial decisions controlling labor union political activities in Great Britain and the United States

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LEGISLATION AND JUDICIAL DECISIONS
CONTROLLING LABOR UNION POLITICAL ACTIVITIES
IN GREAT BRITAIN AND THE UNITED STATES

A Thesis
Presented to
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by
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INTRODUCTION

The increasing economic and political power of labor unions¹ has raised highly significant questions. Should labor unions be confined to their customary economic activities, or should the function of labor unions also include political activities? Should this decision be left to the judgment of the union membership as a matter of internal labor union policy, or does it involve an issue of public policy to be determined by the electorate through legislation? Further, even if it is decided that political activity is properly within the scope of labor union functions, or that political action is an issue to be determined by the unions themselves, the question still arises as to what form that action should take, what regulations of that activity are desirable for the protection of the union member, or in the public interest? Does the importance of the group in our present day social structure and political system cloak labor unions with a multiple-purpose character which must include freedom of discussion in the electoral and legislative processes? Can there be any attempt consistent with the principles of our democracy or the realities of American politics to prohibit such political action?

¹ I have used the words "labor union" in this thesis to include any organization of workers, irrespective of its structure, which has as its major purpose and activity collective bargaining with employers or management representatives concerning grievances, wages, hours, conditions of work, and related issues.

These are vexing issues created by organized labor's decision to take a more active part in politics and about which there has been fundamental disagreement.²

In this country, labor union political activity is a much-discussed but little-analyzed "problem" which has only recently brought forth much attention from Congress. The principal purpose of this thesis is to analyze the successes or failures, the legal and practical consequences of attempted limitations or prohibitions, general and specific, on the political activities of labor unions. I hope to show some of the real reasons for these results, why these attempts have largely failed. This has been done from a study of the historical background in Great Britain and the United States, the legislative process, the explicit and implicit policy considerations of the legislative intention, and the judicial interpretation, together with their political effects. Thus, I have not confined my interest to the statutes and decisions alone and, where pertinent, I have also discussed electoral campaigns, including the political activities and objectives of the British and American labor unions. A review of corrupt practices legislation is also pertinent to an understanding of the development of these limitations, and leads logically into our study of such attempted controls on unions.

² Louise Overacker, Presidential Campaign Funds, pp. 66-69.

Included in this material is corrupt practices legislation and court rulings relating to or affecting in some way the political activities of labor unions. I have attempted to be as complete as possible on this aspect without detailing every single state. To my knowledge there is no other work which has concentrated entirely on legislation and judicial decisions of this type, and I believe that this thesis may be a contribution to the field of political regulation of campaign activities, especially attempts to limit or prohibit organized labor's political activities. The subject matter of this thesis has been divided into three chapters, each being self-contained and representing a study capable of standing alone as independent research on a particular topic. Therefore, it could be said that this paper is actually three separate theses brought together because of their special relationship which brings a unification of theme. I have made the thesis topical and have combined the British experience with that of the United States for purposes of comparison.

The arrangement of chapters has been to take up the British and American background first as to the development of labor union political activities. Then, in the second chapter, follows an analysis of general legislation, commonly known as the corrupt practices statutes, such as the Hatch Acts, and judicial decisions controlling over-all

political activities in the two countries, including that of labor unions. The third chapter is a more detailed analysis of specific legislation and judicial decisions controlling labor union political activities, especially the House and Senate debate and court cases on Section 304. Also included in this chapter are related legislation and decisions. The evaluative conclusions of the last chapter summarize the legislative, judicial, and historical study of the background, policy, law, and consequences of attempted limitations on the political activities of labor unions, particularly Section 304. Under recommendations, I take the liberty of proceeding slightly beyond the immediate scope of this study to offer the opinion that the solution to the problems of labor union political action still lies in the future and that, in addition to other suggestions, the answer reached in Great Britain may be recommended as the most satisfactory policy for the United States.

From the viewpoint of policy are the stated and assumed justifications for the various attempts by law to prohibit or limit the political activities of labor unions. The Parliamentary Debates are basic information for an adequate understanding of the policy considerations involved. In the United States, the **Senate** debate on Section 304, a transcript of which appears in the Appendix, is "must" reading for ascertaining the legislative policy. The policy

theme running through the debates, both in Great Britain and the United States, is that prohibitions such as Section 304 are needed to protect the union minority from the union majority, to secure equality of treatment for labor unions and business corporations, and to guard against the dangers of corruption and undue influence. As opposed to these arguments, it is urged that the minority can be protected in other ways than by penalizing the majority, that labor unions and business corporations are not comparable, and that democracy demands full participation by all associations of citizens in the electoral and legislative process, including labor unions. There should be an attempt to meet alleged labor union abuses as such, rather than to resort to prohibitions.

The study of the law evaluates the current status, such as their constitutionality, of the statutes in Great Britain and in the United States. The law is intimately connected with policy in that the determination of the proper statutory interpretation is often dependent upon the legislative history, and the legislative debate is frequently relied upon to support judicial decisions. The law in Great Britain has gone from the 1909-1910 Osborne judgment's absolute prohibition of political activities by organized labor to the "contracting-out"³ law of 1913, to the

³ "Contracting-out" is the procedure whereby those union members who do not desire to contribute to the politi-

"contracting-in"⁴ statute of 1927, and back again in 1946 to the 1913 provisions. With the passage in 1943 of the War Labor Disputes Act (the Smith-Connally Act) and its prohibition on the political contributions of labor unions came the first national legislation in the United States aimed specifically at limiting the political activities of labor unions. A year after Great Britain finally discarded such attempts, the Congress of the United States enacted the Labor-Management Relations Act of 1947, the Taft-Hartley Act, Section 304 of which expanded the ban on contributions by prohibiting labor union political expenditures.

Both the latest and most outstanding example of statutory attempts to limit the political activities of labor unions, the clear intention of Section 304, as revealed by the question-and-answer Senate debate, was a design to totally forbid unions from every kind of political activity, a blanket prohibition on all the political activities of labor unions, including in its ban non-commercial labor union newspapers and radio broadcasts. Among their other aims, the authors of the Taft-Hartley Act wanted to confine labor union activity to pure and simple collective bargaining fund of the union so indicate in writing, and this relieves them of the political assessment.

⁴ "Contracting-in" reverses the procedure by requiring those union members who do desire to contribute to the political fund to so indicate in writing, and all those who do not so indicate are relieved of the political assessment.

ing. They intended that Section 304 would be an effective prohibition against labor union political action. Thus, Section 304 is of major significance in its public policy implications for the present and future of democratic electoral and legislative processes. It will be observed that so sweeping a ban would seem to conflict with the guarantees of political rights contained in the First Amendment⁵ to the Constitution of the United States. But the Supreme Court has not so ruled.⁶ By rejecting a careful reading of the Congressional Record, it has chosen by non-enforcement to ignore the express legislative intent. Other court decisions, and recent judicial pronouncements, also indicate that if interpreted as intended by its authors, Section 304 would be unconstitutional.

On the basis of the developments and the cases following the C.I.O. ruling, however, under any interpretation of the law, Section 304 is completely ineffective because any serious attempt to enforce it would be in violation of the First Amendment. This lack of legal enforceability leads us to the next point of study. The practical

⁵ "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

⁶ United States v. Congress of Industrial Organizations, 335 U.S. 106, 68 S.Ct. 1349, 92 L.Ed. 1849 (1948).

consequences of attempted limitations or prohibitions on labor union political activities are examined in regard to whether subsequent events have fulfilled the expectations of the authors of such attempts. In this connection, the earlier background of the British experience serves as an interesting introductory insight into the situation in the United States, and, inasmuch as similar issues were involved, should be of value to our study. The legislative history and the practical results in the two countries permit of certain parallels, as in the striking similarity in the origins, provisions, and consequences of the 1927 Act in Great Britain, and the 1947 Act in the United States. It will be found that efforts to strike at the economic and political sources of union strength, both in Great Britain and the United States, have not only failed to fulfill the expectations of their authors, but that such attempted limitations have had quite the opposite effect by spurring labor to increase its political activities.

The sources used in the preparation of this research paper may be classified into three groups. The first includes judicial decisions, statutes, official documents, legislative debates, congressional investigations and hearings, committee reports, books, law review articles, various pamphlets, newspapers, and general information.⁷ Sec-

⁷ The Bibliography contains references to all the available material in this first group, and there is at

ond, I have drawn upon the knowledge obtained while secur-
ing degrees in economics, law,⁸ and government. Third, the
writer has been aided by his personal activity, experiences,
conversations, and observations in many features of local
politics, including election in 1951 to a four-year term on
the Waltham School Committee. I have been guided by an in-
tensive interest and concern in what I regard to be the im-
portant and inherently stimulating practical and legal iss-
ues arising from electoral conduct in general, labor union
political activities in particular, and the attempts to deal
with these questions through "corrupt practices" statutes,
including the judicial decisions, and, finally, the politi-
cal consequences. I have sought to make the opportunity of
exploring this subject enjoyable to the reader without mini-
mizing its seriousness or at the sacrifice of an accurate
report. I hope that my efforts constitute a useful examina-
tion of this aspect of legislation, that I have written an
acceptable evaluation contributing to the understanding and
appreciation of a fascinating but as yet unsettled problem.⁹

least one citation in the text of the thesis itself for
every source listed in the Bibliography.

⁸ Additionally, on October 19, 1954, the writer was
admitted to practice as an Attorney-at-Law of the Massachu-
setts Bar.

⁹ In delineating the issues and in organizing the
material, I wish to acknowledge the helpful advice which I
received from Prof. John L. Fletcher Jr. and Prof. Everett
J. Burt Jr.

Frederick W. Parkhurst Jr.

March, 1955

I

THE DEVELOPMENT OF LABOR UNION POLITICAL ACTIVITIES

Chapter Introduction

The topical arrangement of this thesis makes it necessary, I believe, to provide a framework of reference as to the correct order of events. For example, to compare the types of control over labor union political activities in Great Britain and the United States tends to reverse the chronological experience of the two countries. That is, Great Britain at first prohibited, then regulated; the United States first regulated, then attempted to prohibit. To combine these two countries under the types of control, as has been done in this thesis, may lead to confusion or be misleading unless the reader is acquainted with the natural sequence. Therefore, this preliminary chapter summarizes the over-all development of labor union political activities in Great Britain and the United States. Further, there is no other way under a topical arrangement to include some of the historical background. Of course, details of particular statutes, and so forth, will not be taken up under this chapter but will be discussed in the various topical sections of the thesis.

Great Britain

Rise of the Labor Party

Seventy-five years ago there was no indication that the workers of Great Britain would ever reject the old parties and create a party of their own. The growth of the idea of a separate Labor Party was at first slow. In 1892 Kier Hardie sat alone as the first independent worker to be elected to the House of Commons. He helped to organize the Independent Labor Party, a group of vigorous young socialists whose goal was to interest the labor unions in political action. In 1900 their efforts saw success in the appointment of a Labor Representation Committee by the Trade Union Congress. From that time the power of British labor in politics has steadily grown until today it is the major political force of Britain, the Labor Party polling more popular votes than any other party.

The Taff Vale case. It has been said¹ that the growth of the Labor Party was influenced more than any other single factor by the Taff Vale case. Contrary to previous assumptions based on the fact that the unions were unincorporated associations, Taff Vale Ry v. Amalgamated Society of Railway Servants, (1901) A.C. 426,

¹ V. Henry Rothschild 2nd, Government Regulation of Trade Unions In Great Britain: II, p. 1346.

at pp. 430, 431, 444-445, rev'g (1901) 1 K.B. 170 (C.A.), imposed features of compulsory incorporation upon trade unions. It was held that the 1871 registration statute had constituted unions an entity which the law would recognize as a defendant in an action at law or in an equity proceeding for an injunction. Labor unions were now to be liable to law suits by employers. "The decision was a smashing blow to trade union activity... In a very short time unions had paid ²£200,000 in litigation."

The trade union answer to the Taff Vale case was to increase its political activities. In the election of 1906, the year that the Labor Party was officially formed, labor's political strength was demonstrated in the defeat of the Conservatives, and by the election of 54 working-class members to Parliament. The new Labor Party startled the country by electing 29 of its candidates to Parliament. Moreover, of the 376 Liberals elected, a majority were ³completely pledged to support pro-union legislation. As a result the Trade Disputes Act of 1906 abolished the conspiracy doctrine in labor disputes, legalized peaceful picketing, and freed unions from law actions for breach of contract. Labor unions could not be sued for damages for any reason, and were not subject to injunction. Experience

² Loc.cit.

³ Ibid, pp. 1346-1347.

has demonstrated a generally statesmanlike attitude on the part of British labor which has prevented the abuse of this immunity.⁴

The Trade Disputes Act of 1906 was a demonstration of the successful effectiveness of labor's political activity, both in its own independent Labor Party and in supporting pro-labor Liberal candidates. The Conservatives had been defeated on the legislative front, and now turned their attention to instituting judicial proceedings designed to cut off the sources of Labor Party funds. This attempt to impede further development of the Labor Party was financed by opponents of the Labor Party who induced a trade union member to bring an action at law.⁵ This was done in the famous case of Osborne v. Amalgamated Society of Railway Servants, 1 Law Re.Ch.Div. 163, 1 British Ruling Cases 56 (1909), affirmed A.C. 87 (1910). The case held that it was illegal for trade unions to give financial support to a political party or candidates.

The Osborne judgment was followed by an outburst of strikes, coupled with a general demand for a national strike. Although many within the unions advocated the abandonment of political action in favor of the general strike, the Secretary of the Labor Party, Ramsay MacDonald,

⁴ Ibid, pp. 1351-1353.

⁵ Ibid, p. 1353.

persuaded the unions to continue political action in disregard of the Osborne judgment.⁶ Thus, despite the judgment, 42 Members of Parliament received financial aid and were elected in the two general elections of 1910, retaining the Labor Party parliamentary representation.⁷ Where the Labor Party had no candidates of its own, it had supported the Liberals in order to secure repeal of the Osborne judgment. The Liberal candidates had, for the most part, pledged themselves to legislation making it legal for the unions to engage in political action.⁸

"Contracting-out" Labor's reaction to the Osborne judgment had caused many to feel it evident that the decision would have to be modified. In 1910 the first act of the Liberal Prime Minister Asquith was to obtain an appropriation for payment to members of the House of Commons for a salary of £400 a year together with traveling expenses.⁹ The measure was acceptable to the trade unions as a partial remedy only, since pro-labor candidates still had no effective legal means for raising a campaign fund. Thus, the Trade Union Act of 1913 legalized political expenditures by the unions with the provision that any

6 Ibid, p. 1360.

7 Ibid; Paul Blanchard, An Outline of the British Labor Movement, p. 22.

8 G.D.H. Cole, A History of the Labour Party From 1914, p. 2.

9 Rothschild, op.cit., p. 1360.

trade union member who objected should be allowed to sign a form "contracting-out" of payment of the political contribution.¹⁰ Although not amounting to a total repeal of the Osborne judgment, the 1913 law greatly aided the new Labor Party, opening the way to its future expansion.

The First World War. The First World War, 1914-1918, brought with it a sharp break in the history of the Labor Party. Up to 1914 the Labor Party had been only a small fourth party in a Parliament still dominated by Liberals, Conservatives, and Irish Nationalists. Prior to 1914, the Labor Party neither stood, nor professed to stand, for Socialism. There were, of course, Socialists in its ranks and Socialist Societies affiliated to it playing a large part in its work. In fact, most of the Labor Party leaders, and a majority of its members, were Socialists. But there were still quite a number who neither were nor called themselves Socialists, and behind these men were the trade unions who were not ready to insist that their candidates must profess Socialism.¹¹ This was so mainly because the labor leaders did not wish to risk a break with the Liberals who supported them.¹²

When, in the summer of 1914, war with Germany

¹⁰ G.D.H. Cole, op.cit., p. 2; Florence Peterson, Survey of Labor Economics, p. 647.

¹¹ Cole, op.cit., p. 2-3.

¹² Ibid, p. 6.

became a certainty, leaders of all parties entered into a truce designed to shelve controversial matters and to stop partisan activities of every sort for as long as the conflict should last. A coalition plan was adopted to give ministerial posts to Liberals, Conservatives, and Laborites. However, some of the Liberals formed an Independent opposition and in the early summer of 1918 the Labor Party decided to repudiate its agreement of four years previously and to begin working independently toward the goal of a Labor government.¹³

New Labor Party Constitution. A new Labor Party Constitution was approved in 1918. Its essential purpose was to reconstruct and transform the Labor Party from a federation able to act only through its affiliated societies, trade unions, and socialist organizations, into a nationally organized party with a local party of its own in every parliamentary constituency.¹⁴ The new Labor Party Constitution not only opened the doors wide to individual members but strengthened trade union domination over the Labor Party by means of the Socialist Societies losing their separate position as a group. This change was obviously proposed in order to get the

¹³ Frederick Austin Ogg, European Governments And Politics, pp. 274-275.

¹⁴ Cole, op.cit., p. 44.

support of the big trade unions. Thus, not only did the Labor Party have Socialist leadership, energy, and spirit, but the support, funds, and votes of the trade unions. The Labor Party now had the extra money which it needed but the new constitution made it clear that "workers by brain" were no less welcome than "workers by hand".

It was during the First World War years that the Labor Party adopted officially the Socialist policy which it has maintained from that time until now. It was during the First World War also that the Labor Party took over the Daily Herald as the official party publication. From 1918 onwards the Labor Party steadily built up its local organization. By 1924 there were only three constituencies in Great Britain in which no sort of Local Labor Party was in existence.¹⁶ In 1918, the election results gave a majority to the wartime coalition of Conservatives and Liberals, the Labor Party (with about 70 M.P.'s) and Independent Liberals in opposition.¹⁷ In 1922, the Conservatives left the coalition and were elected on a platform of "tranquility and stability" in the face of growing economic distress.¹⁸

15 Ibid, pp. 48-49.

16 Ibid, pp. 140, 151.

17 Blanchard, op.cit., p. 22.

18 Ogg, op.cit., p. 278.

Responsibility without power. In the 1923 election the Labor Party increased its seats from 144 to 191. The Conservatives secured 258 seats and the Liberals 158. The Liberal Party supported the Laborites, giving Ramsay MacDonald the Prime Ministership. Measures for unemployment relief were defeated, however, due to lack of Liberal support, as were other such measures. Thus, the Labor Party had responsibility without power. However, in the field of foreign affairs, MacDonald had more success. The Zinoviev Letter was used by the Conservatives in the 1924 election as an attempt to paint the Labor Party with the Red brush. Labor seats fell from 191 in 1923 to 151 in 1924. The largest casualties in the Labor ranks were from the non-trade union representatives. The Liberals fell from 158 to 42 and the Conservatives rose from 258 to 414.¹⁹ The 1924 result confirmed the Conservatives and the Labor Party as the principal opponents of the future.

"Contracting-in" A general strike in 1926 failed. Its immediate aftermath was the Trade Disputes and Trade Unions Act of 1927--a vindictive law enacted by the Conservatives for the purpose not only of curbing strike action and trade union bargaining power, but also of crippling the Labor Party by hitting at the main source

¹⁹ Cole, op.cit., pp. 152-153, 161, 163, 170, 192.

of its funds. The Act drastically restricted the political activities of the trade unions. Under the Trade Union Act of 1913, which followed upon the Osborne judgment, trade unions had been authorized to engage in political activities, within certain limitations. The "contracting-out" procedure was now reversed and the unions' political funds could be raised only from members who positively "contracted-in" by signing a form expressing their desire to pay. The purpose of course was to make carelessness, lukewarmness, and inertia act against contributing, instead of in its favor, and thus to reduce the funds at the disposal of the unions for helping the Labor Party or for financing their own candidates in either parliamentary or local elections. ²⁰

Political consequences. The effect of this change in the law was considerable. The Labor Party's affiliated membership fell sharply from 3,388,000 in 1926 to 2,077,000 two years later. It speaks well for the efficiency of the Labor Party's organization and for the loyalty of the trade unions to the Labor Party that the affiliated membership did not fall much further. The passing of the 1927 Act aroused widespread resentment. It was felt that, even if there were a case for legislating against general strikes, it was a piece of quite

²⁰ Ibid, pp. 190, 193, 195; Peterson, op.cit., p. 647.

unjustifiable sharp practice to use the occasion for a manoeuvre designed to put the Labor Party in a financial²¹ quandary.

Actually, between 1927 and 1929 the Labor Party lost over a quarter of its total income from affiliation fees; and the Local Labor Parties also suffered heavy losses. The unions had to restrict their financing of candidates. The Labor Party was working under very serious financial handicaps deliberately imposed on it by its political enemies. As against this, the resentment felt at this Act of 1927 tended to increase trade union support for the Labor Party, within the limits set upon trade union political action. The Conservatives in effect over-reached themselves: so far from smashing the Labor Party, they compelled it to strengthen itself²² by building up its individual membership.

The general election of 1929 was the first to be²³ fought on the basis of full voting rights for women.

21 Cole, op.cit., p. 195; Overacker, op.cit., p. 53.

22 Cole, op.cit., p. 195. It is interesting to note the remarkable similarity, in their origins, provisions, and consequences, between the British Trade Disputes and Trade Unions Act of 1927 and, 20 years later, the Labor-Management Act (Taft-Hartley Act) of 1947 in the United States. This comparison will be discussed in connection with the development of labor union political activity in the United States.

23 Cole, op.cit., p. 217.

As the result of their inability to cope with the economic situation, the Conservatives fell from 400 to 269. The Liberals gained 12 seats over 1924. Labor rose from the depths to achieve the greatest triumph in its history to that time. It garnered 289 seats, only 19 short of a majority.²⁴ The Labor government which was formed with Liberal backing never attempted to apply a Socialist policy or even to deal with social reform and unemployment, because of the vacillating attitude of MacDonald who hoped to hold office by not offending the Liberals. MacDonald formed a National Party coalition which, in the general election of 1931, resulted in a drop of Labor Party seats to 46 plus 6 other pro-Labor candidates. The Liberals rose from 59 to 72 and the Conservatives had 471 seats.²⁵ The general election of 1935 gave the Labor Party 154 seats. The Liberals got 54 and the Conservatives 387.

Labor victory. A coalition was formed in 1940 to fight the war against Hitler and the next election did not come until 1945, when Labor won 399 seats, the Conservatives 202, the Liberals 25, and 14 from all other parties. This gave a clear majority over all other parties of 158 for Labor. The program on which the Labor Party won called for full employment at good wages, social services and

²⁴ Ogg, op.cit., p. 281.

²⁵ Cole, op.cit., p. 262.

insurance including a National Health Service, taxation on the upper income groups, control of rents and prices, planned government investments and erection of factories in depressed areas, public ownership of the Bank of England, increased industrial efficiency, public control of monopolies, priorities in scarce materials, extensive housing programs, aid to agriculture, and socialization of fuel, power, inland transport, iron and steel.²⁶ One of the first acts of the Labor government was to repeal the hated Act of 1927 and replace it with the Trade Disputes and Trade Unions Act of 1946 which re-instated the 1913 provisions.

Parliamentary elections held in October, 1951, returned 321 Conservatives, 294 Labor Party M.P.'s, 6 Liberals, and 3 others. The vote was 13,948,985 for Labor, 12,660,071 for the Conservatives, 1,830,551 for Liberals of all kinds, 21,640 for Communists, and 177,329 for all others.²⁷ A heavy concentration of Labor support in industrial areas with a fairly even Conservative vote throughout the entire nation accounts for the slight Conservative margin in seats, even though the Labor Party received more popular votes in the total vote cast. Thus, the Labor Party still remains the majority party in Great Britain.

²⁶ Ibid, pp. 310-311, 424-425, 428.

²⁷ 1953 Information Please Almanac, p. 470.

Policies of the Labor Party

Strike and ballot. The British labor movement, which has twice as many labor union members in proportion to population as there are in the United States, has two great weapons. These weapons are the strike and the ballot. In the early days of the labor movement, it was natural that the ballot should be of little importance in accomplishing the aims of the unions. What the workers wanted then was a living wage, shorter hours, and better working conditions. The strike was the popular method of accomplishing these ends. But as the movement grew in power, the desires broadened. They wanted a transformation of the capitalist system into a co-operative system. How should this change be accomplished? By the strike or by the ballot? In general, the leaders of British labor would reply, "By both."²⁸

The result has been that the British labor movement has developed its political activity side by side with its industrial activity. The history of the British labor movement shows that the pendulum of popularity swings back and forth from industrial action to political action, depending upon the economic situation of the country. In the period of frantic commercial expansion immediately

²⁸ Blanchard, op.cit., pp. 49, 64.

after the First World War, industrial action was universally popular. Strikes were uniformly successful because the employers were willing to pay higher wages to keep their employees at work so as to secure a competitive share of the profits to be had. In the great economic depression which later engulfed Great Britain and the Western World, however, strikes fell into disfavor and the pendulum swung²⁹ toward political action for a Labor Parliament.

Co-operative Party. Hostility to co-operatives before and during the First World War, in the form of taxation which the co-operatives considered unfair, led the whole co-operative movement into politics. They have a political party of their own called the Co-operative Party. Almost all its aims are included in the program of the Labor Party and it has no real independence of its own, being affiliated with or absorbed by the Labor Party in every election contest.³⁰ During strikes, the Co-operative stores extend credit to union members and often loan money to unions. In the railway strike of 1919 the Co-operative Bank advanced over \$1,450,000 to the National Union of Railwaymen. In this nine-day strike elaborate preparations were made to feed the workers' families through the co-operative factories, farm, and transport service in

29 Ibid, pp. 65-66.

30 Ibid, pp. 123-124.

case the strike continued to prevent the shipment of food on the railways. In the event of the spread of this strike, the transport workers agreed not to strike in the co-operative industries.³¹

Labor union leadership. The process by which a British labor leader rises from the ranks is not unlike the process by which an American worker rises into power, with one exception. He takes an active part in the campaign of the Labor Party. He educates himself, by means of labor pamphlets, etc., and passes on his information. As an officer in the union his term of service is likely to be longer than in American unions. His position in the community is somewhat higher because in Britain unions are more universally recognized and respected. Today unions are led by responsible executives of great administrative ability who compare favorably with the industrial leaders of any nation. They do not need to turn elsewhere for counsel; they are quite self-sufficient except in statistical matters which are handled by the union's research experts.³²

Labor Party leadership. In the political field the national labor leaders also play a leading part. Most of the leaders of the Labor Party are union leaders, and

31 Ibid, p. 125.

32 Ibid, pp. 131-133.

the speeches made at the Trade Union Congress are often practically the same speeches made by the same men who dominate the Labor Party conferences. The chief difference in leadership is that the intellectuals play a much larger part in the Labor Party. But although the balance of power in the Parliamentary Labor Party rests with the trade union officials, particularly the miners, there has been no fundamental clash of interests between the trade union leaders and the intellectuals. Teachers, authors, journalists, clergymen, doctors, lawyers, economic experts, professors and college graduates of many types are strong in Local Labor Parties and in the Labor Party delegation in Parliament. Labor seats in the House of Commons also include representatives of the Co-operative Party which, as has been observed, for all practical purposes acts as a branch of the Labor Party.³³

Difference in leadership. The reason for this difference in leadership in the labor unions and the Labor Party is obvious. The problems of politics are often far removed from the workshop in which the union leader has had his training, but they are quite familiar to the trained student of economics and politics from the university. The moment that labor entered politics, the union leaders found that they could not cope single handed

33 Ibid, pp. 27-28, 133-134.

with the strategy of the Conservative political experts. The Labor Party lacked able parliamentarians to combat the Conservative leaders. So they turned to those intellectuals who had, indeed, forced them into politics, to the socialists and reformers who shared their aims and had won their confidence.³⁴

Constitutional socialism. Only since the Labor Party appeared upon the scene have party creeds in Great Britain really differed in fundamentals. Conservatives and Liberals always took much the same view of the social order and its implications, differing mainly upon secondary questions of emphasis and methods. Labor injected a body of thought and a program of objectives which gave the voter a chance to say whether he wanted to perpetuate a more or less reformed capitalist system, or a new and basically different social order in its place, constitutional socialism.³⁵

Significance for America

The discerning reader will inquire not only as to the relevancy of the British experience with attempted controls over labor union political activities, which this writer asserts, but also as to the significance for America

34 Ibid, pp. 27, 133-134.

35 Ogg, op.cit., pp. 295-296.

in the rise of the British Labor Party. Therefore, before proceeding to a discussion of the development of labor union political activities in the United States, we will quickly examine whether it is probable, or possible, that American labor will take the same road as British labor. The labor movements of the two countries have much in common. There were in 1947 over 7,500,000 members in unions affiliated to the British Trade Union Congress, and the total membership for all unions was 8,714,000.³⁶ There are in the American Federation of Labor, the Congress of Industrial Organizations, the Railroad Brotherhoods, and independent or non-affiliated unions well over 15,000,000 members out of a population three times the size.

In their structure and operations the unions of Great Britain and the United States are similar. Both include craft and industrial unions. Collective bargaining, the provision of union welfare benefits for sickness, unemployment and old age, and the union struggle to win legal status are all comparable in the two English-speaking countries. Yet in Great Britain the unions form the base of the Labor Party with its 5,000,000 dues-paying members,³⁷ which in 1945 became the party in control of the British

36 Mark Starr, Labour Politics in U.S.A., p. 6.

37 Loc.cit.

government; while in the United States the unions face restrictive legislation in the form of the Taft-Hartley Act which has a provision outlawing labor union political action. What are the differences which have brought about this contrast?

Difference in unity. The obvious differences between Great Britain and the United States are many. The British labor movement has a unity which the American labor movement cannot obtain. It has the unity of race and geography. Practically all the workers are British, born and bred in Great Britain, with a common education and conception of life. They speak the same language, read the same newspapers, and attend the same schools. There is little opportunity for employers to play one national group against the other. There are no racial jealousies to divide the unions into quarreling factions. ³⁸

The United States increased its population from 20 million in 1847 to over 140 million in 1947, largely the result of the rapid mass immigration at the turn of the century. In round figures there are in the United States 14,000,000 Negroes, 11,000,000 of Slavic descent, 5,000,000 Jews, 5,000,000 of Italian descent, 2,000,000 Latin Americans, 370,000 American Indians, and 300,000 Orientals. "The differences between the English, Scottish, Welch,

38 Blanchard, op.cit., p. 19.

Irish, and Jewish elements in British Labour are insignificant in comparison."³⁹

Difference in area. The smallness of Great Britain is also an important factor in maintaining the unity of the labor movement. Employers cannot run away from the unions because there is no place to go. All the mines and factories are within a few hours' journey of each other. The contagion of a strike or organizing campaign may spread rapidly over the whole of Great Britain. The industrial conditions which are won in one district are usually applicable to the other districts.⁴⁰

The United States is a great continental area of 3,000,000 square miles. The differences between Maine and California, between the farmers of Wisconsin and the cattle ranchers of Texas, are greater than those of widely-separated peoples of other countries. One might as well expect a uniform cultural and political pattern throughout the continent of Europe. And while the territorial area of the United States is nearly 55 times greater than that of England, its population of many varying racial stocks is only about three times as big. This means large areas are sparsely populated and the task of political organization is thereby made more difficult.

39 Starr, op.cit., p. 7.

40 Blanchard, Ibid.

The task is relatively easier in the East, and particularly in New York, because one-tenth of the total population of the United States lives within 100 miles of the Empire State Building.⁴¹

Difference in development. Then, too, the United States is still in the process of settling down owing to the relative newness of its development. The fact that in 1776 the thirteen colonies on the Eastern shore rebelled against the British Monarchy and insisted on the right to run their own affairs is only part of the American story. It took many years before the interland of the continent was conquered. The first transcontinental railroad line was finished only in 1859. It needed the mass production of Ford automobiles as an incentive to public road-building, to break up the vast land mass and to penetrate the last frontiers of rural America.⁴² These factors, sometimes under-estimated, have led to sectional and other differences which destroy any easily understood pattern of political behavior. Yet it should be noted that these differences are being undermined by powerful business interests, standardized methods of production and transport and the mass media of communication, the newspaper, radio, television, and motion picture.

41 Starr, Ibid.

42 Loc.cit.

Difference in role of farmers. Another difference is the great role played by the farmers in the politics of the United States. Their importance cannot be overrated. The agrarian states are over-represented politically relative to their population, in the Senate and the Electoral College. These farmers have strong organizations such as the Farm Bureau Federation, the Farmers' Educational and Cooperative Union, the National Farm Labor Union (affiliated with the A.F.L.), and the Food, Tobacco, Agricultural, and Allied Workers Union of America which was organized by the C.I.O. for workers on truck farms and in canneries. "Unlike its British counterpart, organized labour in the United States cannot succeed politically without an alliance with the farmers and farm workers in the agricultural States."⁴³

Difference in psychology. Another powerful force working against a Labor Party being established in the United States is the strong feeling, even among laborers, that there is freedom and equal opportunity to succeed and get to the top if one only has enough energy and luck. The average American citizen still thinks in the psychology of the "gold rush" days. He feels no need for special protection against the upper classes. There is no class struggle concept. But, in Great Britain, on the contrary,

43 Ibid, p. 8.

there is a distinct psychology of working class interests. The concentration of wealth and power in the hands of a few compelled labor to seek to correct this central wrong of the social order.

Difference in conditions. Thus, the answer to why there is no American political party of organized workers and progressives as in Great Britain is rooted in the history and in the basic economic condition of the American working class. In the early United States there was never any landed nobility and feudal caste system, or any established church. Class consciousness has never been well developed among the mass of workers, although there were periods of bitter class struggle in labor union history and large-scale attempts to smash the labor unions by alternating the cruelty of strong-arm thugs with the kindness of company union welfare work. In Britain the hangover of caste distinctions from the feudal hierarchy welded labor into a group consciousness which is absent in the United States.

One of the fundamental reasons why the American labor movement has not taken on the task of forming a political party aimed at changing the social order is the relatively high standards of living enjoyed by trade unionists in the United States. This high productivity has been due to the natural riches of the United States,

plus the high degree of mechanization and standardization of American industry. But whatever the cause, the majority of workers are reasonably content with the existing social order, seeking only its improvement. Thus, American labor functions against a political background which is very different from that obtaining in Great Britain where the political parties are largely instruments of definite social classes, specific economic groups having their own political expressions. In the United States, therefore, a political party does not stand rigidly by fixed principles but freely seeks votes all over the varied social-economic-political spectrum.

Difference in political systems. Further, the American government itself is continuously under the influence of sectional pressure groups and that, too, complicates the building up of a general class or community point of view. As if the natural and social divergencies were not enough, there are the complications created by a written Constitution and the rivalries among 48 semi-independent states, each jealous of its own rights and each with its own Constitution, statute law, courts, legislative bodies, and political rulers.

In addition, there is the peculiarly American concentration of interest and political activity on the election of a president. In Great Britain, under the

parliamentary system, it was possible for labor to build strength gradually in the Parliament, becoming a balance of power until victory could be achieved. In the United States, however, a political party without hope of capturing the presidency does not attract electoral support. This seems to be an overwhelming obstacle in the path of a Labor Party which would seek a gradual building up of congressional strength.

These differences in unity, in area, in development, in the role of farmers, in psychology, in conditions, and in political systems combine to cause most observers to discount the possibility, let alone the probability, of a Labor Party for the United States. It seems more probable that the American labor unions will seek to exert their political influence within the existing parties, especially within the Democratic Party. But this discussion and any speculation as to the future of labor's role in American politics will be deferred until we have taken up the development of labor union political activities in the United States.

Summary

Concluding this British background, it may be observed that the British labor movement is the product of 150 years of growth. Many of the issues which are today

vital in the American labor movement, such as national labor unity, were disposed of many years ago in Great Britain. When America was still predominantly an agricultural country Great Britain had passed through the first and worst stages of the Industrial Revolution. Step by step, workers won the right to organize, to strike, to political power in the state, to great improvements in working conditions, and a measure of joint control over economic life. Each of these forward steps taken by the British workers has been bitterly fought by the employing classes and has been conceded only when labor demonstrated its superior economic or political power.

In summary, then, it can be pointed out that the British labor unions succeeded in repealing the Osborne judgment in favor of "contracting-out" only to find that the increased economic and political strength of the labor movement led to the vindictive 1927 provisions for "contracting-in." Although this was at first a serious handicap to labor's political action, it also so antagonized and spurred the workers that the Labor Party finally swept into undisputed power and repealed the obnoxious anti-union political restrictions, going back again to "contracting-out." Thus in Great Britain today

44 Blanchard, op.cit., p. 17.

the labor unions are an accepted part of the national economic, political, and social life to an extent as yet unheard of in the United States.

United States

Early problems

Conspiracy. During the late years of the eighteenth century and most of the nineteenth century, in the absence of statute law concerning union activities, court cases were based on the common law. Following the early English precedents,⁴⁵ the law courts in the United States at first declared unions to be illegal conspiracies. Between 1806 and 1815 unions of shoemakers were prosecuted in six court cases, and in four of these cases the unions were found guilty under the English common law doctrine of conspiracy. Between 1821 and 1842 there were twelve additional prosecutions of unions for conspiracy, five of which resulted in convictions.⁴⁶ The famous decision of the Massachusetts Supreme Judicial Court in 1842 by Chief Justice Shaw helped to restrict future conspiracy cases. Commonwealth v. Hunt, 4 Metc. 111, 45 Mass. 111, held that a union was indictable as a conspiracy only if the goal of the concerted

⁴⁵ Edwin Emil Witte, The Government In Labor Disputes, pp. 313-314.

⁴⁶ Richard A. Lester, Labor And Industrial Relations, pp. 298-299.

action or the means used to attain it were unlawful, and that a strike was legal if conducted in a peaceful manner. This was the beginning of a slow change to a limited recognition of strikes and picketing.

Injunctions. From the Massachusetts decision in 1842 to 1880, a total of twenty-one additional conspiracy cases were reported. Between 1869 and 1884, six states enacted laws to nullify the conspiracy doctrine, but these laws were not effective. In Pennsylvania alone, for example, following passage of a series of laws in 1869, 1872, and 1876, legalizing unions, at least fourteen conspiracy cases occurred in the 1880's, and it was in the 1880's that the first court injunctions were issued in labor disputes. Thereafter, criminal prosecutions of unions under the conspiracy doctrine were practically replaced by the labor injunction.⁴⁷ An injunction contrasts advantageously with a law suit in that it can be obtained quickly and forestalls action by the union. It is a judicial command issued under the contempt power to prevent injuries so that damage suits are avoided.

For many years, employers applied for and obtained from friendly judges injunctions which made it dangerous for a union to strike. The number of injunctions increased rapidly each decade from the 1880's until the passage of

⁴⁷ Ibid, p. 299.

the Norris-LaGuardia Anti-Injunction Act in 1932 and similar state acts limiting court issuance of such restraining orders in labor disputes. Because most injunctions are issued by courts whose decisions are not noted in any series of official or unofficial reports, the exact number of injunctions in labor disputes is not ascertainable. Edwin Emil Witte, who has made a study of injunctions in labor disputes, estimates that the unreported cases exceed the reported cases in the ratio of five to one.⁴⁸ He has definite references to 508 cases in federal courts in which injunctions were issued prior to May 1, 1931, at the request of employers, and 1,364 cases in all state courts except South Carolina, with the great industrial states, particularly New York, Massachusetts, and Illinois, predominating. Of the grand total of 1845 labor injunctions reported, 28 were issued in the 1880's, 122 in the 1890's, 328 from 1900 to 1909, 446 from 1910 to 1919, and 921 between January 1, 1920 and May 1, 1930.⁴⁹

Political consequences. The direct result of this experience with labor injunctions was a strong union reaction against the courts, believing that the judges had allied themselves with the employers in a

48 Witte, op.cit., p. 84.

49 Loc.cit.

partisan struggle. Labor leaders and workingmen generally bitterly denounced injunctions as unfair, prejudiced, and as a menace to labor. Certainly the anti-union injunction was a large factor in weakening the position of unions and very effective in hampering labor's self-betterment activities. Union leaders would often defy the injunction and face jail. Objecting to what was considered the abuse of injunctions in industrial disputes, organized labor sought, through political activity, both to obtain legislation curbing the power of the courts to issue injunctions in labor cases, and to influence the election or appointment of judges.⁵⁰

The principal attraction drawing labor into politics, therefore, was its resentment against the courts. Labor's foremost legislative demand was to secure relief from the injunction, and it was the consistent effort of the unions to elect anti-injunction legislators. Naturally, this was countered by the employers' associations. The National Association of Manufacturers, the United States Chamber of Commerce, and other organizations representing the employer point of view actively attempted to prevent anti-injunction and similar legislation. These employer groups often employed coarse methods "of the most pernicious kind"⁵¹ in

⁵⁰ Lester, op.cit., p. 300; Witte, op.cit., pp. 122-123.

⁵¹ Witte, op.cit., p. 124.

lobbying for their own interests, and were equally concerned with labor in the selection of judges.

For many years, organized labor in many industrial communities fought the re-election of injunction judges, and endorsed judicial candidates whom it considered friendly. These campaigns have grown less frequent but, nevertheless, one or more still occur somewhere every year.⁵² Illustrative of the situation which prevails in many industrial communities are the advertisements of judicial candidates with which the labor papers are filled before every judicial election. The unions of Minneapolis ran the following endorsement as an advertisement in their labor paper in 1914:⁵³

John R. Coan is a candidate for municipal judge. As a lawyer of ability he has fought many battles for labor. His sympathies are with the men who toil. With Coan acting as judge and jury in our municipal court there would be one law for the employer and the same law for the employee. If Coan happened to make a mistake it would probably be in our favor. Remember John R. Coan election day and you will have done your part in securing justice for yourself and organized labor.

At times, the election of judges in industrial centers has developed into a regular show-down fight between labor and employer interests, centering upon the attitude of the candidates on injunctions in labor disputes. Of course, both sides insist that all that is desired is

52 Ibid, p. 125.

53 Ibid, p. 126.

the election of "fair" judges. Somewhat different tactics have been found necessary to influence the federal judiciary, which is appointed. The most noteworthy instance of such activities was the successful fight which organized labor made in 1930 against the confirmation of Judge John T. Parker as a justice of the United States Supreme Court. The principal cause for the rejection of Judge Parker was his concurrence in a decision sustaining an injunction premised upon a yellow-dog contract. Similar efforts have been made by organized employers', as when they fought President Wilson's Supreme Court nominee, Louis D. Brandeis, who, however, unlike Parker's defeat, was confirmed. Also, at least four federal judges who have resigned while under investigation to determine whether they should be impeached, were charged as one of the points in the attempted impeachment that they were "injunction judges."⁵⁴

Naturally, the judicial reaction to the bitter criticisms to which they have been subjected and to the efforts which unions and employer associations have made to secure "friendly" judges, have differed with the individual judge. Some have thereby been made blind partisans, incapable thereafter of impartiality. Others have been made afraid of injunction cases, long delaying

54 Ibid, pp. 127-128.

their findings and sometimes reaching conclusions clearly opposite to the decisions of the highest court of the jurisdiction. However, an authority on injunction cases believes that, considering the limited understanding of industrial problems of the average judge, the majority of judges decide labor cases fairly and impartially. Most judges are anxious to follow strictly the decisions of the supreme courts. Trial reverses on appeal are usually due to the newness of the issue, the vagueness of this entire field of the law, and not because of a deliberate disregard of the rights of either side, corruption or prejudice.⁵⁵

It still remains true, however, that labor regards the usual equity procedure unfair when followed in labor cases, and the most important aspect of the reaction of labor injunctions upon the courts is their weakened prestige. Workingmen consider the interference of courts in labor disputes as an act of partisanship, that labor is being singled out as is no other group or class, that injunctions deny workers their constitutional rights, that the courts favor the rich and powerful, and that the injunction is for the express purpose of destroying their labor unions to the end that their demands for better working conditions may be defeated. Edwin Emil Witte says that although, of all branches of government, the courts

55 Ibid, pp. 129-130.

have the strongest popular support, there is abundant evidence that the issuance of injunctions in labor disputes has done more to destroy the confidence of workingmen in the reputation of our judiciary for impartiality than any other development of recent
56
decades.

Employers' associations charge that dissatisfaction with the courts among the rank and file has been created artificially by labor leaders. Mr. Witte comments that this may seem an adequate explanation to some, but does not make the distrust of the courts any less serious. Whether labor leaders have just grievances against labor injunctions, as our authority believes, or whether they are merely raising a smoke screen to hide their own misdeeds is not nearly so significant as the fact that their views are shared by the great mass of the organized workingmen, and to a very considerable extent also by the unorganized. Distrust of the courts by workingmen is a
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fact. Thus, injunctions in labor disputes have been an important factor from the beginning of our nation's history in keeping alive and stimulating this feeling, and in fostering labor union agitation for ameliorating legislation.

56 Ibid, p. 131.

57 Ibid, p. 132.

Labor parties. We have seen, therefore, that the workers early used their labor union movement for political action. Forty years before England saw the rise of political groups interested solely in labor representation, the Philadelphia Workingmen's Party was born in May, 1828. The first labor party in the modern world, in the fall election of that year it gained the balance of power in the city council.⁵⁸ In 1829 was established the New York City Labor Party. The first objective of the Philadelphia and New York labor parties was to sponsor the reversal of the conspiracy doctrine under which the courts had held unions to be unlawful organizations. Both the Philadelphia and New York City parties also sponsored the abolition of chartered monopolies, particularly in the field of banking; the establishment of free public education for all, passage of a mechanics' lien law to secure the payment of workers' wages; abolition of compulsory militia service, which the rich could avoid by paying a fine but which the poor were forced to perform; abolition of imprisonment for debt; equal taxation; a less expensive law system; all public officials to be elected by the people, and reduction of high bonds for public officials so that more workingmen could seek office.⁵⁹

⁵⁸ Harry A. Millis and Royal E. Montgomery, The Economics of Labor, vol. III, Organized Labor, pp 29-30.

⁵⁹ Lloyd G. Reynolds, Labor Economics and Labor Relations, pp. 129-130.

The Philadelphia example is best known, but in 61 other cities workers organized independent political action during 1828-1834 and published about 50 weekly labor papers in that period, indicating considerable propagandist activity. New York, Albany, and Boston were outstanding examples. In a couple of years the unions had organized functioning parties in 15 states. Their candidates asked for the 10-hour day, free public education, restrictions on child labor and similar reforms.⁶⁰ Although for a time the various labor parties were fairly important political forces, their immediate strength was soon dissipated. The labor parties were led by inexperienced men whose idealism exceeded their ability as practical politicians. Sensing the popular appeal of many of the labor reforms, the older parties adopted into their own platforms and espoused as their own the labor party proposals, such as mechanics' lien laws, that appealed most to the wage earners. By 1831 the Philadelphia party had become virtually moribund, and shortly thereafter in New York and elsewhere the political labor forces passed into history.⁶¹

Years of confusion. The trade unions, even though supporting with varying degrees of enthusiasm the independ-

60 Loc.cit.

61 Harry A. Millis and Royal E. Montgomery, Ibid.

ent party movement, now centered their demands on labor gains through economic methods. But relegation of active politics to the background did not repudiate legislative lobbying, such as the campaign for suppression of the competition from prison-made goods. Between 1837 and 1852 labor's attention was occupied by a utopian search for a better economic order, of humanitarian aspirations for "equality" and "citizenship" arising out of depression and personal hardships. W. H. Sylvis strongly urged that workers sponsor an independent party, but George H. Evans, whose agitation for free land led to the Homestead Act of 1862, advocated a non-partisan policy.⁶²

From 1852 through 1860, the workers abandoned their quest for the correct "ism" and concentrated on the economic front. The Civil War, and following, saw a re-emergence of political panaceas. Also arising out of this period were both the reform-minded Knights of Labor and the strict trade unions, forerunners of the craft-conscious American Federation of Labor. Certainly indecision as to the political strategy for organized labor was the order of the day. But by 1890, the argument was settled, "after seventy-five years of oscillation between...job control and uplift of the masses," the workers had chosen, not to deny a common labor cause, but

62 Ibid, pp. 29-75.

to assert that the best instrument to promote labor
63
interests was the craft union.

"Non-Partisan" Politics

Gompers' policy. When Samuel Gompers came to the fore and successfully built up the American Federation of Labor in the 1880's, he told union members to stay clear of partisanship, but to "reward your friends and punish your enemies." While trying to avoid party politics, the A.F.L. found it necessary to protect the interests of the workers in state and federal legislation. In 1895 the A.F.L. had a committee stationed in Washington during the session of Congress, in 1900 futilely sought legislation against the labor dispute injunction, and the convention of 1902 instructed the Legislative Committee to prepare labor bills, especially on oriental immigration, government by injunction, the eight-hour work day, and child labor. The bills were to be submitted to the state federations, which were to support only those candidates endorsing these labor bills. But the influence of the National Association of Manufacturers was strong enough to nullify labor's efforts, and in 1904 the N.A.M. contributed to the defeat
64
of pro-labor legislators.

63 Loc.cit.

64 John R. Commons and Associates, History of Labor In The United States, 1896-1932, vol. IV, Labor Movements, by Selig Perlman and Philip Taft, pp. 150-152.

Labor's Bill of Grievances. On March 24, 1906, the A.F.L. Executive Council and representatives of 118 international unions met in Washington and drew up a statement of legislative demands styled "Labor's Bill of Grievances" which called for an adequate eight-hour law, elimination of the competition of convict labor and from the increasing stream of immigration, Chinese exclusion, a law forbidding the towing of more than one undermanned and unequipped vessel, exemption from the application of the provisions of the anti-trust laws and from injunctions, the appointment of members to the House Committee on Labor who are sympathetic to labor, and restoration to government employees of the right of petition. This petition was laid before President Theodore Roosevelt and both branches of Congress with the statement that

Labor brings these--its grievances--to your attention because you are the representatives responsible for legislation and for failure of legislation...Labor now appeals to you, and we trust it may not be in vain. But if perchance you may not heed us, we shall appeal to the conscience and the support of our fellow-citizens.

Campaign of 1906. Congress ignored "Labor's Bill of Grievances" and, therefore, fulfilling its threat, the A.F.L. Executive Council decided to enter the congressional campaign of 1906, and of later years, to help bring

65 Ibid, pp. 152-153.

66 Howard R. Penniman, Sait's American Parties And Elections, p. 139.

about the defeat of its enemies. Although it was the policy of the A.F.L. to support friends and punish enemies, this was seldom done effectively without co-ordinated activity. The elections of 1906 therefore marked a real change in that the Executive Council now urged central bodies and local unions to elect delegates to conferences or conventions to formulate plans to "stand by our friends and administer a stinging rebuke to men or parties who are either indifferent, negligent or hostile" to labor's demands. More important was the instruction that wherever both parties ignored labor, to "secure the election of intelligent, honest, earnest trade unionists, with unblemished, paid-up union cards⁶⁷ in their possession" as straight labor candidates.

A Labor Representation Committee made up of Samuel Gompers, Frank Morrison, and James O'Connell, was elected to direct the campaign, and an appeal was made for funds to elect legislators favorable to labor regardless of party. The committee was to scrutinize the attitude of all candidates for nomination on all issues that affect labor and instruct local campaign committees to have trade unionists take part in the primaries of both parties and in the general election. The task of the local committee is to inform the public on the labor issues in

⁶⁷ Ibid, p. 139; John R. Commons and Associates, op.cit., p. 153.

the campaign, to obtain the support of farmers and other groups for the A.F.L.-approved candidates, and to collect funds. During the campaign statements are issued and speeches made from time to time in behalf of or in⁶⁸ opposition to one or another candidate.

Labor put its first efforts into Maine to defeat Congressman Littlefield who was on the payroll of the National Association of Manufacturers. Although the Republicans spent money lavishly on behalf of Littlefield and rushed half a dozen of their leading spellbinders to salvage his election, Gompers and a large number of other union speakers had enough effect to cut Littlefield's margin from 5449 to 1362. Labor carried on its political activities in other districts and reduced the pluralities of its chief opponents. Spending \$8225.94 during the campaign, the A.F.L. elected six trade unionists to⁶⁹ Congress.

Campaign of 1908. Having once become involved in politics, the A.F.L. found it impossible to keep clear of partisanship. In 1908 A.F.L. President Gompers submitted the demands of labor to the national conventions of the major parties. Being rejected by the Republicans and accepted by the Democrats, Gompers asked labor support

68 John R. Commons and Associates, Ibid; Penniman, op.cit., pp. 139-140.

69 John R. Commons and Associates, op.cit., pp. 153-154.

for the better party platform as a matter not of political partisanship but of principle. A test of strength between the A.F.L. and the National Association of Manufacturers occurred in Wisconsin in 1908. Congressman John J. Jenkins, as chairman of the Judiciary Committee to which all bills pertaining to injunctions were referred, had been very helpful to the N.A.M. The victory went to labor and to its ally Senator Robert M. LaFollette Sr. Also in 1908, ten trade union members were elected to the House, and the A.F.L. also helped to reduce the Republican majority in Congress.

Campaign of 1910. Following the 1908 election, the A.F.L. sought the enactment of an anti-injunction bill. This failing, the A.F.L. Executive Council led by Gompers appeared before both the Democratic and Republican Resolution Committees to request their endorsement of the following planks for the party platforms: recognition of the right of labor to organize; prohibition by law of the issuance of injunctions in labor disputes, when such injunction would not apply if no labor dispute existed, and in cases where there already existed a remedy through the ordinary processes of law; trial by jury in contempt cases when not committed in the presence of the court; a pledge to extend the eight-hour day to all public work,

70 Penniman, op.cit., pp. 139-140; John R. Commons and Associates, op.cit., pp. 156-158.

whether the laborers were employed directly or by contractors; an employers' liability law; an amendment to the United States Constitution granting woman suffrage; and the creation of a department of labor, and a bureau of mines.⁷¹

As in 1908, the Republicans rejected all of the demands of organized labor whereas the Democratic Party incorporated all of these demands in their platform. In the campaign of 1910, the A.F.L. succeeded in electing fifteen members of trade unions to Congress, including eleven Democrats, three Republicans, and one Socialist. William B. Wilson, former secretary-treasurer of the United Mine Workers, was appointed chairman of the House Labor Committee. At the approach of the 1912 election, the A.F.L. again submitted its proposals to the leading political parties. Again, the Republicans rebuffed the A.F.L. and again the Democrats accepted labor's program.⁷²

Campaign of 1912. The campaign of 1912, resulting in the election of President Woodrow Wilson and a Democratic Congress, was hailed as a great victory for labor. The National Association of Manufacturers had lost most of its influence on Congress and immediately labor's views found acceptance in the successful opposition to the

71 John R. Commons and Associates, op.cit., p. 157.

72 Ibid, pp. 158-159.

so-called "scientific management" methods for government arsenals. Labor's opposition to these methods was based on pride in craftsmanship, the principle of seniority and group relationships rather than only on personal efficiency and individualism, the fear of speed-ups and unemployment. In 1912 a Special House Committee to investigate these methods reported favorably to the union's stand. Labor's influence was also evident in the authorization by Congress of the United States Commission on Industrial Relations to investigate labor unrest which reported that trade unionism should be fostered as the paramount⁷³ remedy for the industrial ills of the country.

Anti-Trust revisions. Although a number of its affiliated organizations from time to time have sponsored political parties and occasionally have gone so far as to advocate a separate labor party, it should be remembered that the A.F.L.'s general policy of rewarding friends and punishing enemies did not as a rule extend to a formal endorsement of presidential candidates. But there have been a few occasions when the A.F.L. has broken this policy. As has been mentioned, Samuel Gompers himself actively participated in the Democratic Party campaign in 1908 after he was repulsed by the Republicans in his efforts to obtain relief from the courts' use of injunctions

73 Ibid, pp. 158-159, 164.

in labor disputes under the Sherman Anti-Trust Act. This Act, passed in 1890, was applied to labor organizations and some of the most important cases in this country under the federal anti-trust laws have been prosecutions against unions for being combinations in restraint of interstate
74
commerce.

Probably the decision of the United States Supreme Court in the case of Loewe v. Lawler, 208 U.S. 274, 28 S.Ct. 301 (1908), is the most celebrated example giving
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rise to the great union alarm over damage suits. The union was sued by a Danbury hat manufacturer on alleged conspiracy to prevent the manufacturer from selling his products in interstate commerce. The hatters union had instituted a nation-wide boycott against this manufacturer's hats in support of the strike at Danbury. Inasmuch as there was no interference with the transportation of the hats, the union felt it had not violated the Sherman Anti-Trust Act. But in 1908 the union was found guilty, in 1912 a jury awarded a verdict of \$250,000, and in 1915 the
76
Supreme Court sustained the award of damages. The consternation that these cases caused in labor circles led to a campaign by organized labor to obtain relief from the

74 Lester, op.cit., p. 301.

75 For other decisions in this case, see 148 Fed. 924 (1907); 187 Fed. 552 (1911); 223 U.S. 721 (1912); 209 Fed. 72 (1913); 235 U.S. 522, 35 S.Ct. 170 (1915).

76 Loewe v. Lawler, 235 U.S. 522, 35 S.Ct. 170 (1915).

Sherman Act.

The Clayton Act of 1914 and nine state laws patterned after it were designed to remedy abuses in the issuance of injunctions in labor cases.⁷⁷ The Clayton Act, declaring that the labor of a human being is not a commodity or article of commerce, specified that labor organizations were not to be construed as illegal combinations or conspiracies in restraint of trade under federal anti-trust laws. It also limited the effectiveness of injunctions in labor disputes by prohibiting certain activities from being enjoined. But, although these laws were thought to have excluded unions from the anti-trust laws, in three cases in the 20's the United States Supreme Court upheld continued application of the federal anti-trust laws to labor disputes. The Supreme Court construed the Clayton Act narrowly, restricting its benefits to those immediately involved in the dispute. Thus, in Duplex Printing Press Company v. Deering, 254 U.S. 443 (1921), secondary boycotts were forbidden.

The Loewe v. Lawler case has often been regarded as a parallel to the English decision of Taff Vale Ry v. Amalgamated Society of Railway Servants, (1901) A.D. 426,⁷⁸ in which it was ruled that a labor union could be sued for

⁷⁷ John R. Commons and Associates, op.cit., pp. 164-165.

⁷⁸ Witte, op.cit., p. 134.

damages caused by its officers and agents. This decision was overruled by the British Trades' Disputes Act in 1906. In the Danbury case the union was sued through its individual members and not against the union as an entity. But in United Mine Workers v. Coronado Coal Co., 259 U.S. 344, 42 S.Ct. 570 (1922), the Supreme Court held that a labor union could be sued as an entity, and in United Mine Workers v. Coronado Coal Co., 268 U.S. 295, 45 S.Ct. 551 (1925), later upheld an appeal that facts warranted a finding of guilt. Thus, subsequent court interpretation of these acts, which had been thought to relieve labor of injunction abuses, robbed them of any real effectiveness.

Farmer-labor parties. Plagued by court injunctions in labor disputes which cost the unions hundreds of thousands of dollars in damages and sent union leaders to jail, the A.F.L. felt compelled to maintain an increased level of political activity in seeking to reverse these decisions. ⁷⁹ In the states, labor enjoyed some success through outstanding co-operation with farmers in the Nonpartisan League. This political organization was founded in 1915 in North Dakota by a group of socialists, political independents, farmers, the Agricultural Workers' Union of the Industrial Workers of the World (I.W.W.), and the United Mine Workers of America. In Minnesota the

⁷⁹ John R. Commons and Associates, op.cit., pp. 154-156.

Nonpartisan League was endorsed by the Minnesota State Federation of Labor in 1917, and nominated many pro-labor candidates in the 1918 Republican primary. A farmer-labor-independent ticket in Minnesota became the second party, polling almost half the votes for governor, electing fifteen members of the state senate and thirty-⁸⁰six lower house representatives.

As a result, on the advice of their president, the delegates to the convention of the Minnesota State Federation of Labor met on July 19, 1919, as a political conference and organized the Working People's Nonpartisan political League. Its revenue was to come from a per capita tax of twenty-five cents a year from each supporting union, and the members of the governing committee were forbidden to belong to any other political party. This eagerness of the Minnesota State Federation of Labor to set up a political mechanism was a manifestation of a widespread tendency in the latter part of 1918. The Chicago Federation of Labor organized the Labor Party of Cook County on January 4, 1919, which was endorsed by the Illinois State Federation of Labor. Later in the year at a conference of delegates of local unions was launched the Labor Party⁸¹ of Illinois.

80 Ibid, pp. 525-526.

81 Ibid, p. 527.

Following an overwhelming vote of the state locals on the question of a labor party, 400 delegates of the Indiana State Federation of Labor organized the Indiana Labor Party. State labor parties were also organized in Michigan, New York, Utah, and Pennsylvania. In August, 1919, the Chicago and Illinois State Federations of Labor and the two labor parties of their creation, inviting fraternal delegates from the Nonpartisan League and the Committee of 48, a group of middle class liberals, convoked a conference to start a national labor party. District 12 of the United Mine Workers in Illinois also endorsed independent political action, and a national conference of over 1000 in Chicago on November 22, 1919, produced the American Labor Party.⁸²

The national nominating convention of the American Labor Party met in Chicago on July 11, 1920. Of the 500 labor delegates, two-thirds were from Illinois and Indiana. Of the three principal leaders, one was an old trade union socialist, and one was the president of the Illinois Federation of Labor. Although there were hardly any representatives of farmer organizations present, the party was renamed the Farmer-Labor Party to gain farmer votes. A national campaign was made and the ticket polled about 300,000 votes, running considerably ahead of the Democrats

82 Ibid, pp. 527-528.

but second to the Republicans in Washington and South Dakota. After the 1920 election, the trend towards independent political action continued strong in the labor movement, especially in the city centrals and state federations. The 1921 convention of the United Mine Workers endorsed the idea of a national Farmer-Labor Party. ⁸³

In 1922 the Nonpartisan League of Minnesota decided to unite the strength which the farmer-labor political movement had in two separate parties by launching a third party, and the 1922 election was the first major victory of a straight third party ticket since the days of Populism. The Farmer-Labor Party elected a United States Senator, a governor, secured control of the state senate, greatly increased its representation in the lower house, and elected a second United States Senator in 1923. The Farmer-Labor Party held a convention in 1922 which instructed its officers to take steps toward a national Farmer-Labor Party. Accordingly, invitations went out to labor, farm, and progressive organizations to hold a joint political conference in Chicago. However, the communists set out to "capture" the new party by packing the convention with delegates from every conceivable communist-controlled group. Finding themselves outvoted, the genuine Farmer-Labor Party delegates ⁸⁴ withdrew, leaving the communists with an empty victory.

83 Ibid, pp. 528-529.

84 Ibid, pp. 529-530.

Campaign of 1924. The united front in the Middle West between labor and the farmers which resulted in victories for the Populist, Farmer-Labor, and Progressive parties had not been joined by the international unions, although, as we have seen, a number of A.F.L. state federations had identified themselves with the Farmer-Labor Party successes in a number of state and local elections. Other unions had made contributions to the Socialist Party. But in February of 1922 delegates from fifty of the more politically conscious of the international unions formed the Conference for Progressive Political Action. The railway unions were in the forefront joined by the garment and other unions. Also included were representatives from the Socialist Party, the Church League for Industrial Democracy, the National Catholic Welfare Council, the Methodist Federation of Social Service, the Farmers' Union, the Nonpartisan League, the Single Taxers, farm and labor organizations, co-operative societies, liberal political organizations, and other sympathetic groups and assorted progressives.⁸⁵

The Conference for Progressive Political Action chose a representative national committee of fifteen to co-ordinate activities. Leaders of the railroad brotherhoods, United Mine Workers, Socialist Party, National

85 Ibid, pp. 531-532.

Farmers' Council, the People's Legislative Service, and others on this national committee were to secure support for progressive major party candidates and where there was no real choice, to support Socialist or Farmer-Labor candidates who had a chance to win. Any final decision on a third party was to be postponed until the major parties had held their nominating conventions.⁸⁶

The Conference drew up a legislative program which included repeal of the Esch-Cummins law, direct election of the President and Vice-President, endorsement of the Norris-Sinclair producers' financing bill designed to increase the value of farm products, increased taxation of large incomes and inheritances, the payment of a soldiers' bonus by an excess profits tax, women's protective labor legislation, federal regulation of child labor, amnesty for political prisoners, safeguarding of civil liberties, government regulation of the coal industry, denunciation of the labor injunction, opposition to financial imperialism, and a declaration that the power of the courts to hold laws unconstitutional was a usurpation.⁸⁷

Because of Democratic pledges against the labor injunction, long-time A.F.L. president Samuel Gompers had supported the Democratic Party, although less actively, in

⁸⁶ Ibid, pp. 532-533.

⁸⁷ Loc.cit.

the 1912, 1916, and 1920 presidential elections, and the A.F.L. seemed to be drifting to the Democratic Party. But in 1924, with the nomination of Calvin Coolidge by the Republicans a foregone conclusion, and with the adoption of both a conservative platform and a conservative candidate, John W. Davis, by the Democrats, A.F.L. support of an independent third ticket, even if only as a protest, became inevitable. The candidate was Wisconsin's famous United States Senator Robert M. LaFollette Sr., labor's best friend in Congress. Repudiating the communists who offered him the doubtful gift of their endorsement, LaFollette invited progressives to follow his leadership. 88

On July 4, 1924, the Progressive convention met at Cleveland, nominated LaFollette for President, accepted LaFollette's platform, and selected LaFollette's choice for Vice-President, United States Senator Burton K. Wheeler, Democrat of Montana. LaFollette's independent candidacy was endorsed by the convention of the Socialist Party. Largely influenced by the court rulings adverse to labor in regard to the Clayton Act, the A.F.L. Executive Council and Samuel Gompers personally endorsed LaFollette on the Progressive Party and Socialist Party tickets, but without committing the A.F.L. to either a third party as a permanent policy or with the views of the Socialists. LaFollette

88 John R. Commons and Associates, op.cit., pp. 532-534; Penniman, op.cit., p. 140.

also received the official and unqualified support of the Railroad Brotherhoods, the Seamen's Union, and a number of others, many of whom contributed to the National Progressive Committee. On the whole, the unions supported the new party.⁸⁹

On no other occasion had labor support been pledged so definitely as to LaFollette in 1924. Although the number of congressmen elected with A.F.L. endorsement in 1924 was 170, leaders of the railway unions and the A.F.L., measuring the outcome from the standpoint of its immediate accomplishment regarding employment conditions and the labor injunction, were disappointed. Compared with the almost 16,000,000 votes for Coolidge and the more than 8,000,000 cast for Davis, LaFollette received slightly less than 5,000,000 votes, largely in the cities, and carried Cleveland, Ohio. Only in his own state, which he carried, and in North Dakota, did he draw heavily from the farmers. Gompers found solace in the thought that the votes cast for the independent ticket would teach the old parties a salutary lesson.⁹⁰ As a matter of fact, on the percentage of votes cast, compared with 1948, on the same ratio LaFollette would have received 10,000,000 votes. I

⁸⁹ John R. Commons and Associates, op.cit., pp. 534-536; Louise Overacker, Labor's Political Contributions, 54 Political Science Quarterly 56-68; Penniman, Ibid.

⁹⁰ John R. Commons and Associates, op.cit., p. 537; Penniman, op.cit., pp. 139-140.

make this comparison because if the Progressive candidacy of Henry A. Wallace in 1948, which was maligned as much as LaFollette's in 1924, had received anywhere near 10,000,000 it would have been regarded as a tremendous achievement.

At its meeting of February, 1925, the Conference for Progressive Political Action decided to liquidate the movement. The unions, including the railroad brotherhoods, were opposed to a third party, and the only third party survivors after 1924 were the LaFollette Progressive Party adherents in Wisconsin, and the Minnesota Farmer-Labor Party which was successfully maintained on its reliable rural support, the skill of the labor politicians, and the virtual disappearance of the state's Democratic Party. It elected Floyd Olson as governor in 1930 and in 1932. Although the outcome of the 1924 election brought the A.F.L. back to its earlier policies, insofar as financial political backing was concerned it had never departed much from Gompers' advice. From 1906-1925 the A.F.L. had raised and expended for political purposes only a little over \$95,000 from general treasury funds, made no contributions to candidates or parties whatsoever, and the A.F.L. Executive Council resisted strong pressure for the endorsement of Alfred E. Smith, 1928 Democratic presidential nominee. ⁹¹

⁹¹ John R. Commons and Associates, Ibid; Penniman, op.cit., p. 140; Louise Overacker, Labor's Political Contributions, 54 Political Science Quarterly 56-68.

Legislation. The conservative "non-political" philosophy of Samuel Gompers, and his distrust of state intervention which still endures among the older A.F.L. unions and their leaders even though Gompers died in 1924, was due largely to the feeling that the A.F.L. had all it could do to build the union against business and political opposition without trying to build a political party at the same time. The specific exclusion of party politics from A.F.L. conventions in Article III, Section 9, of the A.F.L. Constitution⁹² was an attempt to prevent the internal contention which helped destroy the Knights of Labor. After all, the attitude of "hands off" to the government was in the American tradition. However, even in the early days, neither the A.F.L. nor Gompers personally were permitted by circumstances to be completely consistent with their non-partisan policy of "rewarding your friends and punishing your enemies." From the first to the most recent A.F.L. convention political demands, requests for government action, and the misdeeds and virtues of individual politicians have been prominent on

⁹² This is in contrast to the Congress of Industrial Organizations. Article 2 of the C.I.O. Constitution outlines the objects of the national organization, including "To secure legislation safeguarding the economic security and social welfare of the workers of America, to protect and extend our democratic institutions and civil rights and liberties, and thus to perpetuate the cherished traditions of our democracy." Leo Huberman, The Truth About Unions, pp. 35-36.

the agenda. That also applies to the activities of state federations and city central labor unions.⁹³

In the 23 years between 1909 and 1931, the A.F.L. defeated 115 proposed laws that were unfavorable to labor, and by 1931 state legislatures had passed 489 laws proposed by labor.⁹⁴ Although states had begun in the 1840's to enact child-labor laws and legislation limiting the hours of work for women, much of that early legislation was limited in applicability or failed to provide for effective enforcement. Likewise, many of the measures favorable to labor between 1909 and 1931 were not too important or effective or both. Gradually, however, loopholes were closed and enforcement made effective. Big advances in protective labor legislation were made in 1907 to 1917 when most states enacted their first hours-of-work laws for women, and state minimum-wage legislation for women was enacted by twelve states during the years 1912 to 1917. Congress enacted "workmen's compensation" laws in 1908 providing for compensation for accidents sustained while on the job in federal employment⁹⁵ and from 1910 to 1915, 30 states had also so provided.

Major political advances for labor came with the

⁹³ Florence Peterson, Survey of Labor Economics, pp. 495-497; Starr, op.cit., pp. 9-11, 14.

⁹⁴ Starr, op.cit., p. 19.

⁹⁵ Lester, op.cit., p. 305.

1912 Lloyd-LaFollette Act granting public employees the right of lobbying and affiliating with labor organizations, the creation of the United States Department of Labor in 1913, the prohibition in government arsenals and naval establishments of the so-called "scientific management" systems, the government report of 1914 favoring unionism and collective bargaining for improved industrial relations, the LaFollette Seamen's Act of 1915, the passage by Congress in 1916 of the Adamson Act to avert a threatened railroad strike by providing for an 8-hour day for train operatives, and the Norris-LaGuardia anti-yellow dog contract and anti-injunction law of 1932.⁹⁶

The LaFollette Seamen's Act of 1915 for improving the working conditions of marine transportation employees was a revolutionary change in the legal status of seamen. Evidence of the very strong permeation of Congress by labor's influence, the reform abolished imprisonment for desertion in a safe harbor, granted seamen the right to demand half of the wages earned and unpaid in ports of loading and unloading cargo, raised the standard of living and food allowance, decreed the nine-hour day while in port, protected seamen's wages from allotment to original creditors, and made the owner as well as the master liable for failure of officers to appear for trial when charged

⁹⁶ Loc.cit.; Starr, Ibid.; John R. Commons And Associates, op.cit., p. 160.

with inflicting corporal punishment on the crew members. In cases of foreign vessels no deserting seaman could be arrested and returned to his job. The legislation also included regulations that were at the same time safety measures, job protection for skilled seamen, and devices to minimize oriental competition. Further, the Act provided for greater passenger safety in case of shipwreck.⁹⁷

Prior to the 1932 Norris-LaGuardia Act, between 1870 and 1925, at least twenty state legislatures adopted laws restricting union activities, including boycotts and peaceful picketing. But in the same period thirty-three states limited the issuance of injunctions in labor disputes, exempted unions from state anti-trust laws, legalized picketing, outlawed yellow-dog contracts (or made them unenforceable in state courts), and forbade employer black-listing of workers. Unfortunately, these early state laws favorable to labor were largely ineffective because of either being declared unconstitutional or made innocuous by court interpretation. Except for the Wilson World War I period, prior to 1933 executive intervention in labor disputes by the use of the injunction, as in the great railroad strikes of 1877 and 1894, generally operated to the benefit of management. It has been observed that the factors influencing the development of labor legislation

⁹⁷ John R. Commons And Associates, op.cit., pp. 160-163.

in this country have been the attitude of the courts, the philosophy of organized labor, executive leadership⁹⁸ in government, economic conditions, and public opinion.

The New Deal Era

More legislation. The depression following 1929 gave a new impetus to labor legislation, and seven states enacted new minimum wage laws in 1933, and following a 1936 Supreme Court decision validating a State of Washington minimum wage law, a new wave of such legislation⁹⁹ occurred. The 1932 Norris-LaGuardia Anti-Injunction Act, which also outlawed the yellow-dog contract, severely limited the granting of labor injunctions by the federal courts and in the 1930's some 16 states also enacted anti-injunction laws of the Norris-LaGuardia type, curbing the power of state courts to issue injunctions in labor disputes, or to hamper lawful union activities.¹⁰⁰ In the 1940's the Supreme Court reversed its earlier decisions under the Sherman and Clayton Acts and granted labor unions wide immunity from the anti-trust laws by reasoning that the Clayton and Norris-LaGuardia Acts taken together showed¹⁰¹ a Congressional intent to legalize labor union conduct.

⁹⁸ Lester, op.cit., pp. 300-305.

⁹⁹ Loc.cit.

¹⁰⁰ Loc.cit.

¹⁰¹ Loc.cit.

National Industrial Recovery Act. During the first two administrations of Franklin Delano Roosevelt, organized labor expanded greatly in numerical strength and political influence. Public opinion supported government intervention to improve economic conditions, and labor seized the opportunity to obtain favored legislation. In 1933 the National Industrial Recovery Act's famous Section 7(a) declared that it was desirable for workers to have "the right to organize and bargain collectively through representatives of their own choosing," "free from the interference, restraint or coercion of employers of labor or their agents," and that no worker "shall be required as a condition of employment to join any company union¹⁰² or to refrain from joining, organizing, or assisting a labor organization of his own choosing."¹⁰³

National Labor Relations Act. When the N.I.R.A. was declared unconstitutional by the Supreme Court, Section 7(a) was incorporated into the National Labor Relations Act of 1935, popularly known as the Wagner Act. Hostile toward much New Deal legislation prior to F.D.R.'s

102 This provision was in opposition to the strong employer company union movement known as the "American Plan." A company union is a union which is under the control, domination, or influence of the employer so that the union leadership is not wholly free to act independently for the exclusive benefit of the union membership.

103 Lester, op.cit., p. 306; Starr, op.cit., pp. 32-33.

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court reorganization proposal in 1936, thereafter the Supreme Court became more liberal in its interpretation of the Constitution, as we have already seen in the case of minimum wage laws and the Norris-LaGuardia Act. Thus, although employers generally had refused to comply with the Wagner Act, relying on legal opinion that it was unconstitutional, in April of 1937 the Supreme Court upheld the new labor legislation. The federal law was followed and complemented for intrastate commerce by a number of state "little Wagner Acts" modeled more or less after the Wagner Act. These states included New York, Massachusetts, Pennsylvania, Utah, Wisconsin, Rhode Island, and Connecticut. 105

Under the Wagner Act, the rise in business activity, and the psychology of hope created by the New Deal, the unions more than quadrupled their strength. In addition to explicitly outlawing company unions and guaranteeing to workers the right to organization and collective bargaining, the Wagner Act established a number of employer "unfair labor practices" which prevented employers from discriminating against a union member in hiring, firing, or promotions. No longer could employers use their economic power and

104 This proposal was that for every Supreme Court Justice who did not retire upon reaching the age of 70, the President could appoint an additional Justice, but in no event could the Supreme Court exceed 15 Justices. This so-called "court-packing" plan did not pass Congress, but apparently did have some effect upon the Court.

105 Lester, op.cit., pp. 306-307, 309; Starr, Ibid.

influence to interfere with the workers' right to organize and operate unions. Any union concerned had the right to call in the National Labor Relations Board to hold an official election to decide which, if any, union the employees desired to represent them and which the employer must recognize and bargain with in good faith. This legal status which the New Deal gave to collective bargaining was instrumental in union membership soaring to unprecedented heights.

It was also the New Deal which used the power of the federal government in bold constructive ways. It was the federal government which set up relief agencies and created jobs when the large corporations closed their doors, and private enterprise failed to overcome the depression. These changing economic and political circumstances altered the traditional A.F.L. attitude toward government intervention in industrial relations. Notably since 1933 the A.F.L. has gotten away from the imprint of Samuel Gompers and is coming to take a different view of government as an agency for social betterment. Consequently the A.F.L. has been in the process of changing its mind in favor of greatly increased participation of unions in political activity, both to protect their own legal status and to obtain improvements for the workers such as higher minimum wages and social security at state and federal levels.

Campaign of 1936. But this has been a very slow process indeed. Thus, in spite of the heartening political development in Great Britain of the youthful Labor Party, the spontaneous movements in various parts of the country by organized labor for its own party, which seemed to indicate that the time was ripe for action on a national scale, and the insistent urging of the formation of a labor party, more than at any convention in the past, the 1935 A.F.L. Convention refused to even instruct the A.F.L. Executive Committee to "study the subject of independent political action." Even in 1936, when Roosevelt was favored by an overwhelming sentiment among organized workers, the policy of nonpartisanship was not abandoned formally.¹⁰⁶ The attitude of the Congress of Industrial Organizations, which arose out of the A.F.L. as the Committee for Industrial Organization, has been more alert and positive toward political action than that of the A.F.L. because it was the favorable climate of the New Deal which made possible its own birth and rapid growth.

Convinced that vigorous political activity is necessary if labor is to retain and increase its economic gains, in 1936 various C.I.O. unions led by John L. Lewis and joined by several A.F.L. unions founded Labor's Non-Partisan League with the specific purpose of campaigning

106 Penniman, op.cit., pp. 140-141.

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for the re-election of the New Deal administration.

Individual labor unions contributed \$770,218, all of which went to the Democrats and affiliated parties such as the New York American Labor Party. Founded in 1936 by active unions supporting President Roosevelt, and patterned after the British Labor Party, the A.L.P.'s strength was largely confined to the City of New York. Himself previously a prominent Republican, John L. Lewis gave Labor's Non-Partisan League \$500,000 from the treasury of the United Mine Workers and retained it largely under his control.

108

The clothing workers unions contributed \$150,000.

Rise and fall of the A.L.P. In 1937, the American Labor Party elected five members to the New York City Council, five New York State Assemblymen, and a number of public officials have been elected as Democrats or Republicans with the endorsement of the A.L.P. which contributed 35% of the total vote which elected Mayor LaGuardia. In 1937 it gave Mayor LaGuardia 482,790 votes and 434,297 votes in 1941. Its statewide vote in 1944 constituted about 8% of the total.

109

Vito Marcantonio in 1946, and Leo Isaacson in a 1948 by-election, were elected as A.L.P. Congressmen from Harlem and the Bronx in New York

107 Penniman, op.cit., p. 141; Peterson, op.cit., pp. 495-497.

108 Penniman, Ibid; Starr, op.cit., p. 16; Louise Overacker, Labor's Political Contributions, 54 Political Science Quarterly 56-68.

109 Penniman, Ibid.

City, and one A.L.P. Assemblyman was elected to the New York legislature. The national elections of 1948 saw the A.L.P.'s high point, with over 500,000 votes for the Progressive Party presidential candidacy of Henry A. Wallace.¹¹⁰ In 1944, the president of the International Ladies' Garment Workers' Union, David Dubinsky, had established the Liberal Party in protest to alleged Communist infiltration into the A.L.P. The Liberals polled 329,325 votes in 1944 compared with 496,405 for the A.L.P. In 1948 there were 222,562 Liberal Party ballots.¹¹¹

So far, the Liberal Party has elected some members of the New York City Council, made possible the victory of a number of major party candidates, and jointly endorsed with the Democrats several Congressmen from New York, including Democratic-Liberal United States Senator Herbert H. Lehman. In the 1949 New York City mayoralty fight, 373,287 voted for the Liberal Party, and Vito Marcantonio received 356,626 A.L.P. endorsements. Votes cast for the

¹¹⁰ Henry A. Wallace was chosen by President Roosevelt to serve variously from 1933 as Secretary of Agriculture, Vice President, and Secretary of Commerce. Upon Roosevelt's death in 1945 and the succession of Harry S. Truman to the Presidency, United States relationships with the Soviet Union began rapidly to deteriorate. Wallace protested that this mutual hostility was due largely to Truman's "get tough" policies. Wallace resigned from the Cabinet and the 1948 Progressive Party was founded with the slogan "Wallace or War." Later, American involvement in the Korean conflict was cited as evidence that the Progressive slogan was not too extreme.

¹¹¹ World Almanac for 1953, pp. 69-70, 209.

A.L.P. in 1950 were 147,578 and for the Liberals 223,993. The 1952 Liberal Party vote was 357,535, whereas the A.L.P. dropped to 63,136.¹¹² The Liberal candidate for Mayor of New York City in 1953, Council President Rudolph Halley, received 400,000 ballots, and in 1954 by the narrowest of margins Averell Harriman was elected Democratic-Liberal Governor of New York. The A.L.P. had declined to such an extent in the 1954 election as to receive insufficient votes to be entitled to automatic status as a regular political party, and must now secure signatures to appear on the ballot in future elections.

Trend to Democrats. In 1938, the growing breach between the A.F.L. and the C.I.O. led A.F.L. President William Green to denounce John L. Lewis' Labor's Non-Partisan League as "a ventriloquist's dummy for C.I.O. leaders" and urged all A.F.L. affiliates to sever relations with it.¹¹³ This did not prevent the unions from contributing large sums in the 1940 election.¹¹⁴ The percentage contributed by labor, however, was still fairly small. Organized labor contributed only 5.1% of the funds of the Democratic National Committee in 1936,

112 Loc.cit.

113 Penniman, op.cit., p. 142.

114 Reynolds, op.cit., p. 122; Louise Overacker, Presidential Campaign Funds, pp. 16-18.

and 6.2% in 1940.¹¹⁵ But it should be understood that merely considering labor's "contributions" as above is misleading. Labor's "expenditures" cannot be computed as easily as labor's "contributions" because political expenditures are often intangible and are inextricably interwoven with other non-political expenditures. Labor's political activity takes on new meaning when we consider that the Democratic Party, which has lost much of the "big business" support (except for liquor manufacturers) which it had in 1928 and as late as 1932, has been the chief recipient of labor's support.¹¹⁶ A split in the economic interests which had previously contributed to both parties leads to speculation that labor's welcome aid may cause the Democrats to become more and more a "labor party."¹¹⁷

The tide begins to turn. It is clear from British experience that one result of labor union participation in the financing of political campaigns is likely to be agitation for the legal prohibition or regulation of such contributions, expenditures, and activities. In its report of the financing of the 1936 campaign, a Senate

¹¹⁵ Section 304, Taft-Hartley Act: Validity of Restrictions on Union Political Activity, 57 Yale Law Journal 806-827.

¹¹⁶ Louise Overacker, Labor's Political Contributions, 54 Political Science Quarterly 56-68; Louise Overacker, Presidential Campaign Funds, pp. 16-18.

¹¹⁷ Loc.cit.

committee stressed labor's role and recommended that the existing prohibition upon contributions from banks and corporations be extended to include labor union contributions. The proposal was not pushed at that time, but the handwriting was on the wall: sooner or later the use of labor union funds for political purposes would be challenged. A bill to prohibit unions from contributing politically was unsuccessfully introduced into the New York legislature in 1938.¹¹⁸ The impetus for direct political action on a national scale was strengthened during 1943 when widespread expressions in the daily press, state legislatures, and Congress aroused fears that the New Deal labor gains were in jeopardy. In 40 state legislatures bills were introduced to restrict various practices and activities of labor unions, although only eleven of these bills actually became law during the year.¹¹⁹

Strikes in 1943 brought about an adverse public opinion toward the unions. A Gallup Poll showed the extent of this anti-labor reaction, reporting that when the Smith-Connally bill to curb unions was before Congress, 67% of the nation was for it, only 24% against

¹¹⁸ Louise Overacker, Labor's Political Contributions, 54 Political Science Quarterly 56-68, p. 63.

¹¹⁹ Loc.cit.

it, and 9% undecided.¹²⁰ Again, a Fortune poll covering tests of the whole population gave the following results: 7% believed that labor unions have done an excellent job and should be given more power; 28% believed that labor unions have made mistakes but they have done more good than harm and should be supported; 49% believed that labor unions have done some good in the past, but they have gone too far and should be curbed by law; 7% believed that labor unions should be abolished; and 9% expressed no opinion.¹²¹

The year 1943 saw six southern and north-western states adopt laws regulating unions, and in Congress bills were introduced to apply the existing prohibition on corporate political contributions to labor unions.¹²²

Smith-Connally Act. Stoppages of work by the United Mine Workers in 1943 helped to bring about the enactment, over President Roosevelt's veto, of the Smith-Connally War Labor Disputes Act in June of that year. It has been observed that its passage marked the end of a decade of federal legislation favorable to labor.¹²³

¹²⁰ Stuart Chase, Democracy Under Pressure: Special Interests vs The Public Welfare, p. 73. Chase comments this was so even though it was "a thoroughly stupid act"

¹²¹ Ibid, p. 72, Chase observes "This is a public reaction to throw the fear of God into any leader of labor."

¹²² Lester, op.cit., p. 311.

¹²³ Loc.cit.

Among its other provisions, the Smith-Connally Act prevented direct contributions by labor unions to the campaign funds of candidates or political parties on the same basis as a federal law of 1907 prohibiting such contributions from business corporations. But these provisions applied to national elections only, and not to national primaries. Also, the law had no application to primary or election campaigns on a state or local level. Further, the Smith-Connally Act prohibition on national election contributions did not make illegal labor union political expenditures through independent
124
committees.

Political Action Committee. Therefore, to circumvent the Smith-Connally Act ban by carrying on election activities directly and to assure the continuation of the New Deal program, both national and international, the C.I.O. established a Political Action Committee on July 7, 1943, under the direction of the late president of the Amalgamated Clothing Workers, Sidney
125
Hillman. Others on the Committee were R.J. Thomas of the United Automobile Workers, Albert J. Fitzgerald of the United Electrical Workers, John Green of the Shipbuilders, David J. McDonald of the Steelworkers, and

124 89 Cong.Rec. 5328 House 1943 78th Contress 1st Session.

125 Peterson, op.cit., pp. 495-497; Huberman, op.cit., p. 81.

Vice President Van A. Bittner of the C.I.O.¹²⁶ Hillman maintained that the C.I.O. was losing the gains it had made since the depression. There had been no constructive social legislation since 1936. Labor had suffered setbacks in the 1942 congressional election. There seemed to be an effort to destroy organized labor and opposition to Franklin D. Roosevelt was bitter. The Wagner Act was under attack.

The P.A.C. was intended to perform the same functions as those originally proposed for Labor's Non-Partisan League, but to organize within wards and precincts just like a major party.¹²⁷ P.A.C. Chairman Hillman said the main task was to re-elect F.D.R. and to elect congressmen who were favorable to F.D.R. The 1943 C.I.O. Convention approved the action of the C.I.O. Executive Board in establishing the P.A.C. and resolved that:¹²⁸

Our primary task in the political field today is to weld the unity of all workers, farmers and other progressives behind candidates, regardless of party affiliation, who are committed to our policy of total victory and who fully support the measures necessary to achieve it and to lay the basis for a secure, peaceful, decent and abundant postwar world.

126 Labor Research Association, Labor Fact Book 7, p. 82.

127 Penniman, Ibid.

128 Labor Research Association, op.cit., p. 61.

This meant that the Political Action Committee backed only those senators and representatives from both parties who stood not only for a C.I.O.-sponsored labor program, but also for an acceptable foreign policy. Thus, it opposed "isolationists" even if their voting records were pro-labor.¹²⁹

Campaign of 1944. The aim of the C.I.O. was to awaken the people to political issues and never before had America seen so vigorous a political campaign by labor.¹³⁰ The P.A.C. produced a number of able pamphlets which instructed C.I.O. members in the art of politics, how to organize local areas, get radio time, make speeches, etc. In greater New York the C.I.O. checked registration lists and set up an elaborate system to insure the registration of all eligible members of the C.I.O. A high pressure propaganda campaign for Roosevelt was carried on during the summer and fall of 1944.¹³¹ The P.A.C. organized itself throughout the country and distributed, or at least printed, 85,000,000 copies of campaign literature which included 2,000,000 pamphlets, 57,000,000 leaflets, and over 400,000 posters.¹³²

129 Penniman, Ibid.

130 D.M. Young, Restrictions On Political Contributions, July, 1950, 1 Labor Law Journal 770-774.

131 Penniman, Ibid.

132 Young, Ibid.

The National Citizens Political Action Committee was organized in July, 1944, to supplement the C.I.O.-P.A.C. Signey Hillman was also Chairman of the N.C.P.A.C. which showed total receipts from voluntary contributions of \$380,306.45 and total expenditures of \$378,424.78. The C.I.O.-P.A.C. spent nearly \$500,000 of union funds for an unprecedented educational program and pre-campaign publicity and collected another \$500,000 for the campaign itself. C.I.O. unions contributed \$647,903.26 to the P.A.C. Four C.I.O. unions had contributed \$100,000 each. Total contributions to the C.I.O.-P.A.C. by unions and individuals and to the N.C.P.A.C. were \$1,405,120.48 and total expenditures were \$1,327,775.92.¹³³

The Executive Council of the American Federation of Labor remained "neutral" in the 1944 campaign, although two of its fifteen members came out for Republican candidate Thomas E. Dewey, and nine for President Roosevelt. The October issue of the Federationist, official A.F.L. organ, impartially printed F.D.R.'s speech to the Teamsters and

¹³³ Section 304, Taft-Hartley Act: Validity of Restrictions on Union Political Activity, Comment in 1948, 57 Yale Law Journal 806, pp. 822-823; Vol. 1 Senate Miscellaneous Reports, Report No. 101, 79th Congress, 1st Session, pp. 21, 23; Regulation of Labor's Political Contributions and Expenditures, Comment in Winter 1952, 19 University of Chicago Law Review 371, p. 374, estimates labor spent \$1,570,000 in the 1944 campaign, more than in any previous election.

Dewey's Seattle address on opposite pages. However, officials of certain international unions supported F.D.R. openly. The October 28, 1944, Trade Union Record of New York City, reported the names of a dozen important national unions and twenty-one state federations which had endorsed the President, along with the city central bodies of most of the big cities. In addition, many state and district organizations of national unions, especially among the machinists, teamsters, food, building, and needle trades workers went on record for the fourth term. Also helping the Democratic campaign were many popular figures in the theatrical trades.¹³⁴

The railway unions, and especially President A.F. Whitney of the Railroad Trainmen were active in supporting F.D.R., but Labor, organ of fifteen of the railroad unions, declined to endorse any presidential candidate. Although John L. Lewis supported the Dewey-Bricker ticket, the rank and file of the United Mine Workers in Pennsylvania, West Virginia, and Illinois gave Roosevelt substantial enough majorities in leading coal mine counties to hold these states for the President. On September 27, 1944, a 31-state pre-election poll of 60 A.F.L., 58 C.I.O., and 21 joint or independent papers, with a combined circulation of over six million, revealed only one Dewey supporter

134 Labor Research Association, op.cit., pp. 80-81.

among the labor editors, an independent in Salina, Kansas, and only 11 A.F.L. papers took a non-partisan or neutral position.

135

Percentages of political support within the unions in the 1944 campaign show the Democrats with their greatest strength in the C.I.O. 78 per cent of C.I.O. members and 69 per cent of A.F.L. members voted Democratic, compared with 56 per cent of workers not members of labor unions. In a group of some four hundred top union officials, 51 per cent of the A.F.L. leaders reported themselves as Democrats, 19 per cent as Republicans, and 30 per cent either as minor party endorsers or supporters of candidates favorable to labor regardless of party. Among C.I.O. leaders, 65 per cent were Democrats, 7 per cent Republicans, and 28 per cent either favorable to minor parties or supporters of pro-labor candidates irrespective of party affiliation.

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Although the A.F.L. Executive Council, as noted, took a "neutral" position in the 1944 election, there was much co-operation between the C.I.O.-P.A.C. and A.F.L. leaders. In many industrial centers the A.F.L., the Railroad Brotherhoods, and the C.I.O. united in what were called "ABC" committees for political and legislative action. A survey in March, 1944, revealed these committees

135 Loc.cit.

136 Reynolds, op.cit., p. 127.

functioning in 15 states, and before the election the number had increased.¹³⁷ Even though the political expenditures by labor were but a fraction of the estimated \$21,000,000 spent in the 1944 campaign, the C.I.O.-P.A.C. was believed to have had a major influence on the outcome of the elections. It spotlighted the record of every candidate. Its campaign for getting out the vote was a dramatic and startling success. Especially in the last weeks of the campaign, the P.A.C. was the subject of continuous attack by its enemies who, said Hillman, attempted to smear him personally and the C.I.O.-P.A.C. with:¹³⁸

...lies on top of lies, lies in newspaper chains the editors of which I am sure are now ashamed to read their own editorials ...No slander was too base, no appeal to prejudice too bigoted, no tactic too unprincipled for them to employ.

The vitriolic attacks on the P.A.C. were a tribute to its effectiveness, for it was credited with having played the decisive role in the defeat of several prominent congressmen. Not only was President Franklin D. Roosevelt re-elected with 3,600,000 more votes than his opponent, but the Democrats increased their seats in Congress. In some cases the P.A.C. had supported

137 Labor Research Association, op.cit., p. 84.

138 Ibid, p. 83.

progressive Republicans like Senator Wayne L. Morse of Oregon, Senator George Aiken of Vermont, and Representative R. J. Welch of California. In the final count, P.A.C. claimed partial responsibility for carrying several states for F.D.R., for the election of seventeen Senators and 120 Representatives to the Congress, as well as at least six governors.¹³⁹

Following the 1944 election, both the House and Senate investigated charges that the C.I.O.-P.A.C. had violated the Smith-Connally Act, but found no violation of the law because the ban was on "contributions" and not on "expenditures."¹⁴⁰ A majority of the Senate Committee recommended publicity as to labor's political expenditures, while the minority believed that such union activities should be prohibited.¹⁴¹ Having been vindicated in their right under the Smith-Connally Act to engage in political affairs, the C.I.O. subsequently continued to be a very active force in primary and election campaigns. The seventh annual C.I.O. convention, held at Chicago in November, 1944, voted to continue the P.A.C. and expand its organization under the chairmanship of Sidney Hillman who was instructed to intensify the P.A.C.'s program of

139 Ibid, pp. 85-86; Penniman, Ibid.

140 Vol. 1 Senate Miscellaneous Reports, Report No. 101, 79th Congress, 1st Session, pp. 20-22.

141 Ibid, pp. 83-84.

political education and to prepare the ground work for extensive participation in the local, state, and congressional elections of 1946.¹⁴²

Strikes. Between 1944 and 1946 five non-industrial states banned the closed shop.¹⁴³ "The reaction against unions was growing."¹⁴⁴ This unfavorable public reaction was due largely because of wartime stoppages chiefly in the coal industry, by jurisdictional strikes, and by exceptional strikes in public services. By these wartime strikes organized labor had antagonized public opinion, which viewed the unions as unpatriotic. The strikes following World War II were the natural consequence of pent-up grievances of all kinds which had been accumulating. The no-strike pledge for the duration of the war had been honored by most of the labor movement, and now was the opportunity to catch up and keep up with the rising cost of living. Thus, 1946 was the biggest strike year in American history to that time.¹⁴⁵ These large-scale strikes following the war were regarded as inflationary and created an atmosphere of anti-labor sentiment which formed the basis

142 Ibid, p. 22.

143 Lester, op.cit., p. 311.

144 Loc.cit.

145 A review of these post-war strikes may be found in From The Wagner Act to Taft-Hartley by Harry A. Millis and Emily Clark Brown, pp. 311-314.

of the Republican campaign of 1946 and set the stage for
a flood of union-restricting laws.¹⁴⁶

Campaign of 1946. Exploiting labor's neglect of public relations, the National Association of Manufacturers, the United States Chamber of Commerce, and other anti-labor groups, launched a systematic and lavishly financed attack on the New Deal with the Wagner Act as the focal point of the onslaught.¹⁴⁷ As an immediate result, legislation restricting unions was passed by at least 30 states in early 1947, including the industrial states of New York, Pennsylvania, and Michigan.¹⁴⁸ Nationally, the father of the New Deal, President Franklin D. Roosevelt, was no longer alive to provide the Democratic Party with his inspiring leadership. Organized labor did not provide the effort needed to ward off the Republican challenge. The A.F.L. and C.I.O. were divided, expending their energies

146 On February 7, 1946, after a week of bitter debate and involved parliamentary tangles, the House of Representatives passed the so-called Case bill which was severely restrictive on labor unions. An amendment to prohibit labor organizations from political expenditures was ruled out of order as not germane at the request of the bill's author, Francis Case. President Truman's veto of the bill was sustained. Congressional Quarterly, Vol. 11, No. 1, pp. 84-92.

147 The 1946-1947 propoganda campaign of the N.A.M. and the U.S. Chamber of Commerce through the use of newspaper advertisements, etc., is described by Harry A. Millis and Emily Clark Brown, From The Wagner Act to Taft-Hartley, pp. 287-291.

148 Lester, op.cit., p. 312.

on fighting each other rather than their common foe. Enemies of labor claimed, "During the New Deal, labor unions were coddled, nursed, and pampered...Labor has been permitted to grow into a monster supergovernment."¹⁴⁹

Even persons who were considered friendly to labor's objectives were persuaded that in the bigness of the unions was a potential danger of abuse in the powerful hands of arrogant or unscrupulous labor leaders.¹⁵⁰

As a consequence, the 1946 campaign was a defeat for the P.A.C. In the 34 states outside the South only 73 of the 318 congressional candidates with P.A.C. backing were elected and only 5 of the 26 senatorial candidates.¹⁵¹ Republican spokesmen had made much of the "left wing" leanings of some of the P.A.C. leaders and the Republican congressional victory was attributed at least in part to the public reaction against unionism. In control of both houses of Congress for the first time in 20 years, the Republicans felt they had a "mandate" to repeal the Wagner Act and replace it with drastic anti-labor legislation.¹⁵² Organized labor asked for a non-partisan commission to

¹⁴⁹ Fred A. Hartley Jr., Foreword by Robert A. Taft, Our New National Labor Policy--The Taft-Hartley Act And The Next Steps, pp. 4, 47.

¹⁵⁰ Elias Lieberman, Unions Before the Bar, p. 309.

¹⁵¹ Penniman, Ibid.

¹⁵² Harry A. Millis and Emily Clark Brown, From The Wagner Act to Taft-Hartley, p. 363.

examine the operation of the Wagner Act. But a grimly determined Republican-controlled Congress, backed by the editorial pages of much of the nation's press and spurred on by John L. Lewis' coal miners strike of 1946, wanted immediate adverse action.

153

Taft-Hartley Act. Restrictive measures were adopted in the Labor-Management Relations Act of 1947, commonly known as the Taft-Hartley Act. The moving spirit behind this legislation can be judged from the attitude of Congressman Fred A. Hartley Jr. who, in making his report to the House on the necessity for this legislation, said:

154

For the last 14 years as a result of labor laws ill-conceived and disastrously executed, the American workingman has been ...cajoled, coerced, intimidated, and on many occasions beaten up, in the name of the splendid aims set forth in Section 1 of the National Labor Relations Act...His whole economic life has been subject to the complete domination and control of unregulated monopolists...His mind, his soul, and his very life have been subject to a tyranny more despotic than one would think possible in a free country.

The employer's plight has likewise not been happy...He has had to stand mute while irresponsible detractors slandered, abused, and vilified him.

153 Lieberman, op.cit., p. 312.

154 Loc.cit. A member of the New York Bar, Elias Lieberman maintains, pp. 323, 325, "There are various bits of evidence indicating that many provisions of the act were dictated by political expediency." He believes that the Taft-Hartley Act "was drafted with malice toward labor."

General provisions. Not only did the Taft-Hartley Act, which replaced the Wagner Act in many important particulars, revive the government-initiated injunction and make unions liable in damage suits for violation of agreements, but it made unions subject to twice as many unfair labor practices as employers and made unions, but not employers, liable to damage suits for unfair labor practices.¹⁵⁵ The law requires the workers to vote on the employer's last offer before going out on strike. Technically, this may be interpreted to permit employers to make "last" offers even up to the point of balloting, necessitating further delay of the strike until the new "last offer" could be considered. If so, this has the interesting possibilities of going on indefinitely if the employer is resourceful enough in thinking up last offers.¹⁵⁶

Union boycotts against the employer are outlawed, but no restrictions are placed upon the common action by employers to break a strike.¹⁵⁷ Thus, an employer might be allowed to subcontract work to another firm in the same locality employing members of the same union, and

¹⁵⁵ Labor Management Relations Act, 1947, Act of June 23, 1947, c. 120, P.L. 101, 80th Cong., 61 Stat. 136; Title II, 29 U.S.C. ss. 171-182; Title III, 29 U.S.C. ss. 185-189; Title IV, 29 U.S.C. ss. 191-197; Title V, 29 U.S.C. ss. 142-144; 29 U.S.C. A. 151 et seq.

¹⁵⁶ Lester, op.cit., pp. 322, 328.

¹⁵⁷ Labor Management Relations Act, 1947, Ibid.

under the law these employees could not strike. Therefore, the union would be forced to work against itself. The Taft-Hartley Act favors craft unions as opposed to industrial unions by specifically exempting professional employees, if they so desire, from the same unit of representation as other employees.¹⁵⁸ Supervisors, foremen, and plant guards are entirely excluded from union representation, and federal employees are prohibited from striking, whether they are employed in the government itself or in federally owned corporations.¹⁵⁹

The Taft-Hartley Act gave an employer the right of "free speech" to talk against the union and to warn workers against organizing, although he was not supposed to have the power to promise benefits to his workers if they stayed out of unions or to threaten them with dismissal if they joined.¹⁶⁰ Instead of the union having the right to decide the date of elections, the employer could postpone an election to decide representation merely by making allegations of unfair labor practices by the union.¹⁶¹ The active union member was therefore subject to dismissal if the employer could discover some alleged cause. Furthermore, the employer is given the right to call for a decerti-

158 Loc.cit.

159 Loc.cit.

160 Loc.cit.

161 Loc.cit.

162
fication election. As the Taft-Hartley Act bars
economic strikers from voting, whereas the "scabs" may
vote, combined with "free speech" the decertification
procedure could be used to wreck the union movement. 163

The closed shop, prior membership in the union
before hiring by the employer, was outlawed. 164 In the
construction, entertainment, and shipping industries,
the union had acted as an employment agency, with mutual
benefit to the employer and employee, so that this
provision against the closed shop was not enforced in

162 Loc.cit.

163 Loc.cit. The following comments from
a speaker's book of facts published in August, 1952, by
the C.I.O. Political Action Committee, page 245, indicate
the seriousness of this situation in the opinion of
national labor leaders:

"The most lethal direct blow struck at unions by
Taft-Hartley is the spelled-out right of employers to
fire any workers who strike for higher wages or better
conditions and to replace them with scabs.

"So-called 'economic' strikers could be fired, of
course, even under the Wagner Act...But the Wagner act
gave one element of security...if another NLRB election
was held...both the original employees--the strikers--and
the scab were allowed to vote.

"Taft-Hartley canceled out the voting right of
strikers...With Taft-Hartley, only the scabs can vote.
A strike can be provoked, scabs brought in, a quick
election held, and the union is denied the right even to
ask for an election for a year. Then the scabs can be
moved on and there's nothing the union can do."

164 Labor Management Relations Act, 1947, Ibid.

165
these industries. The union shop, membership in the union after hiring by the employer, was acceptable only if a majority of all workers in the shop voted for it in a special election.¹⁶⁶ If this requirement of a majority of those eligible to vote rather than a majority of those actually voting were to be applied to our national elections the American people would be deprived of a government.

Trade union discipline was grossly interfered with by the Taft-Hartley Act because no worker could be expelled

165 At pages 436-438 in From The Wagner Act to Taft-Hartley, Harry A. Millis and Emily Clark Brown explain the situation:

"In building and related construction work, where the closed shop has been prevalent, the contractors, assembling and using crews of craftsmen for a limited period of time, have generally appreciated a definite source of labor upon which to draw and are usually glad to turn to the business agent of the union for needed help. They likewise appreciate the partial guaranty of efficient help found in the apprentice system and its requirements, which have increasingly brought under joint control. And they appreciate a relatively stabilized crew, teamwork and understanding among the employees, and a degree of protection of labor costs during the life of the contract. Adapting Taft-Hartley to the building trades would be an exceedingly difficult, if not impossible task..."

"In ocean shipping, with the rapid changes in crews, and employees usually sailing with a different carrier at the completion of a voyage for which they had signed, the shippers prefer to have a closed-shop contract..."

There are also sound reasons for the closed shop "In newspaper publication and in large segments of commercial printing..." and also "In the manufacture of ladies' and men's garments..."

166 Labor Management Relations Act, 1947, Ibid.

from the union except for non-payment of dues.¹⁶⁷ This meant that an infringement of union rules, spying for the employer, or even "scabbing," could not be made a cause for expulsion. The check-off of union dues was permitted only if the individual made a signed declaration to have such a deduction made.¹⁶⁸ Vague clauses made the union liable to prosecution if its officers threatened or coerced any worker to join the union.¹⁶⁹ There was also a prohibition against excessive or discriminatory initiation fees, without any definition of what would be so considered.¹⁷⁰ Welfare funds were also interfered with.¹⁷¹

One clause in the Taft-Hartley Act, aimed at "featherbedding" (E.G. payment of musicians when not utilized, as in a radio show or stage performance),¹⁷² made it uncertain whether union requests for greater "safety" measures, workers employed on union business, or guarantees of a half-day's pay by union contract if a worker is called in to work, could be penalized under such power. Jurisdictional strikes were made illegal,¹⁷³

167 Loc.cit.

168 Loc.cit.

169 Loc.cit.

170 Loc.cit.

171 Loc.cit.

172 Loc.cit.

173 Loc.cit.

one of the few good provisions of the Taft-Hartley Act. This prevented strikes over which union was to do certain work. The law forbade workers from refusing to work on non-union material or to strike in sympathy with any group of workers, even if they were in a neighboring shop or in the same industry.¹⁷⁴ Unions were compelled to file detailed financial reports, and their officers to sign an affidavit that they were not members of the Communist Party.¹⁷⁵ Employers needed to make no such declaration.

Section 304. Finally the authors of the Taft-Hartley Act attempted to close the federal primaries and the "contributions" loopholes of the Smith-Connally Act.¹⁷⁶ The Taft-Hartley Act, under Section 304, amended Section 313 of the Federal Corrupt Practices Act of 1925 by prohibiting unions from making both contributions or expenditures in connection with federal primary or election campaigns, although, as we shall see, this section is either ineffectual or unconstitutional. The rise of unionism¹⁷⁷ had not only increased the economic strength

174 Loc.cit.

175 Loc.cit.

176 Loc.cit.

177 "During the fifteen years from the depth of the depression, organized labor had grown greatly in membership and power. It had added some twelve million members to its rolls..." Harry A. Millis and Emily Clark Brown, From The Wagner Act to Taft-Hartley, p. 271.

of employees, which the Taft-Hartley Act was designed to curb, but also increased labor's political power. Therefore, Section 304 was included in the Taft-Hartley Act. President Harry S. Truman had criticized the proposed legislation as a menace to successful democratic society which raised serious issues of public policy transcending labor-management difficulties.¹⁷⁸ But his veto was overridden and the Taft-Hartley Act became law on June 23,¹⁷⁹ 1947.

Campaign of 1948. The sponsors of the Taft-Hartley Act, who had taken the opportunity of the Republican majority in Congress secured in 1946, had intended to use this law to suppress labor's political activities, but instead labor was brought even more into politics. Many of the provisions of the new legislation had not been applied or defined by the courts before the 1948 election, but its very existence provoked a campaign for its repeal. Thus, the Taft-Hartley Act proved to be a boomerang politically. As did the 1927 Trade Disputes and Trade Unions Act in Great Britain, the 1947 Taft-Hartley Act prodded the unions to increased political activity. In the past,

178 H.R. Doc. No. 334, Message from the President of the United States returning Without His Approval the Bill (H.R. 3020) Entitled the "Labor-Management Relations Act, 1947," Vol. 2, 80th Cong., 1st Sess., pp. 9-10.

179 Labor Management Relations Act, 1947, Ibid.

labor's participation in politics has been sporadic with the exception of the C.I.O.-P.A.C. But the passage of the Taft-Hartley Act also catapulted the American Federation of Labor into political action.

By 1947 the A.F.L. had so modified its traditional non-political activity policy as to create in 1947 Labor's League for Political Education (L.L.P.E.), similar to the C.I.O.-P.A.C. to combat the congressional supporters of the Taft-Hartley Act and as a permanent agency of the A.F.L. ¹⁸⁰ Appointed Director of the L.L.P.E. was the Secretary of the Chicago Federation of Labor, Joseph D. Keenan, who established four L.L.P.E. departments: 1) Finance--to plan and carry out appeals for contributions, and audit accounts (union funds were separate from L.L.P.E.); 2) Public Relations--to enlighten members and the public regarding the objectives of the League, political and economic policies of the 80th Congress and individual voting records of each congressman; 3) Organization--to organize and coordinate state and local leagues and cooperate with sympathetic groups; and 4) Political Direction--to prepare and keep records of public office holders and candidates. ¹⁸¹ The A.F.L. has now accepted the fact of continuing political action.

¹⁸⁰ Comment in 1948, 57 Yale Law Journal 806, op.cit., pp. 822-823; Lester, op.cit., p. 315.

¹⁸¹ Young, Ibid.

The Taft-Hartley Act has become one of the significant issues of contemporary American politics. Thoughtful commentators have deplored the fact that the Republican leadership did not rise to the great opportunity to lay a lasting legal foundation for labor-management relations in an industrial economy. "Instead of contributing to a solution, the law generated acrimonious debate and ill-will, and turned the problem into a political football to be kicked around at each election."¹⁸² In the presidential campaigns of 1948 and 1952, the Democratic platform called for repeal while the Republican platform praised the law. Democratic orators have appealed for labor support on the ground that the Taft-Hartley Act was sponsored by the Republican Party and is alleged to be a clear manifestation of the control over the Republican Party by anti-labor industrialists and businessmen hostile to the working class. In the 1948 campaign, President Truman correctly expected labor support because he had vetoed the Taft-Hartley Act, although some of the labor union leaders and others stressed the fact that he did not exercise¹⁸³ enough control over his party to make his veto stick.

182 Lieberman, op.cit., p. 329.

183 Some of the "left-wing" unions, such as the United Electrical Workers (U.E.), endorsed the candidacy of the 100% pro-labor Progressive Party ticket of former Vice President Henry A. Wallace and Idaho Senator Glen Taylor. They did so on the ground that even though the

Repeal of the Taft-Hartley Act was both pledged by President Truman and included in the Democratic platform of 1948, however, and opposition to the Taft-Hartley Act was made the chief focal point of the unions' attention. The P.A.C. spent \$238,498. The A.F.L. League spent \$112,202 and hired a public relations firm for \$500,000 to ward off further attacks and to represent the unions in a more favorable light before the community. Both the A.F.L. and C.I.O. support went almost exclusively to Democratic candidates. The labor vote proved decisive. President Truman was elected, receiving a two million popular vote plurality. Both the House and Senate were transferred from Republican control. The Democratic Party secured the Senate 54 to 42, while victorious

Republican Party was primarily responsible for the Taft-Hartley Act, the picture was far from being black-and-white. Partisan but factual, the best summary and the most complete evaluation of the record on this point, and the political realities behind the Truman veto, has been compiled by the National Wallace for President Committee, Facts to Fight With, pp. 11-13; and The Progressive Party, More Facts to Fight With, pp. 12-13. Also see Harry A. Millis and Emily Clark Brown, From The Wagner Act to Taft-Hartley, pp. 391-392; and Fred A. Hartley Jr., Foreword by Robert A. Taft, Our New National Labor Policy And The Next Steps, p. 102. It would appear that President Truman did not make any serious effort to have his veto upheld, and that had he so desired sufficient support could have been secured from enough Senators to have sustained the veto. Despite this strong suspicion of bad faith on the part of the Democratic leadership in not maintaining even an appearance of party discipline, the more "practical" labor leaders regarded the Wallace candidacy both as politically hopeless and inspired by the Communists.

Democrats led the Republicans in the House by 263 to 171. In 29 states there were Democratic governors as against 19 with Republican governors. Representative Fred A. Hartley Jr. in New Jersey, co-author of the Taft-Hartley Act, prudently decided not to run and his previous constituency elected a Democrat. After these labor successes in the 1948 elections, the A.F.L. announced plans to raise and spend larger funds in future campaigns. 184

Campaigns of 1950 and 1952. In the congressional elections of 1950, granting the normal off-year fall-off in the strength of the incumbent party, the Democrats kept control of Congress with the active support of both the C.I.O.-P.A.C. and the A.F.L.'s L.L.P.E. However, attempts following the 1948 and 1950 campaigns to repeal or amend the Taft-Hartley Act in labor's favor had been blocked by a coalition of Republicans and southern Democrats. The labor forces had hoped to repeal Taft-Hartley by securing a large enough Democratic majority in the 1952 presidential election to permit the liberal element in the Democratic Party to dominate over both the Republicans and reactionary southern Democrats. Thus, in 1952 the A.F.L. and C.I.O. both officially endorsed Illinois Governor Adlai Stevenson.

184 Reynolds, op.cit., p. 122; Starr, op.cit., pp. 34, 36; Comment in Winter 1952, 19 University of Chicago Law Review 371, op.cit., at page 378, estimates expenditures by labor in 1948 were \$1,280,000.

However, the personal popularity of General Dwight D. Eisenhower was overwhelming and for the first time since 1932 a Republican occupied the White House. The congressional results, however, were much closer. In the Senate there was one Independent with an even division of Democrats and Republicans, Vice-President Nixon, President of the Senate, having the deciding vote. Oregon's progressive Senator Wayne Morse, elected as a Republican in 1950, had decided that he preferred being an Independent. Although during the campaign Eisenhower had promised to seek amendments to the Taft-Hartley Act which would eliminate from that law the most objectionable features such as that which permits strike-breakers to vote on union representation but prohibits the economic strikers from balloting, 1954 saw Senators Morse and North Dakota's William Langer, a Republican in name only, joining with the Democrats to defeat Eisenhower-sponsored Taft-Hartley changes which, from labor's viewpoint, would have made the law even worse.

Campaign of 1954. Complicated by a Republican "smear campaign" that the Democrats were "the party of treason," the 1954 congressional campaign was bitterly contested. The most controversial Republican Senator, Joseph R. McCarthy of Wisconsin, repeatedly charged that the past Democratic administrations had been infiltrated by subversives and the Communist issue was made one of the features of the campaign. However,

with the Republicans favoring the encroachment of private interests upon the public lands and off-shore oil reserves, policies against public power and social reform, friendly attitudes toward big business, revision of tax laws to benefit "coupon clippers" who derive their income from corporate dividends, the Dixon-Yates contract proposal taking preference over the T.V.A., and the failure to act against rising unemployment, all tended to create a public opinion reacting to the advantage of the Democrats.

Further, although Taft-Hartley as such was not an issue in the campaign, the unions worked quietly but effectively for pro-labor Democrats.¹⁸⁵ Also, a blundering reference by a Cabinet member, Defense Secretary Charles E. Wilson, likening demands for relief by workers out of jobs as akin to the barking of "kennel-fed dogs" was seized upon by C.I.O. President Walter Reuther and Democratic candidates generally to condemn the Republicans. A last-minute appeal by President Eisenhower for a G.O.P. majority went unheeded. The people gave the Democratic Party control of both the House and Senate. Senator Morse had campaigned against his fellow Senator Guy Cordon and Oregon elected its first Democratic

185 For an analysis that the political activities of labor unions were an important factor in electing many local, state, and national Democrats, see Peter Edson, "Election Results Indicate Labor vote Is Influential," Washington, p. 4, The News-Tribune, January 26, 1955. Edson reports that the A.F.L.-L.L.P.E. and the C.I.O.-P.A.C. each raised more than \$1,000,000, and that this \$2,000,000 campaign fund was equally divided between local and national expenditures.

Senator since 1912 when the "Bull Moose" Roosevelt campaign had split the Republican vote. The Democrats also added eight governorships to their credit, including Maine (!), Pennsylvania, and New York.

Practices and Programs

Support of candidates. The political activities labor unions engage in are of three main kinds: support of candidates for public office, promotion of legislation, and participation in the administration of existing legislation. To discuss them in order, union electoral activities and support for a candidate may involve his being called to a conference for questioning as to his record and viewpoints on labor problems. The union may prepare and disseminate information on the issues involved in the campaign, and on the relative merits of the candidates. In an area where the union endorsement may arouse antagonism, the union might concentrate on opposing the incumbent rather than endorsing his opponent. This would take the form of publicizing the incumbent's poor record, and working for his defeat.

Where the union decides to support a candidate, union members are told they should get together politically to make their vote count just as they have joined together in their union for economic strength. The candidate will be given a letter of endorsement which is usually reprinted in the local

press, and/or distributed to union members. At the polls, the union may hand out this letter, or other circulars or cards. Sometimes the union will advertise in the newspaper, or go on the radio or television, either endorsing or condemning a candidate. The unions try to ensure that all members eligible to vote are properly registered and work at "getting out the vote" on election day. Workers may be at the polls to pass out campaign literature. In this way the C.I.O.-P.A.C. and the A.F.L.-L.L.P.E. perform many of the functions of a political machine.

An example of the extent to which labor unions feel it desirable to go today to engage in effective political action is found in the 1948 U.E. Guide to Political Action which explains what political action is, why it is necessary, and how to start organizing; conduct registration drives; research candidate's records; select candidates; set up and operate a campaign headquarters; run a campaign; write newspaper publicity and advertising copy; use radio time, mailings, leaflets, posters; conduct meetings and rallies, work with small businessmen, farmers, professional people, women, youth, nationality and religious groups, etc.; deal with opposition tactics; keep within the law; operate a voting machine; work at the polls on election day; meet legislators; and also explains how bills become law. The C.I.O.-P.A.C. has a Manual of Practical Political Action of which any political party

would be envious. Measuring nine by twelve inches and weighing one pound and eleven ounces net, it is an index-tabbed loose-leaf binder which adds to political science the most up-to-date super-salesmanship. Graphs, charts, forms, cartoons, picture stories, dramatic presentations and cumulative features make its contents dynamically modern.

Promotion of legislation. In addition to the political activity mentioned, labor unions promote legislation. At the federal level this work is carried on by legislative representatives of the A.F.L., C.I.O., and individual national unions. At the state and local levels, it is carried on primarily by the state and city federations of labor. Legislative work includes drafting bills, persuading friendly legislators to introduce certain bills, appearing before committees to present testimony for or against pending legislation, soliciting the support of individual legislators for particular measures, urging union members to write or wire their congressman, and so on. These tactics are similar to those used by other economic-interest groups. Specific legislative proposals by the unions will be taken up under the discussion of labor's political objectives.

Participation in administration. An increasingly important function of union officials is participation in public administration. Labor is represented equally with

industry, for example, on the committees set up to recommend minimum wages under the Fair Labor Standards Act and under state minimum wage laws. Labor is usually represented on state unemployment compensation commissions, state workmen's compensation boards, and similar bodies. The tripartite board, consisting of an equal number of labor and industry representatives under a public chairman, has become a well-established device for administering labor legislation. Many union leaders have also become full-time public officials, at levels ranging from routine local positions up to Secretary of Labor.¹⁸⁶ President Eisenhower gave this Cabinet post to Martin P. Durkin, an A.F.L. official, who later resigned on grounds that Eisenhower did not intend to keep campaign promises pledging pro-labor revisions of the Taft-Hartley Act.

In addition to direct participation in public administration, unions have an important indirect influence on the enforcement of legislation affecting labor. They spend much time in educating union members in their rights under existing legislation, and in representing them before administrative bodies. A worker who feels that he has been unfairly treated in a claim for unemployment compensation or old age pensions, etc., can present the problem to a union official, who will see that an appeal is taken through

¹⁸⁶ Reynolds, op.cit., pp. 123-124.

the proper channels. If workers suspect that their employer is violating a wage-hour law, the union can present the matter to the appropriate agency and secure an investigation. The enforcement of labor legislation would be much less effective than it is if unions were not available to serve as an auxiliary police force.

Increased political action. The effect of labor's political action--support of candidates, promotion of legislation, and participation in administration--is difficult to appraise, but is probably very considerable. In the 1948 campaign, for example, both the A.F.L. and C.I.O. support went almost exclusively to Democratic candidates. The great political upset of the Truman victory and the capture of Congress by the Democrats, open up possibilities about which no dogmatic assertions can be made. It would

187 Ibid, pp. 124-125.

188 The 1948 campaign saw the extreme left and right wings of the Democratic Party break away to form their own separate groups. On the left, with a radical domestic platform and a pacifistic foreign policy, the Progressive Party was founded with former Vice President Henry A. Wallace and United States Senator Glen Taylor the standard-bearers. On the right, opposing any federal civil rights program, the States' Rights Democrats (Dixiecrats) chose South Carolina Governor J. Strom Thurmond as their presidential nominee with Mississippi Governor Fielding Wright for vice president. It was felt by almost all political observers, commentators, and pollsters, that this division in Democratic ranks spelled out Truman's defeat. But although the two split-off factions received well over 1,000,000 votes each, and the Dixiecrats carried four states, Truman campaigned vigorously and amazed everyone but himself by being elected, together with a Democratic House and Senate.

seem inevitable, however, that organized labor continue in politics. Many leaders in both the A.F.L. and C.I.O. are now convinced that the time has come for increased political action. On December 6, 1954, the C.I.O.-P.A.C. submitted its Report to the 16th Constitutional Convention of the C.I.O., and concluded "that year-round political activity is a necessary and indispensable part of trade union activity..." In Our Job For 1952, the then Secretary-Treasurer of the A.F.L., Mr. George Meany, who is now the President of the A.F.L., wrote that the Taft-Hartley Act is a "threat to the future of American trade unionism" which "must be met by political action."

In this leaflet, Mr. Meany said that organized labor has an interest in, and made a contribution to the welfare of, this country, "greater, perhaps, than any other segment of the population." Labor must use its "fighting spirit" not only to organize economically for good conditions of work, but

If this movement is going to maintain the achievements of the past, if it is going to progress further, we must be politically active.

We can't afford to take the position that we have no interest in politics...We must, as trade union officials, and as an integral part of our trade union activities, go into the field of politics.

Keep this in mind. When they counted the votes to enact the Taft-Hartley Act in 1947, we got a fair count. When they overruled President Truman's veto of that law we got a fair count. Big business, as represented by the National Association of Manufacturers, and as represented

by their lackeys like Taft and Hartley in Congress--big business had the votes. We didn't have them. So, if we are going to correct that situation, there is only one way I know of and that is by getting the votes.

We are never going to repeal the Taft-Hartley Act until we put into Congress men and women friendly to the ideals and principles of this great labor movement.

Objectives of labor. Taking Mr. Meany's words, what are the "ideals and principles" of organized labor? What is labor's economic program? What objectives does it hope to accomplish through political action? What kind of legislation does it favor and oppose? On what basis does labor decide that a public official or a candidate for office is "friendly to the ideals and principles of this great labor movement"? How does labor determine whether a legislator's record is "good" or "bad"? Will the unions remain increasingly active in politics? Does organized labor have plans for a new political party to represent labor? If so, what are the possibilities of success? Before proceeding to the next chapter, I shall attempt to touch upon these questions.

There are three broad categories of labor union objective. First, there are objectives which are of interest in a particular industry and which, therefore, are pursued by the national unions operating in that industry. For example, the United Mine Workers has been largely responsible for mine safety legislation. Second, there are objectives which most workers have in common, such as wage, hour, and child labor

laws, improved working conditions and benefits. Third, there are objectives which, while they are in the interest of the working class, are also in the interest of some or all of the other groups in the economy. Thus, the 1948 A.F.L. Convention supported the Marshall Plan, the United Nations, reduction of taxes on consumption, increases in gift and estate taxes, improvements in the old-age pension and unemployment compensation systems, health insurance, increase in the level of minimum wages, public subsidies to housing construction in order to provide low rentals for low-income families, and repeal of the Taft-Hartley Act, together with defeat for all members of Congress who voted for it.¹⁸⁹

The C.I.O. program contained most of these items and many others, including restoration of price controls and rationing of scarce commodities in order to prevent continued increases in the cost of living; a "realistic" attack upon monopoly in basic industries; legislation to prevent discrimination in employment on racial, religious, or other grounds; a federal anti-lynching bill and other measures to protect the civil rights of Negroes; a more comprehensive full-employment program; reduction of income tax rates on the lowest taxable incomes and abolition of all forms of sales tax; reimposition of the

189 Reynolds, op.cit., pp. 130-131.

war-time excess profits tax on corporations; liberalization of veterans' benefits; increase of the minimum wage under the Fair Labor Standards Act from 40 to 75 cents per hour; federal aid to education; and establishment of organizations similar to the Tennessee Valley Authority in the Missouri Valley and certain other areas. The C.I.O. came closer than the A.F.L. to presenting a comprehensive program on the leading issues of national economic policy. Its program was also further to the political left than that of the A.F.L.¹⁹⁰

These general objectives of organized labor have been toward reducing economic, political, and social inequality. The unions have demanded for workers the rights of political participation, greater educational and vocational opportunities, sufficient leisure, an adequate and rising level of consumption, and protection against the important types of economic insecurity. This program has led labor unions in recent decades to demand increasing government participation in the management of the economy. The C.I.O. has gone further in this direction than the A.F.L., but even the A.F.L. has moved very far from the laissez faire position which it took as recently as 1930.

Organized labor's advocacy of increased government

190 Loc.cit.

intervention is a pragmatic policy based on a belief that the American industrial system should be operated primarily to serve human needs, and that the right to a decent and secure livelihood should be placed ahead of property rights. Most American labor unions are not "class conscious" in a revolutionary sense. On the contrary, they are conservative institutions in that they tend, by gradual but steady improvement in the workers' lot, to reduce the tensions which might otherwise incline him toward violent change. In addition to being beneficial to workers, some of labor's objectives are beneficial also to other groups in the economy. Included in this category would be such things as comprehensive social insurance systems, vigorous measures to combat depression, the conservation and development of natural resources, increased expenditures for education, health, public housing, and other welfare purposes.

Political potentials. The possibilities of labor's potential political power may be judged from the fact that there are more than 17,000,000 union members in the United States today, including an estimated 8,600,000 in the A.F.L., 5,500,000 in the C.I.O., and several million more in non-affiliated unions. ¹⁹¹ Among the independent unions, the most important are the Railroad Brotherhoods, the

191 1955 Information Please Almanac, pp. 774-775.

United Mine Workers, the United Electrical, Radio and Machine Workers (U.E.), and the International Union of Mine, Mill and Smelter Workers.¹⁹² These workers in organized labor have families, relatives, and friends. Much could be made to happen politically if all these union members became active. For many years the International Ladies' Garment Workers Union has asked the A.F.L. to initiate a political party representing labor. Several other unions have also supported the idea of an American Labor Party patterned after the British Labor Party, with policies adjusted to American conditions.

As an example of this viewpoint, the United Electrical, Radio and Machine Workers of America in its U.E. Guide to Political Action published in 1948, states:

Many times in history, the American people have become dissatisfied with the existing political parties and have established new parties pledged to act on certain urgent issues. Usually new political parties have been born of necessity.

Establishing a new political party is no easy job. The network of ward and precinct organizations, the clubs and local leaders, the system of patronage and loyalties built up through the years, favor a political party that has been in existence for a long period of time.

However, history shows that when an issue before the people is sufficiently urgent--and no existing mass political party moves to act as the people believe necessary--political parties are formed and succeed. An example of this was the birth of the Republican Party in 1854.

192 Loc.cit.

At the present time labor is dedicated to the cause of independent political action by working people and their allies. Wherever major parties fail to bring forth people's candidates, labor favors supporting independent progressive candidates.

By this means labor will build its independent strength with a view to the ultimate creation of a new people's political party supported by people in the factories, shops, offices, farms.
(Page 31)

To continue at page 93, the U.E. favors "the building of an independent political force by the working people and their allies" and "pledges its full support and resources to the National C.I.O.-P.A.C. in the drive to build this political strength." Continuing, the U.E. said "Above all, we call for the creation of an independent political force answerable to no boss or machine, and responsive only to the will of the rank and file... Wherever the major parties fail candidates who will act and fight on behalf of the people, we shall use the independent political force we are building to support independent progressive candidates. We shall build this independent strength with a view to the ultimate creation of a new People's Political Party representative of the working people in the factories, shops, and farms, and their allies. It is probable, the U.E. believes, that a genuine Farmer-Labor Party would not for long be a third party, that the reactionary elements of the older parties would unite into one against it.

In addition to the financial resources which are necessary, organized labor must do a better job in educating its own union members. It must also improve its public relations. A political labor movement must have ideas, enthusiasm, and organization. Such an organization, of course, cannot be built from the top. It must be rooted in the active support of its individual members. This fact was pointed out in 1946 by Walter Reuther, now national president of the C.I.O., who spoke as follows: 193

A party serving the true interests of the common people cannot be declared into existence; it must grow. The time must be ready. Labor's political responsibility is neither to close its eyes to the necessity of new alignments nor to surrender to doctrinaire moves to launch a new party prematurely on a too-narrow base. It is rather to recognize the transitional stop-gap nature of its present political activity and to reach out into the community for natural alliances with farm and progressive middle class groups, and to lay the organizational and programmatic groundwork for a people's party.

If the United States is to see a Labor Party, the forces which initiate and work for this new political alignment will have the important job of building up a new philosophy which will permanently unite the liberal and labor traditions of the urban centers with the farm proposals of the radical agrarians. Labor's long-run success in achieving its political objectives will depend a good deal on the extent to which it can convince

193 Starr, op.cit., p. 49.

farmers, white-collar workers, professional people, and
others of the validity of those objectives. ¹⁹⁴ That
labor already has had some success in convincing these
groups is demonstrated in the Populist, Farmer-Labor,
and Progressive victories in the West in which, for a
time, there was a united front between labor, the farmers,
and various liberals. Also, we have seen the American
Labor and Liberal parties of New York. It should be
remembered that Franklin D. Roosevelt's policy of political
improvisation, which helped the United States to meet crises
also called into being, particularly in the 1936 election,
a farmer, labor, liberal alliance for the Democratic Party.

194 Labor, of course, believes that because the
majority of the people are workers, in promoting the wel-
fare of the workers unions are promoting the general wel-
fare--what is good for labor, most of the people, must be
in the interest of the community. Leo Huberman, in his
The Truth About Unions, pp. 81-82, maintains that:

"The tie-up is plain. Labor is fighting for a
program of full-employment, high real wages, guaranteed
annual wages, revised tax laws putting the burden on those
best able to pay, adequate social insurance, the establish-
ment of a permanent Fair Employment Practice Committee to
fight the cancer of race prejudice.

"If this program is achieved it will mean for workers
and their families more and better food, clothing, homes,
medical care, education, leisure, security.

"This, in turn, would mean for the nation a major
step on the road to economic progress--the redistribution of
income and increased consumption by the masses of the people.

"It would mean the end of misery and the beginning of
prosperity as millions of workers who need goods and want
goods become customers with money enough to buy goods.

"It would mean good citizens free from fear.

"The coupling of labor's political and economic
strength to achieve this program is in the interest of the
workers, it is in the interest of the nation."

Nevertheless, many feel that something more fundamental is necessary, that political parties will be forced to develop long-range plans based on specific principles to meet future social changes. It must be remembered that while the New Deal lessened the effects of the great crisis of 1929, it was only the Second World War which expanded production. The postwar aid to ravaged countries, the European Recovery Plan, rearmament, the military programs, the Korean War, and so forth, all created full employment in recent years. Yet the atomic age is now upon us. We are even now speculating about factories run by push-button control rooms operated by a handful of humans, with the work being done by automotons, robots. The serious question arises whether the economic flaws and difficulties of modern production and distribution in the United States will create another 1929 crisis. Can we eliminate the causes of depression? If the economic situation worsens, the unions may be spurred to political activity on a much wider scale than before.

In this connection, it must be remembered that the possibility of an American Labor Party would be faced with the many difficulties it would encounter in this country which are not applicable to the Labor Party in Great Britain. Although many of the early immigrants had brought with them political experience from the older trade union

movements, labor in the United States has never felt the need for political action as strongly as in the British homeland of the Industrial Revolution. The rapacity of the American "robber barons," while resulting in bitter, tragic, or even violent episodes, did not duplicate the ruthlessness and exploitation of the class struggle in Europe.¹⁹⁵ Thus, there is no American Fabian Society educating the population into a more radical philosophy, although some of these functions are carried on by the League for Industrial Democracy.

It needs to be recognized that for many years a new party would be required to depend upon the ideals of its supporters alone. A new party could not reward its supporters with patronage, until after it had built itself into a major party. The adherents of the new party would have to be enthusiastic in order to give it the "blood, sweat, and tears" which always go into the early pioneering days of any organization. But where in Great Britain Kier Hardie, despite occasional friction, stayed with the unions and helped them to create the British Labor Party, in the United States Eugene Debs, who also preached the solidarity of labor and the ethical ideal of Socialism, broke irrevocably with the railroad unions which he had once led and became the brilliant orator, presidential candidate, and

195 Starr, op.cit., pp. 9-10.

political martyr of the Socialist Party. It was in this way that the rebel spirits in the A.F.L. either exhausted themselves in temporary crusades, or gave up the fight, and the A.F.L. became more conservative as the new blood was thus siphoned away.

The biggest contrast between the politics of the United States and Great Britain is of course that a British Labor Government has held power and a British Labor Party commands 50% of the vote, whereas in the United States there is not even the start of a Labor Party on a nationwide scale. There is no crusading Kier Hardie, no Fabian Society, and no Independent Labor Party preparing the way. There are no well-known union leaders in Congress nor any trade union group recognized as such. There is only a beginning of labor representation on local and state levels. This means that labor lacks the leadership and trained workers who have had experience in political administration. It also indicates that American labor has not yet won the battle for public opinion and is not taken for granted in such a way as it is in the smaller country.

The Americans for Democratic Action (A.D.A.), which has collaborated closely with the A.F.L. and C.I.O., is the only nation-wide group most closely akin in viewpoint to the British Labor Party, though it does not run its own candidates as such nor does it support candidates exclusively

of one party. A.D.A. leadership includes prominent liberals and labor leaders, and in its ranks are many New Deal ex-administrators. Like the British Labor Party, A.D.A. refuses Communist membership, support, or co-operation. Originally, it was organized to combat isolationist tendencies and hoped to formulate post-war plans, perhaps playing the role of the Fabian Society in the larger and more complicated American scene. However, those prominent in A.D.A. leadership have become absorbed in immediate political campaigns and in permeating the Democratic Party, rather than in formulating long-term goals and a philosophy for the formation of a new political alignment.

It seems, then, that independent political action by the unions themselves will not in the immediate future result in a new party. The labor unions, except for a few "left-wing" groups such as the U.E., rejected the Progressive Party formed in 1948 by former Vice President Henry A. Wallace, even though it advocated most of the programs sponsored by organized labor. Apparently, the struggle will be to turn the Democratic Party into a Social Democratic Party. This will be no easy task if one just considers the important conservative elements in the South, and even in areas of the North, which have such great influence within the Democratic Party.

If the unions decided to strike out on their own with a Labor Party, or whatever name it might be called, the many differences between the United States and Great Britain warn of serious difficulties for an American Labor Party. However, perhaps these obstacles could be overcome in such states as New York where both the American Labor and Liberal parties have enjoyed local popularity. From there, the movement might expand into agrarian states as a Farmer-Labor Party. In states such as Wisconsin, with the LaFollette Progressive Party tradition, an independent political force might be met with acceptance. Certainly, even today we have Senators like Wayne Morse and William Langer who would be willing to join in such a movement.

There remains to be commented upon the argument that a Labor Party assumes the possibility and validity of a consistent social philosophy, a long-range political policy and economic program. It is alleged that our present problems are not answerable by general principles but that we must proceed merely on a practical, pragmatic basis, undogmatically meeting each situation as such. It is this observation, plus the fact that we live today in a somewhat mixed economy which is neither capitalist nor socialist, which leads many to believe that talk of a new party for labor does not make sense, is not realistic in

the United States. It is said that even the British Labor Party is no longer seeing the issue as "Capitalism versus Socialism" but as "What needs to be done and how best to do it?"

In this context, these people claim that a Labor Party for this country is not needed, that labor can make itself felt and work within the existing parties. In Great Britain, at the time the Liberals had repealed the Osborne Judgment, this same reasoning was probably attempted in order to induce the labor unions to desist from continuing to build the Labor Party. In answer to the argument against a Labor Party, it could be asked: Are not the problems of today so complex and inter-related that one solution may affect many other sectors of the economy, and that a party with an over-all view may be necessary for the proper formulation, planning, and implementation of consistent policies and programs? It is fairly obvious that neither the Democratic nor the Republican parties of the present meet that description.

It might be good judgment that labor can best achieve its objectives within the existing parties by the labor unions founding a Labor Party as a potential threat. Thus, whenever the major party programs do not meet with the approval of labor, then a Labor Party candidate could be put into the field. It could work with

farmers in agricultural areas, and with liberal groups in the towns and cities. The very possibility of such a step by the unions would put labor in a much stronger position especially when it is pointed out that when a pro-labor candidate is nominated by the Democrats, the Republicans, or whatever major party may exist, that a Labor Party candidate would not be placed in opposition.

The Democrats, above all, cannot afford to have the labor vote it usually attracts, or even a good portion of it, lost to the Labor Party. Probably the result in many instances would be to split the progressive vote and to elect the Republicans, and perhaps labor would be willing to accept this risk, looking forward to the next and all future elections when the Democrats know that they must adopt pro-labor policies and candidates if they wish to be victorious. In this way, labor would raise itself above being confined to the status of only a powerful pressure group, but may exert its influence and work within the existing parties, and at the same time campaign independently if conditions warrant such political action.

II

GENERAL LEGISLATION AND JUDICIAL DECISIONS CONTROLLING LABOR UNION POLITICAL ACTIVITIES

Chapter Introduction

In both Great Britain and the United States there is general legislation and judicial decisions controlling the electoral conduct of individual candidates, political parties, campaign committees, and those acting in their behalf as agents. It has become commonly recognized that such "corrupt practices" laws are desirable to prevent the abuse of political power, to guard against the evils of undue influence, to meet the dangers of unfair financial advantages, to promote honesty in government, and to protect the integrity of the democratic process. While not aimed specifically at the unions, the application of these laws to any group which accepts contributions or makes expenditures for political purposes would include the electoral activities of organized labor. Thus, regulations as to political committees would apply to the C.I.O.-P.A.C. and the A.F.L.'s L.L.P.E.

Under these general statutes we find publicity requirements and provisions for publicity pamphlets. Candidates, committees, and others may be obliged to file

statements as to contributions and expenditures. There are limitations as to the amounts and purposes of campaign expenditures. Certain prohibitions exist such as on corporate contributions. Individual limitations on contributions and various other restrictions have been made into law. In addition to these controls, there are also certain statutory provisions which govern numerous "corrupt practices." For example, offers of money or of position for political support is outlawed, Civil Service employees are given protections, payment for newspaper editorial backing is made a crime, political material must be properly labeled, and there are penalties for the offenses of bribery, fraud, and other illegal practices.

Publicity Requirements and Publicity Pamphlets

Great Britain

Expense accounts. The English Corrupt and Illegal Practices Act of 1883, 46-47 Victoria, ch. 51, requires the filing of expense accounts by candidates and their agents, publicity as to the sources and disbursements of the funds so employed. But under the law no accounts are required to be filed by party committees. However, even though not required to do so, the Labor Party makes a detailed accounting of its income and political expenditures, including publication of the exact amounts in its

various party funds.¹ Most other parties do not publish accounts. The refusal of the Conservative Party to publish its accounts has been the subject of reproach against the Conservatives by the Labor Party. Conservative opposition to a public annual financial statement of its accounts has persisted in spite of the Maxwell Fyfe Committee on Party Organization recommendation that such an accounting is "the only effective basis from which to explain to Conservative supporters the main facts about party finance."²

Problem of inclusion. The Conservative leadership has regarded the publication of party accounts as undue intrusion into their affairs, arguing that "The idea of publishing the accounts of political parties is superficially attractive. It arises from the instinctive curiosity about other peoples' affairs which we all share."³ The Conservatives also raise the problem, how can it be decided what legitimately is to be included under the heading of expenditure for party purposes? They assert that the accounts of the Labor Party represent only a small part of the total expenditure on behalf of the Labor Party. Thus, the head-

1 Ivor Bulmer-Thomas, The Party System in Great Britain, p. 175.

2 Ibid, p. 176.

3 Sydney D. Bailey, Political Parties and the Party System in Britain, p. 136.

quarters accounts of the national Labor Party do not include the financially autonomous constituency Labor Parties, and this would be a substantial amount of total Labor organization expenditures.⁴

Further, the Conservatives claim that allowance also must be made for the propaganda expenditures and educational work of the trade unions, the co-operative movement, the retail societies, and the socialist organizations such as the Fabian Society. Though not incurred through the Labor Party itself, the Conservatives argue that these groups further the cause of the Labor Party by the propagation of socialist principles and that their funds are an auxiliary help to the Labor Party. Therefore, say the Conservatives, a comparison of campaign expenditures of the Conservative and Labor parties "would be completely misleading" because the Labor Party is only a section of the whole Socialist movement. The Conservatives allege that, adding the "political expenditures" of the Trade Union Congress, the Co-operative Union, etc., with the national Labor Party funds, "the Socialist Movement has at its disposal an income little less than £1,000,000 a year quite apart from what is raised and spent by the Constituency Labour Parties."⁵

4 Ibid, p. 134

5 Ibid, pp. 136-137.

Labor report of 1950. Because the publication of party accounts would be liable to be "highly misleading," the Conservative Party opposed the Labor Party motion of December 15, 1949, "that in the opinion of this House, political parties and all other organizations having political action as one of their aims should publish annually full and adequate statements of their accounts."⁶ In accordance with the intent of their party's resolution, the 1950 Report of the National Executive Committee to the Annual Conference of the Labor Party showed a credit balance at the end of 1949 of nearly £500,000. The principal sources of revenue for that year were the trade unions which provided £124,000 in affiliation fees, £27,000 towards the party's Development Fund, and £148,000 towards the General Election Fund. Constituency Labor Parties contributed £18,000 in affiliation fees, £7,500 to the By-Election Insurance Fund, and £7,000 to the Development Fund.⁷

Groups helping the Conservatives. In answer to the Conservative charge that the Labor Party has powerful allies whose support is not reflected in the party's budget, Labor spokesmen argue that "the nation should know what groups and organizations are especially anxious to have a Conservative

6 Ibid, p. 137

7 Loc.cit.

Government."⁸ The Labor Party asserts that "big business is actively helping the Tories..."⁹ It is true that organizations such as The Aims of Industry and the Economic League, which have the strong support of the powerful Federation of British Industries (equivalent to the N.A.M. in the United States), engage in anti-socialist propaganda and in behalf of the system of society which is advocated by the Conservatives.¹⁰ The Aims of Industry is described by the Labor Party as "a propaganda body in the interests of big business" and in 1948 had, by its own admission, received over 78,000 column inches of newspaper space "worth no less than £780,000."¹¹ The Economic League has 92 permanent speakers and during 1948 secured over 25,000 inches of press publicity and distributed nine and one-half million leaflets.¹²

Because the British law does not require publicity by political committees, and the fact that the Conservative Party does not publish an annual statement of its accounts, we shall not discover any official answers to the questions raised by the Labor Party concerning the financial backing

8 Ibid, p. 138.

9 Loc.cit.

10 Ibid, pp. 134, 138.

11 Ibid, pp. 138-139.

12 Ibid, p. 138.

of the Conservatives. Thus, in regard to Great Britain it has been observed that "The subject of party finance awaits a full-scale study and anything short of it is bound to be tantalizing and inconclusive."¹³ The same source also observes, however, that there is no mystery about the derivation of Conservative funds.¹⁴ In the past, the central work of the party was mainly supported by the subscriptions of firms and individuals, the Conservative cause securing sufficient financial backing from a relatively small number of people.¹⁵

But in 1947 the Conservative Party made a public appeal for political funds. The Conservative Chairman Lord Woolton, admitting that it was a new thing to make such an open appeal, stated that in the past the party had collected its campaign expenditures "from a few hundred people."¹⁶ Also for the first time, the Conservative constituency parties were asked to accept some responsibility for contributing toward the central funds of the party and a large number of them have done so on a quota system based on the ratio of the Conservative vote to the runner-up in that district, the larger the Conservative margin the

13 Ibid, p. 134

14 Ibid, p. 177.

15 Loc.cit.

16 Ibid, p. 178.

larger the contribution.¹⁷ Today, the Conservative Party income is derived from the subscriptions of members and proceeds of social activities.¹⁸

Government aid for candidates. There is no provision in the British law for publicity pamphlets, which will be discussed later with reference to the United States. However, in England under 8 Geo. V, Ch. 64, Sec. 33, any candidate for the House of Commons, the lower house of the national legislature, is allowed one free mailing to all of his constituents. Each candidate can send to each registered elector in his constituency one postal communication containing matter relating to the election only and not exceeding two ounces in weight, free of any charge for postage. The obvious aim of this provision is to put the wealthy and poor candidates on a more equal plane. This is also the purpose behind the granting of equal or fairly proportionate radio time, without cost, to all political parties.

United States

Federal publicity requirements: history. Prior to 1890, no law had been passed in the United States regulating the use of money in elections.¹⁹ Indeed, until the

17 Loc.cit.

18 Ibid, p. 177.

19 James Kerr Pollock Jr., Party Campaign Funds, p. 7.

presidential election of 1904, the subject of campaign
funds had not received any serious public consideration.²⁰
The 1904 Democratic candidate for the Presidency, Judge
Alton B. Parker, had charged that corporations were
supplying funds for the Republican campaign in order to
buy influence with the Administration.²¹ Although the
charge was repeated during the closing days of the
campaign, public sentiment was not sufficiently aroused
by it to affect the result of the election.²² But after
the 1904 campaign, investigations into corporate political
activities revealed that, among others, insurance companies
had made substantial contributions and had concealed these
campaign donations by questionable bookkeeping methods.²³

This scandalous conduct in the financing of political
campaigns, details of which shall be taken up under restrict-
ions on contributions and expenditures, aroused the public
to demand legislative action.²⁴ This stimulus against the
power and influence of corporation funds being used to
control the government led President Theodore Roosevelt to
recommend publicity legislation in his messages to Congress

20 Loc.cit.

21 Sen.Doc. No. 495, 62nd Congress, Second Session,
p. 17.

22 Pollock Jr., op.cit., p. 9.

23 Ibid, p. 11.

24 Ibid, pp. 11-12.

in 1904 and 1905.²⁵ Although publication of the receipts and expenditures of political committees was advocated by many individuals and groups, including the national Publicity Law Association, bills framed by these organizations failed to pass in 1906 and 1907.²⁶ The following year, 1908, saw both major parties making public their campaign funds in a competition for the honor of "open finances."²⁷

In his first message to Congress in December, 1909, only four years after the first publicity bill had been introduced in Congress, President William Howard Taft "urgently" recommended that a law be passed requiring that candidates for Congress and their campaign committees file with the government a statement of contributions received and expenditures incurred in the campaign for such federal election.²⁸ Encouraged by President Taft's support of publicity legislation, the National Publicity Law Association renewed its efforts in the 61st Congress and on June 25, 1910, the first national publicity law was approved, providing for public information as to contributions and expenditures made for the purpose of influencing elections

25 Louise Overacker, Presidential Campaign Funds, p. 21.

26 Loc.cit.; Pollock Jr., op.cit., p. 13.

27 Pollock Jr., op.cit., p. 14.

28 Ibid, p. 15; see Messages and Papers of the Presidents, vol. 10, p. 7807.

at which Representatives in Congress are elected. ²⁹

Federal publicity requirements: provisions. The 1910 Act, containing ten sections, required publicity for election campaign receipts and expenditures. Political committees must make periodic reports, filing a sworn statement with the Clerk of the House of Representatives in Washington within 30 days after every federal election. This should be an itemized statement submitted by the treasurer of the political committee showing in detail the total of all receipts, the names and addresses of all persons contributing \$100 or more, the aggregate of all contributions of less than \$100, the total of all contributions, the names and addresses of all persons to whom any sum of more than \$10 has been paid, the purposes of all payments, the total of all disbursements, and a statement of outstanding obligations. In addition to political committees, the law also applied to "every person, firm, association, or committee except the political committees, that shall expend a sum amounting to \$50 or more for the purpose of influencing in two or more states the result of an election at which Representatives to the Congress of the United States are elected..."³⁰

Expenditures for traveling, stationery, postage,

29 U.S. Statutes at Large, vol. 36, p. 822.

30 Loc.cit.

telephone, and telegraph did not come within these provisions, which penalized every person convicted of violating any section of the Act by a fine of not more than \$1,000 or imprisonment of not more than one year, or both. A very important compromise in the enactment of the 1910 law was the substitution of post-election publicity for the more effective pre-election publicity. The next year Congress amended the 1910 law. These changes, approved on August 1911, extended the application of the 1910 Act, which had applied only to committees, to include candidates for Congress.³¹ The 1911 amendments also achieved pre-election publicity. The treasurer of a political committee must keep a record of all receipts and expenditures and file a statement not only within thirty days after the election, but also not more than 15 days and not less than 10 days before the election, and a supplementary statement on each sixth day thereafter until the election. Candidates for the House and Senate must file statements immediately³² before and after the election.

The 1911 law also applied to federal primaries as well as elections. Treasurers of political committees and candidates were required to file itemized statements ten to fifteen days after any primary or convention at which a

31 U.S. Statutes at Large, vol. 37, p. 25.

32 Loc.cit.

candidate for Congress was nominated or endorsed. These two laws of 1910 and 1911, together with a short amendment passed in 1912 simplifying the filing of statements,³³ and another amendment in 1918,³⁴ constitute the sum total of federal legislation bearing on campaign expenditures prior to 1925. In that year all this legislation with certain changes, most of them minor in character, was consolidated and became part of the Federal Corrupt Practices Act of 1925,³⁵ which was Title III of the Postal Salaries Increase Act passed by Congress on February 28, 1925. The Federal Corrupt Practices Act of 1925 remained unchanged until the amendments, to be discussed elsewhere, of 1939, 1940, 1943, and 1947. There were only three important changes in the 1925 law affecting national campaign fund publicity.

First, the law applied only to general elections and not to primaries or conventions. This was the result of problems raised by court rulings which will be separately taken up under federal expenditure limitations in primaries. Second was the detailed reporting procedure outlined in Section 305 providing for continuous publicity, requiring national committees to file quarterly reports "between the first and tenth days of March, June, and September, in each

33 U.S. Statutes at Large, vol. 37, p. 360.

34 U.S. Statutes at Large, vol. 40, p. 1013.

35 U.S. Statutes at Large, vol. 43, p. 1070 (68th Cong. 2d Sess. P.L. No. 506 Title III app. Feb. 28, 1925).

year, and also between the tenth and fifteenth days, and on the fifth day, next preceding the date on which a general election is to be held, at which candidates are to be elected in two or more states, and also on the first day of January," together with an affidavit from the treasurer certifying that the report covers all expenditures and contributions for the period in question. Statements filed the first of January are cumulative and cover the preceding calendar year.³⁶ These reports must be kept as public records for two years.

The third change in the publicity law broadened the definition of political committee. A "political committee" is defined as any committee which accepts contributions or makes expenditures to influence the election of federal candidates in two or more states, or in a single state if the committee is a "branch or subsidiary" of a national organization. A state organization should file first at the conclusion of the primaries when the political committee starts to accept contributions and make expenditures for the purpose of the elections. No reports are required under the Act if campaign work is limited to primaries or the election of state or local officials. Nor will the political committee have to report if it is not associated with a national organization and does not engage in federal campaigns outside the state.³⁷

36 Loc.cit.

37 Loc.cit.

Publicity requirements as to election campaign committees were supplemented by the Federal Regulation of Lobbying Act of 1946, 60 Stat. 839, 2 U.S.C.A. Sec. 261 et seq. Not only was the public to be informed regarding the election expenditures of political committees, but now was to be enlightened concerning how much is spent to influence Congress. The law sets no limits on the amount of expenditures but requires that any person or organization which receives or spends money for "the principal purpose of aiding or influencing legislation" must file sworn quarterly reports of what they spend. But there is no specified form for these reports. Also, although the Act's constitutionality was upheld, the application of the law has been greatly diminished by the recent Supreme Court decision in United States v. Rumely, 345 U.S. 41, 73 S.Ct. 543, 97 L.Ed. (1953).

Rumely, an officer in the Committee for Constitutional Government, Inc., was found by the Supreme Court to be innocent of contempt of Congress for refusing to testify as to the amount and source of contributions. The Supreme Court held, inter alia, that the scope of the Lobbying Act did not make this information relevant to the inquiry. Further, said the Supreme Court, "lobbying" was not defined in the Act and therefore the law should apply the usual meaning given to the word by the average citizen, the

common understanding should be used. According to the Supreme Court majority, the common meaning of "lobbying" is "direct communication with members of Congress." But Justices Robert Jackson, William Douglas, and Hugo Black dissented, protesting that this ruling in effect rewrote the Lobbying Act, creating a new and inferior law.

Thus, under the present direct representations interpretation, the Lobbying Act has been construed as not covering the cost of printing and distributing "literature" designed to influence legislation, nor under this view does the Act include the cost of radio or television propaganda. Also, the percentage of time lobbyists actually spend with legislators is calculated, and only that percentage of their salary reported. Similarly, only a fraction of the expense of maintaining a Washington office need be reported. Unless and until the law is amended to include within the meaning of "lobbying" all such expenditures, the public cannot expect to know what is being spent by lobbyists to push or block legislation.

Federal publicity requirements: problems. The publicity provisions of 1910 and 1911 were brought into use for the first time in 1912. In that year detailed financial statements filed in Washington gave official figures for public information of all money raised and expended by political committees for the election of national officers.

The presidential election of 1916 saw large sums expended by both parties, but it was all carefully accounted for in reports filed with the Clerk of the House of Representatives.³⁸ On June 5, 1920, the Senate authorized³⁹ the Committee on Privileges and Elections to conduct an investigation into the receipts and disbursements of political committees in the campaign about to begin. Presided over by Senator Kenyon of Iowa, this Committee went into the question of party finance further than any previous investigation and "the value of its work cannot be over-estimated by any serious student of the subject."⁴⁰

Thousands of pages of testimony were taken, and figures of party expenditures were secured which until then had been entirely unavailable. "There is no doubt but that the committee aided materially in checking any undue expenditure of money, as also in providing unusual publicity in the matter of campaign funds."⁴¹ However, while there is general agreement that there has been compliance with the laws requiring publicity, the statements filed do not serve the purposes of publicity because hardly anyone⁴² bothers to look at them and they are scarcely ever published.

38 Pollock Jr., op.cit., pp. 17-18.

39 Cong. Rec., vol. 59, pp. 8637-8643.

40 Pollock Jr., op.cit., p. 19.

41 Loc.cit.

42 Ibid, pp. 185-188.

This is so in spite of the fact that in actual practice the reports are kept indefinitely and afford the press, the public, and the research worker a continuing and fascinating story of the financing of presidential elections.⁴³ Furthermore, to say that they give an absolutely accurate and complete story would be far from the truth.

There is no requirement for a uniformity of reports or a regular system of accounting. No public officer is officially vested with the responsibility of examining the records and reporting violations to the Attorney General. It should not be surprising that researchers have found the statements filed diverse in their method of reporting receipts and expenditures, making it extremely difficult⁴⁴ to assemble comparable data. It has been observed that the Democratic accounts present a better appearance than the Republican accounts, and that the Democrats usually comply with the requirements of giving total figures, but⁴⁵ that the Republicans do not. Therefore, in actuality

43 Overacker, op.cit., p. 23.

44 Loc.cit.

45 Pollock Jr., op.cit., pp. 189-190. "In order to secure them, one must go through all the reports, put down the sums carried forward each time and add them all up. There is scarcely an account on file which would pass the scrutiny of an accountant hired by the government to determine whether the accounts were properly filed according to law. It can hardly be imagined that any business man would allow his books to be kept in a way that party treasurers keep theirs."

there is no publicity except for scholars. There is no requirement for effective publication of these reports. They are unsatisfactorily drawn, there is no checking upon them, and they are known if at all only after the election.

State publicity requirements: history. The states were the first to secure legislation controlling the conduct of political campaigns. In 1890 New York passed the first state corrupt practices law.⁴⁶ This law did not regulate political committees but applied only to the expenditures of the candidates themselves. Limited in scope and otherwise defective, nevertheless it represented a beginning and gave an indication that public interest was being enlisted. In the following year Colorado and Michigan also enacted laws modeled after the New York statute, but improved upon the New York provisions by extending to political committees the requirement of publicity in the matter of receipts and expenditures. In 1892 Michigan passed a more elaborate law which went further in the direction of the thorough-going English Corrupt and Illegal Practices Act of 1883 than any of the other statutes mentioned. Massachusetts followed in 1892 with a law requiring almost complete campaign fund publicity, whereupon California, Missouri, and Kansas came forward in quick succession with similar legislation.⁴⁷ State after

46 Sen. Doc. No. 89, 59th Cong., First Sess., p. 5.

47 Loc.cit.

state enacted publicity laws until today the requirement of filing a statement of receipts and expenditures is the most universal feature of corrupt practices laws. Only two states do not require these statements, Illinois and Rhode Island.⁴⁸

State publicity requirements: provisions. Ten states require the statement of candidates only, while thirty-six require such filing from both candidates and parties. Usually the statement is to be filed with the secretary of state for state-wide offices and with county or city clerks or county probate judges in the case of county or city offices. Most states stipulate that these returns shall be open to the public and shall be kept for periods varying from six months to three years, or that they shall become part of the public records. Surprisingly, a few states make no provisions for preservation of these papers once they are filed. As to the time of filing, there is no uniformity. Most common are provisions for a double filing, before and after the general election, or a single filing after a general election. The time limit for filing before or after elections varies from seven to thirty days. Because the interest in the election is still high, one of the most effective ways of publicizing the expenditures of candidates is through the pre-election filing provisions.⁴⁹

⁴⁸ S. Signey Minault, Corrupt Practices Legislation in the 48 States, p. 4.

⁴⁹ Ibid, pp. 4-5.

Several state statutes require that the books kept by all treasurers be open to inspection by rival candidates at all reasonable times and these states empower the courts to enforce this provision by injunction. In fifteen states, the forms upon which the statements are made are provided by the state, while in four more the form is prescribed by law or by the secretary of state. A small number of states further require an affidavit or oath by the candidate that all expenditures have been made for a legal purpose. A small number of states require that vouchers be submitted for all expenditures over a certain sum, usually \$5 or \$10. In addition to filing the statement with a state official, two states, Georgia and Maine, require that the statement be published in a newspaper. Of the 46 states requiring the filing of a statement of receipts and expenditures, all but four require the listing of unpaid debts in the statement. This is unfortunately a serious shortcoming which may give the unscrupulous candidate a means of avoiding the listing of illegal or embarrassing contributions.⁵⁰

It is a universal requirement that the statement contain the names of the persons to whom payment has been made or from whom contributions have been received, yet only Massachusetts, New York, North Carolina, and Ohio

⁵⁰ Ibid, p. 5.

(the latter in referenda campaigns only) stipulate that the address as well as the name of the contributor or payee be submitted. When the difficulty of checking the statements of candidates as to proper disbursements is considered, the importance of requiring the address of donors and receivers becomes apparent. Two states, Montana and Nevada, specify that a duplicate of the expense account be given the treasurer of the opposing candidate.⁵¹

An interesting control is found in the New Jersey statute requiring all political funds to be deposited in a bank. Twenty days after an election, all deposit slips and all vouchers are to be filed in the same office as are required to be filed the petitions for nomination, that of secretary of state or county clerk. Furthermore, it is also stipulated that no candidate or any person, corporation, or association may withdraw funds from the bank except through a written order by the campaign manager authorizing the withdrawal and upon a form prescribed by the state and detailing the purpose of the withdrawal.⁵²

State publicity requirements: problems. Weaknesses in publicity laws include the post-election publication rather than the desirable pre-election publicity, whether

51 Loc.cit.

52 Ibid, pp. 5-6.

the returns made correspond to the actualities, failure in many states to require party filing as well as candidate filing, failure to require statements as to the borrowing of campaign funds, failure to stipulate that the address as well as the name of the donors and receivers be listed in the returns, and failure to provide for official inspection of the statements filed.⁵³ Undoubtedly the greatest weakness of the corrupt practices statutes of the various states lies in the difficulty of providing adequate enforcement.⁵⁴ In many states provisions for such enforcement are entirely lacking, while in others adequate provisions may be nullified by the action of the courts.⁵⁵

According to the enforcement provisions of their statutes, states might be divided into two categories: those having "automatic" enforcement of their corrupt practices laws, and those leaving such enforcement to private individuals. By "automatic" enforcement is meant that the official with whom the statement is filed must report either the failure on the part of the candidate to

⁵³ Charles E. Merriam and Harold F. Gosnell, The American Party System, p. 405.

⁵⁴ Minault, op.cit., p. 6.

⁵⁵ For an excellent treatment of the still confused juridical and constitutional questions of corrupt practices legislation, consult Judicial Decisions Affecting the Corrupt Practices Laws, Sen. Doc. No. 203, 76th Cong., Third Sess., and Constitutionality of Corrupt Practices Acts, 69 A.L.R. 377.

file the statement (seven states have this requirement only), or, after examination of the statement, the expenditure by the candidate or his treasurer of sums larger than allowed or of illegal expenditures (ten states have both these requirements) to the prosecuting officer. The latter must investigate and, should he find that the law has been violated, must begin criminal proceedings. In practice, however, it is found that very rarely does a prosecuting officer ever bring charges, even when violations are known to him.⁵⁶

That the "automatic" method of enforcement contains imperfections is also attested by the fact that some three states further stipulate that, should the prosecuting officer fail to bring charges against a delinquent candidate, the prosecuting officer shall himself be guilty of a corrupt practice punishable by severe penalties. The majority of the states still leave the initiative of the enforcement of their corrupt practice acts to private individuals, either to the defeated candidate or a number of qualified voters, usually five. Should the latter wish to contest the election they file a petition, together with sufficient sureties, with a designated court either for an audit of the expenditures or alleging any violation of the state statute. It is usually stated that the proceedings are to be given precedence, so far as is possible, over other matters before the court and

⁵⁶ Minault, op.cit., pp. 6-7; Louise Overacker, Money in Elections, p. 353.

the costs are assessed as in equity cases. Appeal is usually allowed.⁵⁷

The court certifies its findings to a prosecuting officer for appropriate action or, in the case of a successful candidate, to the attorney general of the state for quo warranto proceedings to void the election and declare the office vacant. In the case of a state legislative office, the findings are certified to the presiding officer of the proper legislative body. Where a member of Congress is involved, the findings are certified to the governor of the state for transmission to the presiding officer of the appropriate chamber. Legislative houses, of course, are the sole judges of the qualifications of their members. Although fines and imprisonment, or both, are the most common penalties⁵⁸ for violation of state corrupt practices statutes, such as failure to file or exceeding the expenditure limit, it is difficult to get convictions under these laws. A greater use of forfeiture of office and disqualification to hold office, as in Oklahoma which stipulates permanent disqualification, might have a beneficial result.⁵⁹

57 Minault, Ibid.

58 In addition to state provisions, Maine's law requires municipal officials to file a campaign expense account with the local clerk within fifteen days after the election, subject to a fine of \$25 a day for each day the report is delayed, and forfeiture of salary until the official has complied with the law.

59 Minault, op.cit., pp. 7-8 for a summary of the various state enforcement procedures; Merriam, op.cit., p. 412.

The provision withholding a certificate of election from a candidate who has not complied with all aspects of the law has given rise to a number of court proceedings. Where no willful intention of evading the law can be shown, the courts have generally interpreted these provisions liberally.⁶⁰ Thus it has been that although the corrupt practices acts contain general publicity requirements, of a statement filed for public record with details as to time and manner of filing,⁶¹ they have not been particularly effective in publicizing the returns of candidates and committees, or even in securing the proper information in the first place. Just because most candidates and political committees are faithful in filing is no guarantee that these statements are accurate. One student of the subject believes that "there is a great deal of perjury, perhaps as high as 80%, in these sworn statements."⁶² It should also be noted, however, that often failures to file are by candidates who are not acquainted with the law or who make very small or even no expenditures.⁶³ Irregularities of this type are an entirely different question from wilful violations.

⁶⁰ Judicial Decisions Affecting the Corrupt Practices Laws, Sen. Doc. No. 203, 76th Cong., Third Sess., pp. 33-41; Louise Overacker, Money in Elections, chapter XIII for an evaluation of states' corrupt practices acts provisions.

⁶¹ Pollock Jr., op.cit., pp. 237-239.

⁶² Ibid, pp. 240-241.

⁶³ Loc.cit.

As a result of very defective legal provisions, state regulations regarding publicity have been reduced to a sheer farce.⁶¹ About half the disbursements are listed simply as for "services" without any further explanation.⁶² The required returns list ridiculously small expenditures and often there have been no returns at all.⁶³ "As a rule, the reports are worthless."⁶⁴ The early legislation passed in the nineties died of neglect, the machinery for enforcement being so ill-contrived and clumsy that no vigorous application of them was possible. Although after 1904 public opinion was more awake to the possibilities of these measures and there was much closer attention given to the practical application of the laws,⁶⁵ defects still remain.

Summarizing, what is presumed to be publicity is now required, but we have seen there is little real publicity. No candidate need hesitate to file an expense statement of almost any kind, because he knows that it will never be

61 Merriam, op.cit., p. 412; Pollock Jr., op.cit., pp. 243-254 for a discussion of typical examples of how the publicity laws are often made a sham.

62 Pollock Jr., op.cit., p. 242.

63 Merriam, Ibid; but it has been pointed out that in Massachusetts where the 1922 primaries saw 1149 returns filed from candidates for nomination, there were 93 who failed to file, and the majority of these did so when requested by the Attorney General. Most of the failures to file were not wilful. Pollock Jr., op.cit., pp. 240-241.

64 Pollock Jr., op.cit., p. 242.

65 Merriam, Ibid.

brought to light. Many of the defects mentioned could be remedied if adequate publicity could be required. How can this be done? In addition to the statement being filed with a public officer, Georgia and New Hampshire require the candidate to publish the figures of his expenditures in two newspapers of general circulation in the state. It has been suggested that each secretary of state be required to release to the press the figures of individual and party expenditures filed in his office.⁶⁶

Publicity pamphlets. Although in the United States there is no federal provision for publicity pamphlets, several states have experimented with an official state bulletin or "publicity pamphlet." These states include Montana (1913-1918), South Dakota (1916-1921), and Wyoming (1911-1919).⁶⁷ In North Dakota a law was passed in 1911 for official election pamphlets printed by the state in which each candidate was given an equal amount of space for propaganda purposes, the cost of which was shared equally by the candidates, but this interesting feature was changed in 1923 so that the publicity pamphlet is now issued only when constitutional amendments and other measures are submitted to the people. The pamphlet is distributed free of charge to all registered voters.⁶⁸

66 Pollock Jr., op.cit., pp. 246-247.

67 Howard R. Penniman, Sait's American Parties and Elections, p. 554.

68 Loc.cit., Minault, op.cit., p. 2.

A Colorado law of 1913 never became effective, its validity requiring an amendment to the state constitution. A Florida law applying only to primaries, nomination in which is usually tantamount to election in that state, was repealed in 1935.⁶⁹ Through the office of secretary of state and with the approval of the attorney general, who is also authorized to simplify the wording of all referendum questions without changing the essential meaning of these questions, Massachusetts mails at public expense to each registered voter a copy of state referendum questions well in advance of the election, together with the complete text of the majority and minority reports of the legislative committees which considered the proposals.

With reference to candidates, Oregon in 1908 was the first state to issue publicity pamphlets to every registered voter.⁷⁰ The Oregon law, as amended, is today the most outstanding example of publicity pamphlet statutes⁷¹ and provides that the state executive committee of any political party "may file with the secretary of state protrait cuts of its candidates and typewritten statements and arguments for the success of its principles and the election of its candidates, and opposing or attacking the principles and

69 Penniman, Ibid.

70 Pollock Jr., op.cit., p. 104

71 Oregon Election Laws, 1923, Sec. 4119.

candidates of all other parties."⁷² Independent candidates enjoy a like privilege. The material is printed in pamphlet form and mailed to the voters at least ten days before the election.⁷³

For each page in the publicity pamphlet there is a charge of fifty dollars for the cost of printing which is borne by the political parties, or the independent candidate, although the binding and distribution of the pamphlets is paid for by the state in an effort to provide reasonable means of publicity at public expense for parties and candidates as a means of aiding the electorate to make an intelligent choice. The maximum allowance of space is two pages for an independent candidate and twenty-four pages for a political party. At fifty dollars per page, each party can spend \$1200.00 for this one item.⁷⁴ Experience has shown that not all the allotted space is taken and in a typical election only one-half of the space is used and sometimes as little as one-third.⁷⁵

The Democratic State Committee is more likely to buy space in this publication than the Republicans because the Democrats feel that it is an aid to their party, "the more information the voter has the more readily he votes

72 Loc.cit.

73 Loc.cit.

74 Loc.cit.

75 Penniman, Ibid; Pollock Jr., Ibid.

our ticket."⁷⁶ On the other hand, the Republicans take a dim view of the publicity pamphlet. They prefer to spend money in newspapers or print their own party literature because they claim that the voters don't pay much attention to the publicity pamphlet. However, the pamphlets have been continued by the state as a means of educating the average voter.⁷⁷ This type of state aid is considered by writers on this subject to be the most beneficial manner⁷⁸ of reducing corrupt practices at elections.

As stated in the preamble, the purpose of the Oregon law is "as nearly as possible" to prevent the use of any means but arguments addressed to the voters' reason.⁷⁹ The spending of large sums of money in the elections "tends to the choice of none but rich men or tools of wealthy corporations to important offices, and thus deprives the people's government of the services of its poorer citizens regardless of their ability."⁸⁰ The law proceeds, therefore, to set a very severe limitation upon expenditures. Beyond his contribution toward the cost of the statement appearing in the publicity pamphlet, a candidate is restricted to a sum

76 Pollock Jr., op.cit., p. 105.

77 Loc.cit.

78 Minault, Ibid.

79 Oregon Election Laws, 1923, Sec. 4119.

80 Loc.cit.

not exceeding ten per cent of one year's salary of the office he is seeking.⁸¹ Ten per cent of the salary of governor is \$750.⁸²

Obviously such slender resources will not permit a candidate to make himself known to almost 800,000 voters scattered over an area of more than 96,000 square miles. His portrait and a one or two page statement in the publicity pamphlet is helpful but cannot substitute for a campaign⁸³ which involves a serious discussion of political issues. Not only does Oregon's drastic solution of the campaign fund problem over-emphasize the value of the publicity pamphlet, but if a real effort were to be made to guarantee both the information needed by the electorate and to prevent excessive campaign expenses, it would be necessary for the state to cover the entire cost of these pamphlets and, in addition, to appropriate the proper, reasonable, and legitimate expenses of campaigning, or to provide such an amount to meet any deficit occasioned by stringent prohibitions on⁸⁴ contributions above a certain amount.

81 Loc.cit.

82 Penniman, Ibid.

83 Ibid, p. 555.

84 Loc.cit.; Pollock Jr., op.cit., pp. 106-110. Underwriting the cost of political campaigns was suggested by President Theodore Roosevelt to Congress in 1907, Messages and Papers of the Presidents, vol. 10, p. 7486. Under his proposal, private contributions would still be permitted; there would be no giving up the right of personal financial support.

Expenditure limitations

Great Britain

In addition to requiring publicity, a sworn statement as to the receipts, sources, and disbursements of campaign funds of individual candidates, the English Corrupt and Illegal Practices Act, 46-47 Victoria, ch. 51 (1883), strictly limits the amounts which can be expended in furtherance of the election of a particular member of Parliament, restricting both the aggregate sums that may be spent and also the manner in which such funds may be expended by forbidding expenditures for certain purposes and enumerating the objects upon which money may be lawfully spent. Great Britain permits a candidate to spend for each registered voter ten cents in a borough constituency and twelve cents in a county constituency, together with small sums to cover personal expenses and the salary of an election agent. In addition to this, however, the Central Office may spend as much as it pleases in the general interests of the party as a whole, the law in Great Britain being concerned only with the outlay in behalf of individual candidates.⁸⁷

As borough and county constituencies are equal in number, the maximum expenditure for individual candidates averages eleven cents for each registered voter.⁸⁸ In the

⁸⁷ Corrupt and Illegal Practices Act, 46-47 Victoria, ch. 51 (1883).

⁸⁸ Penniman, op.cit., p. 539.

three elections of 1922, 1923, and 1924, according to the official figures including all permitted expenditures, the total average expenditure was twenty-two cents for each registered voter.⁸⁹ For purposes of comparison, if we assume that in the United States local committees spend no more than do state committees and if we base calculations on the whole number of adults, the two major parties spent for each adult some thirty-seven cents in 1936 and forty-five cents in 1940.⁹⁰ It should be noted that this figure for each adult is not a correct comparison with Great Britain because not all adults in the United States are registered voters, and that for each registered voter the amount would be much larger.

United States

Federal expenditure limitations: history. Campaigning in a constituency of well over 60,000,000 voters, as is the case in presidential elections, is necessarily expensive. "The choice of the voter cannot, in the nature of things, be among men whom he knows, but must be among men whom he does not know. The making and selling of these pictures is the costly part of campaigning for the presidency."⁹¹ For example,

89 Loc.cit.

90 Loc.cit.

91 Louise Overacker, Presidential Campaign Funds, p. 4.

in the 1944 campaign the national committees of the two major parties spent for radio time alone over \$1,500,000.⁹² Not only do the national committees of the political parties spend money, but we must remember that in a hotly contested election numerous non-party organizations also customarily enter the field.

Thus, in the campaign of 1928 the Democratic presidential candidate, New York Governor Alfred E. Smith, aroused strong emotions by his attitude on prohibition. National and state organizations of the Anti-Saloon League spent close to \$1,500,000, and the Association Against the Prohibition Amendment spent nearly \$500,000. A single individual contributed \$172,800 to a variety of anti-Smith organizations.⁹³ In this bitterly fought campaign, the Republican National Committee spent over \$4,000,000 in behalf of Herbert Hoover and the Democratic National Committee spent over \$3,000,000 for Alfred E. Smith. If state committees and independent organizations are included, over \$9,000,000 was spent to elect Hoover and over \$7,000,000 in behalf of Smith. It is not known how much local committees spent, but the total for the campaign was probably well over \$20,000,000. "Certainly the total was larger than in any previous campaign."⁹⁴

92 Ibid, p. 5.

93 Ibid, pp. 6-7.

94 Ibid, p. 12.

The 1932 campaign was fought mainly on the depression issue and the way out, including problems of unemployment, agricultural relief, and the extent of governmental expenditures for welfare and reform. Also in dispute were the prohibition and tariff questions, and other but less important election factors.⁹⁵ As reflecting in the national committee reports required by law, the Republican Party was the choice of "Wall Street" and spent more than the Democrats who drew more heavily upon very small contributors.⁹⁶ The wider distribution of Democratic financial support to some extent foreshadowed the widely distributed popular vote of that party. Despite the larger campaign chest against them, the Democrats won. It was not the financial outlay of the parties but the economic condition of the country following the crisis of 1929 which was to be determinant of the outcome.

Important as campaign resources are, in 1932 the people wanted a change. Their feelings of discontent were too deep-seated to be displaced by Republican arguments, and "the Democrats undoubtedly would have won regardless of how much the Republicans might have spent."⁹⁷ Although the radio had been used as early as 1924 in a presidential election,

⁹⁵ Roy V. Peel and Thomas C. Donnelly, The 1932 Campaign An Analysis, pp. 123-142.

⁹⁶ See Louise Overacker's Money in Elections for a thorough consideration of campaign finances.

⁹⁷ Peel, op.cit., p. 122.

and was more extensively employed in the 1928 Smith-Hoover contest, in 1932 the radio industry put the conventions of the two parties on the air free of charge. But thereafter the parties had to pay for their radio time. All the addresses of the presidential candidates were carried over national hookups. The cost of an evening hour's broadcast over the combined networks of the Columbia and National Broadcasting Companies in 1932 was \$35,000,⁹⁸ and the radio bills of the two parties constituted one of their largest items of campaign expenditure.⁹⁹

Where the radio had not materially influenced the 1928 result, it did increase support for the Democrats in 1932. The 1928 radio presentations of both Smith and Hoover were unpleasant, Hoover being dull and uninteresting, and Smith had offended many voters with his raucous speech. But in 1932 the sparkling radio personality of Franklin Delano Roosevelt, his apparent simplification and clarification in explaining the issues, gave him a decided advantage. The only chance President Herbert Hoover had to win the election for the Republicans against the challenge of New York's Governor Roosevelt was dependent upon the return of a measure of prosperity in the late summer or early fall months of 1932. But Republican hopes were in vain. Instead of improving,

98 Peel, op.cit., p. 116.

99 Ibid, p. 121.

conditions got worse.

In 1936 the ultra-conservative, if not reactionary, Liberty League spent over \$500,000 in its futile attempt to "stop Roosevelt." In the same campaign, not to mention the labor union's substantial direct contributions to the Democratic Party, Labor's Non-Partisan League spent \$170,000 to continue the New Deal by helping re-elect President Franklin D. Roosevelt.¹⁰¹ The combined expenditures of the two national committees in 1936 exceeded \$14,000,000, considerably above their 1928 expenditures. It is not known how much was spent by state and local political committees and therefore one cannot say with certainty whether the total expenditures in the 1936 campaign were more or less than the previous high in 1928. It is known, however, that the defeated Republicans spent much more than the victorious Democrats who swept the country in the greatest presidential landslide in American political history.¹⁰²

The three presidential elections of 1928, 1932, and 1936 went by without amendment to the 1925 Corrupt Practices Act. Up to 1940, with the exception of the 1907 enactment of the prohibition of contributions from national banks and

100 Ibid, p. 122.

101 Overacker, Presidential Campaign Funds, pp. 6-7.

102 Ibid, p. 17.

corporations to be noted elsewhere, regulations affecting presidential, as distinct from congressional, elections consistently applied the principle of publicity rather than prohibition.¹⁰³ Although duly organized state or local committees of a political party were specifically placed outside the scope of the 1925 Act, we have seen that the treasurers of political committees coming within the scope of the Act, those attempting to influence the choice of presidential electors in two or more states or those acting as subsidiaries of a national organization, were required to file reports with the Clerk of the House.

One careful observer believes that until 1940 we were moving slowly but steadily in the direction of effective publicity, and that the voters were becoming increasingly aware of the extent to which they did and did not pay their own political bills.¹⁰⁴ At the same time, the party national committees were assuming more responsibility for the collection and distribution of funds, a trend toward centralization which greatly facilitated the assembling of pertinent information. Our picture of the financing of presidential campaigns was still incomplete, but it was becoming steadily more complete and clear cut. With more experience, patience and imagination, the gaps in the 1925

103 Ibid, pp. 22-23.

104 Ibid, p. 24.

legislation might have been filled in, and the defects
105
remedied.

Federal expenditure limitations: provisions. In 1940, however, Congress unfortunately abandoned the path of publicity. Rather than tightening the publicity requirements, prohibitions were to be attempted. The 1925 Federal Corrupt Practices Act was amended by Hatch Act II enacted in 1940 to place a limitation upon the amount expended by both candidates and committees.¹⁰⁶ Individual expenditures for the election of United States Senators are restricted to \$10,000 and of United States Representatives to \$2,500, or an amount equal to the amount obtained by multiplying three cents by the total number of votes cast at the last election for the office the candidate seeks but in no event exceeding \$25,000 if a candidate for the Senate or \$5,000 if a candidate for the House.¹⁰⁷ Although backed by criminal sanctions, this prohibition¹⁰⁸ was passed with little thought to enforcement provisions.

105 Loc.cit.

106 U.S. Statutes at Large, Vol. 54, p. 767, 76th Cong. 3rd Sess. Public Law No. 753, approved July 19, 1940.

107 Loc.cit.

108 The bill, S. 3046, was introduced January 8, 1940. For Senate action, see Cong. Rec., vol. 86, pp. 2720-2723, 2852-2866, 2969-2987, 9495-9497, 76th Cong. 3rd Sess., March 12, 14, 18, and July 11, 1940. For House action, see pages 7506, 9360-9380, 9426-9464, June 4, and July 9, 10, 1940. For newspaper comment see the New York Times, page one, March 15, 1940. The bill was signed into law July 19, 1940.

The most sweeping prohibition of the 1940 amendment, the \$3,000,000 limitation upon the expenditures of national political committees, did not appear until the bill was reported from the Judiciary Committee of the House.¹⁰⁹ In the House there had been no debate on the \$3,000,000 ceiling, but the House amendments to the original Senate bill were accepted without change and without debate.¹¹⁰ Thus was this step taken without discussion of the important change in policy which it involved, with no explanation of the fairness of the standards set, and with no regard to the way these prohibitions would affect existing publicity features.¹¹¹ Dr. Louise Overacker comments, "...proceeding by the rule of 'by guess and by gosh,' we launched a totally new attack upon the problem of campaign funds, applying a totally different formula, with no consideration of its merits or probable consequences."¹¹²

The 1940 limitation on the expenditures of any "political committee" (as defined in the 1925 Act) in any calendar year to \$3,000,000¹¹³ was a most severe attempt to reduce the size of campaign funds considering the almost

109 Loc.cit.

110 Loc.cit.

111 Overacker, Presidential Campaign Funds, p. 24.

112 Ibid, p. 27

113 Section 6 of U.S. Statutes at Large, vol. 54, p. 767, 76th Cong. 3rd Sess. P.L. No. 753, app. July 19, 1940.

\$9,000,000 spent in 1936 by the Republican national organization¹¹⁴ and also considering that the legislation contained no flexibility for changes in the size of the electorate. Further, the law in regard to individual campaign expenditures could be made even more restrictive by state action because the 1940 Act expressly added the provision that no candidate for the United States Senate or House of Representatives could spend in the furtherance of his nomination and election more than the particular state made lawful.

Of course, a public statement of receipts and expenditures was still required of candidates and committees. However, not included as an expenditure would be any amount spent by the candidate for himself alone for his "necessary" travel and subsistence, stationery and postage, writing or printing other than in newspapers or on billboards, distributing letters, circulars, and posters, for telegraph, telephone, and various other campaign services. These items need not be shown on the returns required to be filed, and in most cases the itemized statement of the candidate's expenditures includes only those items falling outside the excepted classes. Thus, the candidate may spend large sums for letters, circulars, and telegrams, and leave no hint of his total outlay in his report. His friends may spend huge sums for workers on election day, as long as they keep him

114 Overacker. Presidential Campaign Funds, pp. 27-28.

blissfully ignorant of what they are doing.

Federal expenditure limitations: problems. It has been observed in regard to individual candidates that the whole outlay of an active campaign might be listed under the "personal" exemptions and that as a matter of fact the maximum allowance may be greatly exceeded without violation of the statute through the very large expenditures permitted by these unlimited campaign exemptions. ¹¹⁶ As with candidates, the legislative language regarding political committees lacked precision. Did the \$3,000,000 limitation apply collectively to all committees supporting the same candidates or, as has been interpreted by the committees themselves, separately to each? The limitations forced the parties, if they were to continue their same amount of spending, to discover other ways of financing their campaigns.

This was done very easily by the Republicans by staggering their bookkeeping methods so as to include presidential year expenditures under other years, the establishment of a series of separate state finance committees, and the organization of national political agencies operating independently of the national committee. Although Senator Hatch, the author of the 1940 Act, disagreed, these Republican organizations insisted that the limitations permitted an

115 Merriam, op.cit., p. 410.

116 Penniman, op.cit., pp. 571-572.

expenditure of \$3,000,000 by each political committee, and that it had not been the intention of Congress to limit to \$3,000,000 the aggregate expenditure of all national organizations supporting the Republicans.¹¹⁷ Thus, enormous sums were spent in the 1940 campaign. The \$3,000,000 limitation did not achieve its purpose of reducing over-all expenditures.¹¹⁸

It is interesting to study the effects of the \$3,000,000 limitation upon the expenditures of the two national committees as contrasted with the total expenditures of all political agencies in the 1940 campaign. As compared with 1936, when the combined major party expenditure by the national committees was \$14,087,713, the 1940 national committee expenditure was \$6,234,964. The Republicans went \$451,310 over the legal limit of \$3,000,000 as compared with 1936 expenditures of \$8,892,972.¹¹⁹ The misleading nature of looking at the national committee expenditures can be easily understood when one knows that after the passage of the 1940 Act the Republicans raised over \$6,600,000 through their newly organized series of state party finance committees to aid their presidential candidate directly or indirectly.¹²⁰

Furthermore, non-party agencies were so numerous that

118 Penniman, Ibid.

119 Overacker, Presidential Campaign Funds, pp. 27-28.

in no previous campaign in our history were they so important, adding another \$3,000,000 to the Republican campaign.¹²¹ The limitation, according to Senate Report No. 47, page 13, 1941, "served to direct the flow of campaign funds in excess of that amount into channels other than those of the traditional party committees, i.e.--(a) independent political committees, each of which believed itself legally entitled to spend up to the \$3,000,000 limitation; (b) state and local committees ostensibly supporting state candidates but actually working for the national ticket as well." The money spent on behalf of the Democrats totaled close to \$6,000,000 whereas the expenditures aiding the Republicans reached the impressive sum of \$14,941,000.¹²²

The total spent by the two parties in 1940 was \$20,787,000. "It is not without its touch of irony that in the first presidential campaign in which we attempted to place a ceiling upon expenditures, more money was spent than in any previous election."¹²³ If the legal limit of \$3,000,000 was to be an aggregate, the Democrats spent almost double the limit, and the Republicans spent close to five times that limit. Somewhat embarrassed by their campaign expenditures, the Republicans claimed that the New Deal expenditures for

121 Ibid, p. 33.

122 Ibid, p. 34.

123 Ibid, p. 35.

relief, W.P.A. projects and the like, should be added to
the Democratic campaign expenditures.¹²⁴ The argument
suggests some of the difficulties of trying to equalize
the resources at the disposal of the candidates by
limiting the funds which may be spent in their behalf.

These difficulties in determining the amount of
campaign expenditures should not be dismissed lightly.
If we attempt to eliminate or minimize differentials by
placing a "ceiling" upon campaign funds, we must recognize
the services of the party organization, of the party press,
and of associations indirectly political but directly
involved in a particular campaign. How can the expenditures
of an individual candidate be ascertained when there are
many candidates of the same party being publicized at the
same time? What should, or can, be done concerning the
relief funds about which the Republicans have complained,
non-party but political organizations, or even the innuendos
of radio commentators? The support given to a candidate or
the help to a party by a favorable press certainly cannot
be measured in terms of dollars and cents and appears upon
no account of campaign expenditures.¹²⁵

The chief effect of the 1940 \$3,000,000 ceiling was
to decentralize the collection and distribution of funds.

124 Ibid, pp. 18-19.

125 Ibid, p. 19; Merriam, op.cit., p. 410.

Prior to Hatch Act II both parties discouraged independent money-raising committees and there was a conspicuous trend toward centralization in the field of party finance.¹²⁶ It was a trend which led to a concentration of responsibility within the parties, greatly facilitating full and prompt publicity.¹²⁷ Hatch Act II reversed that trend and has led to concealment and evasion. Now non-party organizations are condoned and sometimes even inspired by the party's official hierarchy. Because in 1940 several hundred non-party political committees took over much of the campaigning, and publicity is needed for the protection of their members and the public, "This decentralization of responsibility for the collection and distribution of money in presidential campaigns is one of the most unfortunate effects of the Hatch Act."¹²⁸

Thus, expenditures by the numerous "independent" committees made it possible for both parties to circumvent the prohibitions. Certainly if the purpose of Congress was to limit the aggregate expenditures of a party in a presidential election, it failed. Because of the multiplicity of political groups which grew up, the campaigns of 1940 and 1944 afford a convincing demonstration of the ineffect-

126 Overacker, Presidential Campaign Funds, p. 44.

127 Loc.cit.

128 Ibid, pp. 40-42.

iveness of the Hatch Act II ceilings to prevent excessive expenditures. In each campaign the expenditures in behalf of the Democratic Party were twice that amount and the Republicans spent four to five times as much. The limitations may have had a certain nuisance value, perhaps they represented an act of conscience, but they did not limit. ¹²⁹

Regarding the Hatch Act II of 1940 and its operation, a special assistant to the United States Attorney General said in a Report dated February 26, 1941:

We respectfully submit that in our opinion the present existing laws relative to contributions and expenditures of political parties are fatally defective in accomplishing the purposes intended by Congress, and are, in our opinion, unenforceable under the conditions which have been presented in this investigation.

Unless we are willing to take the drastic step of making all political committees, including those on the state and local levels, subsidiaries of the national committee and subject to complete control from the national committee, ¹³⁰ limitations cannot be effective.

A Senate investigation of the financing of the 1944 campaign recommended that existing ceilings be lifted and that the law be amended in the direction of effective ¹³¹ publicity. It was the hope of the Senate Special

129 Ibid, pp. 43-44.

130 Ibid, pp. 46-47.

131 United States Congress, Senate, Special Committee to Investigate Presidential, Vice Presidential and Senatorial Campaign Expenditures in 1944, Senate Report No. 101, 79th Cong. 1st Sess., March 15, 1945, pursuant to Senate Resolution 263, pp. 80-84.

Committee that Federal corrupt practices legislation should emphasize publicity rather than prohibition, arguing that with such publicity public opinion might regulate "where prohibition without publicity has failed."¹³² Surely, adequate publicity would be a greater deterrent to corruption than prohibitions which give citizens a sense of security but which are unenforceable. Among its more important specific recommendations for attaining the goal of publicity were a broader definition of "political committee" and the establishment of a central depository under a joint committee of Congress with authority to institute uniform reports and publish summaries of them.¹³³

But these recommendations, general or specific, were not acted upon, or even seriously considered by the first session of the 79th Congress which ended in December, 1945.¹³⁴ Yet the result of maintaining the prohibitions has been a futile legislative gesture which has not limited expenditures and which has lessened the effectiveness of publicity provisions.¹³⁵ The use of prohibitions backed by criminal penalties as a primary sanction presupposes a standard of limitation carefully arrived at and generally accepted as fair. It

¹³² Loc.cit.

¹³³ Loc.cit.

¹³⁴ Overacker, Presidential Campaign Funds, p. 47.

¹³⁵ Ibid, p. 23.

likewise presupposes a centralization of control over the raising and spending of campaign funds. It must be accompanied by rigid enforcement provisions. In England where limitations have proven effective, all three of these conditions are present. All three of them are lacking in the United States.¹³⁶

Unless or until we effect that revolution in party organization which is an essential prerequisite, present limitations which were designed to put ceilings on expenditures, will continue to defeat the very purpose they were designed to achieve. Even if it were held to be constitutional, it seems most unlikely that legislation will be enacted requiring all political spending agencies, including local party committees and non-party political committees, to become officially affiliated branches of, and subject to complete financial control from, the national committees of the parties.¹³⁷ It appears more probable that the way the problem will be answered, if at all, is by securing effective publicity and to leave it to public opinion to decide what is too much to expend for political campaigning.¹³⁸ This had become so evident to the Senate Special Committee which investigated 1944 campaign expenditures that it concluded

136 Ibid, p. 65.

137 Loc.cit.

138 Ibid, pp. 46-48.

that legislation directed to prohibitions and penalties should be abandoned, that publicity and public opinion based on established facts offer a better hope of accomplishing the desired end.

139

Federal expenditure limitations: primaries. The problem of federal regulation of expenditures in primary campaigns is deserving of separate consideration. As we have seen, the 1925 Federal Corrupt Practices Act applied only to general elections and not to primaries or conventions. Yet this was not always so. Among other improvements, the Act of 1910 requiring publicity had been amended in 1911 to apply to federal primaries as well as elections. But when, with certain changes, the legislation of 1910 and 1911 was repealed and re-enacted into the 1925 Act, which was a consolidation of all previous legislation bearing on campaign expenditures, there was no reference to federal primaries. This failure was not an oversight. It was the outcome of two factors, legislative opposition and court rulings. It has been observed that even during its passage through Congress in 1911, no feature of the law had aroused more controversy than the regulation of expenditures in primary campaigns.

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There had never been any doubt that Congress had the

139 See footnote 131.

140 Penniman, op.cit., p. 570.

right to regulate federal elections. Under the Constitution, Article I, Section 4, Congress has full power to regulate elections at which members of Congress are chosen. That power, exercised repeatedly by Congress, had been sustained by the Supreme Court in such cases as ex parte Siebold, 100 U.S. 371 (1880). The court even held in ex parte Yarbrough, 110 U.S. 651 (1884), that Congress can regulate elections at which national officers are chosen quite independently of any express grant of power in the Constitution. It is clearly established law that Congress may regulate the funds of party national committees, and of party or non-party committees active in behalf of presidential candidates in two or more states.¹⁴¹

But is a primary an election within the meaning of the Constitution? In 1911, United States Senators and Representatives from the South, where the Democratic primaries usually predetermine the results of the election,

¹⁴¹ The power of Congress to regulate contributions to presidential campaign funds was upheld in sweeping terms in Burroughs v. United States, 290 U.S. 534 (1934). Specifically upholding provisions of the 1925 Federal Corrupt Practices Act requiring "political committees" to disclose facts concerning contributions, at page 545 the Court said: "The President is vested with the executive power of the nation. The importance of his election and the vital character of its relationship to, and effect upon, the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self-preservation." See also United States v. Mosley, 238 U.S. 383 (1915).

denied the existence of any federal authority to regulate primaries. The constitutional question thus raised in Congress came before the Supreme Court in the famous case of Newberry v. United States, 256 U.S. 232 (1921). Elected United States Senator from Michigan in 1918, Truman H. Newberry was convicted of violating the corrupt practices law by expending \$195,000 in his primary campaign for the Republican nomination, although the law allowed less than one per cent of that amount. Upon appeal, however, the Supreme Court unanimously reversed the conviction. But the court was in disagreement as to the reasons.

According to four of the Justices, Congress had and has no power to regulate primaries for United States Senator. One Justice believed that Congress had no such power before the Seventeenth Amendment which provided for the direct election of United States Senators, but possibly might have acquired it through the adoption of the amendment. Four said that Congress has and always had such power, but that the conviction should be set aside on the ground of prejudicial error in the trial judge's charge to the jury. The decision left the scope of congressional authority uncertain, and it was felt that it struck a severe blow to the federal publicity law by holding invalid that part of the statute which related to primaries. If the law was to be cut in half, it was, of course, repealed for all practical

purposes in one-party states, or congressional districts overwhelmingly of one political viewpoint, where the primary is all-important.

A further blow to the law came in an opinion of the United States Attorney General at the Hearings of the Committee on the Election of the President, Vice-President, and Representatives in Congress, December 14, 1921, page 2, that since the method of selecting United States Senators had been changed from appointment by state legislatures to direct popular election, the portion of the law relating to the election of United States Senators was no longer binding.¹⁴² But as sole judge of the qualifications of its own members, the Senate could apply its own standards and refuse to recognize a lawful election exclusively on the ground of lavish, though legal, expenditures in the primary. In November of 1922, Newberry resigned. The \$195,000 spent on behalf of Newberry can hardly be compared with the colossal primary expenditures on which the Senate refused to seat Smith of Illinois in 1928, and in 1929 refused to seat Vare of Pennsylvania when an investigation revealed approximately \$2,250,000¹⁴³ spent for the Republican nomination.

For twenty years after the Newberry decision, it was at least doubtful whether Congress had the power to regulate

142 Pollock Jr., op.cit., pp. 19-20.

143 Penniman, op.cit., pp. 570-571.

primaries at which candidates for federal office were nominated. This constitutional issue did not again come before the Supreme Court until the case of United States v. Classic, 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368 (1941), involving fraudulent counting of primary ballots in violation of the United States Criminal Code, vindicated the power of Congress in a unanimous decision. In the words of Justice Stone, "the practical influence of the choice of candidates at the primary may be so great as to affect profoundly the choice at the general election....Unless the constitutional protection of the integrity of 'elections' extends to primary elections, Congress is left powerless to effect the constitutional purpose, and the popular choice is stripped of constitutional protection..." A dissenting opinion by three of the seven Justices was based solely upon their interpretation of the Criminal Code. It fully endorsed the power of Congress to control primary elections.

State expenditure limitations: history. The Corrupt and Illegal Practices Act, 46-47 Victoria, had become law in Great Britain in 1883, and its provisions were so thoroughgoing that they attracted wide attention.¹⁴⁴ Even though the differences between the British and American electoral systems prevented a complete copying of the English law, doubtless it exerted considerable influence upon legislatures in the

144 Pollock Jr., op.cit., pp. 7-8.

United States. ¹⁴⁵ Starting in 1890, when the first state
publicity law was passed, by the end of the decade no fewer
than seventeen states had passed statutes regulating in
more or less complete fashion the use of money in elections. ¹⁴⁶
On January 1, 1925, all but four of the forty-eight states
had some sort of legal provision for the regulation of party
electoral activities. ¹⁴⁷ Thus, in the period of thirty-four
years after 1890, great progress was made toward the control
of campaign funds.

State expenditure limitations: provisions. Today,
even though one of the most authoritative modern writers on
corrupt practices believes that the limitation of campaign
expenditures by legislation is ineffective in giving us fair
elections, ¹⁴⁸ in regard to state laws limiting expenditures
these limitations seem securely entrenched in state statutes.
All but nine states place a ceiling on expenditures by
candidates. Of these states which have the expense ceiling,
nineteen allow various exceptions some of which are so
liberal as to actually defeat the purpose of the limitation. ¹⁴⁹
In the main, the candidates for governor, senator, and repre-

145 Sen.Doc. No. 89, 59th Cong. First Sess., pp. 8-9.

146 Sen.Doc. No. 337, 60th Cong. First Sess., p. 1;
Pollock Jr., Ibid.

147 Pollock Jr., op.cit., p. 21.

148 Overacker, Money in Elections, p. 346.

149 Minault, op.cit., p. 3.

sentative, the more lucrative positions, are the subjects of these limitations. Of course, many states extend them to all elective offices, including that of presidential elector.¹⁵⁰

There is no uniformity in the limitations of allowed expenditures. Eleven states place restrictions only upon the primary campaign, five states limit the amounts to be spent separately on both the primary and the general election, and the remaining twenty-five states allow total sums to be expended either for primary or for general elections, the allocation of the total permitted being left to the party or candidate.¹⁵¹ The most common basis of limitations is upon a flat dollar scale. Some states specify a certain percentage of the yearly salary of the office sought, while a few others permit certain sums depending upon the number of votes cast at the next preceding election.¹⁵² Only the five states of Minnesota, Nevada, New Hampshire, Utah, and Wisconsin impose a limitation upon the party as well as upon the candidate. Here again the limitation is generally upon a dollar basis, from \$10,000 to \$25,000.¹⁵³ Utah, however, specifies that each state committee shall spend per year no

150 Loc.cit.

151 Loc.cit.

152 Loc.cit.

153 Loc.cit.

more than a sum at the rate of twelve and one-half cents for each vote cast by all parties for governor at the next preceding election.¹⁵⁴

Up to this point, we have been discussing state limitations as to the total amount of campaign expenditure. But another group of state expenditure provisions is directed at the character of the expenditures. These laws seek to limit or prohibit campaign expenditures on the basis of their purpose as distinguished from their amounts. Thus, of the nine states without any statutory limitation upon total expenditures, four enumerate the type of campaign expenditure that may be made legally.¹⁵⁵ Also, we have previously noted that all states but Illinois and Rhode Island require a filing of the statement of receipts and expenditures. Regarding limitations as to purposes, most states have long prohibited payment of money for the purchase of votes. Certain other expenditures are also unlawful, such as expenditures for meat, drink, and entertainment of voters as an incident of campaigning.¹⁵⁶

In nearly two-thirds of the states expenditures are limited by the enumeration of what are legitimate expenses. All campaign expenditures are prohibited except those which

154 Loc.cit.

155 Loc.cit.

156 Merriam, op.cit., p. 409.

are allowed in the law.¹⁵⁷ Where the law is so written that it enumerates permitted expenses, outlawing all others, the legislature should be alert to keep the law up to date or else the political use of new means of communication, such as television, would be illegal. Rather than statutes of this type, it would seem better to establish a specific forbidden list. Among the long and varying series of items on the forbidden lists, differing materially in different states, are included payment of poll taxes, payment of naturalization fees, payment of campaign workers on election day, payments for transportation to and from the polls, and many other examples of possible political outlay.¹⁵⁸

In the state of Wisconsin, the abuse of excessive expenditures for political workers on election day has been practically eliminated by the prohibition of any payment of any election day worker by any candidate or committee.¹⁵⁹ There is no uniformity of laws as to the transportation of voters to the polls. Eleven states definitely forbid the practice, while eleven more permit the candidate or the party to expend money for the transportation of sick, aged, or infirm people. The two states of Nevada and Utah permit a joint arrangement between two or more parties for the

157 Loc.cit.

158 Loc.cit.

159 Loc.cit.

conveying of sick, infirm, or aged voters to the polls. A few states expressly permit the expenditure of money for such conveyance.¹⁶⁰ Other provisions in state legislation relating to limitations on the purposes of expenditures, as prohibiting bribery, are taken up under the discussion of miscellaneous illegal practices.

State expenditure limitations: problems. Although the principle of limitation of expenditures is quite widely accepted throughout the country, over three-fourths of the states having enacted laws placing limits either upon the sum total to be spent in his behalf,¹⁶¹ too often there are numerous ways for practical politicians to evade these limitations with little danger to the candidate. Though it is by no means recent, corrupt practices legislation is as yet far from crystallized and court decisions in the states are often at variance.¹⁶² Enacted without sufficient regard for the experience of other states with similar laws, provisions that have been held unconstitutional in a large number of states are still retained in the codes of many states with no attempt at remedying the weaknesses of the statutes.¹⁶³ Naturally, most of these statutes are frequent-

¹⁶⁰ Minault, op.cit., p. 2; E.R. Sikes, State and Federal Corrupt Practices Legislation, Appendix.

¹⁶¹ Merriam, op.cit., p. 411.

¹⁶² Minault, op.cit., p. 8.

¹⁶³ Ibid, p. 9.

ly and blatantly violated.¹⁶⁴

Despite the fact that legislation in this field is growing progressively more stringent, it appears that the limitations upon expenditures are grossly ineffective and easily circumvented, especially in those states which allow exceptions to the limited disbursements. Too many states fail to make adequate provisions for enforcement of the law¹⁶⁵ and some lack both penalties and enforcement mechanisms. The amount which may be expended, as we have seen, may be a fixed sum or it may vary with the salary of the office or the size of the electorate. Where the sums are fixed, or where the sums depend upon the salary of the office sought, they are usually ridiculously low. It would be impossible in many states for any kind of campaign to be put on if the limitations were strictly observed.¹⁶⁶ But as a rule the more drastic limitations apply only to expenditures on the part of the candidate himself.

A distinction must be made between limitations imposed upon the candidate personally and the total amount available for the conduct of the campaign. This is a consideration not infrequently overlooked and a common cause of confusion.¹⁶⁷

164 Pollock Jr., op.cit., p. 260.

165 Minault, Ibid.

166 Merriam, Ibid.

167 Loc.cit.

Upon careful scrutiny, it appears that most of these laws are not designed to restrict the total amount expended in a campaign but, often a wholly different matter, merely the amount given by the candidate.¹⁶⁸ The 1940 Hatch Act II, which limited the expenditures of national committees in one year to \$3,000,000, has aggravated this situation by increasing the activities of state, local, and so-called "independent" committees.¹⁶⁹ In Massachusetts an attempt has been made to concentrate the responsibility for the raising and spending of money in campaigns in the candidates, their agents, and political committees. While expenditures by individuals are prohibited by law, they have not been eliminated, and the law is not vigorously enforced.¹⁷⁰

Experience has shown that too many regulations have not been successful, that numerous requirements, especially unreasonable restrictions, are likely to lead to evasions, and that state expenditure limitations have not curbed the evils at which they were aimed.¹⁷¹ These laws have accomplished little except to decentralize campaign finance and

168 Loc.cit.

169 Minault, op.cit., p. 3. For an interesting treatment of this question see Dr. Louise Overacker, "Campaign Finance in the Presidential Election of 1940," American Political Science Review, Vol. 35, pp. 701-727, August, 1941.

170 Merriam, Ibid.

171 Ibid., p. 412; Pollock Jr., op.cit., p. 228.

to make effective publicity of campaign expenditures more difficult.¹⁷² Publicity is not a sure remedy, nor is it the most thorough one, but on the basis of federal and state experience it seems to be the desirable solution because we have more reason to suppose that it will bring about more improvements than any other method.¹⁷³ Although publicity laws have been a restraining factor, at present they are defective and need to be remedied by more severe penalties, stricter enforcement, compulsory publication of the accounts in newspapers, and publicity regarding deficits and money raised between campaigns.¹⁷⁴ These provisions and similar requirements of complete publicity and adequate enforcement are essential to the purity of elections.

Contribution Restrictions

Great Britain

We have seen that in Great Britain the Corrupt and Illegal Practices Act, 46-47 Victoria, ch. 51 (1883), outlawed certain enumerated and commonly condemned election abuses such as bribery. In regard to the control of campaign funds, it was directed primarily to the individual

172 Merriam, op.cit., p. 411

173 Pollock Jr., op.cit., pp. 228-229

174 Ibid, pp. 229, 232-233.

175 Ibid, pp. 232-233.

candidates and their agents, and not to other persons or groups. Thus, while the English legislation strictly limits the amounts which can be expended by candidates, it does not restrict Central Office expenditures for the general interest of all party candidates. Also, the law requires candidates to file statements of receipts, sources and disbursements, but does not require statements from the party or from political committees. Aside from limiting the amount a candidate may expend, there are no over-all limitations on campaign contributions. Labor union contributions, however, have been made the subject of special attention and will be taken up under the topic of specific legislation and judicial decisions controlling labor union activities.

United States

Federal contribution restrictions: history. The immediate cause of public demand for prohibitions on campaign contributions by corporations in federal elections were the shocking disclosures of legislative inquiries which revealed very large contributions by banks, insurance companies, manufacturers, public utilities, and other corporations for the election of Republican candidates. ¹⁷⁶ Payments from the funds of stockholders had been made to Republican Party campaigns. ¹⁷⁷

¹⁷⁶ Comment, "Section 304, Taft-Hartley Act: validity of Restrictions on Union Political Activity," 1948, 57 Yale Law Journal 806-827, p. 807; Merriam, op.cit., p. 406

¹⁷⁷ Merriam, Ibid.

This was notably true in the campaign of 1896 when various insurance companies contributed large sums of money to the Republicans.¹⁷⁸ Other such contributions became known in the course of these inquiries. For example, in 1896 the Standard Oil Company gave \$250,000 to the G.O.P.¹⁷⁹ In 1900 the Republicans expected checks from all the corporate interests according to the ability of the corporation to contribute, and in the event that the corporation contributed less than the Republican leaders considered fair, the check might be returned.¹⁸⁰ This amounted to special taxation on behalf of the Republican Party.¹⁸¹

- In the campaign of 1900, as in 1896, the Standard Oil Company again contributed \$250,000.¹⁸² In fact, the Republican campaign was so well financed by direct support from corporate funds that the G.O.P. returned to the Standard Oil Company \$50,000 after the election as surplus from various contributors.¹⁸³ It is to be assumed that these corporations believed they were making a wise investment through their donations to the Republican cause.¹⁸⁴ National indignation

178 Loc.cit.

179 Penniman, op.cit., p. 544

180 Ibid, pp. 544-545

181 Ibid, p. 545

182 Loc.cit.

183 Loc.cit.

184 Loc.cit.

at these practices led to recommendations by President Theodore Roosevelt in 1904 for a law against bribery and corruption in federal elections,¹⁸⁵ and in messages to Congress in 1905 and 1906 for a law forbidding corporations¹⁸⁶ to make contributions for any political purpose. In 1907 Congress passed legislation prohibiting political contributions by banks or corporations in federal elections.¹⁸⁷

But failure of control over corporate contributions in the 1907 legislation led to a shifting of attention to laws requiring publicizing of individual contributions in 1910,¹⁸⁸ and in 1911 the first federal statute was passed for pre-election publicity, requiring reports of contributions to and expenditures by political committees, with limitations on expenditures by individual candidates.¹⁸⁹ But little publicity resulted and the limitations proved¹⁹⁰ meaningless. The Federal Corrupt Practices Act of 1925¹⁹¹

185 Ibid, p. 546

186 58th Cong., Dec. 5, 1905, and Dec. 4, 1906, Cong. Rec., p. 22.

187 Merriam, op.cit., p. 406; Penniman, op.cit., p. 546

188 Comment, "Section 304, Taft-Hartley Act: validity of Restrictions on Union Political Activity," 1948, 57 Yale Law Journal 806-827, p. 808.

189 U.S. Statutes at Large, vol. 36, p. 823 (1910); U.S. Statutes at Large, vol. 37, p. 25 (1911); see 2 U.S.C. sec. 244 (1940).

190 Footnote 188, loc.cit.

191 U.S. Statutes at Large, vol. 43, p. 1070 (1925); see U.S.C. sec. 241-256 (1940).

merely modified and consolidated previous legislation.¹⁹²
This legislation remained unchanged until the passage of
Hatch Act II in 1940.¹⁹³ The 1940 provisions, to be
discussed, were brought about because the prohibitions on
contributions from corporations had reduced but certainly
did not eliminate campaign funds from this source.¹⁹⁴ It
is an easy matter for individual corporation stockholders
to make large contributions, or for the directors of a
corporation to make personal contributions and to recover
their payments in the form of bonuses from the corporation.¹⁹⁵

For example, in the second Roosevelt campaign of
1936, "Big Business" came generously to the financial support
of the Republican National Committee in a vain effort to
"stop" the New Deal.¹⁹⁶ Over half of the Republican campaign
fund was contributed by those who gave \$1000 or more.¹⁹⁷ The
DuPonts and the Pews together gave \$1,000,000.¹⁹⁸ Not since
1896 had bankers and manufacturers been so wholeheartedly
behind the Republican candidate--or against the Democratic.¹⁹⁹

192 Overacker, Presidential Campaign Funds, p. 22.

193 Loc.cit.

194 Merriam, Ibid.

195 Loc.cit.

196 Overacker, Presidential Campaign Funds, p. 16.

197 Loc.cit.

198 Loc.cit.

199 Loc.cit.

Contributions to the Republican National Committee totaled \$7,760,000.²⁰⁰ The Democratic National Committee received few very large contributions and its total collections of \$5,200,000 were \$2,500,000 less than the Republicans.²⁰¹ While the support of bankers dropped sharply, more than one-third of all regular contributions came from donations of less than \$100.²⁰² Indicative of profound changes in political alignments as well as in the pattern of financial support, however, was the fact that the largest contributors to the Democratic campaign were the labor unions.²⁰³

Federal contribution restrictions: provisions.

Approved January 26, 1907, the first of the federal laws relating to campaign funds was enacted²⁰⁴ following a favorable Senate report²⁰⁵ that "The evils of the use of money in connection with political elections are so generally recognized that the committee deemed it unnecessary to make any argument in favor of the general purpose of this measure. It is in the interest of good government and calculated to

200 Ibid, p. 17.

201 Loc.cit.

202 Loc.cit.

203 Loc.cit.

²⁰⁴ Pollock Jr., op.cit., pp. 12, 181; see U.S. Compiled Statutes (1918), p. 1690.

²⁰⁵ Sen. Rep. No. 3056, 59th Cong., First Sess. (1907), p. 2.

promote purity in the election of public officials." Dealing directly with a manifest abuse in the collection of campaign funds,²⁰⁶ the law of 1907, now Section 313 of the Federal Corrupt Practices Act, makes it unlawful for any national bank or any national corporation to contribute money in connection with any election, whether local, state, or national, and prohibits any corporation whatever to make a contribution for use in connection with the election of any national officer.²⁰⁷

The validity of this ban was sustained in a successful prosecution brought thereunder in United States v. United States Brewers' Ass'n., 239 F. 163 (W.D. Pa. 1916), and the federal district court decision was not appealed. A large number of brewing corporations of the state of Pennsylvania and the United States Brewers' Association, a corporation of the state of New York, were indicted for conspiracy to violate the prohibition on money contributions from certain corporations in connection with any federal election. Among other defenses, the corporations alleged that Congress had no power to enact the statute, that the statute was void for vagueness and uncertainty, and, finally, that the statute was an attempt to interfere with freedom of speech and press in the discussion of political candidates and electoral issues.

²⁰⁶ Penniman, op.cit., pp. 569, 546.

²⁰⁷ U.S. Statutes at Large, vol. 43, p. 1070 (1925), 2 U.S.C. sec. 241-256 (1940).

The first objection rested on the ground that the regulations of the statute in connection with federal elections would be an unconstitutional interference with the conduct of state elections inasmuch as the states have sole jurisdiction over the qualifications of voters. But the court held that Congress has the power to regulate the conduct of state elections when this involves the election of federal officers. Although the electorate is qualified to vote only by state laws, the right of the electorate to vote for members of Congress is derived from the United States Constitution. Therefore, corporations may be so regulated by Congress as to prevent undue influence on the election of federal officers. These limitations are for the purpose of preserving the freedom of the voter and the purity of the ballot. At page 168, the court noted that "By various acts Congress has undertaken to control the agencies by which political activities in campaigns may be carried on, the amount of money which a candidate may spend, the purposes for which it may be expended, and the manner of accounting for all such expenditures."

The section in question "is in line with this wise and beneficial legislation by undertaking to place a prohibition against political activities by those artificial beings who are merely the creatures of the law." The court went on, at page 169, to point out that the failure of the

statute to define "money contributions" did not make the words vague or uncertain, "but, on the contrary, their meaning is plain, and their purpose as used in the act unmistakable." It is for a jury to determine in the light of the circumstances whether an expenditure is " a money contribution in connection with any election" within the spirit, intent, and meaning of the legislation. Furthermore, the statute does not prevent the freedom of speech or of the press, but only tends to guard against the concerted use of money to corrupt elections. Congress may protect the electorate from such influences. Finally, the court asserted, at page 170, that it is not necessary for a conviction that the offense itself be committed, but it is enough that the corporations conspire to commit the offense.

It is also illegal under the 1907 law for any candidate, political committee, or other person to receive such a contribution.²⁰⁸ The statute did not, however, prevent corporate political assistance in the form of advertising expenditures.²⁰⁹ Also, the legislation did not apply to primaries. Violations of the law were made punishable by a fine of from \$250 to \$1,000 or to a term of imprisonment of not more than one year, or both.²¹⁰ But because the statute

²⁰⁸ Loc.cit.

²⁰⁹ Clark, "Federal Regulation of Election Campaign Activities," 6 Federal Bar Journal 5, p. 8 (1944).

²¹⁰ U.S. Statutes at Large, vol. 43, p. 1070 (1925), 2 U.S.C. sec. 241-256 (1940).

did not prevent the officers of such corporations and those who held controlling corporate interests from making substantial individual contributions which spoke for corporate policies, the doubtful efficacy of the law seemed to call for further legislative action.²¹¹ Demands for restrictions on campaign contributions were especially appealing to the Democrats who were in control of Congress and who felt strongly that the Republicans had an unfair advantage in the size of campaign contributions.²¹²

In July, 1940, by amendments to Hatch Act I of the previous year, Congress instituted a new program of prohibition in Hatch Act II by seeking to reduce both the size of campaign expenditures and of individual contributions.²¹³ These amendments provide first, that during any calendar year no political committee, as defined by the Federal Corrupt Practices Act of 1925, shall receive contributions aggregating more than \$3,000,000 or make expenditures above that amount, and secondly, that no individual, committee, or association shall contribute more than \$5,000 per year to national committees or candidates for a federal office.²¹⁴ The statute also made it unlawful for persons or corporations to aid candidates

211 Penniman, op.cit., p. 546

212 Ibid, p. 552

213 U.S. Statutes at Large, vol. 54, p. 767, 76th Cong., 3rd Sess., P.L. No. 753, app. July 19, 1940, 18 U.S.C. sec 61 (1940).

214 Loc.cit.

for elective federal office by purchasing goods, commodities, advertising, or articles of any kind.²¹⁵ The law expressly stated, however, that such limitations did not²¹⁶ apply to contributions to state or local committees.

As originally introduced by Senator Hatch on January 8, 1940, Hatch Act II was Senate Bill 3046 for the purpose of extending the earlier law to state employees paid in whole or in part from federal funds.²¹⁷ The \$3,000,000 limitation on political committees was added to the bill in the House, and accepted by the Senate without change and without debate.²¹⁸ The \$5,000 contribution limitation was sponsored by Senator Bankhead and accepted by a Senate vote of 40 to 38 without any discussion of the basis of the limitation, its fairness, or its probable effect.²¹⁹ In the House there was no debate on the \$5,000 limitation.²²⁰ Thus, though the bill was debated in the Senate for ten days and in the House for two days as to its other provisions, at no time was

215 U.S. Statutes at Large, vol. 54, p. 767, sec. 4 (13).

216 Loc.cit.

217 For Senate action see Cong. Rec., vol. 86, pp. 2720-2723, 2852-2866, 2969-2987, 9495-9497, 76th Cong. 3rd Sess., March 12, 14, 18, and July 11, 1940. For House action see Cong. Rec., vol. 86, pp. 7506, 9360-9380, 9426-9464, 76th Cong. 3rd Sess., June 4, and July 9, 10, 1940. Bill signed July 19, 1940.

218 Loc.cit.

219 Loc.cit.

220 Loc.cit.

there the slightest discussion of these limitations.²²¹
Senator Hatch himself voted against the Bankhead amendment
as not pertinent to his measure, but supported both limita-
tions on final passage.²²² It is felt by one observer that
apparently the \$5,000 limitation was pushed by opponents
of the original bill in an effort to kill it, but the ruse
failed.²²³

Federal Contribution restrictions: problems. The
direct consequence of Hatch Act II was the creation of a
number of non-party organizations and political groups, each
of whose expenditures could total \$3,000,000 and, of course,
the expenditure limitations were thereby made ineffective.²²⁴
Moreover, each of these groups was theoretically empowered
to receive as much as \$5,000 from each contributor. Since
only national committees came under the statute, individual
contributions were easily channeled into state and local
agencies. The \$5,000 restriction was circumvented by giving
that same amount to a variety of Republican committees, or
having husband, wife, and other members of the family give
\$5,000 each to one or more political agencies.²²⁵ For

221 Loc.cit.

222 Loc.cit.

223 Overacker, Presidential Campaign Funds, p. 27.

224 Ibid, pp. 44-45.

225 Ibid, pp. 35-36.

example, a contribution by a husband and wife of \$5,000 each to the National Committee, and to every one of the 48 State Committees, would total \$490,000. This is not to mention county committees and all other political groups aiding in the campaign.

Even national committees could be financed in part by the aggregation of numerous \$5,000 gifts from single families whose financial resources permitted substantial political contributions. Circumvention of the law was also resorted to by means of fake loans which were not repaid.²²⁶ As a result, although the combined expenditures of the two national committees was \$4,211,000, the total amount spent in the 1940 election was \$21,000,000, contrasted to the previous high of \$16,500,000 in 1928.²²⁷ Truly impressive is the family solidarity represented in some of the larger gifts to the Republicans. Among only the more conspicuous cases of family giving to various Republican committees are the \$200,000 contributed by over sixty members of the DuPont family, the \$164,500 donated by a dozen members of the Pew family, the more than \$100,000 given by the Rockefellers, and over \$55,000 from three Queenys, identified with the

²²⁶ Loc.cit., Comment, "Section 304, Taft-Hartley Act: Validity of Restrictions on Union Political Activity," 1948, Yale Law Journal, vol. 57, p. 808.

²²⁷ Loc.cit.

Monsanto Chemical Company.

These facts demonstrate that a restriction upon the size of individual contributions which does not cover gifts to state and local committees is farcial. The distribution of Lamot DuPont's gifts is illuminating. His contribution of \$49, 000 was divided among three national Republican finance committees and state committees as widely scattered as New Jersey, Tennessee, West Virginia, Maryland, Wyoming, South Dakota, Missouri, and Indiana.²²⁹ Only \$4,000 of this money passed through the books of the Republican National Committee.²³⁰ Edgar Monsanto Queeny, a resident of Missouri, contributed to Republican committees in Connecticut, New York, Pennsylvania, and Wyoming.²³¹ It does not appear upon the record whether these contributions were routed where they were needed, but this is more likely than to imagine that they were guided to these particular states by mere happen-²³²stance.

All this information as to family contributions has been given to us by congressional investigations, notably the special committee of the Senate appointed in 1940 following

228 Overacker, Presidential Campaign Funds, p. 36.

229 Ibid, p. 37.

230 Loc.cit.

231 Loc.cit.

232 Loc.cit.

a practice adhered to consistently since 1912.²³³ Under the chairmanship of Democratic Senator Guy M. Gillette, the committee was aided by an unusually able corps of assistants.²³⁴ This committee found that the law was being avoided by various members of the same family contributing the legal maximum to many state and local committees.²³⁵ The money which the DuPonts and the Pews invested in the Republican campaign would not have been brought to light if the reports of the national committees had not been supplemented by the Gillette investigations.²³⁶ A staff member with a keen, almost morbid, interest in "America's Sixty Families," pieced together contributions from many scattered reports before the full story was available.²³⁷

The same study showed that the Democratic National Committee received no contributions in excess of \$10,000 from any one family.²³⁸ The Democrats raised over \$750,000 from Jackson Day dinners at \$100 a plate for a dinner worth

²³³ United States Congress, Special Committee to Investigate Presidential, Vice Presidential, and Senatorial Expenditures in 1940, Senate Report No. 47, 77th Cong. 1st Sess., 1941, p. 13; Overacker, Presidential Campaign Funds, pp. 29, 37.

²³⁴ Loc.cit.

²³⁵ Loc.cit.

²³⁶ Loc.cit.

²³⁷ Loc.cit.

²³⁸ Loc.cit.

ten dollars.²³⁹ Cash contributions received by the Democratic National Committee in 1940 came largely from labor unions,²⁴⁰ office holders, and small donations generally. Contributions of less than \$100 made up a larger proportion of the whole,²⁴¹ whereas gifts of more than \$1,000 dropped sharply. The Republican financing followed a more traditional pattern and, while it is true that Hatch Act II caused contributions over \$5,000 to vanish, it did not cause a loss in total receipts. The diminished size of contributions was balanced by an unusually large proportion of donations of \$1,000 or more,²⁴² including many \$4,000 gifts. Bankers and manufacturers, who had given one-fourth of the contributions of \$1,000 or more in 1936, were even more generous than usual. In 1940²⁴³ their share rose to more than one-third.

Thus, in the 1940 campaign, the loss of \$5,000 contributions to the Democratic Party was offset by many small gifts, but Republican support merely dropped into the \$1,000 to \$4,000²⁴⁴ bracket. It must not be supposed, however, that these extremely interesting contrasts in the financing of the two

239 Overacker, Presidential Campaign Funds, p. 38.

240 Ibid, p. 39.

241 Loc.cit.

242 Loc.cit.

243 Loc.cit.

244 Loc.cit.

major parties reflects only differences arising out of the operation of Hatch Act II. While illustrating the failure of statutory expenditure limitations and contribution restrictions, it must be remembered that these are fundamental differences beginning with the 1936 campaign, antedating and neither caused nor affected by any legislation.²⁴⁵ Rather, this important trend reflects a realignment of political support on economic lines which led Mr. James Farley, then national Democratic chairman, to assert in 1936 that many of the usual Democratic sources of supply had been dried up by the New Deal.²⁴⁶ In the financing of the 1940 campaign, an increasingly clear-cut economic cleavage is even more apparent.

As in the election of 1940, again in the 1944 campaign Hatch Act II was avoided by diverting campaign contributions to non-party groups, local and state committees. Thus, the total national committee expenditure for the two major parties in 1944 was \$4,997,729,²⁴⁷ but the total amount spent was \$20,500,000.²⁴⁸ In addition to these direct money contribu-

²⁴⁵ Loc.cit. It is Dr. Overacker's opinion that the really fundamental differences in financial support began in 1936. However, one could point to the two parties in the era of Bryan versus McKinley, or to the forces aligned against Wilson, for an argument that these differences arose earlier.

²⁴⁶ Overacker, Presidential Campaign Funds, p. 39.

²⁴⁷ Ibid, p. 32.

²⁴⁸ Comment, "Section 304, Taft-Hartley Act: Validity of Restrictions on Union Political Activity," 1948, Yale Law Journal, vol. 57, p. 808.

tions, other influences are at work, including the services of the party organization, which escape monetary ascertainment. For example, what about the contributions of a favorable press? The public opinion which is at least in part shaped by the press certainly has an effect upon the voting behavior of the electorate, and is of aid to the candidates whose views coincide with that press-influenced public opinion. Yet the help given to a candidate or party by a favorable press cannot be established as campaign contributions. Of course, one should be careful not to over-estimate the power of the press to form public opinion. The Democrats have been elected against almost unanimous press opposition.

Is the problem of campaign finance primarily one of size, of where the money comes from, or of keeping the voter informed about who pays the political bills? Also, how far may the problems be met by legislation? Failure to properly answer these questions has led to muddled thinking and to futile legislative gestures.²⁴⁹ One scholar of the subject maintains that the size of the funds is relatively unimportant, that a more significant factor is the sources from which they come.²⁵⁰ A sound program of legislative control should be firmly grounded upon the principle of publicity.²⁵¹ There-

²⁴⁹ Overacker, Presidential Campaign Funds, pp. 10-11

²⁵⁰ Ibid, p. 13

²⁵¹ Ibid, pp. 10-11

fore, the shift in emphasis from publicity to prohibition²⁵² has been most unfortunate. Unless and until we establish a generally accepted fair standard of limitation, centralization of control over campaign fund raising and spending, and rigid enforcement provisions, restrictions are bound to defeat their own purpose by breaking down publicity, driving organizations underground,²⁵³ and facilitating evasions.

State contribution restrictions: history. American interest in the legislative control of campaign funds was stimulated by the enactment in 1883 of the Corrupt and Illegal Practices Act, 46-47 Victoria, ch. 51, in Great Britain.²⁵⁴ Starting in 1890, the states began to regulate the use of money in elections, and in 1897 three states passed laws prohibiting corporations from contributing in any way to political campaigns.²⁵⁵ Although these three states did not accompany their legislation with a general corrupt practices statute of any kind, by the end of the decade seventeen states had enacted laws regulating in more or less complete fashion the use of money in elections, and before the presidential campaign of 1904, two other states

252 Loc.cit.

253 Ibid, p. 65.

254 Pollock Jr., op.cit., pp. 7-8.

255 Loc.cit.

had passed similiar legislation.²⁵⁶ Proir to 1904, when for the first time there was important agitation for a national law, such statutes had related only to state conditions.²⁵⁷ Now the movement went forward with greater repidity. The year 1905 produced two new state laws and two more states were added to the list in 1907.²⁵⁸

State contribution restrictions: provisions. Today, prohibition of contributions by corporations is a common feature of state corrupt practices legislation.²⁵⁹ With varying degrees of penalties, thirty-six states outlaw the receipt of corporate contributions. For violation of this prohibition, most of these states impose a heavy fine upon the corporation, and for repeated offenses a few states stipulate cancellation of the corporation charter, forfeit-²⁶⁰ure of business in the state. This penalty has been attacked upon the grounds that it is an unconstitutional denial of the freedom of speech and a violation of the equal protection clause of the Fourteenth Amendment, but these contentions have found no favor in the courts.²⁶¹ Although

256 United States Congress, Sen. Doc. No. 337, 60th Cong., 1st Sess., pp. 1, 4, 6, 16.

257 Pollock Jr., op.cit., p. 9.

258 United States Congress, Sen. Doc. No. 337, 60th Cong., 1st Sess., p. 1.

259 Minault, op.cit., p. 4.

260 Ibid, pp. 4, 8.

261 Ibid, p. 8.

there are various exceptions, in all but nine states these laws restrict contributions by and to candidates as individuals through the limitation on the amount these candidates may spend personally.²⁶²

However, candidates for the more important elective offices nearly always avoid these restrictions by establishing one or more political committees which may receive contributions. Therefore, most states have enacted certain controls in regard to political committees. Generally, candidates must appoint a political committee with a responsible treasurer who alone may receive and disburse funds, except personal expenditures of the candidate.²⁶³ Some states permit the candidate to be his own treasurer.²⁶⁴ Two states, Indiana and Maryland, specify that a treasurer must post bond and submit in writing his acceptance of authority to expend funds.²⁶⁵ Unfortunately, the purpose of the restriction is often defeated in a few states which permit the candidate to disclaim expenditures made by his treasurer.²⁶⁶ In order that no excuse for late filing shall be valid, a number of states stipulate that all claims for political services against a committee or a candidate must be presented

262 Ibid, p. 3.

263 Ibid, p. 4.

264 Loc.cit.

265 Loc.cit.

266 Loc.cit.

within a short time, usually ten days, after the election.²⁶⁷

Possibly because of the difficulty of enforcement, the restriction of contributions to political committees has been adopted by only two states, Massachusetts and Nebraska, which place a \$1,000 Ceiling upon individual contributions.²⁶⁸ This restriction is easily sidestepped by having various members of a family each contribute the maximum amount.²⁶⁹ Eighteen states require statements from all persons other than candidates or committee treasurers who receive or disburse sums for political purposes in excess of a certain amount, usually from five to ten dollars.²⁷⁰ Believing that it is both wiser and easier of enforcement to legislate against the wrong use of money rather than against the amount of contributions and expenditures, thirty-two states have either enumerated the purposes for which money can be expended and prohibit expenditures for any other purpose, or specifically outlaw the objectionable practices and permit all other expenditures.²⁷¹ Because it needs less revision to keep up with modern means of political campaigning, such as by television, this latter method seems to be more practical, and to be preferred.

²⁶⁷ Loc.cit.

²⁶⁸ Loc.cit.

²⁶⁹ Loc.cit.

²⁷⁰ Loc.cit.

²⁷¹ Ibid, p. 3; Pollock Jr., op.cit., p. 250.

In some states anonymous gifts are not allowed and if made must be turned over to the state.²⁷² New York and Oregon stipulate that all contributions must be in the name of the actual donors.²⁷³ In Oregon no contribution may be received from a manufacturer of or a dealer in intoxicating beverages.²⁷⁴ Florida prohibits one candidate from contributing to the campaign fund of another candidate.²⁷⁵ Nearly all violations of the corrupt practices statutes are punishable by fines and a few states specify the use to which these fines shall be put. In Utah these receipts are to be placed in the road and bridges fund, while in Wisconsin, Missouri, and Nebraska, they go to the common school fund.²⁷⁶ More severe penalties include imprisonment, forfeiture of office, and either temporary or permanent disqualification to hold an elective position.²⁷⁷ Violating corporations may forfeit their privilege of doing business in the state.²⁷⁸ On the whole, however, enforcement provisions are not adequate.²⁷⁹

272 Minault, Ibid.

273 Loc.cit.

274 Loc.cit.

275 Loc.cit.

276 Ibid, p. 8.

277 Ibid, pp. 7-8

278 Ibid, pp. 4, 8.

279 Ibid, p. 9.

State contribution restrictions: problems. We have already seen that the political result of the 1940 Hatch Act II limitations on the yearly expenditures by national committees was an increase in the number of, and in the amounts donated to, local and state committees. Also involved in state contribution restrictions are other problems of the same nature as those arising out of state and federal expenditure limitations and need not be reviewed again. As in the case of federal contributions, it is even more difficult to enforce legal restrictions on the size of contributions.²⁸⁰ Inasmuch as candidates have much more to fear from an enlightened electorate than from statutes which, too often, contain many loopholes, undoubtedly one of the best remedies for this situation is to be found in carefully²⁸¹ worded legislation providing the widest possible publicity. Such a law must be strictly and efficiently applied by the offices of the Secretary of State and of the Attorney General. To be effective, compulsory newspaper publication of the political contributions received by, and the campaign expenses of, candidates and committees should be required while public²⁸² interest is still high, before the election.

One of the reasons for limiting political expenditures

280 Pollock Jr., op.cit., p. 249.

281 Minault, Ibid.

282 Loc.cit.

and restricting campaign contributions is to place the poorer candidates upon a more equitable basis with wealthy opponents.²⁸³ To the present, this purpose has not been accomplished. Perhaps a partial solution combined with publicity could be increased governmental assumption of the financial burdens of campaigning. This would indicate a trend toward a greater individual sense of responsibility for the functioning of democracy through the broadening of campaign financing.²⁸⁴ Often advocated is state aid to the candidates in the form of official election publicity pamphlets, the state providing the printing at cost,²⁸⁵ as is done now in three states, or even free of charge. Massachusetts now furnishes free printed information mailed at state expense to every registered voter on all state referendum questions. Why couldn't this service be extended to include the candidates?

It has also been proposed that candidates for the more important public offices be furnished with meeting-places and that the franking privilege, the free use of the mails as in England and France, be granted to all candidates.²⁸⁶ Another suggestion concerns the distribution of radio time.

283 Ibid, p. 1.

284 Merriam, op.cit., p. 414.

285 Minault, op.cit., p. 9.

286 Loc.cit.; Merriam, op.cit., p. 415.

Where there are government-owned radio stations, as in the state of Wisconsin, it is possible for all parties to be given an opportunity to present their views over the air to the electorate.²⁸⁷ In fact, inasmuch as the operation of a radio or television station is not a matter of right but a privilege to be regulated "in the public interest, convenience, or necessity" within the reasonable discretion of the licensing authorities,²⁸⁸ I can see no valid legal objection to requiring as a condition of the privilege that all candidates must be allowed a certain period of time to present their qualifications and viewpoints.

Finally, states having inadequate corrupt practices statutes might well remodel these to conform to the various provisions of the best existing laws in many states, such as those of Indiana, Massachusetts, and New Jersey.²⁸⁹ The chief value of these laws has been the education that has accompanied the general discussion of the sources and the applications of campaign funds.²⁹⁰ A generation ago the question of "Who is paying the bills?" was not even raised.²⁹¹

287 Merriam, Ibid.

288 National Broadcasting Co., Inc. v. United States, 319 U.S. 190, 63 S.Ct. 997, 87 L.Ed. 1344 (1943).

289 Minault, Ibid.

290 Merriam, op.cit., p. 414.

291 Loc.cit.

The common raising of this question today has affected the political morale of the community more deeply than the actual enforcement of the laws.²⁹² In this, they have served the useful purpose of focusing public interest on the large political contributions by private interests, thus calling attention to the direct or indirect obligations incident to meeting the campaign requirements of the party budget incurred by the candidates.²⁹³

Miscellaneous Provisions

Great Britain

Enacted August 25, 1883 the British statute entitled "An Act for the better prevention of Corrupt and Illegal Practices at Parliamentary Elections," 46-47 Victoria, ch. 51 (1883), was a summarization of the previous laws known as the Corrupt Practices Prevention Acts passed on a temporary basis in 1854, 1863, 1868, 1872, and 1879, and enacted as permanent legislation in 1867, 1868, and 1881.²⁹⁴ Already referred to in connection with publicity requirements, expenditure limitations, and contribution restrictions, the 1883 statute strictly regulates the amounts which can be spent by or on behalf of an individual candidate during the

²⁹² Loc.cit.

²⁹³ Ibid, pp. 414-415

²⁹⁴ See also Representation of the People (Equal Franchise) Act of 1928, 18-19 Geo. V, ch. 12, sec. 5 (1928).

relatively short formal election period, and requires reports of these contributions and expenditures. But, so long as a particular candidate is not mentioned by name, the legislation places no limitations on contributions to, no restrictions on the amounts which can be spent by, and requires no reports from, political committees or pressure groups. Here is a legal distinction with a real practical difference.

Therefore, while the English law regulates the personal campaign funds of individual candidates, it is not at all in the same legislative category as the general prohibitory laws in the United States. Where American statutes have failed to accomplish their purposes in this regard, the British haven't even attempted to pass such legislation. Rather than overall prohibitions as in the United States, the English have largely confined themselves to enacting penal statutes preventing only those election practices which were commonly deemed contrary to public policy, morals, and decency. Coercion, threats of force, intimidation, undue influence, bribery, treating, the payment of persons for transporting voters to the polls, expenditures for certain purposes, illegal registration, fraudulent voting, repeat voting, and other unsavory and improper election practices are forbidden. Most of these illegal items are also included within the purview of American laws, but in the United States are looked upon only as a necessary supplement to the corrupt practices statutes.

United States

Federal employee protections. Abuse of power by the party in control often led to the assessment of office holders and civil servants for money and services in behalf of the campaign fund.²⁹⁵ Thus, this was one of the first abuses of party financing which Congress attempted to regulate.²⁹⁶ In 1867, legislation was passed designed to protect navy yard employees from political assessments and in 1883 the Civil Service Reform Act, popularly known as the Pendleton Act,²⁹⁷ went much further. Under this law, the solicitation of campaign funds from any officer or employee of the United States by a fellow employee is forbidden, a federal employee cannot pay to another such employee any political contribution, no one may solicit or receive political contributions in federal buildings or on federal premises, and federal employees are protected from discharge for refusing to make political contributions.²⁹⁸

This legislation was reasonably successful in reducing the pressure upon federal civil service employees, but many federal political appointees were still expected to make

408. 295 Penniman, op.cit., p. 540; Merriam, op.cit., p.

296 Loc.cit.

297 U.S. Statutes at Large, vol. 22, pp. 406-407 (1883).

298 Loc.cit.

"voluntary" contributions.²⁹⁹ Therefore, in the second session of the Sixtieth Congress in 1909 a revision of the Criminal Code, by amendments to and re-enactment of the 1883 Pendleton Act, resulted in a penal law prohibiting any United States Senator or Representative, or any public officer, employee, or clerk, from soliciting or receiving any assessment, subscription, or contribution for any political purpose from any officer, clerk, or employee of the United States or from any person receiving a salary from the United States Treasury.³⁰⁰ This problem did not arise again in public attention until the New Deal was accused of manipulating relief programs for political advantage.³⁰¹

Obviously, there can be no doubt that the expenditures of Franklin D. Roosevelt's administration served the political interests of the Democratic Party very well.³⁰² According to the Institute of Public Opinion, although in 1936 F.D.R. was supported by 57% of the voters who had received no money aid from the government, voter support for F.D.R. rose to 68% in the case of subsidized farmers, 73% in the case of subsidized owners of land or homes, and

299 Merriam, Ibid.

300 Pollock Jr., op.cit., pp. 15, 181; see U.S. Compiled Statutes (1918), pp. 1694-1695.

301 Penniman, op.cit., p. 542.

302 Ibid., p. 541.

80 % in the case of relief recipients.³⁰³ Gratitude for help when help was needed is certainly worth a great deal more than mere propaganda expenditures, and when government assumes the responsibility of providing for the general welfare, why should it not be expected that as a natural consequence the electorate will vote accordingly? Surely one of the aims of democratic electoral procedures is to make government more responsive to the needs of the people. Where is the sinister plot in such legislation?

However, to guard against possible abuses in government spending, and to meet widespread disapproval of what was believed by critics to be improper purposes in these policies, in August of 1939 Congress passed Hatch Act I to make it unlawful to deprive or threaten to deprive anyone of federal work or compensation for relief on account of race, creed, political activity, or support of, or opposition to, any candidate or party, or to solicit or receive from a person on federal relief an assessment for any political purpose whatever, or to furnish or receive, for political purposes, any list of persons receiving federal relief.³⁰⁴ The penalty for violation is a fine, imprisonment,³⁰⁵ or both. Aside from these immediate objects, the statute was designed to prevent certain additional "perni-

303 Ibid, p. 542.

304 U.S. Statutes at Large, vol. 53, p. 1147 (1939).

305 Loc.cit.

cious political activities" on the part of all federal administrative officers and employees.³⁰⁶

Employees of the federal government in non-policy determining positions were forbidden to take any active part in political management or in political campaigns, and such employees shall not use their official authority or influence for the purpose of affecting in any way the result of a nomination or election of any candidate for a federal office.³⁰⁷ Federal employees classified under Civil Service may express their political opinions privately only.³⁰⁸ The penalty for violation is stoppage of pay and removal from office.³⁰⁹ However, non-classified civil servants may be solicited for political contributions and may publicly voice their opinions on candidates, issues, and parties, but not as part of any organized campaign.³¹⁰ Further, the statute applied only to federal personnel and did not include employees of state and local governments. Legislative and judicial employees are also excluded.³¹¹

Hatch Act II of 1940, notable for its drastic

306 Loc.cit.

307 Loc.cit.

308 Loc.cit.

309 Loc.cit.

310 Loc.cit.

311 Loc.cit.

changes concerning the collection of campaign funds, amended Hatch Act I of the previous year to extend its coverage to all state and local government employees whose salaries are paid in whole or in part from federal funds, and forbade such employees from active political participation in federal campaigns, or from using their official position to interfere with or influence the outcome of federal primaries or elections.³¹² Taken together, these two statutes constitute the principal provisions regulating the political conduct of federal employees. Excluding officials in policy-determining positions, employees of the federal government are severely restricted in their political activities. What was originally a protection has so narrowed their rights that these employees have become, in effect, second-class citizens.

Also, the problem of defining "political activity" has led to hair-line decisions. For example, federal employees may display campaign stickers on personal automobiles and, when not on the job, may also wear political badges, even though they may not pass out these stickers or badges. Such employees may not serve on or for any political committee or party, or as an officer of any political club or organization, or as a member of any of its committees. However, the Hatch Acts do not prevent activity in "good government" or civic welfare organizations, as long as these organizations are

³¹² U. S. Statutes at Large, vol. 54, p. 767 (1940).

non-partisan in nature and do not hold political meetings. Therefore, federal employees may not solicit or work for a political party, candidate, or faction, distribute campaign literature, ask for or handle political contributions, circulate nominating petitions, act as a watcher or checker at the polls, help get out voters on registration or election days, help organize political meetings, or take any active part in such meetings, or march in a political parade.

On the other hand, these restrictions in no way impair a federal employees right to register and vote, or to express private opinions on political subjects or candidates as long as such expression does not constitute taking part in a political campaign. Employees of the federal government may also contribute on a personal basis to political organizations or campaign funds.³¹³ Federal employees may attend political meetings as an observer, sign nominating or other political petitions, and may petition Congress expressing support of or opposition to pending legislation. However, these employees cannot initiate or circulate such petitions, and may not have an editorial or managerial connection with any politically partisan publication. Further, a federal employee may not write for publication any letter, signed or unsigned, in favor of or against any political party or candidate. But the Hatch

³¹³ Merriam, op.cit., p. 408, reports that in 1940, of contributions \$1,000 or over received by the Democratic Party, nearly one-fifth came from officeholders.

Acts do not prohibit federal employees from informing others of registration and voting laws on a non-partisan basis, or from urging people to vote as a matter of good citizenship.

State employee protections. Where state employees are paid wholly or in part with federal funds, Hatch Act II prevents their being legally solicited for political contributions.³¹⁴ In addition to this protection through the operation of federal laws, many states make it a corrupt practice to intimidate relief clients,³¹⁵ and statutes similar to the Hatch Acts prohibiting the solicitation of funds for political purposes from various classes of public employees, usually those in non-elective offices, have been enacted in twenty-one states.³¹⁶ About one-third of the states prohibit the assessment of officeholders.³¹⁷ This leaves a large proportion of state and local employees without any protection against this form of tribute, and even where legislative protections are theoretically in effect enormous sums for campaign funds are still collected from state and municipal officeholders in the form of "voluntary" political contributions, varying from the usual

314 U.S. Statutes at Large, vol. 54, p. 767 (1940).

315 Minault, op.cit., p. 2.

316 Ibid, p. 3.

317 Merriam, Ibid.

2% to 10%, which it would be unsafe to withhold. ³¹⁸

It should be noted, however, that the employment of public school teachers usually offers much greater employee protections than ordinarily prevail in the case of other public employees. ³¹⁹ Control over school personnel is customarily vested within the exclusive jurisdiction of a Board of Education or School Committee which, though elected locally, is subject to state laws and usually has an independent authority over educational matters. Within the scope of power conferred upon it, the Board of Education or School Committee is a quasi-judicial and policy-making administrative body which selects the superintendent of schools, appoints school personnel, passes upon the curriculum, purchases textbooks, establishes and operates under its own budget, and cannot be interfered with by other locally elected officers. This separation of education from all other local governmental functions is an American tradition resulting from a desire to "keep politics out of the schools."

318 Loc.cit.; Penniman, op.cit., p. 541.

319 In Massachusetts, for example, Chapter 71 of the General Laws stipulates that no teacher applicant can be questioned regarding religion or politics. Causes for dismissal are enumerated in the statute. Further, a teacher in the employ of a school system for three years or more thereby acquires "tenure" rights which entitle such teacher to notice of specific charges in writing, a public hearing with benefit of legal counsel before the School Committee, and then a two-thirds affirmative vote of the entire School Committee is required before such a teacher may be dismissed.

Other corrupt practices provisions: federal. In the United States the popular connotation of the term "corrupt practices" is usually confined nowadays to legislation dealing with the limitation of expenditures, restrictions on contributions, and the filing of statements accounting for campaign funds.³²⁰ Yet it should be remembered that publicity requirements, prohibitions on political donations by corporations, and the like, are not at all necessarily part of even a very comprehensive statute such as exists in England where party campaign funds are undisturbed.³²¹ American laws, then, mention the standard corrupt practices items in a secondary position, and include them under general aspects of election administration legislation mainly for the sake of completeness.³²²

With one exception--the prohibition on the solicitation of political contributions by United States Senators and Representatives--the penal statutes relating to corrupt practices, with certain amendments and additions, were consolidated into the Federal Corrupt Practices Act of 1925,³²³

320 Minault, op.cit. p. 1.

321 Pollock Jr., op.cit., p. 180.

322 Minault, Ibid.

323 U.S. Statutes at Large, vol. 43, p. 1070, 68th Cong., Second Session, P.L. No. 506, Title III, approved February 28, 1925.

and added in 1939 and 1940 were the Hatch Acts.³²⁴ More specifically, the law penalizes such offenses in federal primaries and elections as coercion, threats to persuade or compel a person to vote or refrain from voting in a particular way, undue influence, the purchase of votes, illegal voting either by impersonation or repeating,³²⁵ tampering with the ballots, and falsifying the returns.³²⁵ Bribery and intimidation are each punishable by a fine of not more than \$1,000 or imprisonment of not more than one year, or both.³²⁶

No candidate is legally permitted to promise any office or make any pledge relative to the appointment or recommendation for appointment of any person to any position of employment in order to secure that person's support, and the sworn itemized statement of contributions and expenditures required of every candidate for Congress must include every such promise or pledge made by him or by any person with his consent for the purpose of procuring that person's support. Knowingly falsifying this statement makes the candidate liable to a fine of not more than \$1,000 or imprisonment of not more than one year, or both.³²⁷ One

³²⁴ U.S. Statutes at Large, vol. 53, p. 1147 (1939); U.S. Statutes at Large, vol. 54, p. 767 (1940).

³²⁵ See Footnote 323.

³²⁶ Loc.cit.

³²⁷ Loc.cit.

observer believes that these federal provisions, enacted separately and at different times, can scarcely be said to constitute comprehensive corrupt practices legislation, that in most of the states corrupt practices laws save the situation and prevent the worst of election abuses.³²⁸

Other corrupt practices provisions: state. Although the federal laws have had some limited influence, they have not attempted to cover as broad a field as corrupt practices legislation in the states, political conditions today would be much worse than they are if it were necessary to depend upon federal laws alone for protecting the purity of elections.³²⁹ State corrupt practices statutes have been in force since 1890 and, despite their defects, limitations, and diversities, these state regulations are largely responsible for whatever progress has been made in improving such political conditions as prevailed in this country in the 'eighties and have succeeded in preventing at least the worst forms of political corruption.³³⁰ The fact that all the states have some corrupt practices statute, and that a glance at successive state enactments on the subject reveals a progressive stringency of such laws, is evidence of the need for state corrupt practices legislation for the purpose

328 Pollock Jr., op.cit., pp. 184, 234.

329 Ibid, p. 234.

330 Loc.cit.

of preventing abuses on the part of candidates in their
attempt to secure votes.³³¹

These state laws are extremely diverse, but there are certain fairly uniform requirements running through most of them. All states have made it unlawful to give a bribe in connection with elections, while all but seven forbid the receiving of a bribe.³³² Most states make it illegal for any corporation doing business in the state, directly or indirectly, to make any contribution or expenditure for any political purpose whatsoever, and make it a crime for any person to solicit or knowingly receive any such contribution or expenditure.³³³ Although only twenty states make treating of voters an offense, twenty-four states forbid candidates to promise appointments to secure votes or to give official patronage in return for political support.³³⁴ However, candidates are legally protected in twenty-three states from pressure to make contributions to any organization, but this does not prevent the candidate from contributing to organizations which he has regularly supported in the past.³³⁵ Of these states,

331 Minault, op.cit., p. 1.

332 Loc.cit.

333 Penniman, op.cit., pp. 556-557.

334 Minault, Ibid; Penniman, Ibid.

335 Minault, op.cit., p. 2.

six specifically exempt political organizations from the law, and others permit "voluntary contributions."³³⁶

Of course, the most common requirements of state corrupt practices statutes are penalties against threats or coercion, undue influence, illegal expenditures, voting by impersonation, repeat voting, tampering with ballots, and fraudulent reporting of election returns.³³⁷ Twenty-six states forbid distinguishing marks to be made on the ballots.³³⁸ Most states outlaw the intimidation of employees by employers in voting matters, and many make it a corrupt practice to intimidate relief clients.³³⁹ Among the states imposing a poll tax, several prevent the payment of such tax by others except close relatives or members of the household.³⁴⁰ Anonymous contributions are often prohibited.³⁴¹ Many states forbid election betting.³⁴² A few states outlaw the wearing of political buttons around the polls on election day.³⁴³ In other ways these valuable

336 Loc.cit.

337 Penniman, op.cit., p. 556; Sikes, State and Federal Corrupt Practices Legislation, Appendix.

338 Minault, op.cit., p. 1.

339 Ibid, p. 2.

340 Loc.cit.

341 Pollock Jr., op.cit., p. 255.

242 Loc.cit.

243 Loc.cit.

provisions of state corrupt practices statutes indicate that their purposes are the same, differing only in the ways in which they carry out those purposes.³⁴⁴

Control over newspaper support and advertising is widespread. Seventeen states prohibit the purchase of editorial or newspaper support.³⁴⁵ Over half the states require proper labeling of political advertisements, especially in newspapers.³⁴⁶ In Massachusetts, this means that all political material must be plainly marked as such and bear the name and address of the person or persons responsible. The circulation of statements reflecting upon the character of a candidate is unlawful in eight states, while others stipulate that such statements in a newspaper entitle the victim to the same amount of space in rebuttal.³⁴⁷ Texas requires that no newspaper advertisement be paid in excess of regular rates, and in Kansas a candidate owning a newspaper must charge himself for all personal references in his newspaper at the standard rate, and report these charges in his campaign expense account.³⁴⁸ In Minnesota, every candidate having a financial interest in a newspaper

³⁴⁴ Ibid, p. 235

³⁴⁵ Minault, op.cit. p. 2; Pollock Jr., op.cit., p. 255.

³⁴⁶ Minault, Ibid.

³⁴⁷ Loc.cit.

³⁴⁸ Loc.cit.

must file with the county auditor a statement of that fact.³⁴⁹
Although only a few states have attempted to control the use
of the radio, Mississippi stipulates that radio time be given
in accordance with the provisions of federal statutes and at
the regular rates.³⁵⁰

Many of the provisions of state corrupt practices
statutes, therefore, are sometimes quite elaborate and
penalties for violations of these laws include fines,
imprisonment, withholding of names from the ballot, dis-
qualification to hold office, forfeiture of office, and
disenfranchisement.³⁵¹ Even so, in too many states the
problem of abuses at elections has not been solved because
these enactments are merely a stop-gap, often so ill-
constructed as to open them to the suspicion that they are
meant solely as a sop to a touchy but ignorant electorate.³⁵²
Fortunately, the efficient working of carefully worded
statutes shows that such legislation can effectively curb
election abuses.³⁵³ As an example of a comprehensive state
law, the provisions of the Wisconsin corrupt practices

349 Loc.cit.

350 Loc.cit.

351 Ibid, p. 1; Pollock Jr., op.cit., p. 254.

352 Minault, Ibid; Overacker, Money in Elections,
chapter XIII.

353 Minault, Ibid.

statute are outlined as follows:

(1) Publicity is required. This consists of a sworn itemized statement of receipts, and disbursements in detail, including express or implied obligations.

(2) A limitation is imposed upon the amount that may be spent by or in behalf of any candidate for nomination or election.

(3) The purposes are defined for which lawful expenditures may be made by candidates and committees, such as maintenance of headquarters and rental of halls; stationery, postage, clerical assistance at headquarters; printing and distribution of campaign literature; political advertising; salaries and expenses of speakers, traveling expenses of committee members, and so forth.

(4) No payment of any kind shall be made for services to be performed on the day of the primary or election, even for the expense of transporting of any voter to or from the polls.

(5) Campaign literature must bear the name and address of its author and the candidate.

(6) Newspaper, periodical, or other printed paid political matter shall be labeled as a paid political advertisement, stating the charge made for it and the name of the candidate on whose behalf it has been inserted.

354 Penniman, op.cit., pp. 557-558.

(7) No newspaper or periodical or anyone connected therewith shall solicit or receive any compensation in return for political influence and no person shall offer compensation therefor.

(8) No candidate shall directly or indirectly promote his interests by the offer of appointment to public or private office.

(9) Corporations doing business in the state are forbidden to contribute directly or indirectly, or to offer or agree to contribute any money, property, free service, or thing of value, for any political purpose whatsoever.

(10) The giving or receiving of a bribe is unlawful, as is any form of intimidation in connection with an election. Such behavior as election betting, fraudulent voting, improper marking of ballots, and certain other familiar corrupt practices, are similarly illegal.

Chapter Conclusions

On the whole, by neglect, evasion, and nonenforcement, the federal laws regulating party finance have been left innocuous and of little value, without much basic effect upon the actual conduct of the electoral process.³⁵⁵ The amended and consolidated Federal Corrupt Practices Act of 1925 omits essential features of a good regulatory statute,

³⁵⁵ Pollock Jr., op.cit., p. 260; Merriam, op.cit., p. 415.

leaving important fields of control to the various states.³⁵⁶ Although the ;925 law is primarily for publicity of campaign receipts and disbursements, it achieves little or no practical publicity insofar as making this information part of the public's common knowledge.³⁵⁷ Other features of the federal statutes, such as the limitations upon the amount of expenditures and the restrictions upon the size of contributions in the Hatch Acts, have been more honored in the breach than in the observance.³⁵⁸ Of course, the senatorial investigating committees have made up for many of the deficiencies in the publicity law.³⁵⁹

In fact, these investigations have made use of the publicity requirements to examine the general operation of the federal corrupt practices statutes. For example, in 1940 a study was made of the reports of contributions, expenditures, and activities of national, state, and independent political committees.³⁶⁰ This investigation concluded, in the light of the provisions of the Hatch Acts,

356 Pollock, Jr., Ibid.

357 Loc. cit.

358 Merriam, Ibid.

359 Loc. cit.

360 Report of the Special Committee to Investigate Presidential, Vice Presidential, and Senatorial Campaign Expenditures, 1940, Pursuant to Senate Resolutions Nos. 212, 291, and 336. Senate Report No. 47, 77th Cong., First Sess. February 15, 1941, pp. 5-13, 79-80.

that these provisions were ineffective in preventing the expenditure of enormous sums of money in the 1940 national election campaign.³⁶¹ The \$3,000,000 limitation served to direct the flow of campaign funds in excess of that amount into other channels than the traditional party committees, such as state or local committees, and the newly-established independent political committees, all actually working for the national party ticker, and each legally entitled to spend up to the \$3,000,000.³⁶² Further, the \$5,000 contribution restriction was avoided by the simple procedure of donating that amount to each of these committees, meaning that almost any sum could be put into the campaign and spent without restriction.³⁶³

Necessary statutory changes in the public interest became apparent as the result of the thorough investigation of the 1940 campaign, and the Senate Special Committee recommended exploration and study of the advisability, possibility, and validity of remedial legislation designed to accomplish the following objectives:³⁶⁴

(1) To remove ambiguities and uncertainties as to statutory limitations on campaign contributions and expenditures.

361 Loc.cit.

362 Loc.cit.

363 Loc.cit.

364 Loc.cit.

(2) To place an all-inclusive limitation on the total amount of money that may be collected or expended during any calendar year by political committees and other organizations and groups of persons on behalf of candidates for nomination and election for the offices of President and Vice President of the United States.

(3) To place an all-inclusive limitation on the total amount of money that may be contributed during any calendar year by any one individual to be expended directly or indirectly on behalf of the nomination or election of a candidate for federal office.

(4) To provide protection for candidates for nomination or election to any federal office against false, libellous and scurrilous campaign material. One remedy suggested by the committee is to require that all campaign literature bear upon its face the name of its sponsor and its printer or publisher.

(5) To make unlawful any pernicious political activities by county, township, committeemen, or agricultural conservation associations.

(6) To prohibit coercion, either actual or constructive, of their employees, by private companies or corporations or their officials to interfere with the free exercise of their voting franchise in the nomination or election of federal officials.

(7) To prohibit contributions, directly or indirectly, by any public utility or other corporation regulated in whole or in part by the federal government by officers or directors of such corporations to campaign funds to be used in connection with the nomination or election of any candidate for federal office.

(8) To make effective the provisions of the Federal Corrupt Practices Act prohibiting contributions to campaign funds by national banks, directly or indirectly.

(9) To prevent abuses of the congressional franking privileges during political campaigns.

(10) To prohibit distribution of surplus commodities or other necessities of life, cash, or other benefits by any federal relief or local administrative agency for the purpose of influencing the nomination or election of any federal official.

These recommendations are in themselves a commentary on the failure of existing federal corrupt practices statutes. But it does not necessarily follow that the final answer is to merely list more prohibitions. It should be kept in mind that present-day political campaigns cannot be frugal affairs.³⁶⁵ Fanciful regulations, and attempts to write provisions governing every line of political activity, may be devised by theoretical students, but they will be disregarded and prove quite

³⁶⁵ Pollock, Jr., op. cit., p. 261

fruitless when it comes to a close and hard-fought election.³⁶⁶ Consequently, perhaps it would be much more reasonable to concentrate on being careful about the sources of the campaign fund and about the manner in which it is expended than with the size of the fund.³⁶⁷ Because an informed electorate will be the judge, beneficial results will follow more automatically from an adequate publicity law effectively enforced than from additional penal legislation, and therefore the best means to control excessive campaign expenditures is effective publicity.³⁶⁸

Additionally, improved national legislation must be complemented and supplemented by improved laws in the states.³⁶⁹ This is true because of the nature of our constitutional system, the fact that the federal government cannot legally interfere in purely state matters. Although the worst forms of political corruption have been eliminated by the vast amount of corrupt practices legislation in the states, whatever good results which have occurred being largely attributable to these laws, effective control over campaign funds has not been brought about and there is still a great need for improvement.³⁷⁰ Thus, in many cases they contain pro-

366 Ibid, p. 229.

367 Ibid, p. 261

368 Ibid, pp. 256-259, 263

369 Ibid, p. 263

370 Ibid, pp. 260, 263

visions which encourage perjury and are worse than dead letters because of frequent blatant violations.³⁷¹ Many state statutes have been conceived in partisanship, brought forth in the spirit of persecution, enacted without sufficient consideration, and are therefore objectionable.³⁷² Instead of endeavoring to reach the really important points in the regulation of campaign funds, legislatures have too often sought to multiply regulations which are bothersome and in many cases virtually impossible of enforcement.³⁷³

On the other hand, aside from the standard corrupt practices provisions outlawing bribery and the like, the publicity sections of the state statutes should be the most helpful in suppressing electoral corruption, but, as has been shown, these statutes have too often omitted many features indispensable for a thorough knowledge of the real contributions to, and the expenditures of, the campaign.³⁷⁴ Compulsory pre-election newspaper publication of these statements would be especially valuable. Because they can be effective only through complete and absolute publicity of party finance, the better statutes require careful enforcement through an inspection of the statement of accounts and

371 Ibid, p. 260.

372 Loc.cit.

373 Ibid, pp. 260-261.

374 Ibid, p. 263; Merriam, op.cit., p. 415.

expenses by a state officer, such as the secretary of state, who shall notify the person filing the statement of any deficiency and report subsequent failure to file properly to, for example, the district attorney or attorney general, for enforcement and other appropriate proceedings.³⁷⁵ Obviously, the penalties for violation of the publicity laws should be sufficient to constitute an adequate deterrent.

Finally, good state corrupt practices statutes define what is meant by a political committee and both the rights and obligations of such committees.³⁷⁶ These laws reach those political committees of a subsidiary nature existing side by side with party committees, and the legal provisions applying to the parties are just as applicable to the non-party political committees which, experience has shown, often expend sums of money rivaling those of the party committees.³⁷⁷ Effective publicity will contribute most toward raising the level of political practices and it is in this area of political committee publicity that new laws must be directed.³⁷⁸ With effective publicity could be combined the broadening of campaign financing through government aid in the form of furnishing major state and federal candidates with free

375 Pollock Jr., op.cit., pp. 252-253, 262-263.

376 Ibid, p. 251.

377 Loc.cit.

378 Ibid, p. 263.

meeting places, use of the mails without cost, free radio and television time, and official election publicity pamphlets, printed and mailed at public expense to every registered voter. While this would create certain problems, as in determining the amount of aid to be given minor parties, it would be a tremendous forward step in securing both an informed electorate and greater equality of opportunity for candidates.

III

SPECIFIC LEGISLATION AND JUDICIAL DECISIONS CONTROLLING LABOR UNION POLITICAL ACTIVITIES

Chapter Introduction

As desirable background information to adequately understand the discussion of general and specific controls over the political activities of organized labor in Great Britain and the United States, the first chapter reviewed the history and significance of British and American labor union political activities, the important differences between the two countries, and the electoral practices, programs, and potentialities of organized labor in the United States. The second chapter dealt with the history, provisions, and problems of general legislation and judicial decisions in Great Britain and in the United States controlling or affecting all political activities. These included publicity requirements and publicity pamphlets, expenditure limitations as to amounts and purposes, the restrictions on contributions, protections for public employees, various illegal practices, and other miscellaneous provisions governing elections, particularly relating to the conduct of candidates, parties, committees, and their agents. While not aimed specifically at organized labor, these laws, of course,

equally apply to the political activities of the unions and their members.

In this third chapter, greater attention is given to detailing the specific legislation and judicial decisions controlling the political activities of organized labor in Great Britain and the United States, the development of these controls, their history and provisions, and the practical effects, the political results of these attempts to limit or prohibit labor union political activities. Of interest for the legislative intention are the parliamentary and congressional debates, and found in the Appendix is a transcript of the United States Senate's consideration of Section 304 of the 1947 Taft-Hartley Act. The scope of this chapter, therefore, includes British and American, federal and state, limitations on labor union political contributions, prohibitions on organized labor's electoral expenditures, particularly Section 304, and related legislation and judicial decisions concerning labor's political activities. As in the case of many of the general controls dealt with in the second chapter, however, these specific controls have also largely failed and again will be shown some of the pertinent reasons why these attempts have not been as effective as originally conceived by their authors.

Limitations on Contributions

"Contracting-Out" and "Contracting-In"

History. Although American common law was derived from England, the British law of today differs in many fundamental respects from that of the United States.¹ Mainly statutory and much more definite, the English law has discarded the abstract legal theories upon which American labor law is largely premised.² Under the present law in Great Britain, both sides are accorded full freedom of combination and while there are certain specific restrictions of long standing designed to eliminate intimidation and more recent limitations prohibiting specified kinds of strikes, all other strikes as well as boycotts and blacklists are lawful, labor injunctions are practically unknown, there is no anti-trust statute applied to labor organizations, and neither unions nor employers' associations are held legally responsible for unlawful acts committed in their behalf.³ Labor unions are completely free to support political parties and candidates of their choice. They may assess their membership for such purpose with the exception that any union member who objects to contributing may sign a statement so indicating

1 Edwin Emil Witte, *The Government in Labor Disputes*, p. 313.

2 Loc. cit.

3 Loc. Cit.

and he will not be assessed for the political fund.⁴ With this wider freedom goes strict law enforcement.⁵

However, the political rights of labor unions were not always so clear, and back of this present status is an interesting history which begins with a diametrically opposite policy from that now pursued. Until the middle of the nineteenth century, the very existence of labor unions was without the law.⁶ In the eighteenth century, the English common law doctrines of criminal conspiracy, as well as statutes, had declared all organized associations of workmen to be unlawful combinations in restraint of trade.⁷ This policy was materially reduced by the Combination Acts of 1824 and 1825 which repealed the prior anti-combination laws and expressly declared it to be legal for workmen to combine to fix their wages and hours of work. But these statutes penalized intimidation and molestation, by no means conferring complete freedom of combination.

On the contrary, in the next decades numerous union leaders were convicted on charges of criminal conspiracy for ordinary union activities and some of them deported to

⁴ Louise Overacker, "Labor's Political Contributions," 1939, ⁵⁴ *Political Science Quarterly* 56-68. Also, Louise Overacker, Presidential Campaign Funds, p. 52

⁵ Witte, Ibid.

⁶ Ibid., p. 314.

⁷ See footnote 4.

the penal colony in Australia.⁸ Strikes to procure the discharge of non-union workers, and even peaceful picketing, were held criminal offenses. The labor unions themselves were regarded as extra-legal organizations and denied all right to sue in the courts, even for the protection of their funds.⁹ Parliament then enacted various laws to give the unions a better status, culminating in legislation¹⁰ which not only legalized the unions but gave them all of the advantages of incorporation without any of the disadvantages. By merely registering, they were given the right to sue in their common name but for thirty years thereafter were¹¹ believed not to be subject to suit.

The Conspiracy and Protection of Property Act of 1875, 38-39 Victoria, ch. 86, was intended to sweep away the common law doctrine of conspiracy in its application to labor disputes. For this doctrine it substituted specific prohibitions against certain offensive conduct such as violence, intimidation, persistent following of a person from place to place, and picketing which was not peaceful or not for the purpose of information. It also declared criminal the breach of

8 Witte, op.cit., p. 314.

9 Loc.cit.

10 Trade Union Act of 1871, 34-35 Victoria, ch. 31; Conspiracy and Protection of Property Act of 1875, 38-39 Victoria, ch. 86; Trade Union Act of 1876, 39-40 Victoria, ch. 22.

11 Witte, Ibid.

employment contracts with knowledge that such breach will endanger human life, expose valuable property to destruction, or deprive a municipality of gas or water. It also provided that strikers would still be liable to prosecution, if guilty of these offenses, for rioting, unlawful assembly, breach of the peace, and sedition.¹²

Once having achieved legal status, however, the major activity of the unions, collective bargaining, was early supplemented by political action. In fact, at least since the 1860's labor unions had used their funds for political purposes.¹³ Ever since Disraeli had extended the franchise in 1867 union funds were used to aid the election campaigns of friendly candidates, the unions had put up candidates for Parliament, and two labor union candidates elected in 1874, for over thirty years members of the House of Commons, had always had their election expenses paid by unions.¹⁴ From 1874 onward the unions paid salaries to their members in Parliament. This was felt necessary because Members of Parliament friendly to labor were usually poor, and the law¹⁵ at that time did not provide salaries for the M.P.'s.

¹² Conspiracy and Protection of Property Act of 1875, 38-39 Victoria, ch. 86.

¹³ V. Henry Rothschild 2nd, "Government Regulation of Trade Unions in Great Britain: II," 38 Columbia Law Review 1335, December 1938, p. 1356.

¹⁴ Loc. cit.

¹⁵ See footnote 4.

As early as 1873 a labor union had a Parliamentary Candidates Fund and in 1894 the Royal Commission on Labor had noted that one of the nine purposes on which labor unions expended their funds was parliamentary representation.¹⁶ Political contributions by labor unions had long been recognized as valid by the acceptance for registration of labor union rules providing that the making of political contributions was to be a labor union object. The Registrar had decided that although the making of such contributions might not properly be considered a labor union object, nevertheless it was a proper means to accomplish labor union objects and could be registered upon this ground.¹⁷ Thus, it was apparently legal for labor unions to give financial support to a political party.

The first important attempt at a party representing labor as such was made in 1893 when Kier Hardie founded the Independent Labor Party. Lacking union support, this party was unsuccessful.¹⁸ In 1900, however, the Trades Union Congress joined with Kier Hardie's organization and other societies to form the Labor Representation Committee. In several decisions of trial and intermediate courts in the next decades following the Conspiracy and Protection of

¹⁶ Rothschild 2nd, Ibid.

¹⁷ Ibid., pp. 1356-1357

¹⁸ Ibid., p. 1357

Property Act of 1875, the law was narrowly construed, but not until 1901 did the unions deem it necessary to ask for any new legislation. Two decisions rendered by the House of Lords in this year created consternation in the union ranks.¹⁹ Quinn v. Leatham, 1901 A.C. 495, held that workingmen acting in combination with intent to injure another were civilly liable despite the 1875 Conspiracy and Protection of Property Act, and Taff Vale Ry v. Amalgamated Society of Railway Servants, 1901 A.C. 426, held that labor unions might be sued and their funds taken for damages caused by their members' unlawful acts.

Alarmed, the unions demanded remedial legislation²⁰ and this became an important issue in the 1905 election. The Liberal Party which came into power brought in a bill which went only halfway on the most important issue in²¹ question, that of the liability of the unions for damages. So many of its supporters, however, had pledged their votes to the complete exemption of unions from all actions in tort that the government withdrew its first bill and following the 1906 elections presented and secured passage of the British Trade Disputes Act, 6 Edw. VII, ch, 47. The indignation aroused by the Taff Vale case had given the needed impe-

19 Witte, op.cit., p. 315

20 Loc.cit.

21 Loc.cit.

tus to labor union political action and in 1906 the Labor Representation Committee had been renamed the Labor Party. Its rapid growth with over a million adherents, its success in the 1906 elections, and its triumph in obtaining the 1906 statute, established the Labor Party as a political power.²²

The 1906 statute is still in effect and, although it has been supplemented by other legislation, remains the principal law governing labor disputes in England.²³ It provides that no act done by a combination of either employers or workmen in contemplation or furtherance of a labor dispute shall give rise to either civil or criminal liability unless the act would be actionable if done by only one person. It expressly legalizes peaceful picketing and peaceful persuasion, retaining, however, the enumeration of specific unlawful actions in labor disputes included in the 1875 law. Further, it provides that no action shall be maintained in a labor dispute for persuasion to break contracts, outlawing the yellow-dog contract as a basis for prohibiting efforts at unionization. Finally, it declares that no labor union, employers' association, nor agents or members of either may be sued in tort for unlawful acts alleged to have been committed in behalf of the union or association.²⁴ While

22 Rothschild 2nd, Ibid.

23 Witte, op.cit., p. 316.

24 Trade Disputes Act of 1906, 6 Edw. VII, ch. 47.

this statute has been less liberally interpreted than the unions desired, no decision has destroyed its essential provisions.²⁵

Following 1906, labor's growing political strength soon became a source of much concern. Its M.P.'s were no longer Liberals or Conservatives but were now pledged to an independent platform. Although not speaking for the Labor Party viewpoint at that time, Kier Hardie said that "Labour representation means more than sending a Member to the House of Commons. It is a means to an end and that end is not trades unionism but Socialism."²⁶ This statement was seized upon by the Conservatives in an attempt to undermine the Labor Party's influence and, financed by the Conservatives, the secretary of a local branch of the Amalgamated Society of Railway Servants brought an action against the union to enjoin payment of union funds for political purposes.²⁷ This action was upheld by the House of Lords in the Osborne judgment.²⁸ So long as this decision remained law, unions were absolutely prohibited, legally, from all political activity, and labor immediately began a vigorous campaign

25 Witte, Ibid.

26 Rothschild 2nd, Ibid.

27 Loc.cit.

28 Osborne v. Amalgamated Society of Railway Servants, 1 Law Re.Ch.Div. 163, 1 British Ruling Cases 56 (1909), aff. A.C. 87 (1910). Full discussion in later section.

for its repeal by supporting the Liberals in 1910, and by
electing 42 Labor Party M.P.'s that year.²⁹

"Contracting-Out" The Parliamentary effort to secure
repeal of the Osborne judgment was launched on April 13,
1910, but nothing was done at that time, and the debate
resumed seven months later on November 18, 1910.³⁰ A Mr.
Barnes explained that it was only through collective action
that working class representation was possible, that,
individually, workmen do not have the means, the money, to
enable them to campaign or to serve in Parliament. This
"golden key" was taken away by the Osborne decision, closing
the door to labor of the "opportunity of taking their own
distinctive part in the Councils of the nation." The Trade
Union Congress, representing two million workmen, held
special conferences and numerous meetings all over the
country, demanding the reversal of the Osborne judgment
which "deprives working people of that right which they
have exercised for two generations of organizing themselves
in Trade Unions not only in the industrial field but also
in the political field, with a view of working out their
own social and industrial emancipation..."³¹

²⁹ Paul Blanchard, An Outline of the British Labor
Movement, p. 22.

³⁰ Parliamentary Debates, Commons, Official Report,
Fifth Series. 1910, vol. 16, pp. 1321-1324, 1327-1328, 1330,
1333-1336, 1339, 1348; vol. 20, pp. 118-119, 1643-1644.

³¹ Ibid, pp. 118-119.

Speaking in favor of maintaining the Osborne decision, Mr. F. E. Smith thought "it would be a great misfortune and a gross act of tyranny" if it should be reversed or modified. He claimed he came from a city where the labor unionists as a whole supported the Conservative Party. It would be an injustice if these constituents "were compelled against their wishes to subscribe to the expenses of Labour candidates." He condemned the Liberal Government's proposal which would restore the right of political activity to the unions, but which would make it necessary for any union member who wished to be relieved of the political subscription to indicate his dissent from the general policy of the union. Mr. Smith complained that under this provision "the onus is thrown, not upon those who want to pay, but upon those who do not want to pay." This, too, is "tyranny," because "No one can have followed the recent history of the political activity of trade unions without being aware of the degree of pressure upon persons who do not wish to subscribe to the political expenses which the men's leaders desire which is brought to bear upon individuals upon whom the duty is thrown of signifying their dissent." Mr. Smith expressed his concern lest any union member be subjected to "intimidation."³²

There was practical unanimity that labor unions could not legitimately be denied the right to apply their funds in

³² Ibid, pp. 1643-1644.

political activity. Even Conservatives recognized the indispensability of labor representation in the House of Commons, agreeing that labor was affected by almost all important legislation and that, consequently, labor should be represented by those with a special knowledge of its problems. The leader of the Conservative opposition in the House of Lords, the Marquess of Landsowne, conceded that it would be "absolutely impossible to maintain" a position denying the labor unions the right to contribute funds for political purposes.³³ But, while not arguing against the principle of labor union political action, the Conservatives sought instead to greatly narrow this right, basing their contentions on the alleged injustice of assessing a political contribution from a labor union member professing different political convictions from the majority.³⁴

Thus, the Conservatives proposed the requirement that the approval of each individual member be obtained even though the majority should vote in favor of political contributions. On the other hand, the Labor Party asked for majority rule to govern in this as in other issues of internal union administration, that there was no valid reason to distinguish political from other types of expenditures. Why not

³³ Parliamentary Debates, Lords, Official Reports, Fifth Series. 1913, vol. 13, p. 854.

³⁴ Parliamentary Debates, Commons, Official Reports, Fifth Series. 1910, vol. 20, pp. 118-119.

apply the same majority rule which prevails in Parliament and in other democratic bodies? If a minority disagree with this type of union expenditure, it may attempt to gain sufficient support within the union to defeat rules or by-laws authorizing political contributions. The Labor Party argued that since its members worked in the interest of all union members and all union members obtained the benefit of its work, why should not all union members contribute?³⁵ Labor did not succeed until 1913 in obtaining the legislation it sought when, even though the statute fell short of expectations, Parliament finally enacted the Trade Union Act of 1913, 2-3 Geo. V, ch. 30.

This measure represented a compromise between the Conservatives and the Labor Party. Unions could create a political fund through rules or by-laws satisfactory to the Registrar, engage in political activity, make political contributions, spend money for any political purpose for which a majority of the members voted by secret ballot at a meeting called for the purpose, and all members automatically contributed, except that any union member who objected to contributing to the political fund was allowed to individually sign an exemption form "contracting-out" of payment of the political contribution, and the statute stated that such union member was to be free from any penalty

35 Ibid, vol. 16, pp. 1327-1328, 1334-1336.

for choosing to be exempt.³⁶ Under this law, political contributions could be levied directly, or indirectly as part of the regular dues with exempt members being entitled to a ratable reduction, but in either event the political fund was to be kept separate from the general funds of the union and payments for political purposes were to be made only out of the political fund.³⁷

The net effect of these provisions was to place the burden upon the dissenting union member to attend the meeting at which the making of political contributions was to be considered and, if a majority should vote in favor of political contributions and he should still prefer to avoid contributing, to require him to indicate a dissent intended to be in the nature of a conscientious objection. The bill had first read "is unwilling" to contribute, but was amended to read "objects" to contributing in order that there should be more than just a desire to avoid a payment out of lesser motives than moral convictions opposing the purpose of the payment.³⁸ The political expenditures to which the statute applies consist in substance of contributions to the campaign of any candidate for public office, payment of the mainten-

³⁶ G.D.H. Cole, A History of the Labour Party From 1914, p. 2; Florence Peterson, Survey of Labor Economics, p. 647.

³⁷ Trade Union Act of 1913, 2-3 Geo. V, ch. 30.

³⁸ Rothschild 2nd, op.cit., p. 1363.

ance or expenses of any public office holder, and payments in connection with political meetings or for political literature.

However, the Trade Union Act of 1913 would not apply if the main purpose of these payments is the furtherance of "statutory" labor union objectives, and upon these expenditures for meetings or literature, which may have an incidental political purpose, such as the passage of legislation for an eight-hour day, there would be no limitation either in the statute or elsewhere.³⁹ Further, the statute was not intended to apply to labor union political newspapers, and in no way prohibits political activity by labor unions not involving expenditure of union funds. Thus, the Liberals in power combined with the Labor Party to override the Conservative objections, although the final result did not completely meet the original labor demands for a full repeal of the Osborne judgment. While many unionists criticized the 1913 law, they conformed to its provisions in good spirit. Some unions voted against political levies, and within those in which they were authorized a small fraction of the members chose to exercise their right to "contract-out." Most unionists, however, supported the political levy and the Labor Party drew most of its financial support from this source.⁴⁰

39 Ibid, p. 1364.

40 Louise Overacker, Presidential Campaign Funds, p. 53.

"Contracting-In" Although it has been observed that the Trade Union Act of 1913 worked reasonably well, almost from the date of its passage, disturbed by the rapid growth of the Labor Party, the Conservative Party engaged in an active campaign to amend the 1913 statute to curtail even more the right of unions to make political contributions.⁴¹ This anti-labor opportunity arose in 1926 when the unions of Britain united in a general strike. On May 31, 1926, Conservative Prime Minister Stanley Baldwin told the House of Commons that in calling a general strike the labor leaders were⁴²

threatening the basis of ordered government, and going nearer to proclaiming civil war than we have been for centuries past...this is the moment which has been chosen to challenge the existing Constitution of the country and to substitute the reign of force for that which now exists...The only people who are happy in this situation are those who envy us or who hate us, because they see the home of democratic freedom entering on a course which, if successful on the part of those who enter on it, can only substitute tyranny.

The Conservative Government charged that as a result of the Trade Union Act of 1913 passed by a Liberal Government "the trade union of today is a vast political body spending money to the end that the capitalist state may be overthrown." Replying, Labor Party spokesmen

41 Rothschild 2nd, op.cit., p. 1366.

42 Parliamentary Debates, Commons, Official Report, Fifth Series. 1926, vol. 195, p. 71.

observed that events threw unions into political activities⁴³
"relectantly" but necessarily because

It was found that scarcely ever could a trade union ever get the meanest advance for its members without resorting to the arbitrament of a strike, and we thought by sending representatives to this House, and using constitutionally and peacefully the power that political action might give, the standard of the workers' life and wage might be raised.

Not only is labor entitled to take part in the political activities of the country, but any attempt to prevent workmen from taking political action would be to "drive them back upon the weapon of revolution. It is the development of trade union influence which has strengthened the bulwark against revolutionary aims and tendencies."⁴⁴

In February of 1927, the debate resumed on the Conservative Government's proposals to, inter alia, severely limit the political activities of labor unions. Arguing against these proposals, it was pointed out that under the existing law a member of a union who desires to "contract out" of the political contribution, because he may be a Liberal or a Conservative or for any reason of political conscience, only has to send in a written statement that he objects to contributing to the political fund of the union.⁴⁵
But the Conservative Government was proposing

43 Ibid, pp. 335-336.

44 Loc.cit.

45 Ibid, 1927, vol. 202, pp. 226-227.

not to contract out as they do now, but to contract in--an entirely new principle of legislation. What happens in that event? First of all the union will have to take a ballot as to whether or not it will engage in political action, whether it will form a political fund, and whether it will ask its members to contribute for political purposes. A ballot will be taken. Let us assume that the ballot results in a large majority being in favour of political action and political contributions. The members, by a majority, will have decided that political action from their point of view is desirable. If the Government intend to introduce the principle of contracting-in, it means that the officials or the executive of the union cannot operate a decision already reached in conformity with the rules and secured by ballot by an affirmative vote given in favour of political action. Of what use is it taking a ballot and confirming a principle or a course of action if, immediately after, we are to be restricted by an Act of Parliament which prevents us from putting that vote into operation? Having decided that the union shall take political action we shall have to vote again, if there is to be contracting-in. We shall again have to make application to the union executive for the purpose of securing the right of paying towards the political fund.

That is an entire reversal of the legislative principle. It puts the onus upon members of trade unions of saying "Yes," twice to one question. First of all, they have to vote by majority in favour of a proposal to engage in political work and to pay to the political fund, and having done that they have to express in writing--in all probability it may be enacted that way--their desire, over and above the vote already given, to engage as individual members in the political work of the union. If that is to be the kind of legislation proposed, it will be unfair to a movement which...has shown itself to be a solid, well-managed movement, designed for...the betterment of the conditions of the working people of this country ...men and women combined for the purpose of improving their position.

In answering the Labor Party oratory, Conservative leaders argued that although the Labor Party might have been justified in the early days when the party was being built, now that it was the second party of the nation it should no longer take union money. It was asserted that the Laborites "ought to be ashamed that money is being taken out of the wages of poor Unionists and poor Conservatives" against their wishes. Labor Members ought not to coerce the minority of the union.⁴⁶ It was brought out that even though the number of exemptions claimed as of December 31, 1925, was only 104,797, the ballots against the political levy had been almost 560,000 to about 1,065,000 for the political levy. Only one-third of the union members had voted.⁴⁷ Of course, it could be said that those who do not ballot are thereby consenting to abide by the will of those who do ballot. Also, many of those who balloted against the political levy may have then decided to accept the will of the majority rather than claiming their right to "contract-out."

One of the points against the proposed "contracting-in" law was that it required the money to be sent to the head office or some branch office of the union. This was contrary to the usual method of paying union assessments

46 Ibid, p. 658.

47 Ibid, 1927, vol. 203, p. 367.

which was to pay the assessment to a union agent or collector, and therefore this new method would be just another difficulty to be deliberately imposed upon the unions.⁴⁸ Another argument compared the union's political levy to a tax:⁴⁹

There are a good many people in the suburbs who object to the roads being made up; some object to the Army and Navy and others have objected to the excursion of the Duke of York to Australia. Is the Government going to give them an exemption form which they can send to the Surveyor of Taxes in order to secure exemption?

The bitterness of the debate is illustrated by the following⁵⁰ verbatim exchange:

Mr. JEPHCOTT: Members of the other side, said that many of us were supported out of a party fund that was gathered together by shameful methods. If that is true, I ought to be ashamed of myself, because I have been supported entirely out of party funds in my effort to get into this House. The difference lies in this however, that what money I have had I have had out of the rich, and what money some of my friends on the other side have had they have had out of the poor.

Mr. J. JONES: And proud of it, too!

Mr. JEPHCOTT: So may I be permitted to put this point?

Mr. JONES: We cannot be bought.

Mr. JEPHCOTT: I want no insults.

48 Ibid, 1927, vol. 206, pp. 2050-2053.

49 Ibid, p. 2059.

50 Ibid, pp. 2122-2125.

Mr. JONES: You will get them.

The DEPUTY-CHAIRMAN: The hon. Member for Silvertown (Mr. Jones) cannot be allowed to make these remarks.

Mr. JONES: On a point of Order. The hon. Member insinuates that we are robbing the poor. That is a mis-statement of fact. He has been kept by the rich to rob the poor.

The DEPUTY-CHAIRMAN: That is not a point of Order.

Mr. JEPHCOTT: The hon. Member can be assured from me that I never shall take notice of what he says. The only point that I tried to make, and hon. Members opposite can see the humour of it, is that it is far better to get money out of the rich than out of the poor. I do not want to have to remind some hon. Members how they have lived out of the poor, unless they challenge me.

Mr. RHYS DAVIES: I am sure the Committee will agree with me when I say that the hon. Member who has just sat down possesses at least one splendid quality, and that is honesty; because he has just made the most remarkable confession I have ever heard from a workman. He has told us frankly that he gets his money out of the rich; and I presume that he never inquires from where the rich get their money.

Economically, the general strike of 1926 was a failure. Politically, it made possible the anti-labor Trade Disputes and Trade Unions Act of 1927, 17-18 Geo. V, ch. 22, much of which had long been urged in one form or another by the Association of British Chambers of Commerce, the National Union of Conservative and Unionist Associations, and other such organizations eager to restrict union activity, and also

had been the subject of various press campaigns.⁵¹ Without the mandate of a national election, as in the case of all important labor union legislation in the past, without any preliminary inquiry or investigation, relying upon its tremendous parliamentary majority secured in 1924, the Conservative Government gave legislative effect to the antagonism of various opponents of unionism at a moment⁵² when middle-class feeling ran high against labor. The general strike supplied the occasion for the enactment of extensive amendments to the 1913 law, which went far beyond any necessities indicated in the course of the strike, including some which could not possibly be related to the strike, and to secure its passage the Conservatives were required to invoke the "cloture" or "gag rule," a procedure⁵³ unprecedented in labor union legislation.

Passed over the determined opposition of the unions, the result was a statute which labor believed to be founded upon resentment, which labor promised to ignore, and which developed fresh bitterness and strife.⁵⁴ Although the "contracting out" provisions of the 1913 law which authorized political contributions by labor unions were strongly

51 Rothschild 2nd, op.cit., pp. 1366-1372.

52 Loc.cit.

53 Ibid, pp. 1372-1373.

54 Ibid, p. 1373.

objected to by the Labor Party, in whose behalf all political expenditures of British labor unions are made, as putting too great a burden on the unions, the 1927 provisions made labor's political situation even worse. In amending the Trade Union Act of 1913 which had been enacted to overrule the Osborne judgment, the Trade Disputes and Trade Unions Act of 1927 drastically restricted the political activities of the unions, and thereby labor's electoral rights, by reversing the 1913 "contracting-out" procedures so that the union's political funds could be raised only from members who positively "contracted-in." Regardless of whether a majority of union members may have voted in favor of political contributions and irrespective of any exemption opportunities, the 1927 statute specified that each member must individually authorize the union to use his contribution for political purposes by signing a form expressing his desire to pay.

The purpose of this written consent provision was of course to have carelessness, lukewarmness, faint-heartedness, indecision, and inertia act to reduce the political funds available to the Labor Party from the unions and thus to check the political development of the British labor movement.⁵⁵ Moreover, the 1927 statute required a separate levy for political contributions instead of permitting, as before,

⁵⁵ Peterson, op.cit., p. 647; Cole, op.cit., pp. 190, 193, 195.

a general levy with an appropriate reduction for those union members exercising their right of claiming exemption. Payments for political purposes could be made only from the political fund, and no assets were to be transferred to the fund which had not been separately raised. Unregistered as well as registered unions were now required to file annual financial statements with respect to their political funds. These provisions effected more than a mere change of machinery from allowing members to "contract out" to requiring them to "contract in," for labor unions were deprived of the advantages of group decisions and were given nothing more than "the right which any group of individuals enjoy voluntarily to subscribe to a common fund."⁵⁶

Labor M.P.'s declared the effect would be to take from unions the "benefit of inertia of people of no strong opinions"⁵⁷ and to throw the burden of inertia against the party which has come to a decision. It has been noted that these political provisions "cannot conceivably be related to the national strike of 1926."⁵⁸ In support of the 1927 measure the Conservatives argued that under the 1913 statute intimidation was practiced to coerce labor union members from exercising their right to exemption, quoting figures

⁵⁶ Parliamentary Debates, Commons, Official Report, Fifth Series. 1927, vol. 205, p. 1644.

⁵⁷ Loc.cit.

⁵⁸ Rothschild 2nd, op.cit., p. 1380.

to show that fewer numbers of union members claimed exemption than had voted against political contributions. According to figures cited by the Attorney General in the 1927 Parliamentary debates, about 185 labor unions had political rules. In these unions 270,000 union members had voted against political rules but only 100,000 had claimed exemption from contributions.⁵⁹ That the unions practiced intimidation was vigorously denied by the Labor Party, which emphasized the relatively few complaints to the Registrar. Up to December 31, 1927, 111 complaints had been made, of which only 62 were held to be well-founded.⁶⁰

Moreover, assuming there was intimidation, it was argued that it could be practiced just as easily to coerce union members to "contract in" as to coerce them not to "contract out."⁶¹ Nevertheless, the clause was adopted and was bitterly resented by both the labor unions and the Labor Party as an unprecedented attack by a party in power against the resources of the party in opposition.⁶² It is interesting to note the similarity in their origins, provisions, and consequences between the British Trade Disputes

⁵⁹ Parliamentary Debates, Commons, Official Report, Fifth Series. 1927, vol. 205, pp. 1325, 1495-1496.

⁶⁰ Rothschild 2nd, op.cit., p. 1365.

⁶¹ Parliamentary Debates, Commons, Official Report, Fifth Series. 1927, vol. 205, pp. 1362-1363.

⁶² Rothschild 2nd, op.cit., p. 1380.

and Trade Unions Act of 1927, and, 20 years later, the Labor-Management Relations (Taft-Hartley) Act in the United States, which will be discussed later. That the two laws may be compared, suffice it to mention here that the 1927 statute, besides changing the 1913 law which had permitted unions to levy for political purposes upon those of their members who did not formally protest, to a new requirement that the political levy could be made only upon such union members as individually authorized it, also imposed economic⁶³ restrictions upon the unions.

Certain strikes were declared to be illegal and punishable by fine or imprisonment, including strikes against the public interest, strikes to coerce the government, strikes other than or in addition to the furtherance of a labor dispute, general strikes, and sympathetic strikes. Also outlawed was such "intimidation" as mass picketing, picketing an individual at his place of residence, and any picketing which causes a reasonable apprehension of injury⁶⁴ to one's person or property. This last was a sharp change in the definition of "intimidation" which had previously been confined to an actual or implied threat of personal violence. In addition, the 1927 legislation prohibited the closed shop, weakened union discipline over their members,

63 Witte, op.cit., p. 317.

64 Loc.cit.

and forbade public employees from belonging or affiliating with unions which have any members outside the civil service. Now governmental employees were to have only independent unions, could not be members of the Trades Union Congress, and could have no connection whatsoever with the Labor Party. ⁶⁵

Consequences. Although the entire legislation of 1927 was very objectionable to the unions, ⁶⁶ experience found the economic restrictions more of an insult than an injury, the most important provisions in the 1927 statute proving to be the clauses prohibiting civil service employees from association with other unions and those relating to labor's political contributions. ⁶⁷ Under the new "contracting-in" procedures, the Labor Party's affiliated membership fell from 3,388,000 in 1926 to 2,077,000 in 1928, the year the new law became applicable. ⁶⁸ Actually, while not affecting the finances of the Labor Party as disastrously as supporters of that party had feared, the annual income of the Labor Party was reduced by about £15,000 a year. Between 1927 and 1929, the unions had to restrict their financing of candidates, the Labor Party lost over a quarter of its total income from affiliation fees, and the local Labor parties also suffered heavy

⁶⁵ Trade Disputes and Trade Unions Act of 1927, 17-18 Geo. V, ch. 22.

⁶⁶ Witte, Ibid.

⁶⁷ Rothschild 2nd, op.cit., p. 1385.

⁶⁸ Cole, op.cit., p. 195.

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losses.

As there is no available record of the number of members of unregistered labor unions who contributed to the political fund prior to 1928, the year in which the 1927 statute went into effect, and since union members may affiliate locally with the Labor Party as individuals and pay dues directly to it, no exact statistical comparison is possible.⁷⁰ However, in the case of the registered labor unions with political rules, contributions were received from 2,224,000 members in 1927, whereas in 1928⁷¹ only 1,634,000 union members contributed. Only 58% of the members of labor unions with political rules contributed in 1928 as compared with 76% in 1927, and contributions decreased from £137,000 to £100,000.⁷² Only 1,780,000 union members, or 54%, contributed at the end of 1936.⁷³ According to statistics, the operation of the "contracting in" provision depended upon the type of the union. Thus, in the case of unions with a far-flung membership with relatively infrequent opportunity to communicate with their members,

69 Ibid; Overacker, Presidential Campaign Funds, pp. 53-54.

70 Edwin Emil Witte, "British Trade Union Law Since The Trade Disputes And Trade Unions Act of 1927," 1932, 26 American Political Science Review 345, p. 348.

71 Loc.cit.

72 Loc.cit.

73 Loc.cit.

as in the case of the engineers and seamen, there was a considerable falling off in contributions.⁷⁴

For example, in the Amalgamated Engineering Union, only 9,800 members were exempt in 1927 whereas 145,000 failed to contribute in 1930, and in the National Amalgamated Union of Shop Assistants, Warehousemen and Clerks, with a membership of 35,000 scattered in 600 branches, 97% of the membership contributed in 1926, but only 17% contributed in 1929.⁷⁵ On the other hand, in some unions with a more closely-knit membership the number making political contributions since the 1927 statute actually increased. Only 36% of the closely-knit membership of the National Society of Pottery Workers had contributed to their political fund in 1926 compared to 60% in 1929.⁷⁶ In fact, as against the difficulties imposed by "contracting-in," and within the limits set upon labor union political action, labor's resentment against the 1927 law tended to increase union support for the Labor Party.⁷⁷ The considerable decrease in the total number of union members contributing to the Labor Party resulting from the 1927 statute caused

74 Loc.cit.

75 Loc.cit.

76 Loc.cit.

77 Loc.cit.; Rothschild 2nd, Ibid; Cole, Ibid.

an increase in the pro rata payment of those who still contributed.⁷⁸ In 1931 the affiliation fee was increased 25%.⁷⁹

Thus, the Conservatives in effect over-reached themselves. Instead of smashing the Labor Party, they compelled it to strengthen itself by building up its individual membership.⁸⁰ Even so, the Labor Party was working under very serious financial handicaps deliberately imposed upon it by its political enemies, and felt that irrespective of any case for legislating against general strikes, it was unjustifiable political sharp practice to use the occasion for a manoeuvre designed to put the Labor Party in a financial quandary.⁸¹ In 1929 and 1930 the Labor Party brought in a Trades Disputes Bill which declared sympathetic strikes to be lawful, repealed the non-affiliation provisions against government workers, stipulated that a threat to strike was not intimidation, and that there should be no legal restrictions upon the use of union funds for political purposes⁸² when a majority of the members have authorized such use. The bill met with strenuous opposition, largely over the proposed repeal of all restrictions upon the use of union

Ibid. 78 Loc.cit.; Overacker, Presidential Campaign Funds,

79 Loc.cit.

80 Loc.cit.

81 Overacker, Presidential Campaign Funds, p. 53.

82 Witte, Ibid.

83
funds.

But the Conservatives were joined by the Liberal allies of the coalition Labor Government and the bill was so amended in committee as to be no longer acceptable to the unions, whereupon the Labor Party withdrew the measure.⁸⁴ The unions, however, did not retreat from their consistent position for repeal held ever since passage of the 1927 legislation.⁸⁵ Although suffering setbacks, the Labor Party continued its political efforts and following the 1940-1945 wartime coalition, Labor won 399 seats, the Conservatives⁸⁶ 202, the Liberals 25, with 14 elected from other parties. Less than 20 years after the passage of the Trade Disputes and Trade Unions Act of 1927, designed to halt labor union political activity, the Labor Party gained control of the government.⁸⁷ One of the first acts of the Labor Government was to repeal the hated 1927 legislation and replace it with the Trade Disputes and Trade Unions Act of 1946, 9-10 Geo. VI, ch. 52. This 1946 statute re-instated the 1913 "contracting-out" provisions. The Labor Party has

83 Loc.cit.

84 Ibid, p. 318.

85 Ibid, p. 317.

86 Frederick Austin Ogg, European Governments And Politics, p. 281; Cole, op.cit., pp. 195, 262, 310-311, 424-425, 428.

87 Loc.cit.

been greatly helped by the substitution of "contracting out"
for "contracting in."⁸⁸

The political funds of the unions felt the benefit
of the new law at once.⁸⁹ The practical results of this
return to the 1913 law have been described as follows:⁹⁰

Contributions to the Labour party in 1948 from the political funds of the unions were more than double those of 1944, both non-election years. The figures for 1948 are higher than for the election year of 1945...Although many unmeasurable factors influenced labor's political contributions, the drop immediately following the 1927 Act and the increase immediately after 1946 indicate a causal connection between the changes in system and the size of labor's expenditures and contributions.

The percentage of members of all labor unions having political funds who were liable to contribute to those funds rose
from 45% at the end of 1945 to 91% at the end of 1947.⁹¹

The total affiliation fees paid to the Labor Party by unions rose in the same period from £51,261 to £91,930, and by 1950
the figure had risen to £124,297.⁹² Although Parliamentary elections held in 1951 returned 321 Conservatives, 294 Labor

⁸⁸ Ivor Bulmer-Thomas, The Party System In Great Britain, p. 175.

⁸⁹ Loc.cit.

⁹⁰ "Regulation of Labor's Political Contributions and Expenditures: The British and American Experience,"
¹⁹ University of Chicago Law Review 371, p. 384.

⁹¹ Bulmer-Thomas, Ibid.

⁹² Loc.cit.

M.P.'s, 6 Liberals, and 3 others, no attempt was made by the Conservatives to go back to the old "contracting-in" statute.
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Even with the various socialistic measures adopted during the five years of Labor Government, British labor policy today is essentially one of full freedom of combination for both employers and employees. Neither the fact of combination nor the motives of those combining have any weight in determining the legality of conduct or the rights of the contending parties in labor disputes and the restrictions applicable to them are all prescribed quite definitely in statutes. Compared with the United States, there are few restrictions on strikes. Peaceful picketing is lawful. The English law differs from the American law most radically in that legal actions are relatively rare and no action is allowed to be brought against unions from wrongful acts committed in their behalf. The individuals who commit these acts are held responsible, but not the union nor members unconcerned with such conduct. As a matter of fact, there is little violence in British labor disputes. Wide freedom for both employers and employees is accompanied by strict

93 1953 Information Please Almanac, p. 470. The seats won were not proportional to the popular vote of 13,948,985 for Labor, 12,660,071 for the Conservatives, 1,830,551 for Liberals of all kinds, and 198,969 for all others. This disparity was the result of overwhelming Labor support in industrial areas with the Conservatives winning other districts by smaller margins.

law enforcement and those guilty of acts of violence are usually apprehended and convicted.⁹⁴

The Smith-Connally Act

History. As was detailed in the first chapter, in carrying out Samuel Gompers' advice to "reward your friends and punish your enemies," the A.F.L. raised about \$95,000 between 1906 and 1925, the largest collections being made in 1920 and 1925 through what was called the National Non-Partisan Political Campaign Committee.⁹⁵ This money was contributed by affiliated unions specifically for political purposes and was spent on postage, leaflets, and speakers' expenses.⁹⁶ But although some member unions used their money in this way, in no instances were general funds of the A.F.L. itself so used or contributed to the major political parties.⁹⁷ Labor union funds have occasionally gone to the Socialist Party, the Farmer Labor Party in 1920, and in 1924 the Railroad Brotherhoods, the Seamen's Union and some others gave substantial support to LaFollette's campaign fund.⁹⁸ Since 1928, under Daniel J. Tobin's leadership, the International Brotherhood of Teamsters

94 Witte, op.cit., p. 318.

95 Overacker, Presidential Campaign Funds, pp. 49-50.

96 Ibid, p. 50.

97 Loc.cit.

98 Loc.cit.

has consistently contributed to the Democratic National
Committee.⁹⁹ It is clear, however, that before 1936 labor
was not interested in paying its political bills and union
political contributions were small, sporadic, and of little
political importance.¹⁰⁰

But by 1936, the New Deal's support of labor in legisla-
tion and administration had won the active confidence of the
unions, and to secure the re-election of President Franklin D.
Roosevelt organized labor planned to raise more than a million
dollars for the 1936 campaign.¹⁰¹ Although the A.F.L. clung
to its traditional "non-partisan" policy, other labor groups
invested a total of \$770,324 in behalf of the Democrats.¹⁰²
All affiliates of the C.I.O. which had been organized late in
1935 under the aggressive leadership of John L. Lewis, the
most generous contributions were the \$469,870 donated and the
\$50,000 lent to the Democratic National Committee by the United
Mine Workers, which gave more than half of all that labor con-
tributed to F.D.R.'s re-election, the \$81,000 from the Amalga-
mated Clothing Workers, and the \$60,000 given by the Interna-

99 Loc.cit.

100 Loc.cit.; "Regulation of labor's political contri-
butions and expenditures: British and American experience,"
Winter 1952, 19 University of Chicago Law Review 371.

101 Loc.cit.; Howard R. Penniman, Sait's American
Parties And Elections, p. 543.

102 Loc.cit.; Overacker, Presidential Campaign Funds,
Ibid.

tional Ladies' Garment Workers.¹⁰³ Union support for President Roosevelt was divided among the Democratic National Committee, Labor's Non-Partisan League, and the American Labor Party.¹⁰⁴ These contributions were made from general funds and all of the larger appropriations were authorized by convention vote, and the vote of the Amalgamated Clothing Workers limiting its support to Labor's Non-Partisan League was strictly adhered to by the executive committee.¹⁰⁵

Labor's role in the financing of the 1936 Roosevelt campaign was widely publicized and discussed both before the election and afterward.¹⁰⁶ The American voters were fully aware that the unions were supporting Roosevelt, and this was a factor which many considered before casting their ballots, helping them to decide whether they did or did not wish to go along with the unions.¹⁰⁷ Whether labor's endorsement endeared some to F.D.R. or antagonized others, at least the public knew that the unions were now beginning to pick up the Democratic political bill, each citizen could ask why, weigh the consequences, and act accordingly.¹⁰⁸ Yet in its

103 Loc.cit.

104 Overacker, Presidential Campaign Funds, Ibid.

105 Ibid, p. 51.

106 Ibid, p. 54.

107 Ibid, pp. 54-55.

108 Ibid, p. 54.

report on the financing of the 1936 campaign, Senator Lonergan's committee specifically recommended that the existing prohibition upon contributions from banks and corporations be extended to contributions from labor unions.¹⁰⁹ The proposal was not pushed at that time, but plainly the handwriting was on the wall.¹¹⁰ After 1936 it should have been evident to labor's friends as well as its enemies that sooner or later the use of union funds for political purposes would be challenged.¹¹¹

Reflection upon British experience should have suggested that the American labor unions were likely to be more active politically in the future than in the past, that such a course inevitably involves the use of union funds for political purposes, and that this in turn would just as surely lead to demands for legal regulation or prohibition.¹¹² Emergence of labor as a political force in the 1930's produced several legislative proposals aimed at restricting union political activity.¹¹³ Although none of these proposals

¹⁰⁹ United States Congress, House, Special Committee to Investigate Campaign Expenditures of Presidential, Vice-Presidential, and Senatorial Candidates in 1936, Report No. 151, 75th Cong., 1st Sess., March 4, 1937, p. 135.

¹¹⁰ Overacker, Presidential Campaign Funds, p. 54.

¹¹¹ Ibid, p. 55.

¹¹² Ibid, p. 54.

¹¹³ "Regulation of labor's political contributions and expenditures: British and American experience," Winter 1952, 19 University of Chicago Law Review 371.

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resulted in federal legislation before 1943, of course
labor was subject to general election laws. For example,
the Corrupt Practices Act of 1925 providing for publicity
of the source and amount of campaign contributions and
expenditures received and spent by political committees, as
amended, defines a political committee as any group in two
or more states which accepts contributions and makes expendi-
tures for the purpose of influencing the election of candid-
ates for president and vice president, including any branch
or subsidiary of a national organization even though such
branch or subsidiary may be confined to only one state. 115

In the second chapter we saw how Congress has, with
116
minimal success, attempted to exercise some control over
corporate and individual political contributions, and over
campaign expenditures by national committees and candidates.
In order to free party policy from corporate influence and
to protect the electorate, legislation was enacted prohibit-
ing corporations from making money contributions in connection

114 Loc.cit.; For a review of the various proposals in
Congress prior to 1943 to limit labor's political action, see
Joseph E. Kallenbach, "The Taft-Hartley Act and Union Political
Contributions And Expenditures," December, 1948, 33 Minne-
sota Law Review, pp. 1-4.

115 United States Statutes at Large, vol. 43, p. 1070
(1925), 2 U.S.C. ss. 241-256 (1940).

116 "Section 304, Taft-Hartley Act: Validity of
Restrictions on Union Political Activity," comment, 1948,
57 Yale Law Journal 806, p. 807.

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with federal elections. Not until 1943 was Congressional action directed toward the regulation of labor union political activity. Debate on the British experience would not only have helped to clarify basic issues but it would also have brought out that American legislation already included the important corrective of campaign fund publicity lacking in Britain when that country adopted its restrictions. Although labor's contributions to the 1936 campaign were widely commented upon, little discussion of fundamental problems followed the Lonergan Committee recommendation to prohibit contributions from this source.¹¹⁸ Again in 1940, despite the Hatch Acts of 1939 and 1940, the unions took a very active part in re-electing pro-labor Democrats.

Smith-Connally Act. In the hope that the issues and problems arising out of union political activities would be overlooked by others, labor chose to ignore the Lonergan recommendation and the criticism of its enemies who, however, were biding their time until the situation was favorable to drastic action.¹¹⁹ This propitious opportunity came in the summer of 1943 when a wave of anti-union feeling resulting from war-time strikes by the United Mine Workers carried the

117 United States Statutes at Large, vol. 34, p. 864 (1907), vol. 35, p. 1103 (1909).

118 Overacker, Presidential Campaign Funds, Ibid.

119 Loc.cit.

Smith-Connally War Labor Disputes Act of 1943¹²⁰ through Congress over the President's veto. Although, on its face at least, purportedly an emergency anti-strike measure for the possible duration of the war, expiring by its terms on June 30, 1947, the statute contained the first federal legislative provisions in the United States specifically limiting labor union political activities by barring labor organizations from making political contributions in connection with any federal election.¹²¹ It has been noted that the circumstances under which the prohibition was included in the Smith-Connally Act were discouragingly reminiscent of the inclusion of campaign fund ceilings in the 1940 Hatch Act.¹²²

As with the 1940 Hatch Act, again the political contributions restriction was not germane to the main purpose of the bill, again the provision was inserted with very little discussion of the underlying issues of public policy, and again the principle of prohibition was applied without exception.¹²³ However, considering the complexity of the problems involved and the confused emotional atmosphere attending the passage of the Smith-Connally Act, it is not surprising that this

¹²⁰ U.S. Statutes at Large, vol. 57, p. 163, 78th Cong., 1st Sess., Public Law 89, approved June 25, 1943.

¹²¹ Loc.cit.; 50 U.S.C. App. ss. 1501-1511 (supp. 1944).

¹²² Overacker, Presidential Campaign Funds, p. 55.

¹²³ Ibid, pp. 55-56.

particular section of the law should not have been singled
out for special consideration.¹²⁴ When the Senate bill as
introduced by Senator Connally of Texas was being considered
by the House, during these deliberations Indiana Representa-
tive Harness moved an amendment which was in effect a substi-
tute bill.¹²⁵ The provision dealing with labor union politi-
cal contributions was included therein in the form of a pro-
posal to add "labor organizations" to the prohibition on
corporation political contributions of the Federal Corrupt
Practices Act of 1925.¹²⁶ Lost in a bewildering array of
amendments to the amendment, some of which passed and others
of which were defeated, few members of the House had a very
clear idea of just exactly what was or was not in the bill
when it came to a vote.¹²⁷

Thus, after weaving its confusing and circuitous way
through the legislative process, the political prohibition

124 Ibid, p. 56.

125 Loc.cit.; U.S. Congress, Cong. Rec., vol. 89, p. 5328, 78th Cong., 1st Sess., June 3, 1943. The bill was S. 796. For the more important steps in its passage see U.S. Congress, Cong. Rec., vol. 89, pp. 5341, 5382, 5391, 5401, 5727, 5734, 5773, 78th Cong., 1st Sess., June 3, 4, 11 and 12, 1943. Also, U.S. Congress, Cong. Rec., vol. 89, pp. 5328, 5390, 5721, 5754 ff, 6488. For the Conference Report see U.S. Congress, Cong. Rec., vol. 89, pp. 5726-5729. The bill was enacted into law as U.S. Statutes at Large, vol. 57, p. 163, 78th Cong., 1st Sess., P.L. 89, app. June 25, 1943.

126 Loc.cit.

127 Loc.cit.

affecting labor was accepted by the House and also by the joint House-Senate Conference Committee to which the bill was then referred, and which included the provision in its Report without supporting argument or explanation.¹²⁸ In the Senate, this particular section of the Smith-Connally Bill as submitted by the Conference Committee Report was sharply assailed as being irrelevant to the bill's major purpose and discriminatory in that it proposed to restrain labor groups but not business or management interest groups, but the Senate accepted the prohibition apparently in order to expedite passage of the entire bill.¹²⁹ President Roosevelt's veto message objected to the political feature, stating that if there was any merit in such a prohibition it should be enacted as permanent peacetime legislation and "careful consideration should be given to the appropriateness of extending the prohibition to other non-profit organizations."¹³⁰

Although the veto was overridden by Congress, in the same session Senator Hatch of New Mexico subsequently introduced a bill designed to answer the charges of discrimination by further amending the Federal Corrupt Practices Act of 1925 to place a ban on the political contributions of "management organizations," defined as "any business league, chamber of

128 Loc.cit.

129 Loc.cit.

130 U.S. Congress, Cong. Rec., vol. 89, pp. 6487-6488, 78th Cong., 1st Sess., June 25, 1943.

commerce, board of trade, employers' organization, trade association, manufacturer's association, or any other committee, association, organization or group representing or designed to further the interests of any group of persons ...engaged in the operation or management of one or more types of business enterprise."¹³¹ This broadening of the prohibition to include employer groups was reported favorably and passed without debate in the Senate on February 15, 1944,¹³² but the House failed to act upon it. As enacted by Congress, then, the Smith-Connally Act prevented direct political contributions by labor unions:¹³³

Sec. 6. Section 313 of the Federal Corrupt Practices Act, 1925 (U.S.C., 1940 edition, title 2, sec. 251), is amended to read as follows:

Sec. 313. It is unlawful for...any labor organization to make a contribution in connection with any election at which Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every...labor organization which makes any contribution in violation of this section shall be fined not more than \$5000;

¹³¹ Loc.cit.; U.S. Congress, Cong. Rec., vol. 89, pp. 5721, 5754 ff, 6503 (1943).

¹³² U.S. Congress, Senate Report No. 412, 78th Cong., 1st Sess. (1943); Cong. Rec., vol. 90, p. 1643 (1944).

¹³³ U.S. Statutes at Large, vol. 57, p. 163, 78th Cong., 1st Sess., Public Law 89, approved June 25, 1943. Note that only those portions of the law concerning labor union political contributions have been cited, omitting the previously enacted prohibitions and penalties for violation on national banks and corporations.

and every...officer of any labor organization, who consents to any contribution by the... labor organization...in violation of this section shall be fined not more than \$1000 or imprisoned for not more than 1 year, or both.

Consequences. It should not be supposed, however, that the Smith-Connally Act political provision was at all a complete prohibition on the use of labor union funds in elections. Far from it, there were a number of important exceptions to any blanket ban. Terminating on June 30, 1947, the statute was temporary. It applied only to general elections, not to primaries or nominating conventions. It did not cover purely state or local elections. Most significant, even where it did apply, to federal elections, the prohibition was confined to political contributions. There was no prohibition on political expenditures. Further, as interpreted by the United States Attorney General, such groups as the C.I.O.-P.A.C. were construed not to be "labor organizations."¹³⁴ Thus, it should be obvious why the law¹³⁵ had little practical effect on the 1944 campaign. In spite of the seemingly sweeping prohibition of the Smith-Connally Act, organized labor spent more money in 1944 than

134 Letter from the Attorney General of the United States to Senator Moore dated September 23, 1944, Department of Justice Press Release, September 25, 1944.

135 "Section 304, Taft-Hartley Act: Validity of Restrictions on Union Political Activity," comment, 1948, 57 Yale Law Journal 806, p. 807.

in any previous election in our history.

The clumsily-drawn political provision which originally had been tacked on as a rider to the 1943 anti-strike legislation, even when added to the limitations of the 1940 Hatch Act, presented no barrier to labor unions determined upon throwing their full political weight into the scales on the side of their chosen candidates, and with very little ingenuity the money-raising and campaign expenditures of the C.I.O. were brought within the limits of these statutes.¹³⁷

In a publicity campaign which many political professionals viewed with envy and alarm, P.A.C. organizations under C.I.O. leadership spent \$1,327,776 in an election which may well go down in history as a victory for the P.A.C. as well as F.D.R.¹³⁸

The Smith-Connally Act did not apply to nomination campaigns and the C.I.O. spent \$478,499 from its treasury before the July 23, 1944 Democratic National Convention on a general educational program in regard to labor's outlook on issues.¹³⁹

While not strictly politically partisan, this helped create public attitudes favorable to certain candidates.¹⁴⁰ After the nominations, the unions began the second phase of their

136 Overacker, Presidential Campaign Funds, p. 57.

137 Loc.cit.

138 Ibid, pp. 57, 59.

139 Ibid, p. 58.

140 Loc.cit.

campaigning.

In compliance with a literal interpretation of the Smith-Connally Act as prohibiting political "contributions" but not political "expenditures," labor reorganized its method of political financing to provide for direct political action rather than union contributions to candidates and parties.¹⁴¹ Under this arrangement, the union funds which had been spent in nomination campaigns were frozen immediately following the nominations, and thereafter labor spent voluntary contributions amounting to \$478,499 through the C.I.O.-P.A.C. which endorsed the Roosevelt-Truman ticket.¹⁴² A campaign fund was raised through "A Buck for Roosevelt" appeals to the 5,000,000 C.I.O. members for individual contributions to finance the national and regional activities of the P.A.C.¹⁴³ Organized in August, 1944, the National Citizens P.A.C. solicited contributions from persons outside the labor unions. The two P.A.C. organizations expended all but \$77,344 of the total receipts of \$1,405,120, considerably more than the \$770,000 spent by labor in 1936 before the enactment of the Hatch and Smith-Connally Acts.¹⁴⁴

The political activities of the two P.A.C.'s included

141 Ibid, pp. 58-59.

142 Loc.cit.

143 Ibid, p. 59.

144 Loc.cit.

inducing people to register as voters, endorsement of presidential, congressional, and local candidates, the distribution of literature bearing on the issues of the campaign and on the voting records of candidates, radio programs, meetings, and speakers.¹⁴⁵ Money was also paid out for rent, furniture, running expenses, salaries, travel, publications, and publicity.¹⁴⁶ These activities were designed to promote the political program of the C.I.O. without violating the Federal Corrupt Practices Act and after the nominations the C.I.O.-P.A.C. refrained from making direct contributions to candidates or political committees, although the N.C.-P.A.C., operating on funds derived from individual contributions not confined to labor circles, not only carried on its own political activities but also made direct money contributions to candidates.¹⁴⁷ The 1944 election, while not the beginning of the story, opened an important chapter in labor's participation in the financing of political campaigns and the C.I.O. emerged as a political force to be reckoned with.¹⁴⁸

Although the methods used to finance the C.I.O.-P.A.C. were criticized during the 1944 campaign, the C.I.O. defended its expenditures as legal because the union funds spent before

145 Charles E. Merriam, The American Party System, p. 408

146 Ibid, p. 407.

147 Ibid, pp. 407-408.

148 Overacker, Presidential Campaign Funds, p. 49.

the nominations were not in connection with any election. Thus, there was no legal violation in the \$700,000 pledged to the P.A.C. from union treasuries.¹⁵⁰ Also, after the nominations the unions relied upon individual contributions and spent money directly. Technically, these expenditures were not "contributions," and the C.I.O.-P.A.C. was not a "labor organization" within the meaning of the Smith-Connally Act.¹⁵¹ Further, it was not a "political committee" during the pre-convention period. But once nominations were made and it had endorsed President Roosevelt, the P.A.C. clearly became a "political committee" subject to the Hatch Act II limitations. It could not spend more than \$3,000,000 in any calendar year, or receive a contribution of more than \$5000. In 1944 these limitations occasioned no embarrassment for the reason that the combined expenditures of all C.I.O. funds were less than half \$3,000,000 and the persons who could afford \$5000 contributions were not interested in donating in behalf of labor.¹⁵²

It should be noted, however, that it would have been

149 Ibid, p. 60.

150 Merriam, op.cit., p. 407. The Amalgamated Clothing Workers, the United Automobile Workers, the United Electrical Workers, and the United Steelworkers, the four largest C.I.O. unions, contributed \$100,000 each.

151 Overacker, Presidential Campaign Funds, pp. 60-61.

152 Ibid, p. 62.

possible under existing legislation for the C.I.O.-P.A.C. and the N.C.-P.A.C. each to spend \$3,000,000 and simply by multiplying committees organized labor could spend as much, or more, if they could get it, than the expenditures of the various Republican agencies.¹⁵³ It would be possible, also, for a labor union supporter to contribute \$5,000, if he had it, to an unlimited number of independent political committees. The Smith-Connally Act forced organized labor to make only one important change in their political financing. After the conventions they could no longer receive contributions from labor union treasuries but were dependent upon the individual gifts of union members and friends of labor. It is, of course, more difficult to raise \$1,000,000 in one dollar donations from 1,000,000 C.I.O. members than to raise the same amount in \$5,000 pledges from the union treasuries. But it is not impossible. Once organized labor has decided that it must play the political game they will find ways and means to collect the funds to play it vigorously and effectively.¹⁵⁴

The 1943 provision, clumsily drawn with scant attention to existing legislation and with no debate on the underlying public policy issues, was no barrier. If the framers of this prohibition hoped to "hamstring" labor union political activi-

153 Loc.cit.

154 Ibid, p. 63.

ties, they failed in their goal. They did, however, add a provision which may make it more difficult to determine the role of labor in political campaigns.¹⁵⁵ Under existing publicity laws, the names and addresses of those who contribute \$100 or more to a political committee must be filed with the Clerk of the House of Representatives in Washington. Therefore, the \$5,000 contributions from labor organizations would be itemized while the small contributions from individuals would not. Hence, it would be possible for individual union members to personally contribute unrevealed amounts to a number of political committees without violating the law and with no public knowledge of those gifts. Of course, even without this hypothetical situation, experience has shown that the part-time P.A.C. services of persons who are both union and P.A.C. officers cannot readily be segregated, and in California, for example, it was especially difficult to separate the state P.A.C. from the state C.I.O. council.¹⁵⁶

Even so, assuming the circumstances described in the preceding paragraph, under the operation of the statute we might know less about labor's stake in the campaign than about the contributions of those who are identified with corporations. For while the large political contributions of the Pews and the DuPonts stand out most conspicuously

155 Ibid, p. 64.

156 Merriam, Ibid.

upon the record, the dollar gifts from labor union members are not recorded as such, but are lumped together under a general heading of other contributions less than \$100. That we have a reasonably complete over-all picture of labor's contributions in the 1944 election must be credited to the investigating committees of the House and Senate, which put together the various pieces of the political fund jig-saw puzzle. The work of these committees served the dual purpose of giving the voters valuable information about labor's role in the campaign and of clearing labor unions of false charges which were levelled at them by their enemies.

Congress investigates. A heated controversy arose as to whether the C.I.O.-P.A.C. had violated the Smith-Connally Act. In April, 1944, the Federal Bureau of Investigation completely investigated the books of the P.A.C. and found nothing wrong. Despite the failure of these "fishing expeditions," Senator E. H. Moorse of Oklahoma accused the P.A.C. of corrupt practices. Once again the F.B.I., after careful investigation, found nothing irregular, illegal, or subversive in the organization. However, following widespread comment in the press, debate in Congress, and charges that the C.I.O.-P.A.C. had spent \$5,000,000 to

157 Overacker, Presidential Campaign Funds, Ibid.

158 Labor Research Association, Labor Fact Book 7, p. 83.

purge legislators generally regarded as unfriendly to labor,¹⁵⁹
both the House and Senate authorized an extensive inquiry.
Sidney Hillman, Amalgamated Clothing Workers President and
P.A.C. Chairman, told the House Committee investigating
campaign contributions and expenditures that labor unions
contributed before the conventions but froze these accounts
afterwards except for contributions to or on behalf of
candidates in primaries or state elections or for such other
purposes as were unquestionably permitted under the terms
of the law, and all other expenditures were made from the
individual contributions account.¹⁶⁰

The Chairman of the House Committee, Clinton P.
Anderson, said he had listened to Mr. Hillman and his assoc-
iates in hearings, had brought the House Committee to New
York to complete the congressional investigation at the
C.I.O.-P.A.C. offices, and stated that the P.A.C. operates
in a fish bowl, "where almost anyone who wishes to see every
move it makes can see it without any concealment."¹⁶¹ On
June 13, 1944, a Special Senate Committee to Investigate
Presidential, Vice Presidential and Senatorial Campaign
Expenditures was convened for the purpose of hearing testimony
by Signey Hillman. Mr. Hillman explained the organizational

¹⁵⁹ U.S. Congress, Senate Miscellaneous Reports, Vol. 1, Report No. 101, 79th Cong., 1st Sess., p. 20 (1944).

¹⁶⁰ Merriam, Ibid.

¹⁶¹ Labor Research Association, op.cit., pp. 83-84.

structure of the P.A.C. and submitted a detailed financial statement showing total receipts and disbursements. When questioned as to the validity of the P.A.C.'s activities under the Smith-Connally Act, Mr. Hillman said that he had relied upon the advice of legal counsel that the ban on union "contributions" in connection with a federal election did not apply to union "expenditures."¹⁶²

In support of his assertion, he presented copies of a letter which had been sent to all regional directors of the C.I.O.-P.A.C. under date of December 9, 1943, which called attention to "the necessity of scrutinizing all of the expenditures of your office to make certain that they are in strict conformity with all of the provisions of law and particularly with the requirements of the Smith-Connally Act."¹⁶³ The letter dealt in some detail with the legal aspects of P.A.C. activities and read in part as follows:¹⁶⁴

Counsel has advised the committee that the Smith-Connally Act is applicable only to elections for Presidential and Vice Presidential electors or a Senator or congressional Representative. The act has no application to primary elections, elections of delegates to political conventions, or elections of State or local officials. In the case of those elections to which the law does apply, the Smith-Connally Act prohibits contributions of money or any other thing of

¹⁶² U.S. Congress, Senate Miscellaneous Reports, vol. 1, Report No. 101, 79th Cong., 1st Sess., pp. 20-21 (1944).

¹⁶³ Loc.cit.

¹⁶⁴ Ibid, pp. 21-22.

value by a labor organization with respect to the specific offices covered by the law. Counsel further advises us that the law does not prohibit a labor organization, or the Congress of Industrial Organizations Political Action Committee as an instrumentality of the Congress of Industrial Organizations, from spending moneys in connection with its own activities, undertaken for the purpose of advancing the cause of one or more candidates for Federal office, provided that this money is spent directly by the labor organization and not pursuant to an agreement or prearrangement with these candidates, their political parties or committees. Thus the Congress of Industrial Organizations Political Action Committee is prohibited from making any contribution to a candidate for a Federal office or to his political party or political committee, to be used to forward his candidacy. The committee may, however, continue to engage in its general political and educational activity and, through the distribution of leaflets, the holding of meetings of members of organized labor and the general public, the use of radio time, etc., forward the candidacy of such persons as it may endorse for Federal office. These activities on the part of the committee are merely the exercise of its constitutional right of free speech, press and assembly. They are not and cannot be prohibited by law.

Having concluded his testimony, Mr. Hillman introduced the legal counsel for the P.A.C., Attorney John J. Abt, who testified that the Federal Corrupt Practices Act made a "very clear distinction between contributions and expenditures." He pointed out that if the expenditure of money for the production of a poster, or a pamphlet, or an editorial urging the election of a candidate, were a contribution within the meaning of the Corrupt Practices Act, it followed that every

newspaper which published an editorial urging the election of a political candidate for federal office would likewise be violating the law. It was further contended by Attorney Abt that the issuance of a pamphlet, circular, or leaflet by a labor union or corporation under its own name and financed out of its own funds, which literature openly expressed support of a candidate for federal office, was an "expenditure" which Congress did not intend to prohibit by passage of the Smith-Connally amendment to the Corrupt Practices Act. What Congress intended to outlaw, Abt asserted, was the transfer of corporate or labor union funds to a political candidate or political committee.

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The Special Senate Committee, in its "Conclusions," found no violation of the Smith-Connally Act by the C.I.O.-P.A.C. because the ban was on "contributions" and not on "expenditures." The Senate investigators had accepted the C.I.O.'s view of the law as it stood at present, but split on its "Recommendations." Of the five members, two, Republican Senators Ball and Ferguson, advocated that expenditures by a labor organization in connection with any federal election be prohibited as well as contributions. The majority, Democratic Senators Green, Stewart, and Tunnell, opposed the minority recommendation as a limitation on the rights of freedom of speech, press, and assembly as guaranteed by the

165 Ibid, p. 22.

Federal Constitution. This was indicated by the fact that the Attorney General had declined to institute a test case against the C.I.O.-P.A.C. "Free discussion of political questions should be encouraged, not prohibited." Labor unions should not be under the same political limitations as corporations because a labor union "is not a legal person like a corporation, but an aggregation of individuals like a church, or a fraternal organization, or a social group." The answer of the majority was not to prohibit, but rather to publicize, political expenditures.

Summary. Democratic social and labor legislation to meet the problems of the 1929 crisis and the economic depression of the 1930's won the confidence of organized labor which enthusiastically entered into increased political activities to ensure the continuance of F.D.R.'s New Deal programs. Criticism of this union support of pro-labor candidates led to inclusion in the war-time Smith-Connally anti-strike law of ill-considered provisions against labor union political contributions. Added to the previous regulations, the effect of the Smith-Connally Act, including certain conclusions and recommendations, have been summarized as follows:

1. Labor unions could make contributions or spend union funds directly to influence primary nominations and could make

166 Ibid, pp. 83-84.

167 Overacker, Presidential Campaign Funds, pp. 61-65.

expenditures from union treasuries to create a climate of political opinion favorable to pro-labor presidential or vice-presidential aspirants in the pre-convention period.

2. Once nominations were made, labor organizations as such could not contribute directly to political funds, but committees operating under labor union influence could raise funds on a voluntary basis from union members and spend this money for political purposes.

3. Such committees were defined "political committees" within the meaning of the Federal Corrupt Practices Act and subject to the \$5,000 individual contribution restriction and the \$3,000,000 expenditure limitation of the 1940 Hatch Act.

4. In 1944 labor's financial plans were too modest to be affected by these ceilings, but a more ambitious money-raising campaign could have been kept within the limits of existing legislation by the device of creating a number of independent agencies.

5. Experience conclusively demonstrated that so far as labor union contributions are concerned, the prohibitions of the Smith-Connally Act had essentially the same effect as the Hatch Act II limitations, failure to accomplish the desired ends.

6. On the contrary, the very limitations designed to restrict expenditures tended to decentralize the collection and distribution of campaign funds, breaking down and making

practically impossible any really effective legal control.

7. Rather than directing legislation and penalties to prohibitions which do not prohibit and limitations which do not limit, adequate publicity should be the guiding principle of any regulatory program.

State Legislation and Decisions

As we have seen, the Federal Corrupt Practices Act regulates the conduct of political committees concerning publicity provisions requiring the reporting of receipts and expenditures, and also prohibits corporations and labor organizations from making contributions for political purposes in connection with any federal election.¹⁶⁸ It is to be noted that the statute mentions only federal elections and there is no legislative restriction on corporate and labor union political contributions toward any primary campaign or state and local elections.¹⁶⁹ But additional limitations aimed at and applying to the source of campaign fund revenue in state and local elections may be imposed by state law. Nearly three-quarters of the states now prohibit contributions by corporations.¹⁷⁰ Also, while governed by provisions relating in general to the activities of political

¹⁶⁸ U.S. Statutes at Large, vol. 43, p. 1070 (1925); vol. 54, p. 767 (1940); vol. 57, p. 163 (1943).

¹⁶⁹ Loc.cit.

¹⁷⁰ Merriam, op.cit., p. 406.

committees, labor unions have been made the specific objects of regulation by several states which have attempted, in most cases unsuccessfully,¹⁷¹ to limit or prohibit organized labor's political contributions and/or expenditures.¹⁷²

These efforts to limit the use of union funds in elections, of course, were the result of the growth and success of union electoral activities. At first, such efforts were on the state level as in Hatcher v. Petry, 261 Ky. 52, 86 S.W.2d 1043 (1935), where a local union of the United Mine Workers voted a campaign contribution of \$50 to be expended in behalf of Petry, who was president of the local. The court held that a campaign contribution was not covered by a law forbidding anyone from accepting money or anything of value to influence him "in his official capacity." Further, the prohibition on corporations does not apply to labor unions when the labor union is not incorporated. Since 1943, Alabama, Texas, Colorado, Pennsylvania, and Delaware have passed laws patterned on the political provisions of the

171 "Section 304, Taft-Hartley Act: Validity of Restrictions on Union Political Activity," comment, 1948, 57 Yale Law Journal 806, p. 807.

172 See Ala. Code, Title 26, sec. 392 (Supp. 1943), forbidding political contributions by unions; Colo. Stat. Ann., Ch. 97, sec. 94-(20) (Cum. Supp. 1946), forbidding political expenditures by labor unions; Ore. Comp. Laws Ann. sections 102-909 (1940) prohibiting the creation of "a fund in excess of the legitimate requirements of the union"; Pa. Stat. Ann., Title 25, sec. 3225 (Purdon, 1941), forbidding contributions by unincorporated associations; Tex. Civ. Stat. Ann., Title 83, art. 5154a, sec. 49 (Vernon, 1947), forbidding contributions to candidates or political parties.

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Smith-Connally Act. The Pennsylvania law bars political contributions by both corporations and unincorporated associations, except those formed primarily for political action. Both the Alabama and Colorado statutes were invalidated on technical grounds. The Alabama statute was the most comprehensive, Alabama State Federation of Labor v. McAdory, Alabama Supreme Court, 18 So.2d 810 (1944), prohibiting both contributions and expenditures.¹⁷⁴

The Texas case. The Texas legislation permitted union political expenditures, confining the prohibitions to financial contributions to any party or candidate.¹⁷⁵ American Federation of Labor v. Mann, 98th District Court of Travis County (1944), Texas Court of Civil Appeals, 3rd Supreme Judicial District, No. 9446 (1945) L.R.R., XVI (1945) 307, 188 S.W.2d 276, 286 (1945), held that the state has the right to reasonably regulate labor unions in the public interest:

Few subjects have been deemed more essential to the preservation, protection and operation of our democratic form of government than the free and untrammelled selection by the people of their public officials. This is on the principle that such officials represent all of the people, and not merely the interests of any particular party, group or class. To that end laws are designed to prevent their becoming

¹⁷³ Loc.cit.; Joseph E. Kallenbach, "The Taft-Hartley Act and Union Political Contributions and Expenditures," December, 1948, 33 Minnesota Law Review 1, p. 6; Charles C. Killingsworth, State Labor Relations Acts, p. 289.

¹⁷⁴ Loc.cit.

¹⁷⁵ Loc.cit.

unduly amendable to, or subject to undue control or influence by, any particular group when the interests of such group affect the public interest. Such campaign contributions by corporations have long been forbidden... And in 1943 the Federal Corrupt Practices Act ...was amended to expressly include "labor organizations" within such prohibited class of campaign contributions. Obviously the same power to so regulate, need for such regulation, and reasons therefore would apply to the State as in the case of Federal regulation.

Prohibitions on Expenditures

The Osborne Judgment

In our consideration of the English history, law and legislation, in regard to labor's political activities, pp. 235-267, it was observed that even before the formation of the Labor Party, British labor unions financed political campaigns and since the beginning of labor's independent political movement the unions have supplied almost all the campaign funds of the Labor Party, and are today that party's main source of financial support.¹⁷⁶ Until the 1910 Osborne decision, soon to be discussed, there were no legal fetters on this political activity.¹⁷⁷ Unions contributed directly to both the necessary election and living expenses of Labor

¹⁷⁶ "Regulation of labor's political contributions and expenditures: British and American experience," Winter 1952, 19 University of Chicago Law Review 371, p. 381.

¹⁷⁷ Of course, inter alia, labor was subject to the general provisions of The Corrupt and Illegal Practices Prevention Act of 1883, 46-47 Victoria, ch. 51, Part III.

M.P.'s and neither practice was seriously questioned until, supported by union funds, the Labor Party began to challenge the supremacy of the traditional parties.¹⁷⁸ As one might expect, there were also certain minority union members who strongly objected to being assessed to support political candidates, either because they personally did not favor the candidate endorsed by the union or because they objected in principle to the union engaging in political action. Financed by opponents of the Labor Party, some of these minority union members went so far as to initiate legal action against the union.

Judicial rulings. The first case to reach the courts and to be appealed was Steele v. South Wales Miners Federation, 1 K.B. 361 (1907). The defendant federation was a union registered under the Trade Union Act of 1876.¹⁷⁹ This Act required that all labor unions be registered. Section 16-1 of the Act defined a labor union as "any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been

¹⁷⁸ Overacker, "Labor's Political Contributions," 1939, 54 Political Science Quarterly 56-68; Overacker, Presidential Campaign Funds, p. 52.

¹⁷⁹ Trade Union Act of 1876, 39-40 Victoria, ch. 22.

passed, have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade."¹⁸⁰

One of the objects of the South Wales Miners Federation was to elect and provide funds to pay the expenses of labor members in Parliament. A meeting was held at which a ballot was taken of all the members on the question of an annual contribution from each member for the union's parliamentary representation fund. This was carried by a large majority, with the plaintiff voting in opposition.

The plaintiff paid the assessments and brought an action to recover these payments and to restrain the union from levying any money from the plaintiff or other members for such purpose. The plaintiff maintained that the Trade Union Act of 1876¹⁸¹ defined "trade union" narrowly and that parliamentary representation could not be included, and hence was an illegal use of union funds. The Court, however, held that the definition was not intended to be exhaustive, or to prevent an association from lawfully doing other acts beyond those mentioned. Thus the Trade Union Act could not be interpreted to bar the collection and administration of benefit funds for union members. So, also, mere silence would not bar the union from political action. Indeed, "one of the ways of regulating the relations between workmen and masters,

180 Loc.cit.

181 Loc.cit.

or workmen and workmen, or masters and masters, is to get laws passed by Parliament for their regulation, and that one of the first steps toward getting those laws passed would be to send a representative to Parliament to promote a Bill for that purpose."

A similar situation arose in Osborne v. Amalgamated Society of Railway Servants, 1 Law Re.Ch.Div. 163, 1 British Ruling Cases 56 (1909), affirmed A.C. 87 (1910) which overruled the Miners Federation case. A railway porter foreman and branch Secretary to the Amalgamated Society of Railway Servants,¹⁸² Osborne objected to a compulsory subscription to pay election expenses and salaries of Labor Party M.P.'s, and was expelled for his non-payment. He then backed up his objection by bringing an action, financed by the Conservative Party, against the Society and its Trustees maintaining that such an objective was not within Section 16-1 of the 1876 Trade Union Act and asking for an injunction to restrain the union. The union replied that the purpose of the expenditure was a proper union objective under the Act, and that the annual general meeting had endorsed such expenditures by large majorities. The trial judge, following the Miners Federation decision, dismissed the action. On appeal, it was held that the definition of the 1876 Trade Union Act was based on the objectives of labor unions at that time, which did not include

182 William Glenvil Hall, The Labour Party, pp. 29-30.

parliamentary representation.

Thus, the definition was limiting and restrictive. It was against public policy for members of Parliament to receive their salaries from the union, as this would amount to bribery. If the union could subsidize members of Parliament, so could employers or an individual millionaire and the result would be "scandalous." The Court also objected to the union, which has widespread membership, maintaining a representative from one district because under such circumstances he would not represent his district but the union membership. The following excerpts indicate the feeling of the Court:

Trade unions comprise members of every shade of political opinion and I cannot think it was the intention of the Legislature that it should be competent to a majority of the members to compel a minority to support...by their subscriptions, political opinions which they may abhor, under penalty not only of being expelled from the union, and thus losing all chance of benefit, but also the... very serious risk, of not being able to find employment in their trade in consequence of the refusal of the trade union members to work with the non-union members.

Freedom of choice is the very corner stone of representative government, the withdrawal of which would destroy the whole fabric. It is the justification by which legislative interference with the individual freedom of free men in a free country is reconciled with such freedom, namely, that the interference is their own act, because the Act is passed by the representatives of the whole body of free and independent electors freely chosen. Any compulsion, whether physical, spiritual, or temporal which makes a man subscribe to and

support a representative against his will and judgment is as inconsistent with those principles as is similar compulsion to vote, and, indeed, may in these days, when voters are so numerous, be of even more pernicious effect because more far-reaching. It is not enough to say that a man's vote has not been influenced. It is also necessary for his freedom that he shall not have been coerced into supporting by money or otherwise the candidate whom he wishes to oppose. It is really ludicrous to suggest that his choice is confined to voting on the day of the poll. A man who throughout desires the return of A, and yet wittingly and willingly assists to return B, by subscription or otherwise, stultifies himself and ranks in point of intelligence with the man who votes at the poll for both of the opposing candidates. To contain a man to such imbecility is to both injure and to insult him, and is, besides, an injury to the community in preventing freedom of election. Unless freedom of choice is to be reduced to an absurdity it must extend to the whole conduct of the elector towards the candidate from beginning to end.

Parliamentary debates. Except for Conservatives and other anti-labor elements, the Osborne judgment was widely criticized as poor law and poor policy. The ruling of the Law Lords that a labor union was acting illegally in placing a compulsory levy on its members for political purposes made it almost impossible for the unions to promote candidates and as a result of this crippling effect upon the political funds of the unions the number of Labor Party candidates in the December, 1910 election were only 56, a decrease of 22 candidates from the previous January. ¹⁸³ The Labor Party

¹⁸³ Loc.cit. In fact, the payment of salaries introduced in 1911 saved many Labor M.P.'s from withdrawing.

elected 42 of its members and had supported the Liberals in order to secure repeal of the Osborne judgment.¹⁸⁴ The effort to secure repeal was launched on April 13, 1910, when¹⁸⁵ Mr. John W. Taylor moved,

That, in the opinion of this House, the right to send representatives to Parliament and to municipal administrative bodies, and to make financial provision for their election and maintenance, enjoyed by Trades Unions for over forty years, and taken away from them by the decision in the case of Osborne v. Amalgamated Society of Railway Servants, should be restored.

Mr. Taylor argued that the Osborne decision was looked upon by almost all the labor unions of the country as "just another incident, that proves distinctly the disabilities of being poor." It is both wise and just, he said, that workmen should have their fair representation in Parliament, but the opportunity to serve in such a capacity is not available to a workingman unless he has the support of the unions. Mr. Taylor pointed out that the "railway companies, shipping companies, mining interests, and other industries" are represented in Parliament, and that labor "possesses equal rights, and its needs are greater perhaps than those of the other interests."¹⁸⁶ Mr. Taylor felt that the fact that some union

¹⁸⁴ Paul Blanchard, An Outline of the British Labor Movement, p. 22.

¹⁸⁵ Parliamentary Debates, Commons, Official Report, Fifth Series. 1910, vol. 16, p. 1321.

¹⁸⁶ Ibid, pp. 1322-1324.

members were compelled to contribute against their will was only part of the basic democratic principle of majority rule. Many unions required a two-thirds vote. To ask unanimous agreement would be to place the majority "absolutely at the mercy of the minority. There can be no doubt about that, because if an association decides by a majority of seven-eighths of its members, the one-eighth, or even less than one-eighth, can object to the exercise of their rights by that large majority. We say that is a condition of things that we can scarcely be expected to tolerate."¹⁸⁷

Mr. William Harvey, seconding Mr. Taylor's motion, answered the objection to compelling the minority to contribute to the political fund by an analogy that union-won benefits go to all and not merely to the majority. If the union secures a 10% advance in wages, and there is a 90% membership in the union, the whole 100% get the advantage and not only the 90%. "It is not in harmony with modern times that a man shall receive without paying. There have been plenty of people in this country, and I am afraid there are a few now, who reap where they have never sown." He summed up with the plea that labor asks no favors, but only fair treatment, the right to use union money in harmony with the will of the majority of the people who are in the unions. "We are suffering today under a decision which is unbearable, and we ask the

187 Ibid, p. 1324.

Government at the earliest possible moment to relieve us
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from a position of that kind."

Speakers against the motion asserted that they had no objection to working class representation, but rather to the principle of majority rule being used to "interfere with freedom of thought." Compulsion should not be sanctioned to require contributions towards the expenses and maintenance of M.P.'s. Instead of repealing the Oshorne judgment, it would be better to provide for government payment of Members of the House so that a poor man could serve. It was stated that apparently the Labor Party leaders lack sufficient faith in the enthusiasm of members of the unions for parliamentary representation "to allow the matter to be left to the free will of the members of these bodies; otherwise there would be no need for an amendment of the law at the present moment."¹⁸⁹ In response to these assertions, Mr. Daniel Boyle rose to express his sympathy with the Taylor¹⁹⁰ motion, and answered the previous contention:

I do not see any hardship in asking members of a union to subscribe, quite irrespective of what their political views may be, to the advancement of the class to which they belong. I have never known one of them to refuse any of the advantages which are won...Who will say that the legislation of recent years, since Labour representation has assumed the dimensions it has, has not been toned and

188 Ibid, pp. 1327-1328.

189 Ibid, pp. 1330, 1333.

190 Ibid, pp. 1334-1336.

influenced by the presence here of the contingent directly representing Labour? I think he would be a bold man on either side of the House who would declare that the Members of the Labour party had abused their position, that they had fought only for their peculiar sectional interests, and that they were unmindful of the general interests of the community.

I join, therefore, with my Labour Friends on the opposite side in hoping that an Amendment of the law may take place by which every man who is advantaged--and every working man will be advantaged--by what Labour does in this House and outside it, to improve the condition of working men, and every man who joins his union will be asked to subscribe his modest little for the maintenance of those who speak and act for him, who defend him, and who advance his interests, and without whose defense and representation both here and outside, they would be looked upon as small and very worthless factors indeed.

Representing those who opposed the motion, a Mr. Vivian decried the fact that the Labor Party was socialist and that none of the money to be spent would ever go to the Conservatives. Less selfishly, he argued that the power to expel a man from the union for refusal to pay the political subscription would result in a loss of freedom because the man would be unemployed, and face starvation, unless he complied with a political contribution which is against his conscience. ¹⁹¹ Mr. Vivian then went into this analogy: ¹⁹²

191 Note that this is the same argument used by Cecil B. DeMille in his suit against the American Federation of Radio Artists, to be discussed in a later section.

192 Parliamentary Debates, Commons, Official Report, Fifth Series. 1910, vol. 16, p. 1339.

Do I understand that if a majority of the Miners' Union were to determine that a substantial sum of money should be handed over to the Pope of Rome for the propagation of Roman Catholicism, or to the Archbishop of Canterbury for the propagation of the Church of England tenets, or to the Rev. R. J. Campbell for the propagation of the new theology, that that would be a justifiable transaction?...The members of those unions belong to every political party and profess practically every creed. No condition is to be found in the rules of these organizations which makes the adherence of a member to a particular party a condition of joining, nor is there an indication that the members of the union will be expected to subscribe money towards the support of a particular political creed.

Agreeing with Mr. Vivian, a Mr. Sherwell maintained that a man may be a convinced unionist, being both in his precept and practice absolutely loyal to unionism, but could be compelled to forfeit the benefits of all the payments to sick funds and other funds to which he has been contributing for many years "because he declines to subscribe to the expenses and maintenance of a Parliamentary representative, with whose views he finds himself altogether out of harmony and accord...That is to say, under the arrangements proposed in this Resolution the rewards of a man's thrift and self-sacrifice over a number of years are to be destroyed at a blow simply on account of that man's political dissent. Is that fair or at all consonant with common justice and common equity?"¹⁹³

193 Ibid, p. 1348

Consequences. Following the Parliamentary debates and after considering various alternatives to the prohibition of the Osborne judgment, in 1913 legislation finally provided for "contracting-out."¹⁹⁴ While not completely meeting the original union demands for full repeal, this statute did not enable the Labor Party to conduct greatly increased political activities and until 1927 it was the usual practice for labor unions to collect the political assessment along with the customary union dues unless the member "contracted-out" by signing a paper objecting to, and declining to pay, the political levy.¹⁹⁵ This situation was most unsatisfactory to the anti-labor elements who seized upon the opportunity of the 1926 general strike to enact the 1927 provisions substituting a much more cumbersome procedure for "contracting-out."¹⁹⁶ Henceforth, under "contracting-in," the political levy could be collected only from those who signed a declaration that they wished to pay the assessment.¹⁹⁷ Because of the inertia in human nature, the political funds of labor unions dropped markedly and the Labor Party suffered severe declines in both financ-

194 Trade Union Act of 1913, 2-3 Geo V, ch. 30.

195 Ivor Bulmer-Thomas, The Party System In Great Britain, p. 175.

196 Trade Disputes and Trade Unions Act of 1927, 17-18 Geo. V, ch. 22.

197 Loc.cit.

es and membership.

But labor unionists and Labor Party supporters renewed their political efforts, strengthened their electoral activities, and in 1945 the Labor Party won control of the government, repealing the 1927 statute and re-establishing the 1913 "contracting-out" law.¹⁹⁹ Thus, today the Labor Party is financed by the labor unions with the right of each individual union member to object to this contribution and thereby to be personally excused from such political levy.²⁰⁰ The Labor Party's income is mainly provided from the affiliation fees of labor unions, from which additional special contributions are voted for general elections.²⁰¹ The Labor Party also accepts individual donations and derives income from affiliation fees of the constituency Labor parties for every member on their books, from each central Labor party, from each federation according to the number of constituency parties, from socialist societies,²⁰² and from co-operative associations.

Affiliated with the Labor Party, and the political

198 Bulmer-Thomas, Ibid. For statistics, see this thesis pp. 260-263.

199 Trade Disputes and Trade Unions Act of 1946, 9-10 Geo. VI, ch. 52.

200 Loc.cit.

201 Bulmer-Thomas, op.cit., p. 174.

202 Loc.cit.

branch of an association of trading societies known as the Co-operative Union, the Co-operative Party is financed through contributions from affiliated retail societies, wholesale societies, productive societies, and other special societies.²⁰³ It also receives contributions from the central board of the Co-operative Union and special donations²⁰⁴ and subscriptions from individuals and organizations. The Labor Party and its affiliated Co-operative Party differ from the other British parties in being part of more comprehensive movements. Thus, the "labor movement" is made up of the Trades Union Congress, the Co-operative Union, and the Labor Party.²⁰⁵ The Labor Party is controlled by the members voting in the unions, local Labor parties, and Trades Councils. Each local Labor party is supposed to have affiliated to it the local branches of the national unions and socialist societies which belong to the national Labor Party.²⁰⁶

There are no direct primaries in Great Britain, so the Labor Party candidates are chosen by local conferences. When a seat becomes vacant and the local members of the Labor Party believe that it is worthwhile to fight for the election of a Labor Party member, some union or local Labor Party

203 Ibid, p. 181.

204 Loc.cit.

205 Loc.cit.

206 Paul Blanchard, An Outline of the British Labor Movement, pp. 24-25.

comes forward with a candidate and offers to pay the expenses of his campaign if the national Labor Party will accept him as a nominee. The candidate may be a member of the union which nominates him or he may be some well-known national or local leader who is not a member of any union. The union or society which nominates him is not obliged to pay his election expenses, but the unions which nominate their own members quite frequently finance their campaign for election. Perhaps several candidates will be nominated by several different unions.²⁰⁷ The officers of the local Labor Party see that the names of all candidates are sent to all the unions and societies which compose the local Labor Party so that the members have a chance to consider the candidates before making a choice.²⁰⁸

Then a local Labor Party Conference is called at which delegates from all the local bodies choose the candidate by majority vote. The candidate becomes official when he has been approved by the National Executive Committee of the Labor Party. Under British law, a candidate need not be a resident of the district in which he seeks election. Also, another difference from the American system is that the local Labor parties do not always choose their candidates immediately before elections. Often a constituency has a

207 Loc.cit.

208 Ibid, pp. 25-27.

"prospective" candidate who may be chosen shortly after an election and approved by the national Labor Party. Such a candidate acts as a leader of the opposition in his constituency until the next election.²⁰⁹ Some of the most distinguished citizens and professional people, including writers, economists, attorneys, doctors, and educators, represent the Labor Party in the House of Commons, together with full-time labor union officials and manual workers directly from industry.²¹⁰ Not only did the attempts to prohibit labor's political activities result in eventual failure, but as a consequence the unions were spurred on by these attacks until today the Labor Party is supported by a plurality of the electorate.²¹¹

Section 304 of the Taft-Hartley Act

DeMille testifies. Strikes following World War II antagonized public opinion and in 1946, the biggest strike

209 Loc.cit.

210 Loc.cit.

211 Overacker, Presidential Campaign Funds, pp. 53-54; Witte, op.cit., p. 348; Cole, op.cit., p. 195; Rothschild 2nd, op.cit., p. 1385. In the last general election in Great Britain in 1952, the popular vote was 13,948,985 for Labor to 12,660,071 for the Conservatives, with 2,029,520 for others: 1953 Information Please Almanac, p. 470. However, because of a disparity in the concentration of political strength in different sections of the country, the Conservatives won 321 seats as compared to 294 for Labor and 9 for other parties.

year in American history to that time,²¹² the Republicans regarded their congressional victory as a "mandate" to enact drastic anti-labor legislation.²¹³ This took form in the 1947 Taft-Hartley Act.²¹⁴ Prior to its enactment, Cecil B. DeMille, whose legal problems shall be discussed later in this chapter, testified on February 14, 1947, at the hearings before the Committee on Labor and Public Welfare.²¹⁵ He stated that he was a member of the Screen Directors Guild of Hollywood, California, and that he had been a member of the American Federation of Radio Artists, known as AFRA. He said that in 1944 his AFRA local levied upon all its members an assessment of \$1 to finance a campaign against a proposition appearing on the California ballot at the general election of that year. This was a referendum to outlaw both the closed shop and the union shop. He used his personal experience as an example of the need for limitations:²¹⁶

²¹² Harry A. Millis and Emily Clark Brown, From The Wagner Act to Taft-Hartley, pp. 311-314.

²¹³ Ibid, p. 363. Details of the pre-election campaign were discussed earlier in the first chapter of this thesis.

²¹⁴ Labor-Management Relations Act of 1947, U.S. Statutes at Large, vol. 61, p. 159. See the first chapter of this thesis for the economic provisions of the statute.

²¹⁵ U.S. Congress, Senate, 80th Cong., 1st Sess. Labor Relations Program, Part 2, pp. 796-797.

²¹⁶ Loc.cit.

I personally favored this proposition. I refused to pay a dollar to oppose my own convictions as a citizen. For this adherence to my political rights I was suspended by AFRA, and under the provisions of the union shop, I was prevented from appearing on the radio program which I had produced for more than 8 years. Because I refused to pay a political assessment, I was deprived of the right to work.

Mr. DeMille said that he had taken his individual case to the district court, and to the district appellate court, both of which had sustained the union on the ground that the union was fighting for its existence, that it had approved the assessment by majority vote, and that the union's constitution provides for the assessment. He told the Senators that he was taking the issue to the Supreme Court of California. Senator Ball asked:

The case has not been finished, but so far as you have gone, the courts in your opinion at least, have permitted the closed-shop union to deprive you of your freedom of suffrage?

Mr. DeMille replied:

Yes, sir; that is my whole contention here and that is why new legislation is needed. It is vitally important.

Section 304. Attempting to close both the federal primaries and the "contributions" versus "expenditures" loopholes of the Smith-Connally Act, Section 304 of the Taft-Hartley Act amended Section 313 of the Federal Corrupt

217 Loc.cit.

Practices Act of 1925, as follows:

It is unlawful for...any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every...labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5000; and every officer ...of any labor organization who consents to any contribution or expenditure by the... labor organization...in violation of this section shall be fined not more than \$1000 or imprisoned for not more than one year, or both.

In view of the severity of the law upon labor's economic activities, it was strongly suspected that the inclusion of Section 304 in the Taft-Hartley Act was bad faith on the part of the authors.. The A.F.L. offered the opin-

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218 U.S. Statutes at Large, vol. 61, p. 159, 2 U.S. C.A. App., sec. 251 (Supp. 1947), 18 U.S.C.A., sec. 610 (1948 Rev.), amending U.S. Statutes at Large, vol 43, p. 1070 (1925), 2 U.S.C., sec. 251 (1940). Only pertinent provisions quoted.

219 Elias Lieberman, Unions Before The Bar, p. 325, observes "That politics was very much on the minds of the sponsors of the act is evident from the very fact that they deemed it necessary to prohibit unions from making political 'contributions or expenditures' in connection with primaries, political conventions, or campaigns for the election of president, senator, or congressman. What place has unions' political activity in an act which is supposed to deal only with labor-management relations?" See also Harry A. Millis and

ion that "The framers of the Taft-Hartley Act, not content with reversing the philosophy underlying the Wagner Act, have attempted to perpetuate their new order by making it difficult, if not impossible, for organized labor to seek to defeat them at the polls and to install in their places legislators equipped with better understanding of the nature of our economy and the functions of trade unionism in that economy."²²⁰ It has been pointed out that "Underlying this regulation, apparently, is an intention to restrict union activity largely to collective bargaining."²²¹ The

Emily Clark Brown, op.cit., where they state at page 598 that Section 304 has no place in the Taft-Hartley Act or in any other statute "unless the provision is simply an indication of an effort to weaken unions and their influence in public life..."

220 J. Albert Woll and Herbert S. Thatcher, "Taft-Hartley Law Exposed," pp. 9-10.

221 George W. Taylor, Government Regulation of Industrial Relations, p. 268. In noting the economic provisions of the legislation, Taylor comments at page 269 concerning the logical consistency of this intended restriction upon union activities: "Restrictions were placed upon labor's political activities by the very Act than transferred important industrial-relations issues from the economic to the political arena. Only through political activity--as distinct from economic pressure--can organized labor secure changed treatment of these issues. Yet any labor organization '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' is legally restrained from making any contribution or expenditure in connection with major political elections. Some observers have concluded, and not in any cynical sense, that the ban on political activity was intended to give finality to the determinations made in the Act and to avoid "retaliation" by the unions against those who supported the legislation." See also the remarks of Congressman Fogarty

spokesman for the Council for Social Action of the Congregational Christian Churches has written that "There is little doubt that this provision of the bill was intended to muzzle any effective political retaliation by labor unions against the sponsors of the Act."²²² In this, we may compare the motives of the sponsors of the 1926 Act in Great Britain.

It should be noted here that the original Taft bill in the Senate did not contain Section 304. This had been included in the Hartley bill in the House, with the explanation that it was meant to make permanent the Smith-Connally War Labor Disputes Act political restriction upon unions, with the added limitation upon political expenditures of both unions and corporations. It was justified as a protection of the rights of the individual union member to support any candidate he chooses, and "to decide for himself

in the House of Representatives on April 16, 1947, Cong.Rec., vol. 93, p. 3536: "This is not legislation for the common good--this is punishment because labor unions have grown so powerful. American workers now have a voice in the functioning of our industrial machinery and some industrialists resent this. They are determined that, at whatever the cost, these men and women must be returned to the position of humble and suppliant employees, glad to work for whatever pittance is awarded them."

²²² Gerhard P. Van Arkel, "The Taft-Hartley Act," pp. 13-14. Mr. Van Arkel is a member of the Massachusetts Bar, was formerly General Counsel of the National Labor Relations Board, and is the author of An Analysis of The Labor Management Relations Act, 1947 published by the Practicing Law Institute, 57 Williams Street, New York, in co-operation with the American Bar Association.

whether or not his money will be spent for political pur-

poses." ²²³ The only other discussion in the House was a careful and detailed statement by Congressman Miller of California, which was never answered. The Hartley bill had passed the House and the Taft bill passed the Senate on May 13, 1947, by a vote of 68-24. Voting in favor were 47 Republicans and 21 Democrats. Voting against were 21 Democrats and Republican Senators Langer, Malone, and Morse. ²²⁴

Truman's veto. The Taft bill and the Hartley bill went to the Conference Committee which accepted the House

²²³ In addition to the congressional debate, also see Our New National Labor Policy--The Taft-Hartley Act And The Next Steps by Fred A. Hartley Jr., Foreword by Robert A. Taft, p. 166:

"These funds are gathered by the union leaders for necessary and proper expenditures in connection with the administration of the union. Dissemination of information of interest to the membership is a necessary and proper function. So too are expenditures in connection with collective bargaining negotiations, organizational campaigns, and other activities pertaining to the contract terms and conditions.

"Political activities are not proper union activities, any more than they are proper activities for business corporations.

"This is in no sense a deprivation of rights of citizenship. Union members are perfectly free as individual citizens to take part in politics through any of the many organizations formed for that purpose.

"On the other hand, it is not proper that an organization created under government sponsorship should exercise the influence obtained by reason of such sponsorship to engage in political activity designed and employed to create political pressures to force desired results." (Underscoring added)

²²⁴ The Legislative process in the House and in the Senate is taken from Harry A. Millis and Emily Clark Brown, op.cit., pp. 380, 387, 594.

clause. The conference bill was reported to the Senate on June 5. Senator Taft explained that Section 304 was a continuation of the Smith-Connally Act's prohibition on contributions and that the word "expenditure" had been added to "plug a loophole," since it had been thought that "contribution" was not broad enough. The following day the Taft-Hartley bill passed the Senate by a vote of 54-17. Favoring the bill were 37 Republicans and 17 Democrats. Against it were 15 Democrats and two Republicans, Morse and Langer. Of the absentees whose views were announced, 15 would have been in the affirmative and 7 would have been opposed. Here as in the House more than the two-thirds necessary to override a veto had been obtained. On June 20, 1947, President Harry S. Truman sent a veto message to the Congress, in which he analyzed Section 304 as follows:

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In undertaking to restrict political contributions and expenditures, the bill would prohibit many legitimate activities on the part of unions and corporations. This provision would prevent the ordinary union newspaper from commenting favorably or unfavorably upon candidates or issues in national elections. I regard this as a dangerous intrusion on free speech, unwarranted by any demonstration of need, and quite foreign to the stated purposes of this bill. (226)

225 U.S. Congress, H.R.Doc.No.334, Message from the President of the United States returning Without His Approval the Bill (H.R. 3020) Entitled the "Labor-Management Relations Act, 1947," vol. 2, 80th Cong., 1st Sess., pp. 9-10.

226 Our New National Labor Policy--The Taft-Hartley Act And The Next Steps published in 1948 by Fred A. Hartley Jr.,

Furthermore, this provision can be interpreted as going far beyond its apparent objectives, and as interfering with necessary business activities. It provides no exemption for corporations whose business is the publication of newspapers or the operation of radio stations. It makes no distinction between expenditures made by such corporations for the purpose of influencing the results of an election, and other expenditures made by them in the normal course of their business "in connection with" an election. Thus it would raise a host of troublesome questions concerning the legality of many practices ordinarily engaged in by newspapers and radio stations.

...The most fundamental test which I have applied to this bill is whether it would strengthen or weaken American democracy in the present critical hour. This bill is perhaps the most serious economic and social legislation of the past decade. Its effects --for good or ill--would be felt for decades to come.

I have concluded that the bill is a clear threat to the successful working of our democratic society.

One of the major lessons of recent world history is that free and vital trade unions are a strong bulwark against the growth of totalitarian movements. We must, therefore, be everlastingly alert that...we do not destroy the contribution which unions make to our democratic strength.

Foreword by Robert A. Taft, comments at pages 85-86, 164, 166, that although the Section 304 provision "restricting the political activities of union organizations...has received a great deal of criticism" on the ground that it violates freedom of the press, the authors "do not agree with such an interpretation." The law does not prohibit the "legitimate" function of the labor press. It does not prevent any labor leader, as a private citizen, from endorsing a candidate for public office. "Persons in the labor movement still have the same rights as every other citizen to engage in political activity and to raise campaign funds on a voluntary basis." The law was designed to prevent political activity by workers through their union organization, but not individually.

This bill would go far toward weakening our trade union movement. And it would go far toward destroying our national unity. By raising barriers between labor and management and by injecting political considerations into normal economic decisions, it would invite them to gain their ends through direct political action. I think it would be exceedingly dangerous to our country to develop a class basis for political action.

The House received the veto message at 12:05 P.M.

One minute later the clerk began reading; without a word of debate or discussion the roll call was started just three minutes after the clerk had finished reading the President's message. ²²⁷ The vote was 331 (including 57% of the Demo-

²²⁷ This refusal to give even the most casual consideration to the veto message is explained as follows in Our New National Labor Policy--The Taft-Hartley Act And The Next Steps by Fred A. Hartley Jr., Foreword by Robert A. Taft, at pages 90-91: "Since 1933, Congress has been increasingly suspicious of the New Deal use of the veto power, and has become less inclined to study veto messages with a view to correcting the legislation concerned...The Truman veto of the Taft-Hartley Act was of this character...a political veto...the President attempted to set aside the well-founded judgment of almost three-quarters of the nation's elected representatives...The House acted immediately, voting to ignore the wishes of the President by 331 to 83...The vote of 331 is the largest vote ever recorded in the House of Representatives to override a veto of the President." At another point, page 102, Hartley admitted that not much consideration was given to the Taft-Hartley Act by Congress even during the course of the entire legislative process, and that this "railroading" attitude was not confined merely to President Truman's veto message: "As I witnessed the Senate vote, I could not help but ponder one question: how many of the members of the House and Senate had voted for the new labor law out of a full knowledge of its contents, or how many because of their confidence in the men who wrote the legislation and presented it to their respective bodies." Also see Harry A. Millis and Emily Clark Brown, op.cit., page 374: "We are forced to conclude that the House proceedings did not do credit to that

crats voting) to 83 for overriding the veto. This was 55 more votes than the two-thirds needed to override the veto. More House Democrats had voted to override the veto than voted for the original bill. In the Senate, the opposition succeeded in delaying the vote. However, three days later when the Senate vote was finally taken, President Truman's veto was overridden by a vote of 68 to 25, and the Taft-Hartley Act became law on June 23, 1947. The Democratic Party had delivered only 37% of its strength in the House to sustain the veto, and only 50% in the Senate.²²⁷ The first chapter of this thesis discusses the events leading up to final congressional action on the veto in greater detail and provides sources for additional information.

Analysis of Congressional debate. Although any analysis of a statute must proceed from the clear meaning of the statute itself, its wording being construed according to its natural import and common usage as the main source for the ascertainment of the legislative purpose, the imperfections of language to express intent often render necessary further inquiry into the intention of its authors as indicated by the legislative record, and the policy background to its body in terms of adequate and relevant analysis of the important issues presented. Whether because of the shortness of time, the lack of information on the part of many members, or the sense of defeat harbored by the opposition, relatively few persons participated, and their contributions were on the whole neither brilliant nor penetrating."

227 Lieberman, op.cit., p. 331.

enactment. The congressional history of Section 304, of course, really begins with the Smith-Connally War Labor Disputes Act of 1943 and in discussing the ban on political contributions in Section 304, it must be assumed that the word "contribution" is carried over from the Smith-Connally Act and conveys the same meaning. It has a fairly clear factual content. If a corporation or a labor union gives a candidate for some federal office a certain amount of cash for campaign purposes, it has obviously made a "contribution" and committed a crime.²²⁸ Moreover, the candidate has committed a crime by accepting the money. If a corporation or a labor union pays for a candidate's political advertisements in newspapers of general circulation or on the radio,²²⁹ it has made a "contribution" and has violated the law.

228 See extension of remarks of Senator Robert A. Taft, Cong. Rec., vol. 93, p. A3369, legislative day, July 7, 1947: "If a union used funds collected as dues for political contributions or expenditures, it would violate an amendment which the law has made in the Federal Corrupt Practices Act and the officers responsible for the diversion of such funds would be committing a crime."

229 The statement of the conference report, signed by Fred A. Hartley Jr., Cong. Rec., vol. 93, p. 6380 (June 4, 1947) supports this contention: "Section 304 of the House bill contained a provision placing on a permanent basis the provisions which were contained in the War Labor Disputes Act whereby labor organizations were prohibited from making political contributions to the same extent as corporations. In addition, this section extended the prohibition, both in the case of corporations and labor organizations, to include expenditures as well as contributions. Moreover, expenditures and contributions in connection with primary elections and political conventions were made unlawful to the same extent as those made in connection with the elections themselves. There was no comparable provision in the Senate amendment. The conference agree-

The meaning of the word "expenditure" is not, however, quite so clear. Its ambiguity was discussed in the Senate debate of June 5, 1947, between Senators Taft, Ball, Pepper, Barkley, and Magnuson, with a few comments by Senators Taylor and Morse. (See Appendix) The inquiring legislators pointed out to Taft that most newspapers are run by corporations, that a newspaper which makes an editorial comment in favor of one candidate or against his opponent has made an "expenditure in connection with" his election, and that this kind of expression of opinion--generally thought to be an exercise of the freedom of the press--is quite possibly a crime under the statute. ²³⁰ Senator Taft insisted in his reply that the

ment adopts the provisions of the House bill, with one change. Under the conference agreement expenditures and contributions in connection with primary elections, political conventions, and caucuses are made unlawful to the same extent as those made in connection with the elections themselves." See also Donald H. Wollett, Labor Relations And Federal Law, p. 141.

230 The analysis of this point by Paul H. Douglas of the University of Chicago, now United States Senator, was inserted in the Cong. Rec., vol. 93, pp. A3510-A3511, by Hon. Melvin Price, Tuesday, July 15, 1947: "The act forbids unions from making not only any 'contributions' in connection with national primary or general elections, but also any 'expenditures' (sec. 304). Outright contributions by unions for such purposes are doubtless subject to abuse although they can be defended on the ground that they permit the many in the low-income groups to pool their individually small contributions to offset the bulked contributions of the wealthy. But this act goes even further. It would prevent unions from publishing literature to acquaint their members with the voting records of Members of Congress or the public attitudes of candidates...While an apparent attempt is made to make this prohibition mutual by a loosely worded clause which would similarly prevent 'any corporation' from making similar expenditures or contribution (and which might stop newspapers from taking polls, etc.), this restraint is not applied to unincorporated

primary objective of the provision is to stop unions from using their members dues for political purposes. Thus, according to Taft, although it is a crime for any corporation or labor organization publishing a newspaper which is financed from the funds contributed by its members as dues and fees to print the voting record of a candidate to recommend his defeat or election, it is not a crime for a corporation or a labor union publishing a newspaper for profit, or financing it by advertising and subscriptions, to do precisely the same thing. (See Appendix)

In answer to questions from Senators Pepper and Barkley, Senator Taft declared that, although under the law it would be legal for an organization such as the C.I.O.-P.A.C. (not a labor organization as defined in the statute) or an association of manufacturers (not a corporation) to use funds for political activity where such funds were not contributed by a labor organization or a corporation but were contributed directly by individual union members or stockholders who know that the money will be spent for political purposes, the publication of political news and political editorials is legitimate under Section 304 only if the newspaper is "sold to subscribers" and "supported by subscrip-

employer's associations and hence in all probability would not serve to restrain them. This somewhat one-sided and certainly injudicious prohibition strikes at the fundamental rights of citizens in a democracy." (Underscoring added)

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tions." In other words, if the newspaper is in business for a profit it does not come under the ban of Section 304. but if it is a corporate or union publication paid for from corporate or union funds, then such publication is subject to the prohibitions of Section 304.

Since daily newspapers are usually published for a profit or financed by advertising and subscriptions, while union newspapers frequently are not, the Taft interpretation of Section 304 would prevent any expression of political opinion by union leaders or union members in the labor press. 232
Official union journals and labor publications would be under a political prohibition which did not apply to the daily press. Presumably, Senator Taft would require unions to avoid or circumvent the law by buying daily newspapers in order to carry forward the political policies of the union through editorials and general comment. This has been the Labor Party practice in Great Britain. But, as we shall

231 Confirming the Senate debate is the comment in Our New National Labor Policy--The Taft-Hartley Act And The Next Steps by Fred A. Hartley Jr., Foreword by Robert A. Taft, p. 165, that Section 304 was not meant to restrict "the publication of a bone fide newspaper by either a labor union or by a business corporation formed for the purpose of publishing a newspaper..."

232 See extension of remarks of Hon. Homer D. Angell, House of Representatives, Cong. Rec., vol. 93, p. A2918, Monday, June 16, 1947: "Some 95 percent of union papers are paid for out of union funds rather than from subscriptions paid directly and specifically for the paper by the member. Under the provision, these union papers could not make any political expression during an election campaign."

soon discuss, the Supreme Court in 1948 and appeal court decisions in subsequent cases have rejected Senator Taft's interpretation of his own law, that the law does not mean what Senator Taft thought it meant.

As has already been indicated, Senator Taft's view was founded on a policy justification that minority union members needed protection from the union majority, that labor's influence in elections and upon legislation was disproportionate, and that this prohibition placed labor unions on the same footing as corporations. These reasons for Section 304 have been disputed. For example, concerning minority protection, it has been suggested that the British experience may be of value to American policy makers.²³³ Thus, rather than total prohibitions, the solution could be "contracting-out." In regard to undue influence in elections, organized labor contributed but 4% to 7% of all campaign funds in recent elections.²³⁴ This is not evidence that organized labor, representing 17,000,000 union workers, and presumably their families, exercises a disproportionate influence on the electoral process. On the contrary, there is considerable evidence that other groups enjoy a peculiarly

²³³ "Regulation of Labor's Political Contributions and Expenditures: The British and American Experience," comment, 19 University of Chicago Law Review 371, pp. 384-385.

²³⁴ "Section 304, Taft-Hartley Act: Validity of Restrictions on Union Political Activity," 57 Yale Law Journal 806, pp. 824-827.

advantageous monopoly in that the press, radio, motion picture, and other "opinion industries" represent and articulate the point of view of their owners, managers, and advertisers--against labor.²³⁵

As for labor's influence upon legislation, in passing the Taft-Hartley Act over President Truman's veto with votes to spare, Congress provided the strongest possible evidence that labor unions, in 1947 at least, did not possess any dictatorial power. While conceding that "...the AF of L, the CIO and the railway brotherhoods are in pressure group politics up to their necks" Stuart Chase also observes that "As compared with any particular business lobby, the labor lobby serves more people, and people who often need that service very bitterly...Big Union has caught up with Big Business, and in that there is a kind of rough justice."²³⁶ Furthermore, it is pointed out that "Labor accounts for about only one tenth of all funds spent on lobbying at the national level."²³⁷ Again, as in the case of elections, this is not evidence that organized labor exercises a disproportionate influence on legislation.

Turning now to the contention that the Taft-Hartley Act is even-handed in its effect on employers and workers,

²³⁵ Loc.cit.

²³⁶ Stuart Chase, Democracy Under Pressure: Special Interests vs The Public Welfare, pp. 74-75.

²³⁷ Richard A. Lester, Labor And Industrial Relations, p. 315.

that it puts labor unions and business corporations on an equal footing because it applies the same prohibitions to both, the answer to this is that Section 304 "is likely to weigh more heavily on unions, since corporation officers and owner groups are usually able to finance personal contributions out of their own incomes more easily than union officers and members."²³⁸ It is impossible to say that unions and corporations are on an equal footing "because of differences in structure, wealth, membership, and control of the media of mass communication."²³⁹ It is one thing to prohibit a corporation from making a political expenditure, and another to deny such privilege to labor organizations

238 Extension of remarks of Hon. Homer D. Angell, House of Representatives, Cong. Rec., vol. 93, p. A2918, Monday, June 16, 1947. See also the observation by J. Albert Woll and Herbert S. Thatcher, "Taft-Hartley Law Exposed," pp. 9-10: "While individuals are permitted to make political expenditures under the act, it is obvious that employers are able to utilize this privilege much more effectively than individual workers whose income is greatly more limited than the income of corporate officers. It is only through small joint contributions of many individual employees associated together in a labor organization that the rights of the individuals to make contributions can have any practical meaning."

239 "Regulation of Labor's Political Contributions and Expenditures: The British and American Experience," op.cit., p. 387: "If corporations and unions were both prohibited from making political contributions and expenditures, corporate interests could more easily raise money than labor interests, since the former could rely on large contributions from a relatively few individuals, while the latter must collect small amounts from many individuals. Furthermore, corporate interests are more adequately represented in the press and radio which are largely corporately owned and supported primarily by corporate advertising."

which are nonprofit associations for the mutual benefit of their members and one of whose prime purposes, unlike corporations, is the securing of legislation beneficial to working people, their families, and the community, state, and nation.

Despite the attempt to restrict labor union activity to collective bargaining, the Taft-Hartley Act has stimulated political activity.²⁴⁰ Organized labor has reacted to this union-restricting legislation by the establishment of permanent political agencies which utilize the existing union field organization.²⁴¹ The unions have mobilized their political power to forestall further attacks on the organization through which the workers aspire to improve their economic position. Every labor union is now participating in one or another political organization. Non-political business unionism is a thing of the past. The long-range effects may well be similar to that of the Trade

240 Harry A. Millis and Emily Clark Brown, From The Wagner Act to Taft-Hartley, p. 596. That this was inevitable was predicted by George W. Taylor in his Government Regulation of Industrial Relations, p. 270, that "...the Taft-Hartley Act cannot fail to induce a greater emphasis upon political activity by the labor movement. Major industrial-relations issues formerly settled exclusively at the negotiation table have been determined, for the time being at least, by legislation. Not economic power but political power is the key to securing changes in these terms of employment. And, of course, since the passage of the Taft-Hartley Act, a greater emphasis has been placed by unions upon the necessity for mobilizing labor's political power."

241 Lester, op.cit., p. 316.

Disputes and Trade Unions Act of 1926 in Great Britain; the stimulus which that statute gave labor union political activity in England is being duplicated here. The seeds of a future Labor Party in the United States may have been planted by the Taft-Hartley Act.

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But aside from the practical considerations for labor's desire to continue in political activity, these could be of no avail in the face of a law prohibiting such activity. The decision of the unions to continue political activities despite Section 304 was the result of legal analysis of the law. On the basis of the Senate debate, The Bureau of National Affairs published their legal opinion of Section 304 that the following expenditures are forbidden:

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1. Publication in a union paper or house organ of a corporation of editorials or other comment in favor of or against a national political candidate unless such papers are sold for profit.
2. Radio speeches for or against a national political candidate if the radio time is paid for by a labor organization or corporation.
3. Publication by unions of pamphlets advising their members that a candidate has an antilabor record if the pamphlet is paid for out of union funds.
4. Free distribution of newspapers of special editions designed to influence elections.

242 Gerhard P. Van Arkel, "The Taft-Hartley Act," April, 1948, Social Action magazine, Council for Social Action of the Congregational Christian Churches.

243 The Bureau of National Affairs, Inc., The New Labor Law, p. 79.

5. Political advertisements paid by an organization such as the Chamber of Commerce (which Senator Taft says he 'thinks' is a corporation) from funds contributed by corporations, even though these funds were not contributed primarily for political purposes.

These legal aspects convinced the unions that the law was unconstitutional. For example, the C.I.O. Legal Department noted that in the Senate investigations concerning alleged union violations of the Smith-Connally Act, the C.I.O. had distinguished political contributions from political expenditures, and had contended that while it was perfectly legal to prohibit union political contributions, any law which attempted to prohibit union expenditures in connection with political campaigns would be unconstitutional in violation of the rights of members of labor unions to exercise their freedom of the press, speech, and assembly, and that this viewpoint was supported by legal opinions of the Attorney General of the United States. The C.I.O.'s Legal Department pointed out that on the floor of the Senate, when debating the Taft-Hartley bill, Senator Taft specifi-

244 Gerhard P. Van Arkel, a member of the Massachusetts Bar and formerly General Counsel of the National Labor Relations Board, wrote that "It seems probable that this section will be held unconstitutional as an interference with the right of speech if interpreted to cover the stating of political views by a labor organization...constitutional protections may surround a labor organization, as a 'citizen' which are not available to a corporation as a 'person' within the meaning of the Constitution." An Analysis of the Labor Management Relations Act, 1947, p. 69. (American Bar Association)

245 C.I.O. Legal Department, "Analysis of the Taft-Hartley Act," pp. 47-49.

cally stated that the new prohibition was intended to prevent a labor union, in its regularly distributed newspaper, from publishing the voting records of members of Congress when this is done in the course of a political campaign. ²⁴⁶

In noting that this prohibition could also be applied to a discussion of political candidates at a local union meeting involving expenditures of union funds for rental, etc., or the distribution of political pamphlets by the union in an election campaign, it was the legal opinion of the C.I.O. General Counsel that: ²⁴⁷

Labor organizations may independently expend their funds for the purpose of distributing to their membership and to the public the voting records or other statements of candidates for Federal political office. Such dissemination of information may be carried on through the radio, the union newspaper, or local union meetings.

These activities reflect the exercise by the members of their rights of freedom of speech, press and assembly. For this reason they may not be abridged.

Relying on the opinion of their Legal Department, the C.I.O. Executive Board, at its meeting in Washington on June 27, 1947, adopted the following resolution: ²⁴⁸

We propose, as good Americans, to fight the political restraints in this legislation.

We would not merit the name of free Americans if we acquiesced in a law which makes it

246 Loc.cit.

247 Loc.cit.

248 Loc.cit.

a crime to exercise rights of freedom of speech, freedom of press, and freedom of assembly. We would betray a fundamental heritage of political liberty if we allowed ourselves to be gagged by the law. The Constitution remains the law of our land and we propose to enjoy its protection. We will not comply with the unconstitutional limitations on political activity which are written into the Taft-Hartley Act.

United States v. Congress of Industrial Organizations.

A test case was not long in coming. Under the name of C.I.O. President Philip Murray, page one of the weekly C.I.O. News of July 14, 1947, carried a three column statement urging the election of Judge Edward A. Garmatz in the Third Congressional District of Baltimore, Maryland. The editorial said that Judge Garmatz would work for the repeal of the Taft-Hartley Act. Murray asked all C.I.O. members in the district to vote for Garmatz for Congress in the special election and to bring others to do the same. According to the indictment drawn against both Murray and the C.I.O., an extra 1000 copies of the C.I.O. News were sent to Baltimore for distribution. Was Mr. Murray's letter "an expenditure in connection with" a federal election?

On March 15, 1948, Judge Moore handed down the opinion of the United States District Court, District of Columbia, dismissing the case brought by the government, and holding that Section 304 "is an unconstitutional abridgment of freedom of speech, freedom of the press and freedom of assembly"

in violation of the guarantees of the First Amendment. Further, respecting the use of union funds for political objectives not in accord with minority views, the Court said that "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." United States v. Congress of Industrial Organizations, 14 Labor Cases 64, 77 FSupp. 355 (1948).

On an appeal by the government to the Supreme Court, United States v. Congress of Industrial Organizations, 335 U.S. 106, 68 S.Ct. 1349, 92 L.Ed. 1849 (1948), four members held, in an opinion by Justice Reed, that the decision turned on the question whether the prohibition applied to the circumstances; they found that Section 304 does not cover such activities as were complained of here, that the publication in question did not violate the statute, and therefore that there was no occasion for deciding the constitutional issue. Reed said that there was no allegation of free copies being printed, no charge that distribution was to non-subscribers or non-purchasers or among citizens not entitled to receive the C.I.O. News. The law cannot be said to prevent such papers from editorially supporting candid-
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ates. If so, even a corporately owned religious paper

249 Contrary to this opinion, the intent of the authors of Section 304 is found in the view expressed in Our New National Labor Policy--The Taft-Hartley Act And The Next Steps by Fred A. Hartley Jr., Foreword by Robert A. Taft, at

supporting a candidate on moral grounds would be in violation of Section 304. This could not have been the intent of Congress, Reed felt, in reviewing the Senate debate.

Concurring, Justice Frankfurter expressed the view that as the issue raised went beyond the necessities of the case, it was proper for the Court to give the statute an allowable construction that fairly avoided the constitutional question.

Justice Rutledge, in whose opinion Black, Douglas, and Murphy, JJ., joined, concurred in the result but, in reviewing the Senate debate, came to another conclusion than Reed, J. Justice Rutledge insisted that this statute was obviously intended to cover the facts at hand and that the majority of the court

sets aside the one clearly intended feature of the statute apart from its general objectives. I doubt that upon any matter of construction

page 99 where Mr. Hartley comments: "The CIO attempted to violate the no-expenditure provisions of the law as applied to its newspaper, the CIO News. For my own part, I see no reason why the CIO News has a right to hide behind the honorable slogan of 'freedom of the press.' This labor union publication, in spite of its name, is not a newspaper in the accepted sense of the word. It is a highly inflammatory, completely biased weekly, with its own ax to grind." Agreeing with Mr. Hartley's interpretation of the congressional intent is the comment in "Regulation of Labor's Political Contributions and Expenditures: The British and American Experience," 19 University of Chicago Law Review 371, pp. 374, 377, that the Supreme Court's rejection of the source of funds test as to regular union publications "was in the teeth of clear statements on the Senate floor by the sponsor of Section 304 that the test should be applied in such situations." Thus, the comment observes at page 378, "the CIO case" departed "from the language of the Section and from the test set out in legislative debate..."

the Court has heretofore so far presumed to override the plainly and incontrovertibly stated judgment of all participants in the legislative process with its own tortiously fashioned view. This is not construction under the doctrine of strict necessity. It is invasion of the legislative process by emasculation of the statute. The only justification for this is to avoid deciding the question of validity.

Justice Rutledge believed that the statute is more broadly drawn than is necessary to reach the contended evils, that reasonable restrictions or regulations rather than total prohibitions could have been enacted, and therefore the statute is unconstitutional as an unjustifiable abridgment of the freedoms of the First Amendment:

any asserted beneficial tendency of restrictions upon expenditures for publicizing political views, whether of a group or of an individual, is counter-balanced to some extent by the loss for democratic processes resulting from the free and full public discussion...The expression of block sentiment is and always has been an integral part of our democratic electoral and legislative processes. They could hardly go on without it. Moreover, to an extent not necessary now to attempt delimiting, that right is secured by the guaranty of freedom of assembly, a liberty essentially coordinate with the freedoms of speech, the press, and conscience.

A restriction upon political expenditures

necessarily deprives the electorate, the persons entitled to hear, as well as the author of the utterance, whether an individual or a group, of the advantage of free and full discussion and of the right of free assembly for that purpose.

Freedom of speech, etc., does not depend upon whether a

charge or payment was made for the publication, as the opinion of Justice Reed seemed to intimate. The electorate must not be "deprived of information, knowledge and opinion vital to its function" and even upon the construction placed on the statute by the majority, it is unconstitutional:

A statute which, in the claimed interest of free and honest elections, curtails the very freedoms that make possible exercise of the franchise by an informed and thinking electorate and does this by indiscriminate blanketing of every expenditure made in connection with an election, serving as a prior restraint upon expression not in fact forbidden as well as upon what is, cannot be squared with the First Amendment.

Commenting on the C.I.O. decision, the Bureau of
National Affairs ²⁵⁰ reports that although the Supreme Court disappointed the labor unions in not ruling directly on the constitutionality of Section 304, all nine of the Justices agreed that the union was not guilty and four members of the Court would have held the provision banning political expenditures unconstitutional on its face. That the unions are probably correct in their firm belief that Section 304
is unconstitutional ²⁵¹ is the opinion expressed by Roland

250 The Bureau of National Affairs, The Taft-Hartley Act After One Year, pp. 5, 10, 195.

251 Also see "Regulation of Labor's Political Contributions and Expenditures: The British and American Experience," 19 University of Chicago Law Review 371, at page 378: "If followed literally, the prohibitions in Section 304 would probably be held unconstitutional."

E. Ginsburg in the Michigan Law Review for January, 1949, volume 47, pages 408-410. He believes that the unions may safely ignore Section 304: "The result of the Court's decision is to leave the statute with little or no application, because any attempt to apply it would raise grave doubts as to its constitutionality."

Reuther v. Clark. This prediction was proven accurate in the cases which followed United States v. Congress of Industrial Organizations. As the Supreme Court had held in that case that the union had not violated Section 304, and for that reason the Supreme Court found no necessity for passing upon the constitutionality of Section 304, union leaders decided to do everything they could think of to violate the law in order to test its constitutional validity. Proceeding under the declaratory judgment statutes which allow the federal courts to pass upon an issue before it has actually arisen if it appears inevitable that it will sufficiently fall within the constitutional rule of case or controversy, C.I.O. leader Walter P. Reuther, Reuther v. Clark, United States District Court, District of Columbia, 22 L.R.R.M. 2096, 14 Labor Cases 64503 (1948), brought an action against Attorney General Tom C. Clark to enjoin the enforcement of Section 304 on the basis that such political prohibition is unconstitutional.

In his complaint, Walter P. Reuther alleged that it

is and has been the established policy and practice of his international union and its local unions to engage in certain political activities, and that these activities are forbidden by Section 304. Reuther went on to state that union funds had already been spent and would be spent in the 1948 election to secure support for candidates pledged to the repeal of the Taft-Hartley Act. Reuther alleged on information and belief that Attorney General Tom C. Clark had threatened to prosecute any union for making expenditures for such purposes and that the Attorney General was preparing to institute criminal proceedings against the international union and its officers. Unless the court granted injunctive relief, Reuther argued, the union would be forced to defend many criminal prosecutions the cost of which would be ruinous and the resulting damages irreparable. The union asked an immediate determination of the invalidity of Section 304 so as to be able to exercise its political rights at the forthcoming elections.

The Court dismissed the complaint as follows:

In our opinion the facts presented by the complaint are insufficient to justify the exercise of the equity powers of this court to enjoin the prosecution of acts in violation of the terms of the statute in question. In view of this conclusion, it follows that the court should not render a declaratory judgment concerning the constitutionality of the statute. This is especially true in view of the admitted deliberate violation of the law which may very well subject the plaintiffs to criminal prosecution, in which event they will have the opportunity of directly attacking the constitutionality of the statute.

United States v. Painters Local Union No. 481.

Thus, the unions had to await a conviction under Section 304 in order to test its constitutionality. This opportunity had apparently arrived when the United States District Court of Connecticut, in United States v. Painters Local Union No. 481, 79 F.Supp. 516 (1949), held the union and its officers in violation of Section 304. In this case, Painters Local Union No. 481 had paid for a newspaper advertisement and radio broadcast opposing the candidacy of Senator Robert A. Taft for the Republican nomination for president, and advocating the defeat of six Connecticut congressmen. The union had no financial or other direct or indirect interest in the newspaper or in the radio station. The union spent for these political purposes \$143.64, which payments were authorized by a special meeting of the union. The funds were drawn from the general treasury of the union, which was secured by dues and fees. On these facts, the district court sentenced the union to pay \$200 on each of four counts, and the union president to pay \$100 on each of two counts.

The district court was reversed by the United States Court of Appeals, Second Circuit, 172 F.2d 854, which ordered the dismissal of the indictment. In its decision reversing the lower court, the Court of Appeals relied on United States v. Congress of Industrial Organizations,

stating that

We should bear in mind the...important consideration that all the Justices of the Supreme Court who participated in the CIO decision regarded the prohibition of the statute if applied to the facts of that case either as involving an undue abridgment of the rights of free speech, free press, and free assembly, or at best of exceedingly doubtful constitutionality.

Justice Augustus Hand, speaking for the Court of Appeals, concluded that as it was only a "...relatively small union ..." which had made only "...trifling expenditures..." that "Under all the circumstances we are constrained to hold that the statute did not cover the publications effected by the defendants in the case at bar."²⁵²

Was this non-enforcement an application of the legal doctrine de minimus non curat lex, that the law does not care for, or take notice of, or concern itself with, very small or trifling matters? If so, it would be the first time it had been so applied to an explicit statutory malum prohibitum. If an act is positively illegal, being expressly forbidden by the legislative judgment, then in the absence of unconstitutionality the courts have no discretion but to

252 Yet Fred A. Hartley Jr., at page 165 in his Our New National Labor Policy--The Taft-Hartley Act And The Next Steps, Forward by Robert A. Taft, wrote that Section 304 did cover the publications effected by the defendants in the case at bar, and that the decision of the district court holding the statute as covering these publications was "exactly in line with congressional intent." There can be little question that the Court of Appeals chose to ignore the congressional intent, as did the Supreme Court majority in United States v. Congress of Industrial Organizations.

enforce the provisions. But the Court of Appeals here did not enforce the provisions of Section 304. The conclusion can be only that either the Court considered Section 304 unconstitutional or that the refusal to enforce the statute infringed upon the functions of Congress and constituted an abuse of judicial power.

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Discussing the legal effects of United States v. Painters Local Union No. 481, the Winter 1952 edition of the University of Chicago Law Review, volume 19, at pages 380 and 381, notes that, contrary to Senator Taft's principle of "minority protection," the Painters case accepts the principle of "majority rule." More important, however, "By its broad extension of United States v. CIO, the Painters decision has largely emasculated Section 304. The limitation that distribution must be to union members has been eliminated...labor is probably free to indulge in almost every type of paid political propaganda under the rule of the Painters case." As a result, "The law is still uncertain and the constitutionality of Section 304 is still in doubt."

253 The late eminent Supreme Court Justice Benjamin Nathan Cardozo, in his The Nature of The Judicial Process, page 129, has this to say about abuse of judicial power: "In countless litigations, the law is so clear that judges have no discretion...Judges have, of course, the power, though not the right, to ignore the mandate of a statute, and render judgment in despite of it...None the less, by that abuse of power, they violate the law. If they violate it willfully, i.e., with guilty and evil mind, they commit a legal wrong, and may be removed or punished even though the judgments which they have rendered stand."

United States v. Construction & General Lab. L. U.

No. 264. Further doubt was cast over Section 304 by United States v. Construction & General Lab. L. U. No. 264, 101 F.Supp. 869, U.S.Dist.Ct.W.D.Missouri (1951), which reversed a lower court conviction of the local union and its officers for violation of Section 304. The Appeal Court held that the political activities of the labor union in making political payments of at least \$400, were not "contributions" or "expenditures" within Section 304. As this case is the very last word spoken by a federal court on Section 304, it should be helpful to look closely into the facts, and the reasoning of the decision.

To summarize the facts, the local union had made two principal expenditures. First, payments were made to three union employees, two of whom were regularly on the payroll of the union, one for a long period of time, and all three of whom devoted a considerable portion of their time to political activities, such as the registration of voters and the general transportation of voters to the polls. Second, payments were devoted exclusively to the political interests and for the aid of one candidate for Congress, the president of the local union, Theodore Leonard Irving. The uncontradicted testimony was that the union spent money to secure election of Theodore Leonard Irving as Representative in Congress by registering voters, transporting voters

to the polls, and by the printing and distribution of political literature of all varieties, including pamphlets, cards, matches, photographic posters on porches, and advertisements on the back of Blue Line Cab Company cars reading "Leonard Irving for Congress."

The Court asserted that efforts to secure registration of voters and their transportation to the polls was a public service in behalf of good government beneficial to all candidates irrespective of political party. What about the effort to elect Mr. Irving? While recognizing that the maxim of de minimus non curat lex does not apply in criminal cases, the Court held that "the evidence is entirely insufficient to sustain the conviction..." It reached this conclusion because "Each of the counts involves an exceptionally small amount, and...it is hard to conceive that the Congress had in mind when it enacted this particular law, that an uncertain, insignificant amount such as is involved here should be considered as an expenditure and used as a basis for a criminal prosecution." Thus, the Court decision seems to be employing de minimus non curat lex at the same moment it is denying its validity!

The Court argued that if it were the intention of Congress to prevent these activities, "then any political activity of any person on the payroll of a labor organization, from its president to its janitor, would render

that Union and its principal officers liable..." If Section 304 were to be taken literally, the Court noted, it might prohibit the president of a labor organization from making a political speech in support of or in opposition to any candidate for federal office, if any of the expenses during such time were paid by a labor organization. The Court said that the debates were not precise enough to determine "just exactly what the Congress intended" by prohibiting political "expenditures" but the Court could not bring itself to "believe that the Congress, with its vast knowledge of the practical application of its acts, intended such a restriction as is sought to be placed upon labor unions as here."

Of course, any intelligent reader of the debates (See Appendix) must reach the conclusion that this is precisely what the authors of Section 304 did intend. It strikes me that the key to the Court's decision is to be found in its statement that "If the Court were to determine that the Congress did intend such meaning of the word, then it would be necessary to pass upon the constitutionality of the statute..." and at page 875 where the Court wrote:

Labor organizations have a right to engage in political activities just the same as any other group, and certainly the Congress has the right to at least control the expenditures and contributions of such groups, just as it does those of political parties and corporations. But in exercising this prerogative, the Congress hasn't the constitutional power

to deprive them of the right of free speech, the right to express themselves in the choice of candidates and political ideals, and the right to engage in political activities as guaranteed them under the Bill of Rights.

This was a clear statement by the Court that to interpret Section 304 as outlawing political activities by labor unions (as was intended by its authors) would be to make Section 304 unconstitutional. It is obvious that the judiciary has not followed the policy considerations underlying the statute: "Considerable watering down of Section 304 by the courts has resulted in uncertainty as regards both coverage and constitutionality..."²⁵⁴

Thomas-Lesinski bill. Following the election of President Truman in 1948 and the Supreme Court ruling in United States v. Congress of Industrial Organizations, in 1949 the Democratic Administration introduced the Thomas-Lesinski bill which would have substantially repealed the Taft-Hartley Act. This bill was sponsored by Senator Elbert D. Thomas, Democrat of Utah, of the Labor and Public Welfare Committee of the Senate, and in the House by Representative John Lesinski, Democrat of Michigan, Chairman of the Education and Labor Committee. Except for a few minor changes which almost everybody agreed were needed, the new bill would have restored the 1935 Wagner Act. Supporters

²⁵⁴ "Regulation of Labor's Political Contributions and Expenditures: The British and American Experience," comment, Winter 1952, 19 University of Chicago Law Review 371, p. 388.

of the Taft-Hartley Act said that although they would go along with certain amendments to their law, they would stand by its basic principles. They opposed almost every section of the Thomas-Lesinski bill and stated that they would fight the proposal to permit unions to contribute to political candidates or party campaigns. However, while continuing to favor the ban on direct union contributions, leading opponents of the proposed new law agreed to approve union political expenditures, including publicity and public education.²⁵⁵

The Thomas-Lesinski bill came up for action first in the House. There Taft-Hartley friends got behind a substitute bill proposed by Representative John S. Wood, Democrat of Georgia, which would have repealed the Taft-Hartley Act in name only by re-enacting most of its provisions, some of them in even more objectionable form. When it became apparent that the Wood bill had strong support from Republicans and southern Democrats, an attempt was made to break up the coalition with a third bill offered by Representative Hugo S. Sims, Democrat of South Carolina. This bill, backed by House Speaker Sam Rayburn, Democrat of Texas, but without President Truman's specific approval, did not make sufficient changes in the Taft-Hartley Act to

²⁵⁵ The News-Tribune, April 22, 1949, "The Administration's Labor Bill," p. 1; C.I.O. Political Action Committee, a speaker's book of facts, August 1952, pp. 250-252.

satisfy House liberals, many of whom spoke against it. ²⁵⁶

Without a record vote, the Sims bill was defeated 211-183. On a crucial roll call the House then voted 217-203 to substitute the Wood bill for the Lesinski bill. The 217 votes consisted of 146 Republicans joined by 71 Democrats, all from southern or border states. The 203 votes were 180 Democrats, 22 Republicans, and one American Labor Party congressman. The next day, however, the pro-labor forces were able to change enough votes to send the Wood bill back to the Labor Committee. The vote was 212-209. Voting for recommitment were 193 Democrats, 18 Republicans, and one American Laborite. Against recommitment were 147 ²⁵⁷ Republicans and 62 southern Democrats.

In the Senate, the Thomas-Lesinski bill was called up for action in June, 1949. It was immediately confronted with a series of Republican-sponsored amendments which would have kept most of the Taft-Hartley Act. The debate lasted nearly a month and on all key issues the views of Senator Taft prevailed by narrow margins. Passed by a vote of 51-42, the Taft-amended Thomas-Lesinski bill was never considered ²⁵⁸ by the House Labor Committee. Although from the time of President Truman's election in 1948 to 1952 the unions con-

²⁵⁶ This report of the legislative action is taken from pages 250-252 of a speaker's book of facts published by the C.I.O. in August, 1952.

²⁵⁷ Loc.cit.

²⁵⁸ Loc.cit.

tinued to seek total repeal of the Taft-Hartley Act as an unfair and unjust policy to weaken labor's economic and political rights, anti-labor forces were so strong that these efforts to repeal the legislation got no attention whatsoever. A coalition of Republicans and southern Democrats blocked any changes in the Taft-Hartley Act.

Later developments. With the victory of the Republican Party in the 1952 elections, prospects of substantial modifications in the Taft-Hartley Act were eliminated, although before his death in 1953 Senator Taft himself advocated no less than 16 important revisions in his law, and during the 1952 campaign President Eisenhower pledged that the legislation would be amended to meet many of labor's objections, particularly the provision preventing economic strikers from balloting on union representation while at the same time the "scabs" may cast their votes on the issue of unionism. He has since submitted some proposals to Congress, but little action is expected and in any event there was nothing said about Section 304. In 1954, proposed amendments to the Taft-Hartley Act which would have restored many of the policy and enforcement provisions of labor legislation to the states, making in effect 48 labor laws, were returned to committee. Labor unions considered this a victory, as the amendments were regarded as even more objectionable than the statute itself.

Consequences. Demands for repeal of the Taft-Hartley Act provided a powerful incentive not just for securing the election of friendly candidates in regard to that single objective, but also in furnishing the necessary final realization that permanent political activities in general are absolutely essential to protect union rights and to promote labor's program. Further, as a result of the court's refusal to enforce the prohibition on union electoral expenditures, probably reluctant judicial recognition of the unconstitutionality of such a provision, legislative changes in regard to Section 304 were not needed to permit organized labor from legally engaging in determined political activities financed both directly from union treasuries and from individual contributions given personally by union members.

As an illustration of the difficulty labor would have in paying for a political campaign solely by appeals for these personal donations, it has been pointed out that although the union election fund drives for "a buck a member" had a potential total of at least \$15,000,000, the C.I.O.-P.A.C. had its best year in 1950 when it received contributions of \$1,200,000²⁵⁹ 1950 was also a very good year for the A.F.L.'s L.L.P.E. which collected \$600,000 in that year. Of that \$600,000 collected, the L.L.P.E. spent

259 Peter Edson, "Labor Union Campaign Funds," Washington Views, p. 6, The News-Tribune, Wednesday, September 3, 1952.

some \$550,000 in the 1950 elections.²⁶⁰ The \$1,800,000 collected by the C.I.O. and the A.F.L. in 1950 represents only about one out of nine union members contributing their dollar.²⁶¹ However, the A.F.L. publishes a weekly tabloid newspaper and spends nearly \$1,000,000 a year to sponsor their own radio commentator, Frank Edwards. The C.I.O.-P.A.C. headquarters operates with eighteen salaried employees doing research on congressional records for local campaigns, preparing speaker's handbooks, and similar activities. Printing takes most of the budget, such as the series of vest-pocket booklets on "52 Facts" of which over 3,000,000 copies were circulated. The C.I.O.-P.A.C. divides its campaign money one-half for national and one-half for congressional and state campaigns.²⁶²

In 1954, the A.F.L.-L.L.P.E. and C.I.O.-P.A.C. each raised more than \$1,000,000 in campaign funds. Again, half of this \$2,000,000 was used in national and half in local elections.²⁶³ At \$1 apiece, this would mean only about two million union members financially supporting political activity by direct personal contributions. However, finan-

260 Lester, op.cit., p. 316.

261 Edson, Ibid.

262 Loc.cit.

263 Peter Edson, "Election Results Indicate Labor Vote Is Influential." Washington, p. 4, The News-Tribune, Wednesday, January 26, 1955.

support and political support are two different things and analysis of the 1954 election indicates that most of the labor vote went to union-endorsed Democrats. An important factor was unemployment. Of the 21 seats in the United States House of Representatives which the Democrats took away from Republicans, 18 were in so-called "labor-surplus" areas. The A.F.L.-L.L.P.E. claims credit for the election of 18 union-endorsed United States Senate candidates and 154 union-endorsed candidates for the House. In Illinois, Michigan, Minnesota, Montana, and Oregon, states where labor held at least the balance of power, Democrats were elected to the United States Senate. As compared with the Taft-Hartley 80th Congress when organized labor could count only 83 House and 25 Senate friends, in 1955 the A.F.L.-L.L.P.E. now lists 182 House and 41 Senate pro-labor members of
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Congress.

Union labor was responsible for the election of Democratic governors in New York, Connecticut, Michigan, and Pennsylvania. In all, the Democrats won 27 governorships, a gain of seven. Democrats took 545 seats away from Repub-
265
licans in state legislature contests, and lost only six. Just what the labor vote influence was in these results is still under study but, of course, while not all these Demo-

264 Loc.cit.

265 Loc.cit.

cratic victories can be attributed to a labor vote, the general trend is considered so significant that for the first time Republican election analysts concede union political influence, that organized labor has learned gradually how to throw its political weight around most effectively in national, state, and local elections. This is true in spite of the fact that only a little more than one-quarter of the 64 million workers in the United States civilian labor force belong to unions. Thus, there are freely expressed Republican opinions that if present trends continue, union control of the Democratic Party is possible, or even a United States Labor Party. The Republicans are therefore now considering the problem of how to win more union support.

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Meanwhile, labor has continued to cement even more strongly its already very close affiliation with the Democratic Party. In its resolution on political action of December 8, 1954, the 16th Constitutional Convention of the C.I.O. asserted that Democratic successes in the 1954 state and congressional elections were a defeat for tax-favored oil companies, the utility interests, wealthy owners of timber and land resources, reactionary industrialists, large corporation stockholders, conservative big businessmen, greedy landlords, unscrupulous real estate operators,

266 Loc.cit.

grasping bankers, assorted coupon clippers, certain millionaires, and well-to-do individuals who had given the Republicans "unlimited campaign funds."²⁶⁷ On the other hand, the C.I.O. saw the Democrats as representing liberal businessmen, independent farmers, working men and women, progressive professional people, forward-looking parents, owners of small homes, and the average citizen generally.²⁶⁸

The C.I.O. Convention pledged continued support to candidates regardless of party who favored pro-labor programs and measures which the C.I.O. endorsed as in the public interest. The P.A.C. was directed to expand its activities, to work in conjunction with other union organizations, and in order to accomplish the C.I.O. policies "to cooperate with farmers, consumers, church groups, small businessmen, professional men, white collar workers, minority groups and all other groups and citizens genuinely devoted to the democratic ideas of public service and welfare as is the C.I.O."²⁶⁹ The C.I.O.-P.A.C. was told to support progressives within both of the major parties "basing its judgments on platforms and records of performance."²⁷⁰ More emphasis was to be placed on "year-round politics at the ward, precinct, and neighborhood

²⁶⁷ Political Action of the Week No. 50, December 13, 1954, C.I.O.-P.A.C.

²⁶⁸ Loc.cit.

²⁶⁹ Loc.cit.

²⁷⁰ Loc.cit.

levels so that our members can participate in the formulation of the program and selection of liberal candidates of ability and integrity."²⁷¹ The resolution promised "to carry forward the political action program of our organization in our efforts to raise the standards of government to higher levels of public service and responsibility."²⁷²

State Legislation and Decisions

Although we have seen that most states have restrictions directly or indirectly applying to organized labor's political activities and campaign contributions, a much lesser number of jurisdictions have attempted to include a "little Section 304" provision in their corrupt practices statutes. Indeed, where such legislation has been attempted, these efforts have failed largely on constitutional grounds. For example, Colorado's enactment forbidding political expenditures by labor unions²⁷³ was invalidated.²⁷⁴ Likewise an Alabama law prohibiting both contributions and expenditures by a labor organization was struck down by the Alabama Supreme Court.²⁷⁵ We have already seen the reason-

²⁷¹ Loc.cit.

²⁷² Loc.cit.

²⁷³ Colo.Stat. Ann., Ch. 97, sec. 94-(20) (Cum. Supp. 1946); also see this thesis page 292, footnote 172.

²⁷⁴ Kallenbach, Ibid; Killingsworth, Ibid.

²⁷⁵ Alabama State Federation of Labor v. McAdory, Alabama Supreme Court, 18 So.2d 810 (1944).

ing in the Texas case which held that the state has a right in the public interest to reasonably regulate the political conduct of labor unions.²⁷⁶ In considering the Texas decision, reported in this thesis on pages 293-294, it must be remembered that it dealt only with contributions, and not with expenditures. In this respect it could not be regarded as precedent for a Section 304 situation.

The Massachusetts case. However, an opinion of the Supreme Judicial Court of Massachusetts has provided us with an excellent case in point concerning the validity of prohibitions such as Section 304. The Massachusetts Court was asked to order a writ of mandamus to issue commanding the Secretary of State not to submit to the voters of the Commonwealth an initiative referendum which would, if approved by the electorate, prohibit, among others, any "labor unions or any person acting in behalf thereof" to "directly or indirectly give, pay, expend or contribute, any money or other valuable thing in order to aid, promote or prevent the nomination or election of any person to public office, or to aid, promote or antagonize the interests of any political party, or to influence or affect the vote on any question submitted to the voters."

276 Tex.Civ.Stat. Ann., Title 83, art. 5154a, sec. 49 (Vernon, 1947), American Federation of Labor v. Mann, 98th District Court of Travis County (1944), Texas Court of Civil Appeals, 3rd Supreme Judicial District, No. 9446 (1945) L.R.R., XVI (1945) 307, 188 S.W.2d 276, 286 (1945).

The Court refused to permit the proposed law to be printed on the ballot for the next state election, holding in Bowe v. Secretary of the Commonwealth, 320 Mass. 230, 69 N.E.2d 115, 167 A.L.R. 1447 (1946), that if enacted it would be inoperative because in conflict with both the Federal Constitution and the Constitution of Massachusetts. The people should not be asked to perform a futile act. The Court said at page 252:

One of the chief reasons for freedom of the press is to insure freedom, on the part of individuals and associations of individuals at least, of political discussion of men and measures, in order that the electorate at the polls may express the genuine and informed will of the people...Individuals seldom impress their views upon the electorate without organization. They have a right to organize into parties and even into what are called "pressure groups" for the purpose of advancing causes in which they believe. They have a right to engage in printing and circulating their views, and in advancing their cause in public assemblies and over the radio. All this costs money, and if all use of money were to be denied them the result would be to abridge even to the vanishing point any effective freedom of speech, liberty of the press, and right of peaceable assembly.

It remains to apply these principles to the proposed law under discussion. We do not doubt that labor unions, like individuals, may be curbed by corrupt practices acts and prevented from dumping immense sums of money into political campaigns. But under the proposed law the political activities of labor unions are not regulated or curbed but are substantially destroyed. Deprived of the right to pay any sum of money for the rental of a hall in which to hold a public rally or debate, or for printing or circulating pamphlets, or for advertising in newspapers, or for buying radio

time, a union could not carry on any substantial and effective political activity. It could not get its message to the electorate. Its rights of freedom of the press and of peaceable assembly would be crippled...the proposed law is "inconsistent with" those rights, and consequently cannot be the subject of legislation by the popular initiative.

The DeMille case. DeMille v. American Federation of Radio Artists, 31 Cal.2d 137, 187 P.2d 769, 175 A.L.R. 382 (1947), is extremely interesting in that it represents a complete reversal both in law and policy from Osborne v. Amalgamated Society of Railway Servants, 1 Law Re. Ch. Div. 163, 1 British Ruling Cases 56 (1909). In the California case, referred to earlier in this thesis in connection with the congressional hearing at which Mr. DeMille testified,²⁷⁷ Cecil B. DeMille was a member of the American Federation of Radio Artists which had held a meeting to discuss a state referendum entitled "Right to Employment" which, if adopted by the electorate, would outlaw both the closed shop and the union shop. At the union meeting, of which Mr. DeMille was notified but did not attend, a resolution was unanimously agreed upon declaring that the measures if passed would be detrimental to organized labor, and authorized the union's Board of Directors to take any action deemed proper and

²⁷⁷ United States Congress, Senate, 80th Cong., 1st Sess., February 14, 1947, Hearings before the Committee on Labor and Public Welfare, Labor Relations Program, Part 2, pp. 796-797; see this thesis pages 309-311.

necessary to defeat it. Subsequently an assessment of \$1.00 per member was levied to be used in a campaign of public education to bring about the defeat of the proposition. The members were given 30 days to pay the \$1.00 at the end of which time suspension of union membership would become automatic.

DeMille refused to pay the assessment and was suspended. He sought an injunction which was denied. Going from the district court to the district appellate court, he lost again. He appealed, alleging, inter alia, that the union had no authority under its organic law to levy the assessment. The California Supreme Court, noting that opposition to the open shop has been a feature of the history of the labor movement, said that the objects of the union included efforts "to secure proper legislation upon matters affecting their professions" and that this object covered opposition to contemplated legislation which in the opinion of the members of the union would be inimical to their welfare individually or collectively. The Court then asserted that

The articles of agreement, Constitution and by-laws of American Federation of Radio Artists, both National and Local constitute a contract with the members and are binding on the plaintiff...As that contract may prescribe the terms upon which membership in a union may be gained, so may it define the conditions which will entail its loss.

DeMille further contended that the Levy of the assessment and consequent suspension upon his refusal to pay it in-

fringed his constitutional right of suffrage, freedom of speech, press, and assembly because his payment of the assessment would be an expression on his part contrary to his personal beliefs inasmuch as he favored the open shop. But the Court held:

The member and the association are distinct. The union represents the common or group interests of its members as distinguished from their personal or private interest... Dues and assessments paid by members to an association become the property of the association and any severable or individual interest therein ceases upon such payment... As such property they are subject to disbursement and expenditure by the association in pursuit of the lawful objects for which they were designated to be expended...The Local's declaration to pursue the objective and to authorize the raising of a fund for the purpose was expressed by the membership through democratic procedures...Mere disagreement with the majority does not absolve the dissenting minority from compliance with action of the association taken through authorized union methods. And compliance-- here payment by the plaintiff of the assessment--would not stamp his act as a personal endorsement of the declared view of the majority. Majority rule necessarily prevails in all constitutional government including our federal, state, county, and municipal bodies, else payment of a tax levied for a duly authorized and proper objective could be avoided by the mere assertion of beliefs and sentiments opposed to the accomplishment thereof. In a government based on democratic principles the benefit as perceived by the majority prevails. And the individual citizen would raise but a faint cry of invasion of his constitutional rights should he seek to avoid his obligation because of a difference in personal views. A member of a voluntary association should not be permitted successfully a similar avoidance.

Finally, DeMille argued that the action of the union deprived him of his right to work, and that the assessment was a "tax" on his right to work. If the latter is true, the Court observed, so are union dues a "tax." Mr. DeMille voluntarily chose not to pay a lawful union assessment. Automatic suspension was the consequence of his own choice. Thus, there was no invasion of any constitutional right. "He possessed and, it is assumed, still possesses the means of affording his own relief."--payment of \$1.00.

It would be difficult to find two cases so alike on their facts and yet so different in their philosophy as the Osborne and DeMille decisions. Yet the Court in the DeMille case refers to the Osborne judgment as being consistent with its ruling! Although the California court said that there were sufficiently distinguishing facts between the two cases, it seems impossible to discover the variance in the facts in each of the cases which would reconcile their radically different legal results. The DeMille court did not pass upon the constitutionality of Section 304 of the Taft-Hartley Act as this provision does not apply to state elections, and in any event does not prohibit political expenditures in connection with popular referendums whether state or federal. But in the states at least, the judicial reasoning in both the Massachusetts and DeMille cases represents the unanimous legal opinion that any political prohibition such as Section

304 cannot be upheld as consistent with constitutional rights.

Related Legislation and Decisions

Labor union liabilities. In reviewing the related court decisions concerning union rights and limitations in political activities, this writer found a number of cases which help shed legal light upon this problem. Schneider v. Local Union No. 60, 116 La. 270, 114 Am. St. Rep. 549, 40 So. 700, 5 L.R.A. (N.S.) 891, 7 Ann. Cas. 868 (1905), held that a labor union could not expel, fine, threaten, or deprive of their livelihood any union member when the only reason for such action is that such union member accepted an appointment to a political position against the union's wishes or when a member of a public board refused to vote as the union desired. Any union rule so requiring is illegal. No citizen can be coerced into not accepting a public office and no public official can be coerced in the performance of his duty to the community at large.

A similar result was reached in Spayd v. Ringing Rock Lodge No. 665, 270 Pa. 67, 113 A. 70, 14 A.L.R. 1443 (1921), where a by-law of the local union provided for expulsion of any member who used his influence to defeat an action of the governing body. The Court held that a citizen cannot surrender his constitutional rights by agreement with

others and that the by-law was void as infringing upon the constitutional right of petition in so far as it authorized the expulsion of a union member for signing a petition to the legislature to repeal the "Full Crew" law, which law was favored by the Brotherhood of Railway Trainmen.

Labor union rights. On the other side of the coin, neither can an employer coerce his employees. In Vulcan Last Co. v. State, 194 Wis. 636, 217 N.W. 412 (1928), the company desired the city of Crandon to install waterworks in order that the company might have fire protection. The resolution passed the City Council by a vote of 9-1, the one negative vote being cast by an employee of the company. This employee was discharged at a meeting called by the company to explain its interest in the establishment of the waterworks system, and the other employees were told that any man who voted against the interests of the company in the coming election on the question of issuing bonds to construct the waterworks would be discharged. The Vulcan Last Company was convicted under a state law forbidding any employer from influencing an election by threats of discharge or reduction in wages, or promise of higher wages. The law protects "the right of every free man to cast his vote as the dictates of his conscience shall determine untrammelled by influence exerted by his employer."

Likewise, Lockheed Aircraft Corp. v. Superior Court,

28 Cal.2d 481, 153 P.2d 966, 177 P.2d 21, 166 A.L.R. 701 (1945-1946), upheld a California statute forbidding employers from tending to control the political activities or the political affiliations of employees. Hague v. C.I.O., 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939), ruled that municipal ordinances were unconstitutional which forbade the distribution of printed matter or required permits for the holding of public meetings. Thomas v. Collins, 323 U.S. 516, 65 S.Ct. 315, 89 L.Ed. 430 (1944), held that a Texas statute requiring labor organizers to get a license to solicit members was unconstitutional. These last two cases, while deciding in favor of labor's rights in its pro-union propagandizing and in organizing the union, also have a direct bearing on the general rights of unions to engage in political activities.

Communism in union cases. American Communications Assoc. v. Douds, 339 U.S. 382, 70 S.Ct. 674, 94 L.Ed. 925, reh.den. 339 U.S. 990, 70 S.Ct. 1017, 94 L.Ed. 1391 (1950), held that the non-Communist affidavits required under the Taft-Hartley Act were constitutional. This decision was reaffirmed on the same issue in Osman v. Douds, 339 U.S. 846, 70 S.Ct. 901, 94 L.Ed. 1328 (1950). The basis for the law is to remove the obstructions to the free flow of commerce resulting from "political strikes" instigated by Communists who had infiltrated the management or leadership of

labor unions. Congress may protect the public against a party, in this instance the Communist Party, which supports the policies of a foreign power believing in the violent overthrow of government to attain the Communist goal.

National Labor Relations Board v. Highland Park Mfg. Co., 341 U.S. 322, 71 S.Ct. 758, 95 L.Ed. 969 (1951), held that even though the officers of an affiliated union had filed the required non-Communist affidavits, the N.L.R.B. was not authorized to comply with the request of the affiliated union to issue an order requiring the employer to deal with the affiliated union when the officers of the parent union had not filed the affidavits, even though the parent union was regarded in labor circles as a federation rather than a national or international union. The purpose in requiring the non-Communist affidavit is to wholly bar from leadership in the American labor movement, at each and every level, adherents to the Communist Party and believers in the unconstitutional overthrow of our government.

This reasoning applies as well on the state level, as in Weinstock v. Ladisky, 197 Misc. 859, 98 N.Y.S.2d 85 (1950), which held that a union may amend its constitution to expel Communist members. Public policy opposes Communism and the union has the right to protect itself from those who it believes will destroy the union or bring the union into disrepute.

Time off with pay to vote. The latest case of significance for labor union political action is State of Missouri v. Day-Brite Lighting, Inc., 240 S.W.2d 886 (1951), holding 4-3 that a state law requiring employers to allow time off with pay to vote on election day is a valid exercise of police power violating no provision of the state or federal constitutions. The Supreme Court of the United States, in Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421, 72 S.Ct. 405, 96 L.Ed. 469 (1952), with Justice Jackson dissenting, reaffirmed the decision of the state court and found the Missouri statute constitutional. Similar statutes have been upheld in New York and California, and stricken down in Illinois and Kentucky. Such laws are, of course, part of the effort of labor unions to secure the largest possible industrial vote for labor's program.

Chapter Conclusions

To briefly summarize this chapter, following the political prohibition of the 1910 Osborne judgment which prevented labor from lawful independent electoral action, Great Britain experimented with various legislative provisions. Parliament first accepted the 1913 "contracting-out" statute restoring union political rights with exemption privileges for dissenting members. Largely in retaliation for the 1926 general strike, and as a result of the

rapid growth of the Labor Party, the Conservatives enacted the 1927 "contracting-in" law making it illegal for unions to raise a political fund without obtaining written consent from each member whose dues were to be so applied. This was an additional burden designed not just to hamper the political activities of the unions but thereby to put the Labor Party at a financial disadvantage.

However, despite these difficulties, and perhaps even because of the stimulating of resentment against the vindictive 1927 Trade Disputes and Trade Unions Act, labor continued to build its independent political strength. But union support for the Labor Party was certainly not caused by any legislation. Political action is primarily an effect, the result of an underlying economic basis combined with a realization of this need and the possibilities of self-advancement through combined effort. To the unions, politics was merely another aspect of their economic activities, that legislation is a desirable, sometimes necessary, supplement and bulwark of labor's industrial power. To the benefit of the unions and the Labor Party, "contracting-out" was restored in 1946 after the 1945 Labor Party victory. Conservatives returned to office in 1950, without a plurality in the popular vote, and made no moves to again change the "contracting-out" status of the unions.

In the United States, on both the economic and politi-

cal fronts, a tremendous impetus to labor's industrial growth and electoral activities was stimulated by the New Deal. While labor's political interest was nothing new, the 1924 LaFollette campaign for example, prior to 1936 it was not remarkable. Starting with the C.I.O.-P.A.C., however, the unions exerted ever-increasing political influence. Like the major parties, labor was not controlled by the 1940 Hatch Act and found it no great problem to avoid the 1943 Smith-Connally Act. The post-war wave of strikes in 1946 created an adverse public opinion toward unions which helped the Republicans to gain a majority in Congress and in 1947 the Taft-Hartley Act was passed over President Truman's veto. This legislation included Section 304 amending the Federal Corrupt Practices Act to prohibit labor's electoral conduct.

The addition of the word "expenditures" to the law forbidding labor union political "contributions" was intended to prohibit labor union political activities, even the publication of the voting records of candidates. "in connection with" a national election. In the words of Senator Taft, "Labor unions are supposed to keep out of politics to the same extent that corporations are supposed to keep out of politics." But the C.I.O. case unanimously exonerated the union. The Supreme Court majority found the statute not to cover a C.I.O. News political editorial

endorsing a candidate for Congress. Four Supreme Court Justices felt, however, that the statute did cover these facts and, further, that under these facts and on its face as a matter of law, Section 304 was an unconstitutional violation of the First Amendment.

Subsequent cases under Section 304 found that the law did not prevent labor unions from spending general union funds on such political activities as newspaper advertisements and radio broadcasts, voter registration and transportation of voters to the polls, printing and distribution of political literature of all varieties, including pamphlets, cards, matches, photographic posters on porches, and political advertisements on vehicles of public transportation. It is apparent that the courts have simply either refused to enforce Section 304 or regard its practical application as unconstitutional.

State cases uphold this view. While prohibitions on "contributions" have been sustained, similar restrictions on "expenditures" have been stricken down as inconsistent with the constitutional rights of free speech, press, and assembly. Especially strong on this point are the Massachusetts and DeMille cases. Other court decisions reveal that neither the union nor the employer may use direct or indirect coercion to influence a citizen in the exercise of his free ballot or in his functions as a public official. How-

ever, as a matter of public policy, Congress has the constitutional power to bar members of the Communist Party from union leadership. Likewise, in the absence of legislation, the union may act on its own initiative to expel Communists from union membership.

EVALUATIVE CONCLUSIONS AND RECOMMENDATIONS

Like any other group which engages directly or indirectly in electoral campaigns, in both Great Britain and in the United States labor unions must, of course, comply with general legislation and judicial decisions controlling or affecting all political activities. These include publicity requirements and publicity pamphlets, expenditure limitations as to amounts and purposes, the restrictions on contributions, protections for public employees, various illegal practices, and other miscellaneous provisions governing elections, particularly relating to the conduct of candidates, parties, committees, and their agents. While not aimed specifically at organized labor, these laws equally apply to the political activities of the unions and their members. In our second chapter review discussing the significant history, provisions, and problems of these measures, we saw that the over-all corrupt practices regulatory programs have been fairly effective, but that the limitations, restrictions, and prohibitions in regard to campaign finance, contributions and expenditures, such as the 1940 Hatch Act, have largely failed because of legal inadequacies, practical avoidances, and lack of enforcement.

Specifically concerning organized labor, until the middle of the nineteenth century the English common law conspiracy doctrines had declared labor unions to be unlaw-

ful. Once having overcome this barrier, unions grew rapidly, increased in economic strength, and soon turned their attention to politics. The rise of the Labor Party as the political arm of the unions led to efforts to limit these activities. Minority union members brought suits to prevent political assessments being levied on them and on other union members. The Osborne case held that political action is not a legitimate interest of the union movement. This decision was reversed by the British Parliament in 1913 with a policy permitting labor union political action and political assessments on those union members who did not "contract-out" of the assessment. The Labor Party's strength increased rapidly until it came to challenge the traditional Liberal and Conservative parties.

The General Strike of 1926 gave the Conservatives their opportunity to enact the Trade Disputes and Trade Unions Act of 1927, the general provisions of which were very similar to the 1947 Taft-Hartley Act in the United States. In regard to political assessments, the 1927 Act required "contracting-in." Protection of the minority was the principal reason given in the debates for the new limitation. Opponents of the restriction argued that political action was a necessity for labor unions and that it should not be made more difficult by such a procedure. Although the immediate effect of the 1927 Act in Britain

was to cut the money available to the Labor Party, the long-range effect was to build up general pro-Labor Party sentiment and to promote individual membership apart from the union movement itself.

The Labor Party won a clear-cut majority over both its opponents in 1945 and in 1946 changed the law back to the 1913 "contracting-out" statute. In 1948 the Labor Party's funds were doubled over 1944, both non-election years. Thus, while there seems to be a causal connection between the legal system permitted and the money available for labor's political activities, so long as there is an opportunity for democratic elections it appears that labor will find ways and means of making its voice heard. The Labor Party lost the last election in Great Britain after a period of socialization only because of a concentration of Labor Party support in industrial areas; the total vote throughout the nation gave a popular plurality to the Labor Party.

In the United States, the courts at first followed the English conspiracy doctrines until 1842 when a shift began to the use of injunctions rather than holding the unions illegal as such. Early American labor parties did not continue, but agitation against the injunction led eventually to the Norris-LaGuardia Act of 1932 and similar state legislation. Although there had been some labor

union political activity previously, the New Deal Era gave a new impetus to labor's political action and laws favorable to the union movement. The National Industrial Recovery Act and then the Wagner Act guaranteed labor's rights. The American Federation of Labor's "non-partisan" policy was changing, and the rise of the Congress of Industrial Organizations gave further accent to labor's political action.

As a consequence, efforts were made to limit these union activities. The 1943 Smith-Connally Act prohibited labor union "contributions" to federal election campaigns. This did not stop labor's political action. Instead, the unions formed independent political committees, such as the C.I.O.-P.A.C., and campaigned successfully for the re-election of President Franklin D. Roosevelt. An investigation by Congress confirmed the fact that the 1944 political expenditures did not violate the 1943 law against political contributions. In fact, the investigators concluded that full and free discussion of political issues should be encouraged, that labor unions, unlike corporations, were not legal persons but were an aggregation of individuals like a church, fraternal organization, or social group, and that the answer was not prohibition but publicizing of political expenditures. Therefore, the unions continued their political activities in the interests of securing representation and legislation favorable to labor and the community.

Following the war, 1946 was the biggest strike year in American history to that time. The Republican congressional victory in 1946 was attributed at least in part to the public reaction against unionism. Not only were the economic sections of the 1947 Taft-Hartley Act severely, if not vindictively, restrictive against labor, but through a continuation and expansion of the expiring Smith-Connally Act provision forbidding direct political contributions, attempted to prohibit labor's political activities. Under Section 304 the law was applied to the use of union funds in federal primaries as well as elections and added to the contributions prohibition a ban on political expenditures. Passed by Congress over President Truman's veto, the Taft-Hartley Act became the major issue of the 1948 campaign. Even though strong evidence exists to indicate that the veto was not supported by its maker, the unions endorsed the Democrats on their pledge to repeal the Taft-Hartley Act. Truman's election, however, did not bring repeal because of a Republican-southern Democratic coalition and in 1952 the Eisenhower victory swept away any likely prospects of an early legislative change in the Taft-Hartley Act.

In test cases brought to the courts by the unions, however, judicial changes in Section 304 negated the legislative intent and rendered the law ineffectual to reach the political activities of the unions. Although the cong-

ressional debate clearly indicated a definite policy against the expenditure of union funds for any political purpose whatsoever, including political comment in labor union newspapers or radio broadcasts sponsored out of general union funds, such a prohibition would be in violation of the First Amendment rights of free speech, press, and assembly. But the courts in a series of decisions have refused to find the law uncomstitutional. Instead, the judiciary has chosen by interpretation to leave Section 304 non-enforceable. It appears, therefore, that insofar as Section 304 is concerned, labor unions will remain active in politics. No doubt of this exists in the states where the courts have consistently striken down attempted prohibitions on the political expenditures of labor unions as unconstitutional.

Aside from the right of labor unions to engage in political action which is guaranteed under our Constitution to any association of citizens which seeks change by peaceful, democratic methods, there is the question in the minds of many persons as to the desireability of labor unions including political programs along with their economic aims. We sometimes hear it debated as to whether labor unions should " go into politics." However, as a practical matter, it is rather pointless to debate whether unions should be politically active. The fact is that if they really have no choice in the matter, then there are at least three compell-

ing reasons why unions are almost automatically in politics.

First, unions exist in a legal and political system which generally has been critical of union activities. From earliest times, the conspiracy suit and the "injunction judge" have been a serious problem for unions. In order that unions may be able to engage in collective bargaining on more even terms, a minimum of political activity is essential. Second, certain union objectives which conceivably could be attained through collective bargaining can be achieved more quickly or more satisfactorily through legislation (which is of a permanent nature not subject to the give and take of the yearly union-management negotiations) as, for illustration, minimum wage and maximum hour laws, safety regulations, and the elimination of child labor. Third, some things can be obtained through legislation which cannot be obtained at all through collective bargaining. Unemployment compensation and other forms of social insurance, adequate housing and medical care, good public education, effective anti-depression measures--these and many other things cannot be negotiated separately with each employer, but must be established as matters of public policy and applied uniformly throughout the community, state, or nation.

Of many justifications for laws restricting labor union contributions or expenditures for political purposes, perhaps the most consistently urged is that minority members

of the union are coerced into financial support of political objectives with which they are not in sympathy, that a union which spends money for the election of a candidate is violating the rights of those individual union members who do not agree with the majority view. It is argued that the minority is being taxed through dues payments to further purposes of which they disapprove and that legislation such as Section 304 is needed to protect union members holding political opinions contrary to those of the union majority which votes the use of funds contributed by all union members to promote public acceptance of views opposed by some union members. The answer to this is that it is perfectly proper for the union to act in what it regards as the legitimate interest of the majority of its members even though a minority may object to such action. See the DeMille case at pages 356-360 of this paper.

Where union elections and political expenditures are given democratic guarantees, the union member is protected. The minority always has the opportunity of converting more people to its point of view and of becoming the majority at some later time. If labor unions exist which are so controlled as to abuse their economic and political power, legislation could secure guarantees which would protect the democratic process within the union and which would require majority consent for political expenditures. If it is felt

that the absolute majority rule principle should not be applied to labor union political expenditures (as it does with the union shop provision requiring a worker to join the union after a 30-day period) then the dissenting minority could be protected, not by the blanket prohibitions of Section 304 which has proven to be a failure, but by either a "contracting-in" system which would require individual approval of the political expenditure, or by a "contracting-out" system which would require individual disapproval. If American legislators are to be guided by the British experience, it seems that this latter alternative would be the fairest and more practical solution.

Further support for measures to prohibit labor union political activity is often grounded in the proposition that the law prohibiting business corporations from making political expenditures, or contributions to political parties or candidates, in connection with a federal election should be applied equally to labor unions. It is said that the purity of elections and of official conduct should be preserved against the influence of unions as well as corporations. But so long as there are individual stockholders who are able to make political contributions as large as most unions can afford to make, comparing union contributions to corporation contributions is not a sound analogy. This is even more obvious in the case of expenditures when

we consider the essential differences in kind between a labor union and a business corporation.¹ (See Remarks of Senator Pepper in Appendix)

If the aim of such prohibitions on union political expenditures or contributions is to equalize political influence, then it could be argued logically that no individual's political contribution could exceed the amount which an average worker could afford to contribute.² Or, inasmuch as the present ban on corporation contributions has not solved the problem of corporate wealth in election campaigns (although it has obscured its influence), a much more convincing case for equality could be made for repealing the ban on corporations rather than for extending the ban to labor unions. If both corporations and labor unions were permitted to engage in political activity openly, legislation enforcing adequate publicity would give the voting public a list of contributions and expenditures constituting a very revealing picture of who really pays the political bills.³ Labor unions would have nothing to lose

1 Another fundamental difference arises out of the fact that whereas a labor union must have machinery for ascertaining the will of the majority on many controversial problems, the business corporation usually lacks the machinery for determining varied questions of policy by democratic methods. See Louise Overacker, Presidential Campaign Funds, p. 69. It should also be noted that votes in a corporation are per stockholder investment while in a labor union votes are per individual member.

2 Florence Peterson, Survey of Labor Economics, p. 647.

3 Louise Overacker, Presidential Campaign Funds, p. 69.

and much to gain from full political publicity of this kind, for the record will show that the people on Labor's side are paying their political bills with dimes and dollars.⁴

On the other hand, we would have more revelations such as were reported by Thomas L. Stokes in the Boston Daily Globe of Saturday, July 3, 1954. In his Washington column on page ten, Mr. Stokes tells of the Senate vote "to continue the tax bonanza for the oil industry embodied in the 27½ percent depletion allowance" which "is written off before they begin to figure their taxes." Because of this law, many such taxpayers are paying little or nothing in taxes and are consequently not bearing their share of the burdens of government. This tax exemption, Stokes reveals, has permitted a legal raiding of the people's treasury, and according to Senator Paul Douglas, Democrat of Illinois, its significance is that it is largely responsible for the creation of "the Texas oil multi-millionaires" and to this extent gives them excess funds for political activity.

Stokes quotes Douglas as claiming that these Texas oil millionaires "now are attempting to dominate the politics of the United States" and that "they constitute one of the largest sources of political financing and political propaganda at the present time." Douglas told the Senate that Maine Republican Senator Margaret Chase Smith, recently

⁴ Loc.cit.

renominated, had put a note on his desk "authorizing me to say that the Texas oil men went into the Maine primary and tried to defeat her." Commenting on the failure of the Senate to take a roll call vote on the oil depletion exemption, said Thomas L. Stokes: "No wonder so many Senators wanted to duck a record vote. Oil has cowed them." With adequate publicity of facts of this kind, it is difficult to believe that the average voting citizen would elect candidates known to be supported by such sources.

Another argument favoring the validity of legislation prohibiting labor union political expenditures emphasises the dangers from the influence of money in elections. It is said that democracy is subverted when powerful groups are permitted to exert a political influence out of proportion to their numbers, and that such provisions as Section 304 reduce the alleged undue and disproportionate influence of labor unions upon elections. However, even if Congress could restrict free speech, free press, and free assembly to strike at such an evil, not only has there been a failure to demonstrate any real danger to our democratic form of government in labor's political expenditures but, on the contrary, labor is enlarging democratic methods by promoting interest in the electoral process. Surely labor unions have as much right to be in politics as Texas oil millionaires.

In its flat ban on political contributions and

expenditures by unions, Section 304 fails to distinguish between abuse of power and the proper exercise of fundamental rights. If there are abuses in labor's political activities, it would seem more appropriate for Congress to take steps which meet the specific evils. If, for example, it is feared that labor's political spending leads to corruption, then a federal statute could be enacted directly affecting such practices. Further, it has been suggested by congressional committees and recommended by others that requirements for adequate publicity of campaign contributions and expenditures would be of greater value than prohibitions. Not until such specific measures are found inadequate should there be any broader, more restrictive, legislation by Congress.⁵

In answer to the constitutional objection to prohibitions on union political activity, that it is in violation of the First Amendment guarantees, freedom of speech, etc., supporters of the Taft-Hartley Act argue that the statute prohibits expenditures of money only, and does not place any restrictions on the right of free speech itself. This contention ignores the fact that even in the eighteenth century, the exercise of free speech often involved the expenditure of funds, as in political pamphleteering, and it is hardly to be

⁵ Ibid, pp. 64-68; "Regulation of Labor's Political Contributions and Expenditures: The British and American Experience," comment, 19 University of Chicago Law Review 371, p. 388; "Section 304, Taft-Hartley Act: Validity of Restrictions on Union Political Activity," 57 Yale Law Journal 806, pp. 824-827.

supposed that the drafters of the Bill of Rights would have agreed to a ban on political expenditures which would have put a restriction on such pamphleteering.

Moreover, civil and political rights have become more complex since our early days. No longer is the right to speak encompassed by freedom to mount a cracker-barrel. Instead, many traditional concepts of the right of free speech are made anachronistic by modern techniques for reaching millions of people through such mass communication media as newspapers, radio, motion pictures, and television. Today the essence of free speech is free access to these channels of communication and this access is impossible without large expenditures of money. Therefore, in order to be free to speak effectively, the right to spend would seem to be deserving of the First Amendment protection, which is not restricted to individuals but also protects the rights of groups of individuals such as labor unions.⁶

In a democracy, if rational decisions are to be made, the electorate must have access to factual information and conflicting opinions from all groups. In addition to population increases, the advent and development of new techniques, channels, and areas of communication have caused a steep rise in political costs needed to provide the basic services of a successful election campaign. Large scale

⁶ "Section 304, Taft-Hartley Act: Validity of Restrictions on Union Political Activity," op.cit., pp. 815-816.

printing, direct mail distribution, newspaper advertisements, bill boards, auditorium space, radio broadcasting time, motion pictures, and television--all have added to the expense of publicizing divergent viewpoints on political issues. To the extent that political expenditures are curtailed, the education of the public will suffer.

The political activities of organized labor have given the individual wage earner an opportunity to participate in making the decisions that vitally affect him in his work and community life. More and more the unions have come to regard political activity as a necessary method of complementing economic action. The right of political action gives unions a powerful incentive to make gains through favorable labor legislation rather than through the techniques of economic strife and industrial warfare. Just as the individual worker in combination with others can gain a certain equality of economic power with management which it is impossible for him to do singly, so also in the contention of powerful pressure groups for legislative recognition, the combined association of workers in political action is necessary if the union member as an individual is to make his voice heard in the electoral and legislative process. Therefore, any curtailing of union political expenditures prevents by just that amount the worker from utilizing the channels of communication through which public opinion is formed and by

just that amount makes government less responsive to the needs of the wage earner.

The prohibition on labor's political expenditures, then, does not seem justifiable as sound policy in a democracy, and the decision in United States v. Congress of Industrial Organizations, and subsequent cases, give warning that Section 304 of the Taft-Hartley Act probably falls within the ban of the First Amendment. The loopholes in the section "read into it by judicial legislation, have resulted in a substantial collapse of the prohibitive scheme...Prohibition more stringent than that left by the decisions would be of doubtful constitutionality."⁷ In the absence of the advocacy of force or violence, Congress may not forbid freedom of expression through free association. Aside from the problem of constitutionality, however, this issue will probably be fought out largely according to one's degree of sympathy with labor's political objectives. On the whole, as a purely practical matter, those who oppose labor's objectives tend to favor restrictions, whereas those who support labor's objectives oppose any such legislation.

Several developments seem reasonably certain. Labor will have increasing influence on the selection of candidates and on the framing of party policies. This is already happening in Massachusetts where leaders in both the A.F.L. and

⁷ "Regulation of Labor's Political Contributions and Expenditures: The British and American Experience," op.cit., p. 384.

C.I.O. were official delegates to the 1952 Democratic Convention. The 1954 Democratic state platform was partially written by labor representatives, and calls for the complete repeal of the Taft-Hartley Act. Within the labor movement there will be increasing emphasis on political activity as compared with collective bargaining. Especially will this be true as prosperity slides off its present peak. There will also be a greater effort on the part of labor unions to state their objectives in terms of broad concepts of public interest, and on this basis to appeal for the political support of the middle class professional people, white-collar workers, and the farmers. C.I.O. leaders in particular are concentrating their efforts on trying to demonstrate that in furthering the interests of the workers they are at the same time furthering the interests of the great majority of the community.

One of the difficulties facing American labor not confronted in Britain has been the division between the unions. It has been pointed out that "...the persisting cleavage between the A.F. of L. and the C.I.O. continues to produce internecine warfare and to dissipate labor's political influence. Until the breach between the two wings of the labor movement is healed, the full political strength of the labor movement will still remain to be realized."⁸ Yet even as I am writing

⁸ Merle Fainsod and Lincoln Gordon, Government and the American Economy, p. 39.

these words, announcement is being made of plans agreed upon for a merger of the two great labor organizations. This combination will include the unification of the C.I.O.-P.A.C. and the A.F.L.-L.L.P.E. for concentrated political action. Eventually, independent union groups such as the coal miners and the railway brotherhoods may become members of this labor merger. In any event, there will be a deeper intensification and a broader extension of labor's political influence in both the electoral and legislative process.

Whether labor's political activities will lead to the formation of a third party in this country, as the Labor Party in Great Britain rose to challenge the Liberal and Conservative parties, is a question for study and speculation not within the subject of this thesis. It seems to be the general view of most observers, however, that there are sufficient differences peculiar to the two countries to make such a development unlikely in the United States. Barring unforeseen events, it is more probable that the labor unions will come to be the dominant influence in the Democratic Party. Actually, without the impetus offered by a united labor movement, that trend has already been taking place very visibly. Control of the Democratic Party would save labor the effort of building its own party. It should be remembered that any third party runs into a large hard core of traditional partisanship, including the union members.

To summarize the points covered in this thesis directly affecting organized labor, it can be said that the increased economic and political power of labor unions, both in Great Britain and the United States, led to efforts to curb this power. The policy considerations were much the same in both countries and, although different solutions were experimented with, prohibitive legislation has been a failure. In Britain, labor emerged stronger than before, organized its own political party, and now attracts more than half of the popular vote. In our own country, Section 304 has proven ineffective. Our experience with the Hatch, Smith-Connally, and Taft-Hartley Acts demonstrates conclusively that present limitations do not limit and present prohibitions do not prohibit. Aside from the legal question, it can be argued that American democracy demands freedom of discussion and active participation by all groups in the electoral and legislative process.

Issues of the desirability of political action should be resolved within the union membership itself rather than by legislation. The issue which appears to be raised when a labor union uses its funds for political purposes is no more unique than the issue which appears to be raised when a farm group, or a business group, or a veterans organization uses its funds for similar purposes.⁹ We cannot logically ban

9 Louise Overacker, Presidential Campaign Funds, p. 69.

one unless we are ready to ban all.¹⁰ Labor's right of political participation, however, may be reasonably regulated to eliminate actual abuses. Thus, where the worker is obliged to belong to a union, it is justifiable policy to protect the dissenting union member through "contracting-out." We should see that democratic procedures within unions are guaranteed, that labor union political activity is the result of a democratic decision, that an authorized vote has been taken, and that the union makes an accounting to both its membership and to the public.

As a substitute to prohibitive legislation such as Section 304 of the Taft-Hartley Act, the alternative of the effectiveness of widespread publicity as to the amounts and sources of all campaign contributions and expenditures should be the guiding principle of any regulatory program. Also, legislators should abandon futile attempts to distinguish between "political" expenditures and so-called "educational" expenditures, and require the publicity laws to apply to all "opinion-moulders."¹¹ Further, we must not overlook the

¹⁰ Loc.cit. Standing alone, this view of Dr. Overacker is correct. But I would offer certain reservations, considering her query at page 60 in Presidential Campaign Funds, whether corporations have the same right as labor unions to make direct political expenditures. It should be borne in mind by the reader that there is a difference in kind between a corporation and a labor union. Legally, it should not be supposed that business enterprises operated for a profit are entitled to the same political rights as groups of citizens organized for mutual benefit.

¹¹ Overacker, Presidential Campaign Funds, p. 9.

other measures suggested in the body of this thesis, including governmental sharing of the cost of campaigning through official election bulletins printed and mailed as a public service to all registered voters. Aside from campaign finance, it is to be assumed of course that the proper over-all conduct of elections will be fully provided for in corrupt practices statutes with sufficient penalties for any violations.

With these practical and legal supplements, publicity should be found inadequate to prevent alleged abuses before any further attempts are made at restrictive laws. We must recognize that labor union political action is an important necessity if we are to have full democratic political participation in the processes of government. Finally, it is important, and also good common sense, for organized labor to realize that rights and duties are concomitant, that responsibility must accompany power, that the unions should take the initiative in drafting comprehensive legislation providing for the protection of the minority union member, guaranteeing democratic procedures within the union, and requiring campaign fund publicity.¹² This sort of union statesmanship would be frank recognition of their responsibilities to their membership and to the public. It would be

¹² Real publicity would include compulsory pre-primary and pre-election newspaper publication of all income and disbursement statements of all political accounts filed by the candidates, parties, and committees.

convincing evidence that organized labor is ready to assume
its new responsibilities that inevitably flow from its poli-
tical activities.¹³

¹³ Overacker, Presidential Campaign Funds, pp. 70-71.

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APPENDIX

Senate Debate On Section 304 Of The Taft-Hartley Act
(93 Cong, Rec. 6436-6448, 6522-6524; June 5-6, 1947)

Application of Section 304

Mr. TAFT. Mr. President, the conference report on the labor bill is on the desks of all the Senators. The only major additions to the bill, as I see them, deal with matters which the Senate has approved in other measures. I refer particularly to the section having to do with the Corrupt Practices Act, which limits contributions by labor organizations for political purposes.

As to the prohibition of political contributions by labor unions, it should be remembered that after the expiration of the Smith-Connally Act, on June 30, the current prohibition of political contributions by labor unions will cease to be a part of the Federal law unless new legislation is enacted. The Senate passed the Smith-Connally Act and approved it, with that provision in it, by a 2-to-1 vote.

Mr. PEPPER. Has the Senator concluded his discussion on the conference report relating to the prohibition of political activities?

Mr. TAFT. Yes.

Union Newspapers

Mr. PEPPER. I have noted that the Senator did not refer to the action which I understand the conference committee took prohibiting expenditures by labor organizations and, of course, expenditures by corporations, for political purposes. The way the provision now reads, as related to labor organizations, as I see on page 67 of the report, it is unlawful for any labor organization to make expenditures and contributions in connection with primary elections and political conventions. Under the conference agreements expenditures and contributions in connection

with primary elections, political conventions, and caucuses are made unlawful to the same extent as those made in connection with the elections themselves.

I wish to ask the Senator, if I may, this question: Would the newspaper called Labor, which is published by the Railway Labor Executives, be permitted to put out a special edition of the paper, for example, in support of President Truman, if he should be the Democratic candidate for the Presidency next year, and in opposition to the Senator from Ohio, if he should be the Republican nominee for the Presidency, stating that President Truman was a friend of labor and that the Senator from Ohio was not friendly to labor? Would that be called a political expenditure on the part of the labor organization?

Mr. TAFT. If it were supported by union funds contributed by union members as union dues it would be a violation of the law, yes. If the paper called Labor is operated independently, if it derives its money from its subscribers, then of course there would be no violation. The prohibition is against a labor organization using its funds either as a contribution to a political campaign or as a direct expenditure of funds on its own behalf.

Mr. PEPPER. Has the committee given consideration to whether or not that kind of a prohibition would be a denial of the freedom of the press to a newspaper which might happen to be owned by a labor organization?

Mr. TAFT. It is not a denial of the freedom of the press. We have long prohibited corporations from contributing money to political campaigns. The conference report simply writes into the corporation provision a similar provision affecting labor organizations.

Mr. PEPPER. Does the Senator from Ohio mean to tell the Senate that a corporation owning a newspaper cannot have a free editorial policy to oppose candidates and to oppose political parties according to its own judgment.

Mr. TAFT. Not if it used its corporate funds for that purpose.

Mr. PEPPER. Does the Senator know how a newspaper published by a corporation can get any money to provide editorials for the paper if it does not get it from the corporate treasury?

Mr. TAFT. They get their money from advertising. They are business concerns operating newspapers. So far as I know no one has ever thought that a corporation could publish a pamphlet for one candidate as against another without violating the Corrupt Practices Act.

Mr. PEPPER. I wonder if the Senator, upon reflection, really means that the newspapers of this country which are owned by corporations cannot publish an extra paper if they want to oppose some candidate or cannot put out a whole special edition giving their view about a political party or a political candidate. That is one of the civil rights in this country. Does not the Senator know that it would be unconstitutional to try to deprive a corporation owning a newspaper of the right of freedom of the press? If that be the correct premise --and I think it cannot be denied that it is--is not the Senator denying to the labor organization which may happen to own a newspaper the right to the same freedom of the press to support or oppose candidates and political parties which other newspapers enjoy? Yet the Senator from Ohio says that the newspaper Labor, published by the 21 railway labor executives, would not be permitted to publish a statement saying it supported President Truman and opposed Candidate Taft, or vice versa. I say that would be a deprivation of the freedom of the press.

Mr. TAFT. No; I said that union funds could not be used for that purpose. They could conduct a newspaper if they wanted to, just as a corporation can conduct a newspaper. But why should a labor organization be able to publish pamphlets or special newspapers against one candidate or in favor of another candidate, using funds which that organization collected from the union members?

That is what happened in the State of Ohio. The PAC is a separate organization which raises its own funds for political purposes, and does so perfectly properly. The Smith-Connally Act prohibited the making of contributions by unions to the PAC, yet those unions took the position that they could use their funds for the publication of pamphlets for or against candidates throughout that election, and they evaded the entire law by saying that was not a contribution--not even an indirect contribution--to the candidate who received the benefit of that procedure. That is what this provision of the House bill is intended to reach, if it be agreed to.

Mr. PEPPER. Mr. President, I call the attention of the Senator from Ohio to the following practice of the

railway labor executives in the past: If a certain candidate was unfriendly to the interests of labor, they would publish a special edition of their paper and would put that special edition into circulation in the area where that candidate was running for office, and would place it in the hands of labor-union members and also in the hands of the public generally.

Mr. TAFT. That is exactly what they should not be allowed to do.

Mr. PEPPER. Very well; I want it definitely understood that the Senator from Ohio intends to outlaw that privilege on the part of labor. Now that I have made that clear---

Mr. TAFT. It is perfectly clear. It is perfectly clear that union funds are not to be used to interfere in political campaigns and with political candidates, either in favor of one candidate or against another.

Mr. BARKLEY. Suppose the particular publication referred to by the Senator from Florida is published and paid for by subscriptions paid to the publication by the membership of that railway labor organization?

Mr. TAFT. That will be perfectly lawful. That is the way it should be done.

Mr. BARKLEY. And suppose it is not paid for by union funds collected from the various labor unions?

Mr. TAFT. That will be perfectly proper.

Mr. BARKLEY. The Senator from Ohio referred to the law prohibiting the making of direct or indirect contributions by corporations as a justification for making the same provision in the case of labor unions. Let us consider the publication of a corporation which, day after day, takes a position against one candidate and in favor of another candidate, and does so in its editorials. The editorials occupy space in that newspaper or publication, and the space costs a certain amount of money. Is that a direct or an indirect contribution to a campaign; and if it is neither, what is it?

Mr. TAFT. I do not think it is either a direct or an indirect contribution. I do not think it is an

expenditure of the sort prohibited, because it seems to me it is simply the ordinary operation of the particular corporation's business.

Mr. BARKLEY. None of us have ever assumed that the Corrupt Practices Act prevented a newspaper from writing editorials for or against any candidate.

Mr. TAFT. That is correct.

Mr. BARKLEY. Yet the Senator from Ohio is saying that the law is applicable to corporations, and is saying that that is a basis for doing the same thing with respect to labor organizations which may publish newspapers.

Mr. TAFT. In my opinion, the word "contribution" covers the direct expenditure of money for the same purpose. But in order to make that matter perfectly clear, the House inserted the word "expenditure" in this measure.

Mr. BALL. I know of one newspaper in my section of the country which makes a practice of printing hundreds of thousands of special reprints and sending them into various states, to influence the elections. I think that is prohibited, just as the practice of the labor paper to which the Senator from Florida has referred--the sending of a special edition of 200,000 or more copies into a State--would also be prohibited.

Mr. TAFT. I would say the word "expenditure" does not mean the sale of newspapers for their worth. If they are sold to subscribers and if the newspaper is supported by subscriptions, then I would not say that constituted such an expenditure. But if the newspapers were given away--even an ordinary newspaper--I think that would violate the Corrupt Practices Act. That act would be violated, it seems to me, if such a newspaper were given away as a political document in favor of a certain candidate. I think that would have been so under the present law, and I think we make it more clearly so, perhaps, by this measure.

Mr. BARKLEY. Mr. President, let me ask the Senator this question: Let us suppose a labor organization publishes a newspaper for the information and benefit of its members, and let us suppose that it is published regularly, whether daily or weekly or monthly, and is paid for from a fund created by the payment of dues into the organization it represents. Let us assume that the

newspaper is not sold on the streets, and let us assume further that a certain subscription by the month or by the year is not charged for the newspaper. Does the Senator from Ohio advise us that under this measure such a newspaper could not take an editorial position with respect to any candidate for public office, without violating this measure?

Mr. TAFT. If it is supported by union funds, I do not think it could.

Mr. BARKLEY. So if there is a labor organization which is publishing a newspaper--not as a political newspaper, but for the benefit of its members--and if the expenses of that publication and distribution are paid from the funds raised by means of the payment of dues, and if all members of the union understand that a certain portion of their dues goes to the publication of that newspaper, then in order for that newspaper to take any position with respect to any candidate, it would have to charge a subscription by the month or by the year in order that it might express its views in that respect; is that so?

Mr. TAFT. I am inclined to think so.

Mr. BALL. In the case of most union papers, as I understand, the subscriptions from the union members are collected along with the dues, but they are an earmarked portion of the dues which the union collects and remits to the paper in the form of subscription. I take it that would be in a different category from the case where the union make a blanket subscription and an appropriation out of union dues.

Mr. TAFT. I think if the paper is, so to speak, a going concern, it can take whatever position it wants to.

Mr. PEPPER. Suppose there were a case where a number of corporations associated themselves together into an organization we will call the National Manufacturers Association, and suppose the funds of that organization are altogether contributed by corporate memberships. Is that organization under this section, forbidden to publish any pamphlet, or send any telegrams, or make any telephone calls, or incur any expenditures, in respect to any political election or any party, or any candidate, or any caucus, or any convention?

Mr. TAFT. I think it would be. It would be a

general conspiracy, I think, and would be a clear violation by all the corporations which contributed the money. Such an association could receive money by direct contributions from individual members, just as the CIO-PAC can properly operate as a political organization, raising its funds from individual members. In the same way the National Manufacturers Association could do the same thing. But no corporation could contribute to the National Manufacturers Association and no labor union could contribute to the PAC.

Mr. PEPPER. The Senator is using the word "contribute". My reason for emphasizing this matter is that the conference committee has added two very important and I think very significant words. The old law, the Smith-Connally law, which has been reenacted, prohibited only contributions, but the proposed law prohibits a contribution "or expenditure" without any definition of "expenditure". That means a dollar, or 50 cents, or \$500 or \$1000.

Suppose a labor union felt that a candidate for office was unfair to labor, and that labor union wished to put out a pamphlet to advise its members about the labor record of the candidate. I ask the Senator from Ohio whether that would be forbidden as an expenditure by a labor organization in respect to a candidate or an election, under the proposed act?

Mr. TAFT. Yes, I think it would be.

Mr. PEPPER. So a workingman's organization would be deprived of the power even of advising its membership of the antilabor record of a man who might be a candidate for public office?

Mr. TAFT. Correct. What would the law mean if a corporation or a labor organization were prohibited from contributing to candidate X, but in spite of that, could issue its own papers, could print its own pamphlets, and issue them in behalf of candidate X?

Mr. PEPPER. The Senator is overlooking the distinction that exists in every corrupt practice act that I know anything about. When in our several states we run for the office of Senator we are limited in the amount of contributions we personally make, or are responsible for, but if I have a friend in the southern part of the State who wants to put out some pamphlets for me, and distribute them over the community, he has a perfect right to do so.

Mr. TAFT. If the Senator had had a friend who was a corporation and had done that, the corporation officials would have been in jail long ago.

Mr. PEPPER. Yes; but if one of the corporations owns a newspaper, directly or indirectly, that is just what they are doing all the time.

Mr. TAFT. They have been able to sell legitimate newspapers and distribute them without question. They do not distribute corporation funds for that purpose.

Mr. BARKLEY. But suppose the National Association of Manufacturers, out of the funds contributed to it, bought a page in a newspaper, and advertised for or against some candidate indirectly; and when I say "indirectly" I mean use the space in order to advocate certain things advocated by some candidates or opposed by other candidates, without mentioning the names of the candidates. I recall that last summer there were widespread advertisements in the newspapers of the United States, consisting of whole pages. I do not know to what extent they affected anyone's vote, but they definitely had an indirect effect, and I have no doubt that they cost hundreds of thousands of dollars. Was that a violation of the law.

Mr. TAFT. The question there would be whether or not it was in connection with a Federal election.

Mr. BARKLEY. Those advertisements were very skillfully drawn, and they had no specific reference to anyone's candidacy.

Mr. TAFT. The question would be whether it was in connection with such an election.

Mr. MAGNUSON. The International Brotherhood of Teamsters have a newspaper, which they have published for many years. It has a circulation of probably 200,000. It is distributed to members. On the newsstand, no price appears on it. No advertisements are accepted. Under this regulation, would they be prohibited in the future from mentioning in their editorial columns, for their regular circulation, without adding anything additional, the support of a certain candidate or a certain political party?

Mr. TAFT. We discussed that. If the union simply takes the union funds and publishes a newspaper and uses it

as a political organ in an effort to elect or to defeat one man that is prohibited.

Mr. MAGNUSON. Teamsters' unions publish newspapers dealing with matters in which such unions are interested. The same is true of other unions. If the pending measure becomes a law, from now on such unions will be prohibited from advocating in their newspapers the support of any political candidates.

Mr. TAFT. That is correct, unless they sell the papers they publish to their members, if the members decide to buy them.

Union radio broadcasts

Mr. PEPPER. Does what the Senator has said in the past also apply to a radio speech? If a national labor union, for example, should believe that it was in the public interest to elect the Democratic Party instead of the Republican Party, or vice versa, would it be forbidden by this proposed act to pay for any radio time, for anybody to make a speech that would express to the people the point of view of that organization?

Mr. TAFT. If it contributed its own funds to get somebody to make the speech, I would say they would violate the law.

Mr. PEPPER. If they paid for the radio time?

Mr. TAFT. If they are simply giving the time, I would say not; I would say that is in the course of their regular business.

Mr. PEPPER. What I mean is this: I was not assuming that the radio station was owned by the labor organization. Suppose that in the 1948 campaign, Mr. William Green, as President of the American Federation of Labor, should believe it to be in the interest of his membership to go on the radio and support one party or the other in the national election, and should use American Federation of Labor funds to pay for the radio time. Would that be an expenditure which is forbidden to a labor organization under the statute?

Mr. TAFT. Yes.

Mr. MAGNUSON. Let us consider the teamsters. Suppose they have a weekly radio program, as, indeed, they have had for a long time back. Or let us say the AFL has such a radio program. Let us assume I am running for office and they ask me to be a guest on their program. Suppose I talk on the subject of labor and do not advocate my own candidacy. Nevertheless I am on that program. My name is being advertised and I am being heard by many thousands of people. Would that be an unlawful contribution to my candidacy?

Mr. TAFT. If a labor organization is using the funds provided by its membership through payment of union dues to put speakers on the radio for Mr. X against Mr. Y that should be a violation of the law.

Mr. MAGNUSON. They are not paying me anything. They have asked me to be a guest.

Mr. TAFT. I understand, but they are paying for the time on the air. Of course, in each case there is a question of fact to be decided. I cannot answer various hypotheses without knowing all the circumstances. But in each case the question is whether or not a union or a corporation is making a contribution or expenditure of funds to elect A as against B. Labor unions are supposed to keep out of politics in the same way that corporations are supposed to keep out of politics.

Mr. MAGNUSON. Let us take the reverse situation. Suppose the General Electric Co. asked me to be its guest on its Sunday afternoon hour to talk about electrical matters. I am running for office at the time. I am introduced on their program.

Mr. TAFT. Oh, I do not think that would be a contribution.

Mr. MAGNUSON. Mr. President, if the Senator will yield, let me ask him another question. All the funds of labor unions come from the dues paid by their members. All the activities of the unions are based upon expenditures of funds provided by dues. That money is in the union's treasury. If the pending bill should become law it would mean that all labor organs which are now in existence would, from now on, be prohibited from participating in a campaign, favoring a candidate, mentioning his name, or endorsing him for public office?

Mr. TAFT. No; I do not think it means that. The union can issue a newspaper, and can charge the members for the newspaper, that is, the members who buy copies of the newspaper, and the union can put such matters in the newspaper if it wants to. The union can separate the payment of dues from the payment for a newspaper, if its members are willing to do so, that is, if the members are willing to subscribe to that kind of a newspaper, I presume the members would be willing to do so. A union can publish such a newspaper, or unions can do as was done last year, organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purpose.

Mr. MAGNUSON. I think all union members know that a part of their dues in these cases go for the publication of some labor organ.

Whether Section 304 is valid

Mr. TAFT. Yes. How fair is it? We will assume that 60 percent of a union's employees are for a Republican candidate and 40 percent are for a Democratic candidate. Does the Senator think the union members should be forced to contribute, without being asked to do so specifically, and without having a right to withdraw their payments, to the election of someone whom they do not favor? Assume the paper favors a Democratic candidate whom they oppose or a Republican candidate whom they oppose. Why should they be forced to contribute money for the election of someone to whose election they are opposed? If they are asked to contribute directly to the support of a newspaper or to the support of a labor political organization, they know what their money is to be used for and presumably approve it. From such contribution the organization can spend all the money it wants to with respect to such matters. 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 in violation of the wishes of many of its stockholders.

Mr. MAGNUSON. Let me ask the Senator from Ohio a further question. Would the provision in any way deny the

right of a religious organization to publish pamphlets in behalf of a candidate because, let us say, the organization supported him on moral grounds?

Mr. TAFT. If the organization is a corporation, I assume it could not do so directly. If the organization publishes religious papers that it can sell, that is all right; but the organization cannot take the church members' money and use it for the purpose of trying to elect a candidate or defeat a candidate, and they should not do so.

Mr. MAGNUSON. Would the Anti-Saloon League, for example, be prohibited from issuing pamphlets against a political candidate?

Mr. TAFT. Any unincorporated organization can collect money from individuals for almost any purpose, and if the individuals who pay the money agree, the money can be used for purposes designated by the organization. There is no prohibition against using such money for political purposes.

Mr. MAGNUSON. My point is that all other organizations except corporations and labor unions can use the dues of their membership to publish any sort of pamphlet or publication on behalf of a candidate for public office.

Mr. TAFT. Yes, that is correct, and if any abuses arise with respect to other organizations we can extend the provision of law to the other groups.

Mr. TAYLOR. We are not going to permit a labor union to print the voting records of Senators. How are people to find out how we voted?

Mr. TAFT. Surely the Senator has something besides labor organizations in the State of Idaho. He must have other friends. Any individual friends of the Senator can publish the same thing. The question merely is whether in political campaigns we are going to permit labor unions or corporations to use funds which they have accumulated for some other purpose to elect or defeat a presidential candidate.

Mr. BALL. I do not think there is a single thing in the bill which prohibits any union or corporation or

anyone else from printing any public official's voting record. That is not a campaign for or against a candidate. It is simply the printing of public information.

Mr. TAFT. I was thinking of the way most of the labor organizations are on record. They do not, as a rule, merely print facts.

Mr. BALL. The Senator was thinking of the PAC.

Mr. TAFT. Yes.

Mr. PEPPER. I wish to ask the Senator from Ohio whether he agrees with the Senator from Minnesota (Mr. Ball), who* used its funds to disseminate the voting record of a candidate for office, during the time of the campaign, that would not be unlawful.

Mr. TAFT. I think it would depend upon all the circumstances in the case. If it was merely a bare statement of actual facts and simply direct quotations of what the man had said in the course of certain speeches on certain subjects, and was not colored in any way I would rather agree with the Senator from Minnesota. But I think it would depend, in each case, on the character of the publication.

Mr. PEPPER. Of course, the language is "In connection with". The provision does not contain any statement as to whether the statement is colored or not. The words simply are "any expenditures in connection with an election." I do not see how the Senator could say that the publication of a voting record, in the midst of a campaign, was not an expenditure in the midst of an election.

Mr. TAFT. That is not a very practical question, because no one would do just that. Either it is an argument for him or against him, or it is not.

Mr. MURRAY. I should like to inquire what would be the situation in a case in which an industrial organization has a chain of newspapers which obviously are operated for political purposes, and which have a deficit at the end of each year, which is made up by the corporation, the newspaper being used for purposes of advancing the political interests of the corporation, influencing elections, and advocating the election of

**just expressed the opinion that if a labor organization*

certain favored candidates. What would be the situation in such a case, under the provision of the bill we have been considering?

Mr. TAFT. I think that corporation had better be careful. It is a more difficult case to prove, as the Senator realizes, because the contribution is indirect. But if I were an attorney for such a corporation, I would advise that corporation to be very careful and that it might very easily be found to be violating the law.

Mr. MURRAY. But of course it is obvious that the unions would be at a great disadvantage under this bill, because these large corporations control all the weekly newspapers throughout a State, by placing lucrative advertisements with them. That is a practice in Montana and many other States. The corporations can give contracts for advertising purposes to all the weekly newspapers, and thus can have their support in the elections and in the campaign involving economic issues. Under this provision, the unions will be entirely confined to publishing newspapers that do not carry any information or propaganda advancing their interests.

Mr. TAFT. Probably the Senator from Montana saw that the American Federation of Labor has announced the spending of \$1,500,000. So it is not wholly without funds to advertise in opposition to the measure which is now before the Senate.

So apparently large sums of money are available on both sides.

Mr. MAGNUSON. Much has been said to the effect that the purpose of this measure is to equalize the opportunities of corporations and labor unions. The provision we are now considering makes the situation entirely unequal, as the Senator from Montana has pointed out. As he has stated, a string of newspapers is operated in his State, and most of them operate at a deficit. In many cases the deficit is made up by a large corporation that is up to its ears in politics all the time. Those newspapers can be published for 365 days a year and can be absolutely under the direct control of that large corporation, and can make deprecatory statements about the candidates for public office, and can do so as much as they wish to, whereas the union, which obtains its funds only from dues paid by the union members, will not be able to engage in such activities.

Mr. MORSE. I can well imagine why the politicians who are so strong for this bill want to prevent labor unions from participating in political campaigns. However, such attempts to weaken the political strength of labor will only serve to make the workers of this country more convinced than ever that they must take a very active part in politics if they are to protect their rights and freedoms.

Remarks of Senator Pepper

Mr. PEPPER. Mr. President, if the Senator will yield to me for a moment, let me say that the provisions of this measure overlook the essential differences between corporations and labor unions. A corporation is a person, but is not a citizen, under the laws of the United States. A corporation is entitled to the protection of its property, but it cannot vote, because it is not a citizen, in the sense that a person is a citizen. A labor union is not a corporation, it is simply an unincorporated association of people. In legal character, it is no different from a lodge, or a church, or the WCTU, or any other organization of human beings who get together to further their common good. Therefore, when labor unions are working together, through their own instrumentalities, they are simply working for the furtherance of the welfare of citizens of this country; and citizens were not created to make money. That is the reason why corporations were created.

Mr. President, this prohibition, therefore, is denying to citizens of this Nation the right of free press, the right of free speech, the right of disseminating information of public value. It is a chain upon the citizen's activity, and we well know that these labor organizations are composed of working people. They do not have people who are their members who can contribute hundreds of thousands or millions of dollars to political campaigns. They have to do it collectively. So they are denied the privilege of collective expression in political campaigns and are being discriminated against in favor of the corporations of the country.

Again, Mr. President, the Senator from Ohio is considering a group of citizens banded together for their common benefit as he would consider a corporation created for profit, and he is treating the person who is a citizen like the heartless corporation that may be considered a synthetic person.

Mr. President, the bill presents an anomalous situation. I think it denies the right of free press, I

think if a labor union, as an unincorporated association of citizens, wants to endorse a political candidate, if it wants to put out a special edition of its newspaper to appeal to the American people to vote for the candidate, the union should have the right to do so, and a denial of that right is a denial of a constitutional right of which Congress cannot deprive anyone.

The union is not a corporation. A corporation does not have the right of a citizen to vote. Citizens have the right to vote. If a group of citizens should want to pay dues to their union and say to its president, "Use this money to pay someone to speak for us, to protect labor against this calumny" the provision of the bill would deny that privilege. I claim that is a denial of the right of a citizen to give his money to a common fund to protect his political and economic rights.

I do not want to impugn anyone's personal motives in any sense of the word, but I say that since labor, since the working people of this country, became articulate under the administration of Franklin D. Roosevelt, since they learned to work together to meet the danger and menace of slush funds which corporations can find a way to put into the hands of a favorite, there has been a determined effort on the part of certain individuals in Congress, as well as outside, to strike down the power of workers acting cooperatively through their unions. I cannot but regard the provision in the bill to which I am addressing myself as an expression of that sentiment. It has the effect of stifling and suppressing the legitimate political activity of a substantial part of the citizenry of America.

Mr. President, there are 15,000,000 labor union members in America. If there are four members to each family, which is the average American family, these union members are the spokesmen and bread winners for 60,000,000 Americans. So, to do anything which will impair their right as citizens to write and to speak their views about their Government is a denial not only of labor's rights, but a denial of the fundamental constitutional right of the citizenry of this land.

The laboring people are poor people. They do not have in their membership rich stockholders, rich executives. They do not have large expense accounts which they can pad and use in political campaigns. They do not own the newspapers of America as, by and large, corporations do, 80 percent of which consistently fought Franklin D. Roosevelt. They cannot work through corporate machinery and exercise its many and multitudinous pressures to achieve their ends. If they do anything they have got to work together through the instrumentality through which alone they can cooperate,

their unions, and if that power can be struck down, the political manifestations of the masses of the people of America can be strangled, and when they are taken advantage of, they will be unable to protest effectively in the political forum.

A study of some of the past presidential elections will disclose how much the duPonts contributed to the Republican campaigns, how much the General Motors Corp., President Sloan and others, contributed. Such a study will reveal how much the Rockefellers and the other great rich families of America who own the corporations of America or dominate them, contributed. Oh, they will still have a full war chest to contribute to the Grand Old Party when election time comes, Mr. President. Of course it will cost them a little less if the workers are so strangled so they cannot put up some contributions. The large contributors will gain a little from the enactment of this provision.

Mr. KILGORE. May I suggest that the Senator from Florida go one step further and discuss the question of the annual bonuses paid out in election years to directors and high-ranking officials of corporations. Every one knows the way they get around the prohibition against corporate contributions, by simply declaring bonuses to certain officials, which can be used for political purposes. That loophole has not been closed, I may suggest to the Senator from Florida.

Mr. PEPPER. Chess is a fairly complicated game, but there will never be on any chess board as many means by which to attain an objective as there are corporate devices by which to achieve the objective the Senator from West Virginia has spoken of.

An Abstract of a Thesis:
LEGISLATION AND JUDICIAL DECISIONS CONTROLLING
THE POLITICAL ACTIVITIES OF LABOR UNIONS IN
GREAT BRITAIN AND THE UNITED STATES

By Frederick W. Parkhurst Jr.

The principal purpose of this thesis is to analyze the successes or failures, the legal and practical consequences of attempted limitations or prohibitions in Great Britain and in the United States, federal and state, on political activities in general, and specifically on the political activities of labor unions. This is done by a study of sources including judicial decisions; statutes; official documents; legislative debates, hearings, and committee reports; books; law review articles; various pamphlets; newspapers; general information; and the writer's knowledge and personal experience. The subject matter has been divided into three main sections as follows:

The first chapter reviews the historical background and the development of labor union political activities and objectives in Great Britain and the United States, together with certain comparisons. It is noted that in the United States labor unions engage in three kinds of political activities-- support of candidates, promotion of legislation, and participation in administration. In Great Britain, labor adds to this list by sponsoring its own Labor Party financed by union funds. The chapter concludes with a discussion of labor's political potentials, touching upon whether American unions will also

sponsor a Labor Party or continue to work within the Democratic Party.

The second chapter considers those general controls over electoral conduct which, while not aimed specifically at the unions, apply to all political activities. These "corrupt practices" provisions include publicity requirements and publicity pamphlets, expenditure limitations as to amounts and purposes, the restrictions on contributions, protections for public employees, various illegal practices, and other miscellaneous provisions governing elections, particularly relating to the conduct of candidates, parties, committees, and their agents. It is pointed out that laws regulating party finance have been largely ineffective, and that adequate publicity would be more beneficial.

The third chapter details the specific controls attempting to limit or prohibit the political activities of organized labor in Great Britain and the United States, the development of these controls, their history and provisions, and the practical results of these attempts. As in the case of many of the general controls dealt with in the second chapter, these specific controls have also largely failed and again is shown some of the pertinent reasons why these attempts have not been as effective as originally conceived by their authors. Particularly has this been true with the courts' refusal to enforce the political prohibitions of the Taft-Hartley Act's Section 304.

The findings of the thesis are summarized and evaluated in the fourth chapter. It is concluded that labor unions are by necessity almost automatically in politics, that labor's political activities make a very definite contribution to democratic electoral and legislative processes, that prohibitions have failed on several grounds including constitutionality, and that among other recommendations the alternative of effective publicity should be the guiding principle of any regulatory program. At the same time, labor unions must assume the responsibilities of political statesmanship which accompany its ever-increasing political activities and programs.

Although the Bibliography lists well over one hundred fifty sources, all of which have been referred to in the text of the thesis, there has been no previous extensive concentration of the scope of this paper and the writer hopes to have made a useful examination of a fascinating but as yet unsettled problem. The Appendix is a transcript of the Senate question-and-answer debate on Section 304. It not only contains many of the arguments for and against labor union political activities, more of which were reported in greater detail in the thesis proper, but also is valuable for ascertainment of the legislative intent. However, this intent has not been recognized by the courts.

Frederick W. Parkhurst Jr.

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