

UNIONS, POLITICS, AND PUBLIC POLICY: A (SOMEWHAT) REVISIONIST APPROACH

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I don't care how militant your leadership is, how good your contracts are, how rich your treasuries are, you're not going to turn the country around on the picket line or at the bargaining table. . . . There is only one way, and that's at the ballot box.¹

I. INTRODUCTION

The involvement of labor organizations in the political process is neither accidental nor motivated solely by "public spirit." Like other organizations, unions are entities whose economic and political goals are so intertwined that they are inseparable.² It is no accident that most of the largest labor unions in the United States are headquartered in Washington, D.C., yet very few Fortune 500 company main offices are in the nation's capital.³

Through regulation, legislation, and judicial decisions, the public sector and its quasi-public allies (such as labor unions) now exercise direct or indirect control over virtually every aspect of economic activity. This control covers product pricing, production techniques, items to be produced, and the terms of exchange for the inputs (notably labor inputs) purchased by firms. Given the economic control that government has arrogated to itself, it is not surprising that labor organizations have

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1. *Unionists Told Priorities Are To Oust Ford, Byrd*, Richmond Times-Dispatch, Aug. 4, 1976, at B4, col. 1 (quoting Al Barkan, Director of the Committee on Political Education, speaking to the 1976 annual convention of the Virginia AFL-CIO).

2. During oral argument before the Supreme Court in a case involving union expenditures for political endorsements, Joseph Rauh, counsel for the defendant union, speaking perhaps over-expansively, claimed that "[f]or a hundred years . . . we [either the United Auto Workers (UAW) or unions generally] have been engaged in political activity. Our own union constitution . . . urges it. *One cannot draw a line between bargaining and politics.*" *United States v. United Auto Workers*, 352 U.S. 567 (1957) (emphasis added).

3. The author is indebted to Professor Morgan Reynolds, Texas A & M University, for pointing out this small but instructive fact.

taken an active, continuing role in politics to ensure their survival and to advance their other interests.

The economic viability of labor unions is directly related to the level of union membership because of dues, assessments, and other forms of income from members. Thus the level of union membership is crucial to union leaders. Political action influences the income of labor organizations by influencing the supply of potential members. The 1935 National Labor Relations Act (otherwise known as the Wagner Act)⁴ specified that once a union was certified or established, not only would *all* persons in the bargaining unit be represented by the union, but they could also be *required* to pay dues. Unions saw this requirement as an efficient means of acquiring membership and vigorously opposed any restrictions on this part of the Wagner Act. Despite their best efforts, however, the union movement could not prevent the passage of the Taft-Hartley Act, which permitted states to restrict such inducements.⁵ This event was arguably the single greatest impetus to the direct entrance of unions into the realm of electoral politics. Although fewer than half of the States have subsequently passed legislation restricting inducements under the terms of Taft-Hartley, few issues are likely to be seen as a more serious political challenge than the prospect of changing a state's "right-to-work" status.⁶

The enactment of Taft-Hartley remains a constant reminder to union officials that special privileges, hard won through the political process, can be gutted or negated by others also working through the political process. The political environment changes constantly. Those who fail to understand this, who believe that the business of labor is solely "labor" and who thus eschew political involvement, are doomed to find themselves at the mercy of those who have rightly understood that the principal actor in modern society is government.

4. National Labor Relations (Wagner) Act of 1935, Pub. L. No. 74-198, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151-187 (1982)). Congress amended the Wagner Act in 1947. See Labor-Management Relations (Taft-Hartley) Act, Pub. L. No. 80-101, 61 Stat. 136 (1947) (codified as amended at 29 U.S.C. §§ 141-197 (1982)). The next major amendment to the NLRA occurred in 1959. See Labor-Management Reporting and Disclosure (Landrum-Griffin) Act, Pub. L. No. 86-257, 73 Stat. 519 (1959) (codified as amended at 29 U.S.C. §§ 401-531 (1982)).

5. Labor-Management Relations (Taft-Hartley) Act, Pub. L. No. 80-101, § 14(b), 61 Stat. 136, 151 (1947) (codified at 29 U.S.C. § 164(b) (1982)).

6. See Gall, *Constant Vigilance: The Heritage of the AFL's Response to Right to Work Legislation, 1943-1949*, 9 LAB. STUD. J. 190-202 (1984).

The malaise of late-Twentieth-Century unionism hardly needs documentation. Despite a certain quiet on the subject in recent years, the decades since 1970 have witnessed an indisputable reduction in the size of the movement, no matter how it might be measured.⁷ Discussions about the precise extent of the decline are rather heated, if for no other reason than that the data sources being used are grossly inaccurate. Among other things, there is no generally accepted definition (even for government reporting purposes) of what constitutes a union member.⁸

The decline of unions is also shown by the unprecedented merger movement among union organizations in recent years. Between 1977 and 1982, the number of AFL-CIO organizations dropped from 115 to 99. Both William H. Wynn (Food and Commercial Workers, UFCW) and Glenn E. Watts (Communications Workers of America, CWA) have predicted that there will eventually be only fifteen to twenty large unions left in the AFL-CIO.⁹ The incentive for mergers does not arise from some newly found spirit of solidarity or brotherhood but instead stems from an attempt to restore sagging financial fortunes through consolidation. Overhead can be reduced by combining two organizations because economies of scale apparently exist in activities such as bargaining and organizing. Equally important, mergers reduce the opportunities for inter-union rivalry. Jurisdictional disputes among labor organizations have long plagued the union movement and sapped its strength.

Another indicator that unions are concerned about their softening status in society is the importance being given to advertising campaigns where union services are sold. All branches of the media are being employed to improve the public image of unions, to organize workers, to build morale among members, and to present the union's side in current strike disputes.¹⁰ Both private and public-sector unions are using these techniques. The AFL-CIO signaled the importance it attaches to

7. See Mitchell, *Some Empirical Observations of Relevance to the Analysis of Union Wage Determination*, 1 J. LAB. RES. 193-215 (1980).

8. See Heldman, *Making Policy in a Vacuum: The Case of Labor Relations*, 10 POL'Y REV. 75 (1979) (noting that there are at least six different sets of union membership data in use).

9. See *Labor's Marriages of Convenience*, BUS. WEEK, Nov. 1, 1982, at 28.

10. See *Labor Unions Step Up Advertising Campaigns*, N.Y. Times, Sept. 25, 1982, at L12, col. 1.

the effort by creating the Labor Institute for Public Affairs, an organization intended to "drag the camera-shy labor federation into the television age."¹¹

Despite mergers, advertising, and other activities intended to halt and reverse the downward trend in membership, the malaise has not been cured. As a result, the union movement's leadership has increased the amount of effort and resources it places into political action to achieve the objectives it cannot obtain elsewhere. Also, government agencies, when acting in their employer role, have begun to explore the ramifications of the private-sector model in the face of declining taxpayer support for seemingly open-pocketed pay practices. As a consequence, public-sector unions have strengthened their reliance upon political action as a potent source of pressure upon public officials.

The analysis that follows explores these trends and, in the process, seeks to place them in a wider context of union political involvement as a necessary element of union organizational interests. In brief, unions have *always* had a propensity for political activity, but prior to the mid-Twentieth Century, such reliance was only episodically necessary because traditional modes of achieving institutional objectives were sufficient. Since then, a variety of social, economic, and broad-scale political changes in American society have made these traditional modes inadequate, and unions have returned to the political element of their history.

The adverse climate in which unions presently find themselves is largely of their own making—not in the sense of a negative public view of unionism *per se* but in the sense of suffering from their own successes. The broad, cultural shifts that are making unionism less a factor in the day-to-day workplace and thus impelling the re-targeting of union strategies toward the political arena are, to a very great extent, the ineluctable consequence of unions achieving many of their traditional goals.

In addition, union political involvement is both a cause and a consequence of the increasing intrusion of government into previously private-market transactions. As government became a major actor in a widening array of economic and social decisions, unions followed the scent and turned government into

11. Keller, *Labor Uncovers Television*, N.Y. Times, Sept. 13, 1984, at B18, col. 4.

an arena in which it sought to achieve its ends. At the same time, unions pursued policies at all levels that have had the *effect* (intended or not) of facilitating this economic and social intrusion. One is left to speculate whether these policies favored an activist government because such intervention was an integral element of union philosophy or because union officials felt confident that their ability to control events and influence outcomes was greater in the government arena than it would be in the traditional private sector.

The Article begins with a very condensed discussion of the nature of group interests in a pluralist democracy such as the United States. Unions are a special interest group, and they can be analyzed in terms of the role that a democratic society assigns to such organizations. The Article next surveys the history of unions in American politics up to the mid-Twentieth Century, and it shows that involvement in political action (including electioneering) has been an important part of the overall strategy of unions for achieving organizational interests at critical junctures. The analysis then moves to a more detailed review of the organizational and legal structure of union political action in the modern period, together with a general summary of specific activities in each of the election cycles of 1972, 1974, and 1976. The Article concludes with a discussion of the importance that should be attached to this phenomenon. For those more enamored of current events, it should be noted that the Reagan and post-Reagan years are not covered in this discussion. Among other reasons, the relevant data are only now becoming available.

II. THE ROLE OF GROUPS IN A DEMOCRATIC SOCIETY

Some say that American unions are *sui generis* within the international labor movement, notably its Western European segment. Bruce Millen posited a "political unionism" spectrum in his 1963 study of developing countries. The United States stands alone at one end of the spectrum, and the Soviet Union and its allies stand at the other. Professor Millen generally defined the end of the spectrum occupied by the United States as "economic unionism."¹² While there can be little doubt that such an analytic scheme fits well into the longstanding and

12. See B. MILLEN, *THE POLITICAL ROLE OF LABOR IN DEVELOPING COUNTRIES* (1963).

popular notion of the American union being primarily concerned with its members' economic interests, the facts simply do not fit the theory.

No labor union anywhere disdains the use of political pressure to achieve its ends, nor do unions in even the most Marxist or totalitarian of regimes find themselves completely unable to engage in collective bargaining. The primary concern, then, should be to identify the principal objectives a union movement seeks and the means by which it seeks them. If either is predominantly political, there is justification for describing the movement as political. It is particularly valuable in this regard to assess the extent to which either the objectives or the means are pursued in a way that affects the whole of society rather than the group of persons directly and formally associated with the movement.

A group must be considered political when it takes a course of action designed to alter the structure of society or to impose obligations on some segment of society outside itself. The American Bar Association is not engaging in political action when it develops educational courses for its members or for the profession generally, but it is being political if it seeks to prevent anyone from practicing law who has not taken these prescribed courses. A botanical society is not political if it offers guides for groups touring a local park, but it is being political if it attempts to have the park expanded in size (at the expense of the general citizenry) or to have the city make the society the sole source of persons who can be park tour guides. Similarly, a union that negotiates a wage rate from a private employer for its members is not engaging in political action,¹³ but it would be doing so if the contract covered employees other than the union's members or if the union were seeking governmental authority in support of certain contract provisions—provisions that would not become part of the contract but for a governmentally imposed legal or regulatory sanction.

In each of these cases, together with many others that might be proposed, the distinguishing characteristic is the imposition on others of costs, duties, or obligations that they would not

13. Negotiating for wages and working conditions with a *public* employer is a quite different matter. Such action is political *per se*, if only because a wider group is legally obligated to bear the costs—unlike the costs of private-sector labor contracts that are paid only by those consumers who choose to purchase the goods or services involved.

ordinarily choose to assume. It is a truism in economics that, given a voluntary exchange, the costs to each party in the exchange are, at most, equal to or, more likely, less than the value of the benefits received. When the costs exceed the benefits, the exchange is not voluntary;¹⁴ it has been forced upon the party experiencing a net loss. The only way for this exercise of power to occur is through fraud, violence, or the threat of violence. Government, by law and tradition the only institution in society possessing an ultimate monopoly on force, is therefore the sole source of what might be called "legal violence" through its system of police and courts. Others who might attempt to impose nonvoluntary exchanges do so at their peril,¹⁵ unless they first obtain a grant or delegation of such authority from government. So the fundamental defining characteristic of political action is the search for or the achievement of governmental grants of authority that permit the imposition of nonvoluntary economic exchanges—what economists would call rent seeking.¹⁶ The grant of authority may be explicit in the form of a positive law requiring persons or groups to do or to refrain from doing certain things. It may also be implicit in the form of a governmental policy of inaction whereby the imposition of certain exchanges (not otherwise expressly mandated or perhaps even expressly prohibited) is nevertheless permitted through a regular failure to halt the exchange or to punish the party imposing it.

Unions have claimed that their political involvement was

14. The theoretical purist might argue that, as a matter of fact, the costs *never* exceed the benefits in an exchange—voluntary or otherwise. The robber who demands "your money or your life" has forced an exchange of sorts, but the victim has nevertheless concluded that the costs of compliance were less than the costs of noncompliance. Obviously, the victim had begun the day not expecting to make such a choice. Even afterward, victims will generally prefer not to have been confronted with that situation. The value in pursuing this seemingly abstruse point is that we thereby arrive at a crude though workable definition of "power" as the ability to have people make decisions they would not otherwise have considered. Equally crude though workable is the notion of "political power" that develops from this train of thought: It lies in arranging for government to do what the robber does and to do it regularly to a large group of people.

15. We obviously refer here to such persons as muggers, rapists, embezzlers, and the like, whose use of force and fraud is clearly proscribed. They impose nonvoluntary exchanges *in spite of the law*.

16. Cf. Krueger, *The Political Economy of the Rent-Seeking Society*, 64 AM. ECON. REV. 291-303 (1974) (origins of notion that political authority involves rent-seeking); Buchanan, *Rent Seeking and Profit Seeking*, in J. BUCHANAN, R. TOLLISON & G. TULLOCK, *TOWARD A THEORY OF THE RENT-SEEKING SOCIETY* 3-15 (1980) (excellent presentation of the theory of political rent seeking).

thrust upon them solely as a matter of self-defense and that their activity level is far below that of employers. Although the truth or falsity of these assertions is of concern to many and may even be relevant to the resolution of certain issues, that is not the case here. Our approach is based on the theory of plural democracy and the representation function of groups in society.¹⁷ In this framework, the volume of political activity by one group relative to any other is considerably less important than *the extent to which that group's resources are being expended for purposes approved by the members of the group.*

Accordingly, for our purposes here, the level of union political activity should be measured against the functions that the American system has traditionally assigned to unions. An alternative measure of significance is the level of political activity expected or considered appropriate by union members. Suppose in the alternative that union members believed the *level* of such activity was proper, but their views differed significantly from their leaders' views regarding the *purposes* toward which the activity was being directed.¹⁸ In short, there are a variety of standards against which union political activity might be measured: Each of them carries quite different implications, all of which are largely irrelevant to either an absolute measurement of this activity or a measurement relative to the level of employer political activity.

It thus makes little difference whether unions or employers are more politically active. No fundamental damage to a society's structure is done so long as the political superiority of any one faction is not made structurally permanent by rule manipulations that eliminate or significantly reduce the possibility of that dominant status changing hands. What has distinguished the classically liberal democratic society from all others is the evanescence of political superiority and the constantly shifting character of whichever group may be described as "on top."

Typically, political superiority in such societies depends on making alliances because no single group, save for one so large

17. The obvious premise underlying this discussion is that a "pluralist democratic society" is desirable and, consequently, that conditions which detract from this end are undesirable. See R. DAHL, *PLURALIST DEMOCRACY IN THE UNITED STATES: CONFLICT AND CONSENT* (1967).

18. These and related issues are discussed and opinion survey data are presented in D. HELDMAN & D. KNIGHT, *UNIONS AND LOBBYING: THE REPRESENTATION FUNCTION* (1980).

as to be hopelessly amorphous and heterogeneous, holds sufficient resources to achieve superiority by itself. If, in addition, individuals can change the kinds and amounts of resources available to themselves (in other words, possess social and economic mobility), the result is a society in which every individual is potentially a valuable addition to any group seeking political influence. As a consequence, the groups that form around particular interests are sufficiently numerous and overlapping in membership that extensive permanent alliances are difficult to maintain. Because the conditions for such alliances are largely the result of various natural factors, including a positive, reinforcing public philosophy, efforts to bypass or nullify them must be hidden from view and imposed by force—through physical coercion or, more likely, through the operation of government power.¹⁹

Although union expenditures on political activity are significant,²⁰ it should be clear that this amount does not by itself measure the extent of political influence. While it is clearly an important element, the total volume of political activity aimed at influencing political outcomes must be added to many other factors in assessing the likelihood that desired outcomes will be achieved. To say, then, that one group is more active than another (fields more lobbyists, spends more money, supports more candidates, or has more members) is not automatically to say that it is also more politically influential.²¹ There are many examples of the small, cohesive, tightly focused, and efficiently managed interest group that has achieved success beyond all measure of its size or volume of activity.

For these and related reasons, caution must be used in

19. An historical example of such a surreptitious exclusion would be a literacy requirement for voting that, on its face, might seem acceptable but that had the practical effect of disenfranchising some identifiable group because of the group's systematic exclusion from the educational system. Such a disenfranchisement becomes difficult to detect because the consequence stems from the junction of two factors, only one of which might be generally known.

20. The irreducible minimum amount spent on political activities is the cash contributions reported to the Federal Election Commission (FEC)—for example, about \$17.5 million in 1976. See FEC Disclosure Series No. 10, *Labor-Related Political Committees, Receipts and Expenditures, 1976* (1978). The actual amount is likely to be considerably greater than this reported figure.

21. See, e.g., Lazarus, *PAC Power? They Keep on Losing*, Wash. Post, Mar. 27, 1983 (“[B]usiness interests could target a high-visibility issue of acknowledged national importance [such as the Clean Air Act], mobilize a massive coalition—virtually the entire manufacturing sector—pour PAC dollars into relevant campaigns, and come away with nothing.”).

equating size or expenditures with strength. To the extent that it may be important to measure a group's absolute or relative political standing, the better criterion is the power of the effort to force particular outcomes, not the amount of the effort itself. Yet, *ceteris paribus*, such things as size, money spent, personnel assigned, and unity of purpose are, nonetheless, at least predisposing conditions: They form the base on which other, less easily quantified factors are added. Wherever possible, the following discussion will focus on political influence in terms of outcomes. If more appropriate measures are lacking, it will be necessary to turn to these predisposing conditions as a proxy for influence.

The critical points guiding this analysis may be recapitulated as follows. From an economic or public choice perspective, the issue of union involvement in the political process hinges on the rents these organizations can extract from society at large through lobbying and electioneering. Given the considerable intrusion of government into an increasing number and variety of previously unregulated exchanges, unions have recognized political influence as a potentially fruitful way to achieve goals that they traditionally achieved primarily through market mechanisms. Recognizing that the unregulated market seldom operated in a way that would further their organizational interests, unions sought first to protect through governmental fiat their role as a market actor—a role that otherwise would have been ephemeral, episodic, and only occasionally successful. After this initial strategy produced effective results, unions turned to more vigorous and wider-ranging political activity to extend their influence, to build alliances with other groups, and in recent years, to defend their attainments from encroachment and erosion.

III. THE EARLY YEARS OF UNION POLITICAL ACTIVITY

Despite more than a century of recorded union political involvement in the United States, the main story at the national level began with Samuel Gompers and the formation of the American Federation of Labor (AFL) as the country's first stable association of trade unions. There is no difficulty identifying instances of political action by quasi-union (guild)

organizations as far back as the late-Eighteenth Century.²² After the 1837 Panic, the first recognizable trade unions were formed, and this process reached the national level with the appearance of the National Typographical Union in 1852, followed rapidly by such crafts as the stonemasons, hat finishers, molders, and machinists.²³

In the years following the Civil War, the pace of unionization quickened in response to industrialization. From 1860 to the end of the century, the United States experienced a nearly 300% increase in manufacturing employment; the number of those living in urban areas rose by about 500%; the average size of the individual manufacturing establishment grew to reflect the move from small shops to the expanded factory; and the sociocultural "mix" of those employed changed greatly toward the unskilled, immigrants, and ex-farmers.²⁴ One result was a series of third-party movements, some of which expressly combined labor and political action. In a few cases, it was impossible to tell whether the union was moving into electoral politics (the National Labor Union and the Knights of Labor) or whether the political party was merely drawing union allies (the Labor Reform Party) under its umbrella.²⁵

The Knights of Labor were particularly active and powerful participants in the political process in Chicago, Milwaukee, St. Louis, Newark, and notably, New York City. Its influence peaked in the elections of 1885 to 1887. Thereafter, the Knights declined dramatically in strength and membership until the organization could insure its survival only by joining with the Farmers' Alliance in a partnership that led to the creation of the People's Party in the 1892 election.²⁶ The watershed was

22. See R. MORRIS, *GOVERNMENT AND LABOR IN EARLY AMERICA* (1946). For a discussion of examples of American labor organizations in the 1800s, see Sumner, *Citizenship (1827-1833)*, in 1 *HISTORY OF LABOR IN THE UNITED STATES* 169 (1918).

23. The 1837 Panic was triggered by certain monetary policies (for example, specie currency replacing payments in gold), by extensive crop failures, and by rampant land speculation. One result of the Panic was the creation of an independent federal treasury. For the reaction of contemporary labor groups, see J. RAYBACK, *A HISTORY OF AMERICAN LABOR* 87-92 (1959).

24. See *LABOR AND AMERICAN POLITICS: A BOOK OF READINGS* 63 (C. Rehmus, D. McLaughlin, & F. Nesbitt rev. ed. 1978).

25. See N. WARE, *THE LABOR MOVEMENT IN THE UNITED STATES, 1860-1865: A STUDY IN DEMOCRACY* (1959) for a sympathetic treatment of the Knights of Labor and the various smaller groups (union and political) that swirled around it.

26. See L. FINK, *WORKINGMEN'S DEMOCRACY: THE KNIGHTS OF LABOR AND AMERICAN POLITICS* (1983) for a detailed history of this union and its involvement in local political activities.

the 1886 mayoral election in New York City in which the Knights of Labor joined with the Socialist Labor Party and a new labor federation, the AFL, to support the candidacy of Henry George. Although George came relatively close to winning, Gompers's autobiography reported the consequent disillusionment of Gompers with union political activity and noted that his role in the campaign represented a "curious determination to disregard experience."²⁷

It is clear that in several important respects the Knights were out of step with their time. Perhaps the Knights' responses to the great changes following the Civil War were simply inadequate, and an almost totally unrestricted membership prevented it from developing or sustaining an adequate focus. The latter point is at least partially confirmed by the undeniable fact that the Knights of Labor was supplanted by the AFL, an organization that was as exclusive in its membership policies as its competitor was inclusive.²⁸ A significant number of workers who balked at being indistinctively included among the unskilled and semi-skilled flocked increasingly to the AFL, which not only had rigid apprenticeship rules but also emphasized economic objectives. These and related characteristics were apparently more consistent with the interests of United States employees, as is amply indicated by the meteoric rise of the AFL and the equivalent fall of the Knights. The AFL, founded in 1886 with 140,000 members, had almost three million members by 1924, whereas the Knights reached their peak in 1886 with more than 700,000 members and virtually dropped from memory by 1924.

Samuel Gompers, who ruled as well as epitomized the AFL from its formation until his death in 1924, had strong reservations about the political activities of the Knights. Yet, the AFL itself never completely avoided politics. Its principal medium of involvement was legislative lobbying rather than electioneering; its focus was on the state and local level rather than on the national arena; and its efforts were expended mainly in support of measures directly relevant to the health and safety of employees rather than for social policies or even "shop floor"

27. 1 S. GOMPERS, *SEVENTY YEARS OF LIFE AND LABOR* 312 (1925).

28. For examples of direct movement of Knights members to the AFL, see L. FINK, *supra* note 26, at 199. Virtually everyone, save only the very unskilled and the very rich, were welcome under the Knights of Labor banner.

issues, such as hours or pay. Gompers's refusal to support governmental intervention on these issues extended to positions against social security and minimum wage legislation.²⁹ Nevertheless, an excellent argument can be made that such opposition was organizationally self-serving; Gompers may have feared an erosion of the union movement if the government assumed regulatory responsibility for what traditionally was a cornerstone of union organizing programs.³⁰

This view has been questioned in recent years from a revisionist perspective as part of a more general effort to overturn the Turner "frontier" thesis.³¹ Gary Fink's work on the subject, for example, attempts to show that Gompers's "voluntarism" (opposition to certain interventions) was not shared by AFL leaders at lower levels and that, at the national level, the AFL reflected Gompers's ideas because the national AFL conventions were "gerrymandered" in favor of the Gompers bureaucracy.³² Ironically, Professor Fink's argument returns us to a problem discussed throughout this Article: how the unions' national leaders may fail accurately to reflect the interests, goals, objectives, and policies of those under them.

During the first quarter of this century, the rationale for whatever political action Gompers permitted the national labor movement was that of voluntarism. His notion of voluntarism was based on two principles: (1) The union, not government, should be the main agent affecting labor relations matters; and (2) if political action cannot be avoided, it should at least be nonpartisan (this is the source of Gompers's famous aphorism about rewarding labor's friends regardless of party). It does not really matter much if these twin aspects of voluntarism were solely instrumental or if they stemmed from more fundamental principles. The result was the same either way. The AFL acquired a distinct identity that gave it some distance from the

29. See M. KARSON, *AMERICAN LABOR UNIONS AND POLITICS, 1890-1918*, at 128-30 (1958); P. TAFT, *THE A.F. OF L. IN THE TIME OF GOMPERS* 364-66 (1957).

30. See Saposs, *Voluntarism in the American Labor Movement*, 77 MONTHLY LAB. REV. 967, 967-68 (1954); see also D. HELDMAN, J. BENNETT & M. JOHNSON, *DEREGULATING LABOR RELATIONS* 138-39 (1981). The theory is that employees will be less eager to unionize or to stay with a union already in place if they perceive that the government is actually doing much of what the union presents as the benefits of unionization.

31. Frederick Jackson Turner was one of the most eminent American historians of the early part of this century. A detailed discussion of the "frontier" thesis may be found in F. TURNER, *THE FRONTIER IN AMERICAN HISTORY* (1920).

32. See Fink, *The Rejection of Voluntarism*, 26 INDUS. & LAB. REL. REV. 805 (1973).

Knights of Labor, and it consequently appealed to a large number of skilled craftsmen who were otherwise divided on an extraordinarily wide range of issues.³³

There is perhaps no better indication of the scope of potential, internal disagreement because of divergent views of a union's members than the AFL's national elections of 1894 and 1896. The 1894 election so strained the Federation that Gompers's opponents, who favored vigorous political action on behalf of more than vaguely socialist objectives, successfully defeated his otherwise unbroken record of automatic reelection to the AFL presidency.³⁴ In the 1896 election, on the other hand, even though it was considerably more bitterly contested, Gompers was returned to office and there was a public re-affirmation of his insistence on nonpartisanship. As Gompers observed, "The industrial field is littered with more corpses of organizations destroyed by the damning influences of partisan political action than from all other causes combined"³⁵

Despite this attitude, Gompers was not averse to some forms of political action, so long as they could be divorced from party identification. Under his direction, for example, the AFL perfected and institutionalized the phenomenon of the "voting record." Whereas most legislators traditionally ran for reelection on the basis of what they claimed was their "record," the AFL began keeping precise notes on each vote taken by every member of Congress on measures that were asserted to be "of interest to labor."³⁶ This information was then aggregated over time, and the resulting composite tables of favorable or unfavorable votes presaged by half a century the current plethora of such lists kept by special interest groups. Reflecting the considerable territory covered by the AFL and the inevitable difficulty of having sufficient data for all candidates in the country, the Federation frequently requested its affiliates to keep the na-

33. The most academic among the AFL's proponents, Selig Perlman, in fact remarked that emphasizing a limited number of simple economic goals was arguably the *only* way the United States could have a united labor movement. See S. PERLMAN, *THE THEORY OF THE LABOR MOVEMENT* 196-97 (1928).

34. See P. TAFT, *supra* note 29, at 125-29.

35. Gompers, *Trade Unions and Party Politics*, in 3 *THE AM. FEDERATIONIST* 129, 130 (1896) (letter from Samuel Gompers to Affiliated Unions).

36. See H. CHILDS, *LABOR AND CAPITAL IN NATIONAL POLITICS* (1930) (description of the voting record program). The relevant portions may be found excerpted in Childs, *Voluntarism in Action*, in *LABOR AND AMERICAN POLITICS: A BOOK OF READINGS*, *supra* note 24, at 97, 97-102.

tional headquarters informed about who was running for office.³⁷

Such first steps in creating what might be called a political intelligence network were specifically intended to augment more concrete voting records. By the 1920s, the shape of special interest involvement in electioneering had stabilized into what any knowledgeable citizen could easily recognize today, and that shape had been largely determined by Gompers's AFL. There is no stratagem practiced by any political action group in the 1980s for which we cannot find an equivalent program undertaken by organized labor during this early period. Such *specific* techniques as television advertising must be excluded, of course, but this exclusion does no damage to the generalization.

Unlike the labor movements of nearly all other comparably developed Western nations, however, American unions did not form an allied political party to lay their hands directly on the levers of government. There was pressure to do so from some local union leaders eager to further in various practical ways the interests of a number of localized political organizations. This pressure, however, ran into implacable opposition from Gompers. Furthermore, there were several commonly recognized characteristics of the American political system that militated against any extended electoral success for third-party, sectional, or special interest movements.³⁸

Gompers noted that history was against a labor party, considering the earlier experience of the National Labor Union. He pointed to what had happened in Henry George's campaign in New York and the embarrassing events associated with the subsequent failure of the Progressive Labor Party. Furthermore, Gompers cited the situations in several European countries—Germany, France, and Britain—where labor parties supposedly existed, but where no one could point to the same degree of success as the AFL's in achieving specifically labor objectives.³⁹

37. For an example of these sorts of "requests to the field," see PROCEEDINGS OF THE FORTY-SIXTH ANNUAL CONVENTION OF THE AFL 71-72 (1926).

38. This is not meant to imply that opposition from Gompers and the adverse influences of these structural conditions were somehow unconnected. The evidence indicates in fact that Gompers was a sufficiently astute student of U.S. political history and dynamics to have based his personal opposition upon a reasoned prediction of eventual failure. See S. GOMPERS, *supra* note 27; Gompers, *Political Labor Party—Reconstruction—Social Insurance*, 26 AM. FEDERATIONIST 33, 37-45 (1919).

39. See S. GOMPERS, *supra* note 27, at 37-45.

In sum, Gompers argued strenuously that the only political parties unions were likely to form would be either radical or reactionary. In either case they would be concerned only with vote-getting rather than with obtaining the correct pro-worker policies. In every case where unions *had* created a political party, that party had wound up controlling the unions for its own purposes. In any event, the labor movement could not have gained any more through partisan electioneering than it could as the result of political lobbying and vigorous collective bargaining. Ironically, what the AFL leader appeared to be suggesting was that creating a labor party would have unduly *limited* the unions' freedom of action.

The strongest forces with which Gompers had to contend came from the political left, that is, groups that were united in their commitment to socialism. This should come as no surprise in view of the potential commonality between a union movement representing employees and a socialist movement claiming that employees as a class were the morally superior, progressive wave of the future. Yet this commonality was as likely to produce competition as cooperation. Historically, despite a broad similarity of aims and objectives, it has been difficult for unionists and leftists⁴⁰ to cooperate; each is suspicious of the other's motives and each is convinced that the other does more harm than good.⁴¹

By and large, a curious symbiosis developed between unionists and leftists that continues today. The left saw the AFL and the movement it represented as a powerful but misguided force for solving the class woes of workers; if harnessed, the force could become the mythical "vanguard" leading the revolution to ultimate success. Economic gains for workers could not be achieved on any permanent basis through such mundane tech-

40. For the sake of simplicity, the term "left" and its derivatives is used to refer loosely to the nether end of the political spectrum, thus pulling together a veritable hodgepodge of otherwise distinctly different groups. Where it is important to identify some *single* left-oriented group, it will be indicated; where not, it may be assumed that the particular "-ist" label would be mainly irrelevant.

41. It is among the great ironies of human history that Marxists, who espouse in theory the interests of downtrodden workers, are hostile to unionism in direct proportion to its success in meeting the economic interests of downtrodden workers. The problem is that, according to Marxists, downtrodden workers are supposed to be helped only by bloody revolutions where thousands of them are killed rather than through collective bargaining where they get dollars instead of bullets. This point, expressed less ironically, may be found couched in distinctly liberal terms in C. DANIEL, *THE ACLU AND THE WAGNER ACT* 25-26 (1980).

niques as collective bargaining because this did not change *any* of the critical characteristics of the society. As Marxist polemicist Robert Briffault observed at the time, "Only a liberal could entertain the fantastic notion that the few who run civilization for their profit can be induced to change their purpose by any other method than by shooting them."⁴² Any economic gains won for workers, by the dictates of theory, must be illusory, ephemeral, or both. Worse, appearing to win them might well dull and retard the emerging revolutionary consciousness. Thus, according to the left, although it might be necessary tactically to *talk* about bargaining and about getting better terms and conditions of employment, if only to keep the allegiance of the workers, unions had better direct their energies to the only form of action that had any hope of producing permanent improvements—politics.

Unionists, represented preeminently by Gompers, found the rhetoric of the left useful in defining their mission, in providing an intellectual cachet for what could have been denigrated as nothing more than a demand for "more,"⁴³ and in dramatizing the need for action. They considered profoundly disturbing and misguided, however, the inevitable implications of leftist ideology, and so they rejected the left's prescriptions. Marxist or socialist language could be used to grab the attention of workers⁴⁴ and to identify the nature and source of their afflictions, but true unionists believed that the solution was to be found in economic action. Such action *could* be long term and permanent. At the very least, it was more humane than violent

42. Briffault, *The Anatomy of Liberalism*, 7 MOD. MONTHLY 154, 158 (1933).

43. Another way of putting this point is that many unionists felt more comfortable demanding more in the belief that this was all for a higher cause, as sanctified by various left ideologies. Such rationalizations are, of course, quite common in social movements of all sorts. Nevertheless, it gave leftist theoreticians a role as intellectual headmasters in the union movement that no other element in American society had hitherto been willing to grant. Leftists were, and continue to be, appropriately grateful for this gift. Even today, they are willing to absolve the union movement for nearly any sin, including a number of uniquely leftist sins. In polite liberal circles, one just does *not* criticize unions—except, perhaps, the Teamsters.

44. There is more than a little evidence that some union leaders allowed leftists into their organizations simply to take advantage of their dedication and hard work. See Karsh & Garman, *The Impact of the Political Left*, in LABOR AND THE NEW DEAL 77 (M. Derber & E. Young ed. 1957). After all, most employers were probably strongly predisposed to consider unionism as a leftist phenomenon anyway, no matter what protestations might be made. Union leaders could thus profitably use socialism as a battering ram both to convince employers they were serious and to frighten a few into giving up some economic concessions when faced with the alternative specter of full-scale upheaval.

revolution. If sustained, it would produce very much the same sort of broad social consequences.

What unionists often forgot in this relationship was that it was not symmetrical. Leftists needed the union movement. Aside from a few pitiful and constantly warring action groups directly tied to this or that personality, the political left had no broad scale organization through which it could operate except for the unions. Moreover, unionism was one of the few means available for revolutionaries to pay the bills: It was, in other words, a source of income. Finally, by the early Twentieth Century in the United States, an increasing number of leftists had become convinced that although political action and perhaps even violence were still the only correct course, conditions militated against their direct, open, national involvement unless it were under a more acceptable guise. The numerous eruptions of union-management violence between 1880 and 1920 pointed to unionism as an appropriate vehicle. In any event, those leftist elements most imbued with Leninism certainly appreciated the strategic value of unions and would have been drawn to them regardless.

Little can be said, however, that suggests an equivalent value in the reverse direction. Unionists did not need the ideological left; they could survive fairly well without it. Leftist rhetoric was useful but not critical. If the nature of their work and the psychological tendencies that led them into it in the first place made unionists more amenable to the siren songs of socialism, it was a craving that could be subdued, sublimated, or merely redirected toward a general drive to do good deeds. As with any such tendency, some mastered it while others fell prey to a full-blown dependency. The trick was to keep the right perspective.

The trouble with this relationship between unionists and leftists was the classic question of how, having ridden the tiger, one dismounts. Socialism is not so easily used and then discarded, nor can its adherents be so easily ferreted out and dislodged from an organization. Gompers discovered that his movement was a prime target for infiltration from the left,⁴⁵

45. The asymmetry we discussed above is amply demonstrated by this point. The left has always and everywhere sought to work its way into the union movement; yet nowhere to our knowledge has there been any sustained effort on the part of unionists to infiltrate leftist organizations. Alliances might be and constantly are being made, but that is a different matter.

and that occasionally such outside forces were actively being invited. Those doing the inviting were undoubtedly committed to Marxist or socialist principles, but many who knowingly tolerated the infiltration did so because they thought there was little danger in it. Gompers, who was fervently committed to obtaining for union members more of the fruits of capitalism, could find no stable nor comfortable basis for alliances with either the far left (dedicated to the overthrow of capitalism) or the near left (the populists and progressives who could live with capitalism but only if it were greatly altered and reformed).⁴⁶ The left, of course, never stopped trying to influence the union movement, and the histories of the socialist and labor movements, as well as the Communist Party, consist largely of tracing the rise and fall of an alliance strategy versus an infiltration or "boring from within" strategy. In this, as in so many other areas, there was considerable tension between the national and local union levels.

Gompers never found an answer to the problem of how to avoid being eaten by the tiger, aside from the obvious solution of never dismounting. The AFL was accordingly plagued with pressures to tilt leftward, to join a progressive political alliance, and to pursue political action to the virtual exclusion of any other program. Although the AFL was occasionally forced to retreat to one degree or another from Gompers's firm antagonism to participating in national level politics or his even more implacable commitment to nonpartisanship, the "Gompers balance" dominated organized labor (as the AFL dominated organized labor) until the early 1930s. The movement successfully withstood assaults from the left, whether engineered by external socialist or Marxist groups and their associated splinter unions (the Socialist Trade and Labor Alliance, the Industrial Workers of the World, the Workers Party, or the Trade Union Educational League) or by factions internal to the AFL, including individual leaders or dissident constituent unions.⁴⁷

The most outstanding example of retreat, which had the long-term effect of seeming to validate the wisdom of the

46. See generally G. GROB, *WORKERS AND UTOPIA* (1961); M. KAMPELMAN, *THE COMMUNIST PARTY VS. THE C.I.O.* (1971). Interestingly, the earliest socialist and communist leaders to emerge in the United States (for example, DeLeon, Debs, Foster, and Haywood) possessed strong union organizing credentials.

47. See Karsh & Garman, *supra* note 44.

"Gompers balance," was the AFL's endorsement of Robert LaFollette in the 1924 campaign. Disgusted by the degree to which both major parties had ignored the AFL's policy recommendations, fearful that several Supreme Court decisions would return the union movement to the days of greater hostility,⁴⁸ and pressed from within for at least a gesture or experiment to determine if nonpartisanship were still the best policy, the AFL stepped gingerly into electioneering on behalf of Senator LaFollette's presidential candidacy under the label "Conference for Progressive Political Action." The Conference had been formed two years earlier in Chicago with heavy participation by, and assistance from, the machinists, the railway brotherhoods, and eventually more than thirty other unions and state federations.⁴⁹

The AFL's executive council split into three factions over the issue of electioneering. First, there were supporters of a third-party endorsement; second, there were those who agreed that partisan action was necessary but who preferred to endorse one of the major party candidates (Calvin Coolidge for the Republicans or John W. Davis for the Democrats); and third, there were those who wished to continue the policy of political abstinence. One result was that barely \$25,000 in campaign funds were raised for Senator LaFollette.⁵⁰ Gompers, as the preeminent symbol of the labor movement, was so severely cross-pressured by these splits that he arrived at election day with no more ringing a plea for votes than "Bob LaFollette is a great American."⁵¹

It is ironic that the trigger for what eventually became the nearly fatal split between the old line AFL and its upstart progeny, the Congress of Industrial Organizations (CIO), was a new and successful drive to organize employees. The irony is compounded by the fact that this success, which led to the swelling of union memberships beyond anyone's expectations, arose because of the general tenor of the Roosevelt administration and the passage of the Wagner Act.⁵² Both events were political,

48. *See* *Adkins v. Children's Hospital*, 261 U.S. 525 (1923); *Truax v. Corrigan*, 257 U.S. 312 (1921); *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921).

49. *See* P. TAFT, *supra* note 29, at 481-82.

50. *See* F. DULLES, *LABOR IN AMERICA: A HISTORY* 252 (1966).

51. E. GOLDMAN, *RENDEZVOUS WITH DESTINY* 295 (1963).

52. The Wagner Act (National Labor Relations Act) was approved in 1935, but its labor provisions were lifted almost intact from the 1933 National Industrial Recovery Act (NIRA). *See* Act of June 16, 1933, ch. 90, 48 Stat. 195 (terminated by Exec. Order

and neither had much connection with the AFL.⁵³ The atmosphere of the Roosevelt administration together with the persons President Roosevelt brought in to conceptualize and administer his programs combined to produce a favorable milieu for unionism. In fact, if we ignore the various critical evaluations of this period now being suggested,⁵⁴ the vastly higher standing union leaders enjoyed from 1932 onward in their formal, official role as a third equal partner with business and government was implicitly contemplated by the National Industrial Recovery Act (NIRA). As a consequence, and in light of the diminished standing of "business and industry" in the minds of citizens during the Depression, unions shot upward in public esteem. They became, in a word, respectable. Thousands of employees joined unions in the belief that President Roosevelt "had personally endorsed unionism."⁵⁵

The influx of new members came not so much from the traditional crafts that were the mainstay of the AFL but from the mines, mills, and factories that the earlier industrialization of America had produced. The AFL simply was not structurally able to assimilate them. Its response to the new labor legislation was to sign members up under temporary local charters. During a period of "digestion," they would be allocated among the AFL's constituent unions. The result of the influx of new members was the opening of vast organizing vistas, the success of which almost immediately produced a schism within the organization.

Controversy boiled over at the AFL convention in 1935.⁵⁶ Following noisy and even violent debates on the craft versus

No. 7252 (1935), reprinted in 15 U.S.C. § 712 (1982)). The NIRA had been found unconstitutional by the Supreme Court on the argument that its method of regulating industry violated the fundamental principle of separation of powers. See *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935). Although the labor code provisions embodied a substantially similar notion, the Supreme Court did not explicitly deal with them in its decision and by the time anyone could test the reenacted labor code in Senator Wagner's bill the Supreme Court was disinclined to apply its previous position on economic due process. See B. SIEGAN, *ECONOMIC LIBERTIES AND THE CONSTITUTION* (1980).

53. Union involvement in the 1932 election was minuscule, not only on the national-Presidential level but on the more critical local level as well. The newly elected liberals who approved President Roosevelt's legislative initiatives came to Congress with little AFL support. See F. DULLES, *supra* note 50, at 263.

54. See, e.g., Krauss, *Reagan's Comments on Fascism and the New Deal*, WALL ST. J., Sept. 9, 1980, at 32, col. 4.

55. J. GREENSTONE, *LABOR IN AMERICAN POLITICS* 47 (1969).

56. See generally Young, *The Split in the Labor Movement*, in *LABOR AND THE NEW DEAL* *supra* note 44, at 45, 56-59.

industry question, accompanied by less openly discussed parallel differences on political involvement, the traditionalists reasserted the "Gompers balance." This time, however, the losing minority, represented largely by the Clothing Workers and the Mine Workers of John L. Lewis, was not content to accept defeat. Perhaps the experience of the Progressive Political Action Conference had been sufficiently instructive, or it may have been that Lewis and his colleagues were more sensitive to the possibilities of a sympathetic national government. In any case, a Committee for Industrial Organization (CIO) was created, and the AFL responded by labeling this move "dual unionism." Though there are few charges as serious as this, the dissidents refused to retreat, and the AFL's threat escalated to expulsion. The CIO group held firm and, "[a]t this point, the American labor movement was effectively split in two."⁵⁷ The now slightly-renamed CIO (Congress of Industrial Organizations) remained apart from the AFL for twenty years, during which time it blazed new paths for union political action. The AFL gradually came to adopt the same political view.

By 1955, the convergence in all respects *except* structural philosophy—that is, craft versus industry—had reached a point where the two organizations could manage a reconciliation. The structural issue at the time of the split may have been little more than a proxy for the arguably more fundamental matter of political involvement. It hardly seems reasonable to argue that a conflict about organizing philosophies split the labor movement initially and kept the two groups apart until 1955, considering that the CIO and the AFL were just as divided on this basis at the time of their rapprochement. There is evidence that the craft-versus-industry debate was, alternatively, a proxy for a much less polite and infrequently stated division on the issues of skill and race. The CIO unions were aggressively interested in organizing the less skilled—it would be inaccurate to claim they ever seriously tried to organize truly *unskilled* workers—and this, in turn, meant for a host of reasons that they were also far more willing to accept, if not actively seek, racial minorities. The CIO's record was hardly unspotted in the area of racial discrimination, but compared to the AFL's record, it was certainly less blemished and less virulent.⁵⁸

57. H. PELLING, *AMERICAN LABOR* 165 (1960).

58. See 1 H. HILL, *BLACK LABOR AND THE AMERICAN LEGAL SYSTEM* (1977). It should

Lest it be thought that the CIO jumped immediately into politics at all levels with its actions effectively coordinated on behalf of a single party or platform, a certain degree of diversity should be noted. John L. Lewis, for example, backed the Republican Wendell Willkie against a third term for Franklin Roosevelt, perhaps not so much out of principled admiration for Willkie as out of pique that the Democrats had come to count on the unions without actively having to court them.⁵⁹ On balance, the CIO unions were more politically active, more partisan, more ideologically liberal, and more likely to support the Democratic Party. In fact, in the years immediately following World War II, the CIO became the focus of sustained efforts to establish a progressive wing of the Democratic Party. This strategy, in alliance with such organizations as Americans for Democratic Action, was intended to achieve a large measure of partisan control.⁶⁰

As a means of channeling these efforts and of having an organization that *specialized* in campaigning, the CIO created Labor's Nonpartisan League with the avowed purpose of reelecting President Roosevelt and of serving as the nucleus of a "liberal party," if that proved necessary. As it turned out, however, the main task of the CIO group was to raise money for the national Democratic Party, which had experienced a sharp reduction in financial support from the business community as a result of President Roosevelt's policies.⁶¹

It may fairly be suggested that the Democrats' dependence on union cash dates from the 1936 election. Since then, in response to changes in the legal climate regarding campaign financing, the unions have shifted the *form* of their support away from cash and toward services, but nothing has significantly altered the role of unions as paymasters for the Democratic Party. An astute political observer of the time remarked that until 1936, both parties had relied on the same groups to fund their election efforts and, as a result, neither party could afford

be noted further that there were some personality factors in 1935 that had mostly disappeared by 1955, and this undoubtedly eased the path to a reunion.

59. See S. ALINSKY, JOHN L. LEWIS, AN UNAUTHORIZED BIOGRAPHY 188-90, 192-212 (1949) for excerpts from the famous radio broadcast by Lewis announcing his surprising endorsement and for a discussion of his possible reasons.

60. See A. HAMBY, BEYOND THE NEW DEAL: HARRY S. TRUMAN AND AMERICAN LIBERALISM (1973); H. PARMET, THE DEMOCRATS: THE YEARS AFTER FDR (1976).

61. See A. SCHLESINGER, JR., THE AGE OF ROOSEVELT: THE POLITICS OF UPHEAVAL 594 (1960).

to become outspokenly liberal.⁶² Later events seem to have validated this proposition.

The CIO campaign group exploded into a flurry of action during the summer before the November 1936 election. Leaving the traditional ward and precinct work to the Democratic Party apparatus, Labor's Nonpartisan League nevertheless reached down through the use of pamphlets, radio, and rallies to local levels of union organizations, even contacting individual voters, including nonmembers, in such highly industrialized states as New York, Illinois, Pennsylvania, and Ohio. One estimate put the CIO expenditure for this effort in 1936 at close to \$1 million.⁶³ The rhetoric was just as impressive, with John L. Lewis likening the hapless Alf Landon to a Bulgarian goatherder, a boiled watermelon, and a bootlicker.⁶⁴ Arguably, however, the Nonpartisan League's most significant contribution was money. In addition to the nearly \$1 million of in-kind services, it is estimated that Lewis's United Mine Workers by itself contributed almost a half-million dollars in cash, and other unions added enough to this figure to bring the total to about \$750,000.⁶⁵ For those who could not bring themselves to vote for President Roosevelt solely because he was running under a Democratic Party label, the Nonpartisan League obliged by creating a completely new political party: New York's American Labor Party.⁶⁶

Virtually all of this was denounced by the AFL (headed now by William Green), which regarded the Nonpartisan League as nothing more than the political arm of the CIO. A resolution condemning this stand was introduced at the AFL's 1938 convention. After considerable debate, including a ringing denunciation of the CIO's partisanship by a New York delegate named George Meany, the resolution was defeated.⁶⁷ Not for the first time, and certainly not for the last, there were charges of communist infiltration into both the League and the CIO. But the CIO persisted with a stunningly successful drive for its gubernatorial candidate in New York over the usually redoubt-

62. See Overacker, *Labor's Political Contributions*, 14 POL. SCI. Q. 56, 61 (1939).

63. See A. SCHLESINGER, JR., *supra* note 61, at 594.

64. See *id.*

65. See *id.*

66. See Overacker, *supra* note 62; A. SCHLESINGER, JR., *supra* note 61, at 592-95.

67. See W. GALENSON, *THE CIO CHALLENGE TO THE AFL: A HISTORY OF THE AMERICAN LABOR MOVEMENT 1935-1941*, at 607 (1960).

able Thomas Dewey. As a consequence, John Lewis proclaimed proudly that no one could fail to apprehend the "tremendous power and influence now being exercised by labor in the political realm," no politician could any longer safely ignore the League, and any politicians who did would be "held to strict accountability in that inevitable day when elections come again."⁶⁸ Joel Seidman described the Democratic Party under President Roosevelt as being functionally equivalent to a labor party,⁶⁹ and that is how matters largely stayed until the 1940 election.

Although Lewis had been associated with the Republican Party much earlier, it is not entirely clear why he chose this particular point to reverse his years of alliance with the Democrats. More inexplicably, he abandoned an extraordinarily popular incumbent President in favor of a Republican candidate who was not, in a word, inspiring. The mystery reached its apex when Lewis sought not merely to publicize a *personal* endorsement but to drag the labor movement (specifically, the CIO) along with him. The CIO was solidly pro-Roosevelt, but Lewis possessed sufficient control over the supposedly associated Nonpartisan League to engineer an anti-Roosevelt campaign.⁷⁰ He was, of course, not successful in defeating Franklin Roosevelt, but the other consequences that flowed from the split within the CIO were considerable and significant.

First, Lewis was forced out of the CIO, and because the League remained in his hands, that organization split from the CIO as well. Second, there was a general concern that union political action would be weakened. This fear seemed to be confirmed by the defeat of many liberal Democrats in the 1942 congressional elections, followed shortly by the Smith-Connally Act (1943) barring wartime strikes and union political contributions.⁷¹ It should not be surprising that many union

68. DAILY PROCEEDINGS OF THE SECOND CONSTITUTIONAL CONVENTION OF THE CIO 184 (1939).

69. See Seidman, *Organized Labor in Political Campaigns*, 3 PUB. OPINION Q. 654 (1939).

70. It was noted earlier that Lewis's decision to back Wendell Willkie may not have been because of the issues dividing the two candidates, their respective parties, any commitment to Willkie personally, or some similar matter of principle. Yet, neither is there any consensus on what *did* motivate Lewis: Speculation has included personal pique (President Roosevelt was not consulting with Lewis), communist influence (the Communist Party U.S.A. opposed President Roosevelt in 1940 for a host of reasons), or anger regarding the "third term."

71. War Labor Disputes (Smith-Connally) Act of 1943, ch. 144, 57 Stat. 163 (1943).

leaders saw a direct connection between the split in the union ranks in 1940 and the first major piece of legislation passed in more than a generation that was considered explicitly "anti-labor." Third, although the AFL *might* have learned the lesson that political involvement can lead to harrowing consequences, it appeared to learn instead that unity must be insured at all costs and that the political arm must be fully under central union control. Responding to Lewis's "theft" of the Nonpartisan League and the new curbs on union political involvement represented by Smith-Connally, the CIO formed what became the archetype for all later organizations to the point that its original, formal name, Political Action Committee (PAC), became a generic, descriptive term for all private lobbying groups.⁷²

The CIO's PAC began preparing for the 1944 national elections by developing several programs that had earlier been considered within the sole province of political parties. For example, it produced and broadly distributed educational materials designed to increase the effectiveness of individual political action, particularly of volunteer work at the precinct level. Liberal columnist and commentator Richard Rovere was considerably impressed with the sophistication of the CIO's campaign propaganda and noted that its electioneering was structured almost like a traditional political machine.⁷³

Given the current controversy over union involvement in party primaries, it is of interest that the CIO's PAC became immersed in a number of Democratic primaries many years ago. Notably, it successfully threw its weight against the renomination of Texas Representative Martin Dies in 1944.⁷⁴ One result of this action and others like it was a vastly increased level of influence for unions within the upper reaches of the Democratic Party, sufficient at least to be given the dominant voice in the selection of the vice-presidential running mate. The most likely candidates for this usually less-than-critical piece of patronage were the incumbent Henry Wallace, favored by the

72. See Rosenfarb, *Labor's Role in the Election*, 8 PUB. OPINION Q. 378 (1944). The term "PAC" has become so ubiquitous that it has achieved virtual transmutation into a noun. This common usage is acknowledged here, despite outcries from English language purists.

73. See Rovere, *Labor's Political Machine*, 110 HARPERS MAG. 594 (1945).

74. See J. FOSTER, *THE UNION POLITIC: THE CIO POLITICAL ACTION COMMITTEE* 28 (1975).

CIO for his radical politics, and the more conservative alternative supported by the AFL, James Byrnes. The two, in effect, cancelled each other out, and Wallace was replaced on the ticket by Harry Truman, whose principal backer was Sidney Hillman of the CIO.⁷⁵

It took a shock comparable to that suffered by the CIO to tip the AFL over the precipice into active political, partisan involvement. The Smith-Connally Act almost seemed to have been targeted at the CIO: The act's two main provisions⁷⁶ had little impact on the AFL because its members had been less inclined to strike during wartime—they concentrated on economic activities that did not directly affect the production of war material, and the Federation had not as yet generated enough political money to warrant congressional concern. The Taft-Hartley Act of 1947 provided a comparable jolt for the AFL. All unions had benefitted from the provisions of the Wagner Act, and AFL unions arguably had been favored over their CIO competitors by the NLRB,⁷⁷ so the AFL had come to believe that the general legal framework was both friendly and firmly in place. But a more critically minded Congress—in light of hearings that produced evidence of widespread union excesses—became convinced that existing legislation was unbalanced in favor of unions. The strength of support for this partial re-balancing of the employment relationship can be measured by the fact that Taft-Hartley became law after both Houses of Congress, by a two-thirds majority in each, confirmed the bill over President Truman's veto.⁷⁸ It is not an

75. See M. JOSEPHSON, *SIDNEY HILLMAN: STATESMAN OF AMERICAN LABOR*, ch. 25 (1952). Sidney Hillman, of course, is the person referred to in the famous "Clear it with Sidney" remark reportedly made by President Roosevelt in connection with the contested choice for his running mate.

76. See War Labor Disputes (Smith-Connally) Act of 1943, ch. 144, § 6, 57 Stat. 163, 165 (1943) (restricting strikes in war-related industries); *id.* at § 9, 57 Stat. at 167 (restricting union political spending in war-related industries).

77. See Edelman, *Sensitivity to Labor*, in *LABOR AND THE NEW DEAL INTERESTS* 159, 172 (1957) (arguing that it did not start out this way, but President Roosevelt replaced several of the strongly pro-CIO members of the Board and it began re-tilting in favor of the AFL); see also J. GROSS, *1 THE MAKING OF THE NATIONAL LABOR RELATIONS BOARD* 244-54 (1974); C. DANIEL, *supra* note 41, at 15.

78. See F. DULLES, *supra* note 50, at 357. One of the objectionable features of Taft-Hartley, among many, was the prohibition against union political contributions and expenditures—Smith-Connally had dealt with contributions only—but the expenditure portion of the law was later excised as unconstitutional. See *United States v. CIO*, 335 U.S. 106 (1948).

overstatement to suggest that the entire union movement, but particularly the AFL, took Taft-Hartley as a personal affront.

The AFL's response was to adopt, for all practical purposes, the CIO's approach to political action. It created Labor's League for Political Education in virtually the same image as the Political Action Committee. Both had the same objectives, programs, and priorities, as well as the same special function as a campaign funding device to bypass restrictive legislation.⁷⁹

With the CIO having expelled several unions and union factions during the 1940s for being controlled or dominated by communists, this move by the AFL dissolved the final significant roadblock to an eventual merger of the two federations. The CIO was still very much to the left of the AFL, a condition that played no small role in the departure of the United Auto Workers from the AFL-CIO in 1967, but the CIO had at least taken the symbolic step of ridding itself of its most vociferously radical elements.⁸⁰

For its part, the AFL implicitly endorsed its rival's position on the need for union intervention into the political process, including steady and vigorous forays into campaigning. As far as classical bargaining theory was concerned, the time was ripe for a rapprochement because each had edged closer to the position of the other. Even the earlier personality differences had become less significant with the selection of George Meany as head of the AFL. Meany had risen through his union's ranks and then through the AFL bureaucracy. From his first Federation job as a New York state lobbyist, he had specialized in political activity. Labor columnist Abe Raskin characterized the new AFL President as a unionist nurtured by the New Deal's "emphasis on legislation and lobbying," which sprang from the notion "that labor had to be heavily involved in politics to safeguard the gains it made at the bargaining table, or to win them in the first place."⁸¹ In a very real sense, the merger in 1955 actually began much earlier, with joint campaign activities in several industrialized states by the AFL's Labor League and the CIO's

79. See Leeds, *The AFL in the 1948 Elections*, 17 SOC. RES. 207-08 (1950).

80. Having been at the forefront of the CIO, the UAW found itself chafing at what it viewed as excessive conservatism in the AFL-CIO, notably in foreign policy. See F. CORMIER & W. EATON, REUTHER 405-19 (1970) for a discussion of the Meany-Reuther split and the UAW's withdrawal from the AFL-CIO.

81. Raskin, *AFL-CIO, A Confederation or Federation? Which Road for the Future?* 350 ANNUALS AM. ACAD. POL. & SOC. SCI. 38 (1963) (emphasis added).

PAC that led to formally merged labor committees in more than a dozen states as early as 1950.⁸²

Given these areas of convergence, the removal of personal clashes that had at least exacerbated the original split, and the seemingly more threatening political environment epitomized by Taft-Hartley and Dwight Eisenhower's victory in 1952,⁸³ the reconciliation of the AFL and the CIO might have been considered inevitable. The merger, however, almost did not occur because some in the AFL had begun to question whether they had anything to gain by the amalgamation, or if there were benefits, whether the AFL needed to concede much to bring it about. The problem was that the CIO was losing ground, and it is likely that CIO leaders were just as aware of this situation as were leaders in the AFL.

There was never a time, for example, when the AFL was not larger than the CIO, either in total numbers or (with a few exceptions) as a proportion of employees unionized in different types of work or in different geographic regions. There was an obvious pattern to the distribution of members of the two organizations that resulted from their craft versus industrial orientations, but in most cases the AFL retained its numerical edge. Moreover, the 1940 campaign fiasco had hurt the CIO, internally and externally. The departure of John L. Lewis and the Mine Workers removed from the CIO ranks one of its best known and most respected leaders, as well as one of its largest and most active components. Then the CIO took the bold but still somewhat symbolic step of expelling almost a dozen of its member unions for being dominated by communists. Although this move undoubtedly increased the CIO's acceptability within established labor circles, it also reduced the CIO's dues income. As though these two departures were not enough, there were increasingly persistent rumors in the early-1950s that the second largest union in the CIO, the Steelworkers, was about to transfer its membership to the AFL. After its initial, under-

82. See Leeds, *supra* note 79, at 212; see also Zon, *Labor in Politics*, 27 *LAW & CONTEMP. PROBS.* 235 (1962).

83. Aside from the usual policies considered unexceptionally "Republican" and therefore anti-labor, unions were especially incensed by President Eisenhower's failure to follow through on his campaign promise to soften Taft-Hartley. The administration's Secretary of Labor, Martin Durkin, had been a unionist and had presented a set of recommendations along these lines, but they were rejected, and Durkin promptly resigned. See *Durkin Quits Cabinet, Hits GOP on T-H Stall*, CIO News, Sept. 14, 1953, at 2, col. 1.

standable surge in membership, the CIO had experienced a small but steady decline relative to its competitor. The AFL had increased its proportional membership advantage over the CIO from 1939 to 1953.⁸⁴

Although a consensus had developed between the two organizations regarding the need for coordinated political action, important differences remained regarding such subsidiary issues as the purposes to be pursued and the means to be used. The AFL generally accepted that political action could be an effective protection against legislative encroachments on union prerogatives, as well as a source of new privileges—recognizing the significance, for example, of the Clayton and Wagner Acts for the very existence of the union movement. The CIO considered this non-debatable and believed further that political action should be used to achieve broad social and ideological ends that reached far beyond traditional union interests. The CIO leaders were inclined to expand their concept of “union interests” to include ends that others would not normally believe fell naturally, logically, or traditionally under that heading. This train of thought has led some current union leaders to assert that what unions do is the sole measure of “union interests.”⁸⁵ Another distinction between the AFL and the CIO was that the AFL tended to engage in lobbying as its preferred form of political action and the CIO believed that electioneering and campaigning were the better strategy. To a slightly lesser extent, there was also a distinction between the AFL’s lingering tradition of non-partisanship and the CIO’s greater readiness to ally itself openly with the Democratic Party (or with a variety of even more liberal political groups).

It should come as no surprise that when the two organiza-

84. See Galenson, *The Historical Role of American Trade Unionism*, in *UNIONS IN TRANSITION: ENTERING THE SECOND CENTURY* 53 (S. Lipset ed. 1986).

85. The issue has reappeared recently, particularly in litigation where the court has felt it necessary to develop a more limited definition of “collective bargaining” in the face of assertions that virtually *everything* unions do is to be included. See Brief for Defendants/Appellees, *Ellis v. Brotherhood of Ry., Airline & S.S. Clerks*, 466 U.S. 435 (1984).

The expansive position is stated starkly in a brief by the Communications Workers: “All the expenditures of CWA [the union] ‘promote the cause which justified bringing the group together [i.e., unionism],’ [or] are germane to collective bargaining” excepting only “support of political candidates or parties.” Brief of CWA Defendants to the Special Master, vol. 1, at 85, *Beck v. Communications Workers of Am.*, 112 L.R.R.M. 3069 (D. Md. 1983) (No. B-76-839), *aff’d in part and rev’d in part*, 776 F.2d 1187 (4th Cir. 1985), *aff’d on rehearing*, (4th Cir. 1986) (en banc), *aff’d*, 487 U.S. 735 (1988).

tions merged in 1955, the AFL-CIO settled these differences by incorporating both competing positions. In short, rather than choosing between the alternatives implicitly raised by the different emphases, experiences, and preferences of the AFL and the CIO, the AFL-CIO made clear its intention to preserve existing union legal privileges, to obtain new rights, and to seek broad social objectives through lobbying and electioneering based on a formally nonpartisan but unofficially pro-Democratic Party alliance. It was from this melting pot that the Committee on Political Education (COPE) was drawn.⁸⁶ It possesses an unusually rich history of innovative political action and a mandate from the leadership to utilize the widest possible range of mechanisms for influencing the political process.

IV. COPE, POLITICS, AND THE "MODERN PERIOD"

The establishment of COPE demarcates what might be called the "modern period" of unions in politics. It marks the point at which all the different directions, emphases, and objectives that developed from the late-Nineteenth Century onward were rationalized, coordinated, and streamlined within a single structure. This is not to say that the AFL-CIO has made no mistakes since 1955. Nor does it suggest that there has never been any instance in which one form of political action has conflicted with another (as when a need to give campaign support to an incumbent has interfered with attempts to lobby for that person's vote on a legislative issue). The observation most emphatically should not be construed to mean that COPE is the only union game in town. A few unions have constructed separate political machines and have usually restricted themselves to specializing in a certain geographic area—the Autoworkers in Michigan, the Mineworkers in West Virginia, and the Farmworkers in California.⁸⁷ There are also one or two non-Federation unions with political stratagems not controlled by COPE but with activities evidencing a degree of coordination with collegial union forces—for example, the National Education Association.

86. See J. FOSTER, *supra* note 74. For a divergent and unflattering contemporary account, see J. CATCHPOLE, *HOW TO COPE WITH COPE: THE POLITICAL OPERATIONS OF ORGANIZED LABOR* (1968).

87. We shall be discussing later why COPE might welcome a proliferation of apparently overlapping and possibly redundant political action groups run by various constituent unions.

As modern campaigning has changed because of fashions or technologies, so has the COPE effort. A good case can be made for the proposition that although the unions have not always caught the tide at its crest, they have frequently led the way. A close review of union electoral activities since the 1970s reveals a curious mixture of sophisticated technological innovation with elements of a "last hurrah" style of campaigning.

Clearly, the introduction of computers into PAC operations illustrates how unions have not hesitated to use for their own purposes the same type of automated technology that they have often implacably fought as a collective bargaining issue. This kind of operation dates back at least to 1965, when COPE Director Al Barkan launched experiments with computerized union-membership lists in New Jersey and Pennsylvania.⁸⁸

Yet this phenomenon must be contrasted with the undoubted "traditional ward-heeler" expertise COPE exhibited in the 1984 Democratic Party primaries (especially in those states utilizing a caucus system) on behalf of former Vice President Mondale. These efforts were characterized by campaign techniques as old as the American political game—organizing, get-out-the-votes, personal contacts, volunteers, signs, buttons, and so forth. It was, in short, a style and a set of specific tactics reminiscent of the "whistle-stop" races of an earlier age. Undoubtedly, more than a modicum of tension must have existed between the high-tech, media-oriented, image-conscious element and the precinct captain, machine-oriented, patronage element in the union campaign for Walter Mondale.

COPE has come to epitomize not simply how unions worked their political will on the national level, but often how *any* spe-

88. See Hardesty, *The Computer's Role in Getting Out the Vote*, 80 AM. FEDERATIONIST 5-11 (1973).

The author has intimated elsewhere that there is, in a sense, "nothing new under the sun" when it comes to unions and political action techniques. See *supra* note 72 and accompanying text. As this discussion shows, specifics can change (computers, for example), but there do not appear to be any new *ideas* now being used by any PAC that cannot be traced to much earlier use by COPE or even by the original PAC of the League. Some have said that "independent expenditures" is a new phenomenon, but it is a development created solely by the campaign funding legislation. It cannot be found earlier because the category did not exist in law. Later, unions have not needed to make as much use of this category as have other groups because unions are less restricted in their ability to fund political activity. If pressed, the use of television might be identified as a modern political technique that unions appear to have underappreciated. Television may have begun as a mere technological marvel, but it has clearly become an elemental fact of political life—one that unions have been slow to adopt even to sell themselves, much less to sell a candidate.

cial interest should do so. It has become the model for every lobbying group, including groups with interests quite antagonistic to those of COPE. Although the AFL-CIO's political operation is not always infallible, efficient, effective, or indivisible, it does tend toward these characteristics; and its survival depends upon them.

For all practical purposes, the "modern period" for union political activity may be dated from the early 1970s. First, unions were incensed by the almost incidental revelations during the Watergate scandal that employers and business groups had been pumping large amounts of money into the Republican campaign.⁸⁹ They led the fight for legislation that narrowed the forms of permissible election assistance to those that were or could be of the greatest benefit to the interests and candidates they historically supported.⁹⁰ Second, and closely related, the 1970s witnessed the growth of the PAC phenomenon. In sheer numbers, corporate PACs overtook union PACs by 1976, and union PACs were out-spent by business-related PACs by about 1980.

Where the unions have been most innovative, however, and other groups less likely to imitate them, is in the realm of campaign *services*—those "soft" dollar expenditures that provide assistance to a candidate without actually transferring cash. The actual amounts of these types of union expenditures reported to regulatory agencies are doubtless important, but the

89. It is often forgotten in this regard that these "large amounts of money" were handed over not so much to the Republican Party or to its overall campaign effort but to the "Committee to Re-Elect the President" and to the specific benefit of President Nixon. Furthermore, while there is disagreement over the semantics of this characterization, it was often the case that these sums were not given freely but were, it might be said, strongly encouraged by various strategies. To this extent, the election financing aspect of the Watergate scandal speaks less to the supposed corrupting influence of money in politics and more to the corrupting power of politics itself. After all, for many of the "business contributions," the initial immorality was not in their payment but in the pressure to pay them, pressure that came from certain officials in the Nixon campaign. See, e.g., D. ADAMANY & G. AGREE, *POLITICAL MONEY* (1975); H. ALEXANDER, *FINANCING POLITICS: MONEY, ELECTIONS, AND POLITICAL REFORM 194-205* (1976); Franklin, *Inquiries into Nixon's Re-Election Funds Turning up a Pattern of High Pressure*, N.Y. Times, July 15, 1973, at 36, col. 2.

90. For example, among the various alternative election financing reform measures that have drawn public and legislative attention, unions have tended to support those schemes that limit collecting rather than spending money, favor soliciting from "members" as opposed to the general public, and regulate cash but leave untouched the use of "in-kind" expenditures. See generally, Epstein, *Labor and Federal Elections: The New Legal Framework*, 15 INDUS. REL. 257 (1976).

more interesting phenomenon is the growth in the volume, diversity, and creativity of "in-kind" expenditures.

A. *The 1972 Election*

The first two years of the 1970s, culminating in the 1972 presidential election, were not merely the beginning of the "PAC phenomenon" or the first stirring of employer political activity using the techniques that the union movement had devised for itself. According to Max Green, a former union staffer who later worked with the U.S. Civil Rights Commission, those two years were also the ones in which the AFL-CIO began to "lurch left."⁹¹ Green quotes an unnamed "top AFL-CIO official" regarding the Reuther-Meany split in 1968: "Reuther wanted to be known as a leader of the liberal community . . . [but] Meany was a leader of the labor movement. Where he agreed with the liberals he was *with* them, but he was not *part of* the liberal movement."⁹² Thus, the AFL-CIO's liberal positions on many issues were the result of tactical considerations, at least during George Meany's most active early years. The AFL-CIO used its liberalism to construct alliances that could then be used to achieve traditional union objectives. As a consequence, it is virtually impossible to find any concerted union political energies devoted to objectives that were *not* politically liberal in nature. Similarly, the elements of the labor movement that most energetically professed liberal political ideas were always the most heavily involved in political affairs, especially electioneering.

Max Green recognized the AFL-CIO's role in supporting the massive expansion of government during the Great Society era. He noted that in the late 1960s, Meany claimed to have "long since left behind what he now derisively referred to as the parochial 'bread and butter unionism' of the past."⁹³ In the Nixon-Humphrey election of 1968, the Federation attributed the defeat of the quintessentially pro-union Hubert Humphrey to liberal opposition (mostly because of the Vietnam issue). Union support for Senator Humphrey was organized labor's "Last Hurrah, the last time it stood alone in defiance of liberal opin-

91. See Green, *Labor's Bad Bargain: The AFL-CIO Lurches Left*, 30 POL'Y REV. 14, 14-19 (1984).

92. *Id.* at 15.

93. *Id.* at 14.

ion.”⁹⁴ In that election Meany scorned the coalition that offered George McGovern as an alternative to Hubert Humphrey and declared that Senator McGovern was unable to appreciate either the “perils of isolationism” or the “continuing need to participate in the defense of human freedom and human rights in a dangerous world.”⁹⁵

When the fight was replayed in 1972, Meany’s prestige within the Federation was at stake. He was unable, however, to engineer anything more than a non-binding resolution of neutrality in the McGovern-Nixon contest. In the end, “unions representing approximately half of all AFL-CIO workers endorsed Senator McGovern.”⁹⁶ This was primarily a symbolic protest against the knowledge that President Nixon would win under almost any circumstances and was a symbolic surrender to the “New Politics” advocates in the Democratic Party.⁹⁷

There was more than a little personal animosity in George Meany’s opposition to Senator McGovern. McGovern had run a pre-convention campaign that featured various jabs at “labor bosses.” As Rex Hardesty, an aide to Lane Kirkland (then Secretary Treasurer of the AFL-CIO), said regarding the 1972 election, the McGovern forces “labor-baited all the way to the convention and they invited us out early.”⁹⁸ The personal animosity against Senator McGovern was all the more ironic in that, arguably, it was Meany who had insured McGovern’s election to the Senate in the first place. Senator McGovern had apparently lost his 1962 race by a close vote. The recount in

94. *Id.* at 16.

95. *Id.* (quoting George Meany).

96. *Id.* Several construction and maritime unions endorsed Richard Nixon. See Raskin, *A Reporter at Large, A Unionist in Reaganland*, *NEW YORKER*, Sept. 7, 1981, at 60.

97. The term “New Politics” emerged from the travails of the Democratic Party during the early 1970s when it became increasingly influenced by the involvement of groups that had previously been relatively inactive in party politics. Women, racial and ethnic minorities, and other interests laid claim to the Democratic Party machinery in the name of correcting historical exclusion (legal and otherwise). The result was a party structure that consciously sought such involvement, was willing to exclude traditionally favored groups solely to accommodate these claims, and found itself split internally as a result of the contending factions. The “New Politics” wing of the Democratic Party thought of itself as reformist, progressive, and committed to bringing power to the hitherto powerless. Those who already *had* power were not prepared either to assume responsibility for alleged past ailments or to share their hard-won preeminence. Over time, the “New Politics” proponents, who began their existence railing against a party controlled by such special interests as the unions, were themselves charged with having become little more than a rag-tag assortment of special interests to whom the Democratic Party pandered.

98. Strong, *Why Hart’s Candidacy Fails to Inspire Union Enthusiasm*, *Chicago Tribune*, Mar. 19, 1984, § 3, at 3, col. 3 (quoting Rex Hardesty).

South Dakota cost \$30,000, a sum provided by COPE on Meany's direct approval. The recount came out in Senator McGovern's favor by sixty-five votes. Meany was incensed three years later when McGovern deserted the union ranks on a Taft-Hartley repeal vote.⁹⁹

Although Senator McGovern had "invited out" the unions (and only the Meany wing, at that), the negative tone was felt primarily at the national level. The union presence was eagerly desired in most state and local contests in 1972. Many Democrats' races were run that year with so little mention of their party's presidential candidate that it was possible to think 1972 was an off-year rather than a presidential election. Some campaigns actually *counted* on Democrats voting for President Nixon; their strategy was to encourage ticket-splitting based on a feeling of guilt for having voted Republican on the national level.¹⁰⁰ Even unions that had endorsed McGovern publicly on the national level exerted various efforts to divorce that action from their work on behalf of favored candidates on the state level.

The union movement was considerably more solid at the state and local level than it was nationally. In California, for example, the state senate was in danger of having a Republican majority, thus removing from the Democrats the right to organize the senate. Two seats were open in a pair of special elections, with one in San Diego certain to be taken by the Republicans. If the Los Angeles seat also went Republican, the balance of power in the California senate would shift. COPE reportedly delivered "more than 1,000 union members" to the Democratic candidate's precinct organization, with "hundreds of other union members [involved in] the get-out-the-vote effort. Cars and drivers were provided through the Los Angeles Building & Construction Trades Council."¹⁰¹ The Democrat won by 4,000 votes. The AFL-CIO report on the victory made it clear that the Federation's objective was not merely the election of a pro-union state senator, regardless of party affiliation, but rather was to keep the California senate safely in the hands of the Democratic Party.

99. See Isaacs, *Meany Said Unalterably Opposed to Any McGovern Accord*, Wash. Post, July 12, 1972, at A19, col. 3.

100. See Wendland, *Kelley Hopes to Harvest Democratic 'Penance Vote'*, Detroit News, Oct. 30, 1972, at 9A, col. 1.

101. *Democrats Retain Senate in California*, AFL-CIO News, Mar. 10, 1973, at 6, col. 1.

The 1972 Senate race in Rhode Island was considered critical because the incumbent, Claiborne Pell, was the third-ranking member of the Senate Labor Committee. COPE devised a strategy that orchestrated actions on a number of fronts. Six full-time union organizers would be assigned for political education purposes in the state; the publications of a variety of local unions would choreograph a "barrage" of pro-Pell stories and endorsements that would keep the Senator's name before union members on a continuous basis; a coordinator would be named for all union activities on behalf of Senator Pell; a political action office with secretarial assistance, telephones, furniture, and so forth would be set up "preferably in AFL-CIO headquarters"; COPE would create a "Dollars for Pell" committee; and a major poll would be conducted (funds for which would be split between Senator Pell and organized labor) to explore why the Senator was apparently not doing as well as had been expected.¹⁰²

After the election, Meany could look back with rose-colored glasses and remark that his avoid-the-presidential-race strategy had been successful in "correctly interpreting the mood of the membership." With members allegedly split "nearly fifty-fifty" (it was closer to 54-46) on the presidential election, the AFL-CIO had properly "concentrated labor's united efforts on the election of congressmen and senators who were proven friends of working people." In short, according to Meany, "COPE did its best job ever in 1972" and was "already gearing up for 1974."¹⁰³ "Save the Congress" was the watchword in 1972. In contrast with estimates for earlier years, the unions devoted about seventy-five percent of their direct cash outlays to congressional and various state house elections. COPE alone accounted for about \$2 million, an amount that was unprecedented by COPE's own admission.¹⁰⁴

102. See Davis, *Pell, Labor Chiefs Plan Campaign*, Providence J., Aug. 5, 1971; R.I. Meeting: Internal COPE Memorandum, available as Exhibit 2415 in *Seay v. IAM*, Nos. 67-1394-HP and 71-498-HP (C.D. Cal. Dec. 19, 1973).

103. 2 PROCEEDINGS & EXECUTIVE COUNCIL REPORTS, TENTH CONSTITUTIONAL CONVENTION OF THE AFL-CIO 5 (1973).

104. See, e.g., *Cope Gifts Set Record, Chief Says*, Wash. Post, Oct. 30, 1972, at A7, col. 1; *Meany Lauds Union's Political Organization*, Boston Globe, Feb. 22, 1973, at 25, col. 1.

TABLE 1
UNION POLITICAL CONTRIBUTIONS¹⁰⁵

Election Cycle	Democrats	Republicans
1972*	\$ 6,207,000	\$ 454,000
1974	5,900,000	400,000
1976*	16,450,000	1,050,000
1978	10,860,000	613,000
1980*	13,218,000	995,000
1982	19,661,000	1,255,000
1984*	24,594,000	1,570,000
1986	27,665,000	2,178,000
1988*	34,081,000	2,858,000

* Denotes an election cycle that includes a presidential race.

The in-kind assistance was also unprecedented. The Federation claimed that "COPE's representatives were everywhere," and their numbers were running about fifteen percent higher than in 1968. Thirty-one unions supplied personnel who worked on campaigns for up to four months just "covering the marginal races."¹⁰⁶ Unions also instituted voter registration and turnout programs, distributed pamphlets and leaflets, canvassed voters, provided babysitters, and provided various other services through their enormous manpower resources. A minimum of \$9.9 million is a reasonable estimate for these sorts of in-kind services provided by the unions to selected candidates in 1972 based on one reporter's detailed analysis of only 35 union groups.¹⁰⁷

COPE could justifiably claim success. The Federation's PAC had endorsed 362 persons in House races, 60% of whom won; 55% of COPE's Senate candidates won; and 65% of COPE's 17

105. In Table 1, data for election cycles prior to 1971—when the reporting requirements of the Federal Election Commission Act of 1971 (FECA), Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified as amended at 2 U.S.C. §§ 431-456 (1988)) did not apply—were drawn from various public sources, including reports filed by congressional candidates with the clerks of the House and Senate. For election cycles afterward, all figures are from FECA reports. As an indication that these national estimates represent only a small portion of even the direct expenditures, note that others have suggested that union spending for all electoral levels in 1972 (federal, state, and local) amounted to \$8.5 million. See Stetson, *Labor Power in the Elections*, N.Y. Times, Jan. 18, 1976, § 3, at 1, col. 6; *More and More Union Money for Campaigns*, U.S. NEWS & WORLD REPORT, Oct. 25, 1976, at 95 (graph).

106. *COPE in '72*, supplement to AFL-CIO News, Nov. 18, 1972, at 8, col. 1.

107. See Epstein, *Political Contributions: Big Labor's Big Guns*, Philadelphia Inquirer, Oct. 26, 1976.

gubernatorial candidates succeeded. Combined with senators and representatives who were already union allies but not formally COPE-endorsed, the union movement could count on a reliable “progressive” majority in each house of Congress following the elections in 1972.¹⁰⁸

The “liberal-labor” alliance, which had its first concrete stirrings during the Great Society era of Lyndon B. Johnson, was tested on several occasions during the Nixon years, but organized labor maintained the alliance primarily for its instrumental value. One example was the Federation’s use of its allies to lobby the U.S. Civil Rights Commission against conducting a proposed study of racism in the labor movement—an activity that, quite likely, these liberal allies would have strongly endorsed otherwise.¹⁰⁹ Some of the more obvious contradictions or tensions inherent in the alliance also began to appear during this period. An excellent example of this tension was the issue of job protection. Until the mid-1970s, most union officials had a critical view of liberal policies on the environment and defense spending. Although agreeing at the most rarified level that environmentalism was a good thing, the AFL-CIO supported the Alaska pipeline project in the face of virtually unanimous opposition from other elements of the alliance. The job protection issue also figured prominently in union support for the supersonic transport, the antiballistic missile program, and a stable level of military spending.

The principal problem during the early 1970s—the “shakedown” phase of the alliance—was that the unions were still pursuing the political policies that had characterized their earlier years. Although unions had achieved a prominent position in the United States economy and culture through the legal privileges granted under federal legislation long before the 1970s, this fact was either largely ignored or severely underappreciated. It was not until the late 1960s that the AFL-CIO began to recognize that its true field of battle encompassed lobbying and electioneering.¹¹⁰ After this

108. See American Federation of Labor and Congress of Industrial Organizations, Report of the Executive Council of the AFL-CIO, Tenth Convention, at 367-70 (Oct. 18, 1973).

109. See H. Johnson & N. Katz, *The Washington Post National Report: The Unions* 102 (1972).

110. It is entirely possible that the single event that most shocked union leaders into

recognition, it took a while to develop the mutual accommodations necessary for the alliance structure to operate smoothly and effectively. There had to be a period of posturing, symbolic fighting, and testing during which foundations could be laid for future relationships.

The seeming irony of a "liberal-labor" alliance was noted by columnist and political commentator, Stewart Alsop, who contrasted "fashionable" liberal millionaires and leftist intellectuals with "machinists and autoworkers, who are not fashionable people."¹¹¹ Alsop noted that by 1971, it was clear that a Democratic candidate could not gain the required exposure for election without courting the former group, but the "organization and manpower" of the latter were also critical. Citing an analogy from pollster Richard Scammon, Alsop described the unions as the engine in the car—without it, the car may have handsome upholstery and body work, but it will not run. Alsop quoted Lane Kirkland, Meany's trusted lieutenant, as observing that the tension in the alliance was caused by "intellectuals think[ing] they should be at the wheel, and . . . [that the unions] should stay under the hood."¹¹² In the following years, there was an unrelenting effort within the union leadership to become just as "fashionable" as the millionaire liberals and leftist intellectuals. In the process, the movement may have lost much of its common ground with machinists and autoworkers, who remain "unfashionable."

Following Richard Nixon's overwhelming victory in 1972, the labor movement began to muster its forces and to assess precisely where its strengths could be most judiciously applied. There appeared to be an unspoken commitment to ensure that never again would such an "anti-union" president be elected. If this could not be prevented, then at least the struggle would not be quite so uneven. AFL-CIO Secretary-Treasurer Kirkland was one of the union leaders who saw the shape of the main task. Speaking about the Democratic convention's choice of Senator McGovern rather than someone more in line with Federation desires, Kirkland observed that it had not previously been necessary to load the state delegations with

this realization was their failure to win repeal of section 14(b) (right-to-work section) of the Taft-Hartley Act in 1965 despite all of the traditional factors favoring success.

111. Alsop, *Labor and the Liberals*, NEWSWEEK, Nov. 22, 1971, at 140.

112. *Id.*

unionists; after all, the Democratic Party had been “run by professional politicians” who consulted with the unions because they recognized unions as one of the important elements of the historical coalition behind their party.¹¹³ Behind Kirkland’s comment was an almost aggrieved tone and a belief that the McGovern upstarts had stolen the Democratic Party from under the noses of their elders. The theft had been masked by “rules changes,” notably, the quota system for delegates. Kirkland’s comment also implicitly presaged the “delegate committee strategy” that was to become a major element in later union strategies for controlling the nomination process.

Lane Kirkland left the impression that what had actually happened was not a revolution, which would imply fundamental changes, but a palace coup. He was echoing classic Leninist organizational tactics when he commented that “the whole world is run by a handful of people who are willing to sit until the end of the meeting.”¹¹⁴ The consummate irony is that this is precisely how some union leaders, in countries where first-hand reports are available, have wrested control from the rank-and-file to create self-perpetuating oligarchies.¹¹⁵ In short, the unions had been beaten on precisely those grounds (organizational infighting) in which they were supposed to be expert; this made the consequent defeat all the more galling. It did not help that the McGovern campaign referred to the AFL-CIO and COPE in the persons of George Meany and Al Barkan as “wreckers” of the Democratic Party whose “dominant role” should never again be permitted.¹¹⁶

The union counterattack was swift and blunt. Full-page advertisements appeared in major daily newspapers in all parts of the country a month after the election. The adds carried the titular sponsorship of the “Coalition for a Democratic

113. See McPhearson, *Watergate Has Undone the Republicans, Right?* N.Y. Times, Sept. 9, 1973, § 6 (Magazine), at 38, 53.

114. *Id.*

115. This point can be found developed in virtually all of the classic literature on the democratic nature of union organizations. See, e.g., J. HUTCHINSON, *THE IMPERFECT UNION: A HISTORY OF CORRUPTION IN AMERICAN TRADE UNIONS* (1972); J. EDELSTEIN & M. WARNER, *COMPARATIVE UNION DEMOCRACY* (1973); S. BRILL, *THE TEAMSTERS* (1978). As may be inferred, the United States is among those countries where such tactics have been used.

116. See *Interview with George McGovern*, N.Y. Times, Nov. 14, 1972, at 36, col. 5.

Majority," but this was little more than an ad-hoc vehicle for the old-line Democrats who had been frozen out of party affairs by the practitioners of the "New Politics." Among the signers were nine union officials and three others associated with such ancillary union organizations as the Randolph Institute and Frontlash.¹¹⁷ The advertisements were followed by a considerably more traditional maneuver: the election of a Democratic Party National Committee chairman in the service of the AFL-CIO. Labor columnist Victor Riesel had no doubt that Robert Strauss, chosen for this post shortly after the Coalition's advertisement appeared, carried a "union label."¹¹⁸

Within the labor movement, of course, a significant minority was not nearly as concerned about Senator McGovern's attack as were Meany and Barkan. Among the fourteen active union officials on the Democratic National Committee following the choice of Robert Strauss as chairman, ten members were Meany supporters and four members—representing what might be called the left-liberal wing of the union movement—came from unaffiliated unions (such as the UAW) or unions that were large enough to get along without Meany's benevolence (such as the American Federation of State, County, and Municipal Employees (AFSCME); Communications Workers; and Machinists). Roughly the same pattern can be seen in the makeup of the other critical Democratic Party agencies. In the Charter Commission, for example, of the eighteen union officials who were members, thirteen were Meany supporters and five were New Politics unionists (consisting of people from the UAW, AFSCME, and the Clothing Workers). Not surprisingly, the Delegate Selection Commission, where the McGovernites had launched their coup by instituting the quota rules, featured just as high a proportion of unionists; but the balance between the old and new style proponents was more nearly even: five Meany supporters against four McGovern supporters.¹¹⁹

The essence of the difference between the "old" New Deal (backed by Humphrey Democrats and the Meany-led union traditionalists) and the "new" New Deal (identified with the

117. See Wash. Post, Dec. 7, 1972, at A6.

118. See Riesel, *Capture of Democratic Committee by Labor's Man Starts Meany-Nixon Rift*, Wash. Star, Dec. 11, 1972.

119. These tallies were compiled by the author based on a variety of sources.

McGovernites and the UAW-NEA-Machinists wing of the labor movement) has been succinctly captured by Dudley Buffa in his study of the UAW in Michigan. Buffa, a former aide to Senator Philip Hart, contrasted the Roosevelt coalition that "appealed to the economically disadvantaged with the promise of a redistribution of wealth," with the New Politics movement that "promised to provide almost unlimited opportunity for the expression of even the most idiosyncratic individuality."¹²⁰ The former "had confronted the Great Depression and the fact of economic scarcity by devising a strategy based on government as the manager of the national economy."¹²¹ Describing 1960-1972 as the "longest single peacetime period of sustained economic growth in American history," Buffa suggested that the left-liberal alliance had decided that the economic problem had been solved, with the consequence that politics need no longer be confined to the details of wealth distribution. Borrowing from Marx (without publicly footnoting him), the Democratic Party insurgents concluded from all this that material abundance through government management now permitted society to turn its attention to removing the "last remaining limitations on human development," by which they meant the "right of citizens to pursue freely what some designated personal morality and others dismissed as private pleasure."¹²²

In short, the race for existence, for obtaining the necessary goods and services, was over. New Politics adherents sought to lay the groundwork for what was often termed the "me" years of personal enhancement, of "doing your own thing," and of a relativistic morality that eschewed objective standards beyond those proclaimed by the individual. In this milieu, the Meany traditionalists, while no less liberal in ideology, were those who believed that the Rooseveltian New Deal struggle continued unabated, that the electoral coalition had to remain firm, and that economic issues remained paramount.

B. *The 1974 Elections*

The 1974 general election was preceded by stunning Repub-

120. D. BUFFA, *UNION POWER AND AMERICAN DEMOCRACY: THE UAW AND THE DEMOCRATIC PARTY, 1972-1983*, at 87 (1984).

121. *Id.*

122. *Id.*

lican losses in a pair of special races in Michigan where union money was lavished in districts in which Democrats rarely appeared, much less won. One seat involved a replacement for twelve-term Congressman Ford, whom President Nixon had appointed as his Vice President. The Democratic candidate ran his campaign on the twin themes of Watergate and the desirability of having hometown-boy Gerald Ford as President. Partly because of union donations, the Democrat out-spent his Republican opponent by more than three to one.¹²³ The other seat was also viewed as a referendum on President Nixon and Watergate. The prospects of delivering a knockout blow while the regular congressional races elsewhere in the country were just taking shape appeared so enticing that the eighth district contest in Michigan became a media event. It became a union event as well, at least to the extent that to one observer, "it sometimes seemed that the AFL-CIO executive council had for some unknown reason decided to hold an April [1974] meeting in Saginaw . . . instead of Bal Harbor, Florida."¹²⁴ The *Congressional Quarterly* quoted Democratic Party estimates that by the time the campaign was over, unions would have supplied more than \$50,000, along with invaluable personnel assistance in a district that contained nearly 50,000 active or retired members of the UAW.¹²⁵ In an attempt to prevent further erosion in the general election (as well as for a host of other, possibly more pressing reasons), President Nixon resigned on August 8, 1974.

Although many politicians declared in the days and weeks to follow that the resignation put Watergate out of the picture, that "our Constitution work[ed]," and that "our long national nightmare" was over,¹²⁶ the Democrats were no more willing to relegate President Nixon to history than they had been willing to absolve President Hoover of personal responsibility for the Depression. Democrats everywhere—and according to the opinion polls there were many more of them following Watergate than had existed before it—began talking about a victory of epic proportions, a landslide in Congress that would be at

123. See CONG. Q. WEEKLY REP., Feb. 23, 1974, at 493; *id.*, June 8, 1974, at 1473, 1477; *id.*, Oct. 12, 1974, at 2865-70.

124. D. BUFFA, *supra* note 120, at 97.

125. See CONG. Q. WEEKLY REP., June 8, 1974, at 1476.

126. *Transcript of Address by New President [Ford]*, N.Y. Times, Aug. 10, 1974, at 3, col. 3.

least the equivalent of Senator McGovern's 1972 defeat. The prediction was accurate, but paradoxically, in triumph the Democratic Party merely laid the groundwork for its virtual dissolution on the national level just one election cycle later. The problem was that winning an election as a Democrat in 1974 was *too* easy.

In a year in which nomination was often tantamount to winning in the general election, the nominating process assumed an importance it had not previously held other than in a few southern states. Furthermore, the nominating process was dominated by those who could most effectively manipulate the new, complex, and unfamiliar rules on participation-by-quota that the left-liberal wing of the party had succeeded in instituting. It may be that with so many seats in the state and federal legislatures certain to become Democratic property, there was a greater willingness to experiment with candidates who previously would never have been given serious consideration. Their nomination could now be tolerated because, with so many Democrats to be elected, a few "unusual" (minority, young, liberal-activist, new-entrant) candidates would be carried in on the tide. It was not until shortly before the general election itself, when the full slate of nominees was known, that anyone noticed that an extraordinary number of candidates were of this sort. With the votes counted, the Democratic Party found itself able to claim an embarrassment of riches at all electoral levels, many of which consisted of New Politics adherents. The Party was about to discover whether having Democrats win elections was all that mattered or whether too much success brings its own problems.

These success-related problems were shared by the union movement at the national level. This was in part because unions were associating with one or the other faction within the Democratic Party and in part because union assistance during the 1974 elections was a notable factor in the Democratic avalanche. This assistance was primarily in the form of organizational contributions. Although the COPE dollar was generally more effectively disbursed, being more precisely targeted than the employer PAC dollar, the "biggest asset" of COPE backing was the "organized effort put behind it."¹²⁷ For example, the

127. See Stetson, *Labor Power in the Elections*, N.Y. Times, Jan. 18, 1976, § 3, at 1, col. 6 (quoting AFL-CIO spokesman Albert Zack).

AFL-CIO reported that 110,000 volunteers had contributed millions of hours in 1974 to COPE political activities at the community level—"register-and-vote campaigns, staffing telephone banks, polling, canvassing, checking registration, distributing materials and getting out the vote." The Federation's sophisticated computer had generated thirty million printouts to aid these activities, with the result that the turnout among union family voters in 1974 was about thirty percent higher than the overall national proportion.¹²⁸

Having achieved this level of activity, it was not difficult to maintain it because the expertise and experience gained thereby could be readily called on again when needed. It was needed, for example, in a special election in New Hampshire scheduled for the fall of 1975. The unions seized the chance to capture a Republican senate seat by backing to the hilt the candidacy of Democrat John Durkin. One reporter listed the various telephone calls to each of 45,000 union households, the literature, and the door-to-door canvassing, all run by the unions, as major factors in Senator Durkin's win. He then noted that while the Republican loser had also conducted such activities, their cost had been charged to his maximum expenditure ceiling; not so for Democrat Durkin.¹²⁹ In a speech on the Senate floor, Arizona Republican Barry Goldwater cited an unidentified "expert opinion" estimating the value of this union in-kind support for Senator Durkin at more than \$150,000.¹³⁰ Although the Republican Party's 1964 candidate for President might be suspected of a certain partisanship in the matter, his detailed breakdown of the specific activities and their monetary equivalents lends credence to the estimate. Later in the same speech, Senator Goldwater noted that four Democratic Senators (Williams of New Jersey, Kennedy of Massachusetts, Hartke of Indiana, and Tunney of California) had received more than \$167,000 in union cash through 1975 for their 1976 races, that the unions had contributed more than \$114,000 to the Democratic Party's Congressional Dinner Committee (used to assist indirectly House and Senate campaigns), and that the Democratic National Committee itself had received more than

128. *Id.*

129. *See id.*

130. 122 CONG. REC. S 2620 (daily ed. Mar. 2, 1976) (statement of Sen. Goldwater).

\$116,000 from five unions alone in 1975.¹³¹

C. *The 1976 Elections*

From its very first days, the 1976 election was marked by heightened political activity. The National Education Association (NEA), a major element of the left-liberal alliance, proclaimed:

We must work harder than ever before to build upon the gains in the 1974 Congressional elections, when more than four out of five teacher-backed candidates won.

....

Congressional endorsements will set a new record this year. In 1974, teachers participated in a total of 310 House and Senate contests. We will be involved in upwards of 350 Congressional races in 1976.

....

With the election year comes the possibility of our greatest accomplishment in national politics.¹³²

Their "greatest accomplishment," of course, turned out to be the election of a President and Congress who, in turn, created the only new cabinet-level department in modern United States history expressly designed by and for a single labor union—the Department of Education. The successful NEA year began early with a stunning special election in New York's 39th congressional district, in which the winning Democrat, Stanley Lundine, "rode an extensive teacher-coordinated get-out-the-vote effort to a victory margin of 20,000 votes" ¹³³ He was helped further, undoubtedly, by NEA's maximum allowable PAC contribution of \$5,000 and the full-time, paid, and non-reported services of three NEA "election pros." ¹³⁴ The in-kind union services provided to Lundine reportedly had a value of some \$20,000 and included 60,000 phone calls accompanying 50,000 pieces of literature. ¹³⁵ Overall, the NEA expected to direct around \$2.5 million to "friendly candidates" at all

131. *See id.*

132. Ryor, *This is the Election Year Teachers Have Been Waiting For*, NEA Reporter, Apr. 1976 at 4, col. 1.

133. NATIONAL EDUCATION ASSOCIATION, COMMON SENSE I (Apr. 1976) (special NEA publication for delegates to its national convention).

134. *See id.*

135. *See Weaver, Labor Fighting to Retain Edge in Election Outlays*, N.Y. Times, Mar. 28, 1976, at 52, col. 5.

levels.¹³⁶

The New York State AFL-CIO anticipated its need for funds in mid-1975, and it approved a boost of three cents, marked for COPE, in its monthly per capita tax levied against all affiliated members starting on January 1, 1976. The move produced more than \$250,000, and the head of COPE in New York, Sy Cohen, declared that his campaign assistance plans "were ahead of schedule."¹³⁷ An important parallel strategy in his state involved the "matching of computer tapes from election boards . . . with the list of two million New York State AFL-CIO members in the computer bank in Washington [D.C.]."¹³⁸ All told, Federal Election Committee (FEC) reports indicate that union PACs began the year with roughly \$4 million, a sum to be augmented by a plan to acquire two dollars from each of the AFL-CIO's 14.5 million members. Indeed, union PACs had expended some \$2.4 million in cash contributions even before 1976 began.¹³⁹

Although the plan to collect two dollars voluntarily from each member for political activity never contemplated actually achieving such a one-hundred-percent level of success, the probability of coming close was increased through the use of the "political checkoff"—a device for making the collection as painless and unnoticed as possible. The months prior to the 1976 election saw a major push to include a checkoff provision in new or renewed contracts. The Office and Professional Employees Union (OPEU), for example, obtained the political checkoff in its contract covering office employees and agents at a large insurance firm in the Southwest. Under its provisions, the company would give each employee the opportunity to sign an authorization form for the voluntary withholding of a political contribution each month. These sums would then be forwarded within fifteen days to the OPEU local, *along with the names of all those agreeing to make the contributions*. It followed, of course, that the union would also know who had decided not to contribute.¹⁴⁰

136. See Matthews, *A Funny Thing Happened on the Way to Political Big Time*, Wash. Star, July 10, 1976, at A1, col. 1.

137. Stetson, *State AFL-CIO to Map a Bigger Political Role*, N.Y. Times, Aug. 30, 1976, at 44, col. 6. .

138. *Id.*

139. See *id.*

140. See White Collar, July-Aug. 1976, at 2, col. 4 (OPEU's national newspaper).

All of this money would be put to immediate use because the Labor Coalition Clearinghouse was laying plans to conduct election-type campaigns in favor of persons who would be delegates to the Democratic Convention. Twenty congressional districts in sixteen states were being targeted for special attention as part of this strategy. With an initial budget of nearly \$7,000 for each district, the Coalition intended to set up local steering committees to choose unionists to stand as delegate candidates and to inundate union members with mailings and telephone calls. Because all of this activity was ostensibly being aimed at union members, its costs could be covered totally and directly from union *dues* rather than from the voluntary money collected for expressly political purposes, which would have to be reported in detail.¹⁴¹

The New Politics rules, mandating wide and deep participation of all constituencies (labeled according to their race, sexual preference, religion, life style, and national origin) in the affairs of the Democratic Party, produced James Earl "Jimmy" Carter as its nominee for President of the United States in 1976. A virtually unknown former Governor of Georgia, Jimmy Carter had laid down a detailed game plan for capturing this nomination, a plan crafted by persons who had very carefully studied the quota rules and who thought they had discerned how those rules could be used to advantage by a quasi-Populist. Carter's race for his Party's nod incorporated an understanding of political psychology and of how the New Politics could be married to the New South that had not been seen since the days of such classic "seat of the pants" political flyers as James Farley (Franklin Roosevelt's top adviser) or, more recently, Lyndon B. Johnson.¹⁴²

The Carter plan called for the candidate to make a series of moves far in advance of the normal political season, at a time when other candidates were only beginning to develop strategy. For example, Carter appeared at a major political dinner in Wayne County (Detroit), Michigan in 1974. His speech did not light any fires, but he sat on the dais next to the UAW's

141. See Mossburg, *Labor and the Democratic Candidates*, Wall St. J., Mar. 18, 1976, at 16, col. 4.

142. See K. STROUD, HOW JIMMY WON: THE VICTORY CAMPAIGN FROM PLAINS TO THE WHITE HOUSE 23-27 (1977) for excerpts from a memo by Dr. Peter Bourne, a psychiatrist, to Carter outlining how a virtual unknown could use the disarray within the Democratic Party as a stepping stone to the Presidency.

Leonard Woodcock. "They talked throughout the dinner . . . [and they] met for breakfast" the next day.¹⁴³ The head of the UAW became one of Carter's most active political backers, particularly within the union movement, because he was convinced that Carter was "another Kennedy."¹⁴⁴ Other union officials were cultivated, including Bill Dodd and Mike Miller (political directors of the UAW and Communication Workers, respectively) because they were seen as the avenue to success in the industrial North without which no Democrat, especially one from the South, could hope to win the nomination.¹⁴⁵

The evidence indicates that Woodcock's support for Carter was crucial and dated from a time far ahead of any public statement by the union president. The Carter game plan called for a victory in the Iowa caucuses (or at least a very respectable showing) as an indication that his candidacy was viable. Such an early success was needed to maintain credibility. An outright and clear-cut loss would likely be fatal to the entire effort. Though it had not formally endorsed anyone in January of 1976, the UAW reportedly provided the Carter campaign staff with valued and critical assistance at this early stage in the campaign.¹⁴⁶

Yet arguably the greatest service Leonard Woodcock performed for Carter was to keep his and his union's commitment a secret—to support Carter, in other words, while letting observers think it was for reasons other than the actual desire to see him become the nominee. In Florida, this strategy involved Woodcock suggesting that Carter should be used as a device to frustrate the Wallace candidacy.¹⁴⁷ Indeed, Woodcock used this argument among his circle of liberal acquaintances to raise funds for Carter in advance of the Florida primary and to induce his otherwise reliable liberal ally in the House, Arizona Congressman Morris Udall, to stay out of Florida so as to avoid

143. D. BUFFA, *supra* note 120, at 147.

144. See K. STROUD, *supra* note 142, at 432.

145. See M. SCHRAM, *RUNNING FOR PRESIDENT, 1976: THE CARTER CAMPAIGN* 62 (1977).

146. See L. SHOUP, *THE CARTER PRESIDENCY AND BEYOND: POWER AND POLITICS IN THE 1980s*, at 79 (1980).

147. The strategy apparently worked. Governor Wallace was soundly defeated in the Florida Democratic primary but best of all, more than a third of the Carter convention delegates elected were unionists backed by the liberal Labor Coalition Clearinghouse. See Mossburg, *supra* note 141.

splitting the anti-Wallace vote.¹⁴⁸ Dudley Buffa, for one, is convinced that Carter had privately gotten Woodcock's full endorsement early on and that "it was no longer a question of *what* the UAW was going to do, but of *when* it was going to do it."¹⁴⁹

By the Jefferson-Jackson Day annual dinner in Detroit (April 10, 1976), the traditional beginning of the prime political season for Michigan Democrats, even the press was becoming aware that something was at work. The dinner was to launch the contest for that state's primary, scheduled for just five weeks later, and Carter was again in attendance. At the earlier event, hardly anyone knew he had come and gone; this time, even the landing of his plane was a media event. Carter was met by Woodcock and Detroit Mayor Coleman Young and escorted to a rally at UAW Local 174.¹⁵⁰

Even Woodcock could not, especially in the absence of a formal declaration stamped officially by the union, carry everyone with him for Carter. Other major union leaders, including his own vice president and assumed successor, Douglas Fraser, were attempting to reactivate another Humphrey campaign; still others were backing Washington Senator Henry Jackson.¹⁵¹ The strategy came to a halt on May 7, eleven days before the Michigan primary vote, with a public statement from Woodcock. By this time, Senators Jackson and Humphrey had ceased to be alternatives, and the UAW could speak with a single voice. Woodcock implicitly confirmed, however, that he had been behind Carter for a long time.¹⁵²

Representative Udall, believing himself the only true liberal left in the race, complained bitterly that Mayor Young and the UAW had turned their backs on his candidacy because they

148. See M. SCHRAM, *RUNNING FOR PRESIDENT: A JOURNAL OF THE CARTER CAMPAIGN* 84 (1977). Even an experienced reporter such as Elizabeth Drew was convinced that Woodcock's increasingly warm stance was solely in aid of Carter as a tool to destroy Wallace, never as a real Presidential possibility. See E. DREW, *AMERICAN JOURNAL: THE EVENTS OF 1976*, at 75-77 (1976).

149. D. BUFFA, *supra* note 120, at 149.

150. See *id.*

151. See Hallas, *Carter Tells Detroiters He'll Get Nomination*, *Detroit News*, Apr. 11, 1976, at 1A, col. 2.

152. See Joyce, *Carter Wins Backing of UAW's Woodcock*, *Atlanta Const.*, May 8, 1976, at 1A, col. 4. Ironically, in view of the UAW's reputation as one of organized labor's more democratic unions, Woodcock's endorsement was also purely personal. He had failed completely to follow the prescribed procedure involving initial recommendation by the UAW Executive Board and subsequent ratification by the union's convention. See D. BUFFA, *supra* note 120, at 156-57.

“just want to win” (a curious complaint indeed for a professional politician).¹⁵³ Spurred to greater tactical creativity than had characterized his campaign to date, Udall began to exploit the split in the labor movement’s broader ranks, as opposed to within the UAW. He made much, for example, of Woodcock’s attempt to turn his *personal* choice into an endorsement binding on the UAW. Borrowing a line from Senator McGovern four years earlier, Udall began talking to the rank-and-file and disparaging both Young and Woodcock. Helped significantly by a crossover vote that Gerald Ford had tried to activate in his primary battle against Ronald Reagan, the Arizona Congressman emerged with a mere 2,000-vote loss on May 18 after having been down by more than twenty percentage points only a few weeks earlier.¹⁵⁴ With such a razor-thin margin (out of about 610,000 votes cast), there can be little doubt that Woodcock’s UAW voters, two-thirds of whom voted for Carter, had been crucial.¹⁵⁵ Also, there can be little doubt that the UAW in Michigan used every device at its disposal to *deliver* those votes. Just before the primary, the UAW’s Community Action Program sent a letter to all its members requesting that they vote for Carter. The approximately \$25,000 cost for this was paid from a fund replenished periodically by a three-percent “tax” on union dues. In other words, the UAW paid three percent of its dues income into its PAC.¹⁵⁶

The single most important piece of data suggesting the ultimate value to Carter of union support may be seen in the 1976 Democratic Party National Convention. More than 600 unionists attended the convention as delegates or alternates, and an overwhelming majority of those came from unions in the left-liberal wing of organized labor. In fact, the approach to this particular election was marked by the creation and formal organization of a liberal union group known as the Labor Coalition Clearinghouse composed of the CWA, UAW, Machinists, Graphic Artists, AFSCME, Electrical Workers, Mineworkers, NEA, and the Oil, Chemical, and Atomic Workers.¹⁵⁷ Even

153. *Udall Predicts Loss for Carter*, Detroit News, May 14, 1976, at 14A, col. 3.

154. See Ryan, *Ford’s Campaign Rebounds; Carter Gets a Scare in Michigan*, Detroit News, May 19, 1976, at 1A, col. 2.

155. See Reinhold, *Poll Links Udall Strength to Low Vote in Michigan*, N.Y. Times, May 20, 1976, at 1A, col. 7.

156. See *Action Line*, Detroit Free Press, June 10, 1976.

157. See Ehrenhalt, *The Labor Coalition and the Democrats: A Tenuous Romance*, 33 CONG. Q. WEEKLY REP. 2881 (1975); Mossburg, *supra* note 141 (observing that the Coalition

before the Republican convention nominated Gerald Ford, these groups and the Coalition itself were actively advancing Carter's campaign. Perhaps they were already certain of who the Republican candidate would be and, upon mature reflection, preferred the Carter alternative.¹⁵⁸

In any event, these unions launched a massive effort to constitute the single, largest, identifiable bloc of convention delegates. One generally sympathetic labor affairs columnist reduced it to this:

Ride any horse you can get on [referring to possible Democratic candidates], but get to New York this summer [where the convention was scheduled for July 12]. . . . Then, after we have fulfilled our obligation to the candidate we ride to New York with, we hope to mobilize labor's forces behind the person we think can win in November.¹⁵⁹

A good example of this is a May 24, 1976, letter from George Frawley, president of a group of New Jersey Operating Engineers locals, to his members. "For the first time in history," he wrote, "our Local Union has been able to show its 'POLITICAL MUSCLE' by being able to nominate five Delegates and two Alternates" to the 1976 Democratic Convention. In urging his members to vote in New Jersey's June 8 primary for this slate, Frawley admitted that these delegate candidates were listed as committed to Senator Jackson, but they should get his members' votes anyway even if the recipient of the letter "personally may not agree" with this designation. The union's "objective . . . is to prove our 'MUSCLE'"¹⁶⁰ As an added incentive, the AFL-CIO announced that its unions would pay

was being led by a senior CWA staffer, Mike Miller, and characterizing the group as among "the best-heeled, most politically sophisticated organizations" in the labor movement and at the "heart of labor's 'liberal' wing"); see also Aronson, *A New Coalition Is Born as Labor Looks for a Candidate*, UNION DEMOCRACY REV. 113, 113-16 (July-Aug. 1976).

158. The evidence suggests that, despite an initially declared intention to back anyone who would be electable and who would be union-oriented, by early May the Coalition had stabilized around Carter. See Friedman, *Labor Leaders Agree on Carter*, Charlotte Observer, May 5, 1976, at 1A, col. 1.

159. Bernstein, *Unions Backing All Candidates to Obtain Major Voice at Democratic Convention*, L.A. Times, Jan. 17, 1976, § 1, at 4, col. 1.

160. Letter from George Frawley (May 24, 1976) (on file at HARV. J.L. & PUB. POL'Y). Parenthetically, the letter also highlights the lack of clarity in the rules that govern such solicitations. All indications are that it was printed and mailed with general union treasury funds, presumably on the argument that it was directed at members and their households. Yet the penultimate paragraph urges: "If you have Relatives and Friends, in the other areas in which our Delegates appear, call them and solicit their votes, in our Delegates [sic] behalf."

not only the expenses but also the lost wages of any of its members who were delegates.¹⁶¹

The Federation developed the delegate strategy because it hoped for a brokered convention. Sheet Metal President Edward Carlough put his finger on the danger in this approach, however. He warned that union influence would be seriously endangered if the expectation turned out to be wrong because of developments occurring in the months leading up to the convention.¹⁶² If one candidate *did* have a lead and if the unions could not be identified as an important cause of that lead, much could be lost. More and more, as other candidates dropped out, early Carter bandwagon riders like the NEA and the UAW rubbed their hands gleefully.

By the time of the July 12 convention, Jimmy Carter had been endorsed by the Marine Engineers, AFSCME, and David Fitzmaurice of the Electrical Workers. Even Richard Murphy of the Service Employees Union, who had been initially aggressively anti-Carter, was now conceding that his union would support the Georgian as the alternative to President Ford.¹⁶³ George Meany was reportedly not opposed to Carter. According to one "labor insider," others were at the top of Meany's list, but Carter at least was "not sufficiently unacceptable" to be rejected out of hand.¹⁶⁴

All in all, the "brokered convention" notion turned out to be ineffective. With the formation of the Labor Coalition and its plan to control the largest single bloc of convention delegates, however, it seemed clear that the labor movement as a whole was beginning to move into a new phase of partisan activism within the Democratic Party. Though inaccurate in its strictest sense, the observation by UAW national political director William Dodds was nevertheless prescient: "My guess is that the AFL-CIO never again will stay out of the primaries."¹⁶⁵

As it turned out, nearly eighty percent of the unionists who were convention delegates were from unions in the left-liberal

161. See Bernstein, *Unions Seek Democratic Parley Voice*, L.A. Times, Feb. 18, 1976, § 1, at 6, col. 1.

162. See *Unions' Strategy for Putting Man They Want in White House*, U.S. NEWS & WORLD REPORT, Mar. 1, 1976, at 68.

163. See Singer, *Though Lukewarm on Carter, Labor Is Ready for Unified Plunge into Politics*, 8 NAT'L J. 926 (1976).

164. *Id.* at 931 (quoting Ken Bode).

165. *Id.* (quoting William Dodds).

Coalition.¹⁶⁶ With that handwriting on the wall as the delegate selection process approached its conclusion, Carter was reported to have said that he would have to take sides in this emerging factional split within the labor movement and that his choice was the Coalition rather than COPE. At the Convention itself, two veteran journalist-columnists indicated their belief that it was the Coalition that controlled the candidate rather than the other way around. On a series of rules votes, for example, the Carter representatives reversed their positions in the face of Coalition opposition.¹⁶⁷

The AFL-CIO announced its decision to endorse Jimmy Carter and his running mate, Walter Mondale, on July 19, but it waited until its general board meeting on August 31 to craft a detailed statement of how it planned to manifest its unqualified support. Indeed, the statement's author took some pains to make clear that the Federation's support for the Carter-Mondale ticket was "total, complete, [and] all-out."¹⁶⁸ Its implementation would require a coordinated package of specific strategies including a massive voter registration drive with a focus on minorities, the elderly, and the young; efforts to inform members about the issues, the candidates' records, and the parties' platforms; intensified efforts to elect a liberal House and Senate; an intensified get-out-the-vote campaign; and total support of COPE through time and money.¹⁶⁹

In addition, the union organizations spent \$1.9 million in union funds, using dues rather than voluntary contributions, to communicate with members on behalf of specifically named federal candidates. More than sixty percent of this amount was devoted to communications programs urging the election of the Carter-Mondale ticket, and almost all of the work was done

166. In Indiana, for example, the Coalition attempted to bargain with each of the major candidates. In exchange for assistance in getting the requisite number of signatures supporting the placement of Representative Udall's name on the primary ballot, the Coalition demanded the right to name between thirty and eighty percent (the figure differs depending on the source) of the Udall delegates. Similar negotiations were held with the Jackson and Carter campaigns. Through a slip-up, Udall's name never did get on the ballot and the Coalition wound up backing Carter. See Fialka, *Absence of Udall's Name in Indiana Still a Tangled Tale*, Wash. Star, May 3, 1976; Ziegner, *Jackson Slams Carter at Press Conference*, Indianapolis News, Apr. 12, 1976.

167. See Evans & Novak, *Candidate Carter and the Labor Coalition*, Wash. Post, July 19, 1976, at A23, col. 1.

168. Statement by the General Board of the AFL-CIO on August 31, 1976, reprinted in *Why Labor Supports the Two Democratic Nominees*, International Musician, Oct. 1976, at 3, 24-25, col. 1.

169. See *id.*

by the AFL-CIO and its Building Trades Department. In contrast, FEC records show a meager \$28,000 expended by four corporations on behalf of the Ford-Dole ticket.¹⁷⁰ Among the Republicans receiving union financial support, the largest beneficiary was former Congressman Peter Peyser of New York, whose \$40,000 alone accounts for more than twenty percent of all union campaign money going to Republican candidates for the Senate. Peyser lost the primary race, and early in 1977 he became a Democrat.¹⁷¹

The overall view of union involvement in the Carter election points to the conclusion that James Earl "Jimmy" Carter would not have become President of the United States but for union support. Although it would be difficult to adduce any single piece of information that demonstrates this conclusively, the sheer unanimity of opinion on this matter most likely indicates the presence of at least a core of truth. Thus, for example, the leaders of both political parties felt union spending for Carter was "decisive."¹⁷² The Vice Chairman of U.S. Steel and Chairman of the National Association of Manufacturers stated simply, "We were quite outclassed," but went on to lay most of the credit on the union movement's ability to expend large amounts of time and resources on election activities that were "off the balance sheet," and thus insulated from any reporting requirement.¹⁷³

The direct cash contributions to the House, Senate, and presidential campaigns were among the less important forms of support that unions devised for the 1976 elections. None of the more important forms of support could be considered startlingly new, of course; but what made this year different was the immensity of the campaign effort and its degree of coordination by union leaders. After the AFL-CIO endorsed Carter, COPE's research director, Mary Zon, was assigned to Carter campaign headquarters in Atlanta where COPE continued to pay forty percent of her salary.¹⁷⁴ The normal, traditional union activities, presumably the sorts of things that induce

170. See *FEC Report Shows Unions Spent \$1.9 Million Urging Members to Vote*, 21 DAILY LAB. REP. (BNA), at A-17 to A-18 (Jan. 31, 1977).

171. See CONG. Q. WEEKLY REP., Dec. 30 1978, at 3526.

172. See Raskin, *COPE's Impact on Election Outcome*, N.Y. Times, Dec. 20, 1976, at D1, col. 2.

173. See *id.*

174. See Denniston, *Mood of Workers on Organized Labor's Political Stance*, Wash. Star, Oct. 26, 1976, at A1, col. 1.

thousands of employees to join unions in the first place, were ignored or supplanted in favor of political action as the election season drew to a close. The head of the Federation's Construction Trades Department, Robert Georgine, suspended handling inter-union disputes, thereby making 625 members of his staff available for political activities.¹⁷⁵

Even the standard registration and get-out-the-vote programs received a special pro-Carter emphasis. The names of anti-Carter unionists were pulled from the cards used by telephoners urging union members to exercise their civic, nonpartisan duty to vote. Millions of pieces of pro-Carter campaign literature were scheduled for mail distribution, an effort worth \$4.6 million in regular postage costs alone, but which the unions sought to cover by their nonprofit mailing rate.¹⁷⁶ Excluding the efforts of unions not affiliated with the AFL-CIO, the Federation itself summarized the highlights of the unions' in-kind support that it provided: 120,000 volunteers, 20,000 telephones, which made ten million calls, and eighty million pieces of political material.¹⁷⁷

Overall, there appears to be little evidence to refute the conclusion of a *Los Angeles Times* survey of "key political [Carter] headquarters . . . around the country" that just days before the final vote, fifteen to twenty percent "and possibly more of the total campaign effort to elect Carter is being made by organized labor" ¹⁷⁸ Convinced that Carter would join with a Democrat-controlled Congress in backing legislative measures long favored by organized labor, many poll respondents were enthusiastic about candidate Carter's prospects—even if they were not enthusiastic about Carter personally. The objective was to get a liberal Democrat into the White House. In 1976, Carter was it.

The 1976 election was also distinguished by the historic en-

175. *See id.* Between October 5 and the November 2 election date, all staff members of the Machinists Union national office were told to drop their regular work in favor of political activity. Wall St. J., Oct. 5, 1976, at 1, col. 5.

176. The practice was struck down by a temporary restraining order issued by a federal district judge. Of course, at least some of this mail had reached its intended audience. *See* Wall St. J., Sept. 21, 1976, at 1, col. 5.

177. *See* Wall St. J., Nov. 11, 1976, at 4, col. 3.

178. Bernstein, *Labor Massively Supports Carter—to Oust Ford*, L.A. Times, Oct. 26, 1976, § 1, at 3, col. 4. Bernstein quotes a top staff member of Daniel Patrick Moynihan's Senatorial campaign in New York as estimating that, in their case, the unions could be credited with twenty-five to forty percent of the work.

dorsement of a presidential candidate by the NEA. From a professional association concerned with educational techniques, the NEA had transformed itself by the late 1960s into a full-fledged union in competition with the AFL-CIO's American Federation of Teachers. Increasingly dominated by its national staff, the NEA emerged in the mid-1970s as a leader of the New Politics wing of the labor movement. The 1976 campaign represented the most clear-cut evidence to date of where the NEA was headed as an organization. Its primary motive to participate extensively in the campaign was that Carter had promised the NEA an entire cabinet-level department by carving up the Department of Health, Education and Welfare (HEW). Thus the NEA put forth an effort that enabled it to claim the distinction of having "more sheer delegate strength [at the Democratic Convention] than any other organization in the country—172 delegates, plus 93 alternates, representing some 43 states."¹⁷⁹ In the process of achieving this success, the NEA contributed \$725,000 to its favored congressional candidates, a sharp increase from its reported direct cash contributions in 1974 of \$339,000.¹⁸⁰

Union leaders looked for tangible rewards from a Congress and a White House controlled firmly by Democrats elected through unprecedented flows of union cash and services. Within a month of the new Administration taking office, George Meany presented his "shopping list."¹⁸¹ Almost as rapidly it became evident that even though the Democratic Party leadership was willing to expend political capital to achieve these goals for one of its major backers, the rank-and-file Democrat in Congress was not so compliant. For example, one of the Federation's top objectives was the passing of "Common Situs Picketing" a series of interlocking provisions designed expressly to ease the process of union organizing in the construction industry. It had in fact been approved by the previous Congress, but unexpectedly vetoed by President Ford on Janu-

179. *NEA Flexes New Political Muscle*, NEA Advocate, Sept. 1976, at 3, col. 1; see also *Today at the NEA* (Nov. 8, 1976) (the NEA's internal newsletter for national staff members).

180. See *Campaign Report Shows Near Doubling of Interest Group Political Contributions*, DAILY LAB. REP. (BNA) No. 31, at A-11 (1977). An NEA official, Robert Harman, claimed the union had spent an additional \$400,000 on behalf of Carter, including \$250,000 for a film contrasting the two presidential candidates. See Malbin, *Labor, Business and Money—A Post-Election Analysis*, NAT'L J. 414 (Mar. 19, 1977).

181. See *Meany Draws Shopping List*, TIME, Mar. 7, 1977, at 43.

ary 2, 1976. Despite this previous near miss, the union picketing provision failed to pass the new House of Representatives by a twelve-vote margin on March 23, 1977.¹⁸² What made the event all the more astonishing was that the measure had been defeated *in the House*. All indications were that the Democrat-controlled Senate would certainly have approved this package, that it would not have sustained a filibuster, and that the Democratic President would not have vetoed the bill. Yet the degree of Democratic control in the House was, by all traditional measures, tighter than in the Senate. If "Common Situs Picketing" could not be approved, repealing the hated right-to-work section of Taft-Hartley was so unlikely that it was not even worth a serious effort. Moreover, the AFL-CIO's hopes for a thirty-percent increase in the minimum wage, from \$2.30 to \$3.00 per hour, received a sharp setback when President Carter announced his own plan for a considerably more modest rise of 8.7% to just \$2.50 per hour.¹⁸³

V. CONCLUSIONS AND OBSERVATIONS

Unions hardly stand alone as a market force whose existence is the result of governmental intervention. Many other groups can and do recognize that their financial health, scope of activity, size, and so forth are significantly affected by what government does. They wax or wane in tune with the degree to which their political action efforts succeed in influencing governmental policy (legislative, judicial, or executive). It would be difficult to find *any* economic collectivity for which this were not true to some extent. Nevertheless, there are some groups for which it is *more* true, and unions are among those institutions that depend heavily upon support from governmental policies. The union movement was shocked by the predatory motives imputed to the backers of Taft-Hartley, and there was only slightly less alarm regarding the later restrictions of Landrum-Griffin.¹⁸⁴ There was concern that the Act marked a halt to or a reversal of the ratcheting process by which the scope and freedom of action of unions would be continuously expanded. This

182. See *House Rejects Labor-Backed Picketing Bill*, CONG. Q. WEEKLY REP., Mar. 26, 1977, at 521.

183. See *Unions' Sweet Hopes Turn Sour*, U.S. NEWS & WORLD REPORT, Apr. 11, 1977, at 93.

184. Labor-Management Reporting and Disclosure (Landrum-Griffin) Act, Pub. L. No. 86-257, 73 Stat. 519 (1959) (codified as amended at 29 U.S.C. §§ 401-531 (1982)).

expansion relied upon a combination of positive grants of power from the government and a greater, more detailed, and more burdensome set of restrictions on union competitors in both economic and political markets.

We have no special knowledge of the inner thought processes of union leaders, and they are not famous for publicizing their thinking. It may be speculated with the support of some evidence, however, that national union leaders were becoming more and more convinced during the 1960s that their "product" (union services) was not in demand on the open market for an increasing number of consumers (employees). This realization may well have led union leaders to re-examine the premises upon which they had traditionally marketed their goods. As many other producers facing similar circumstances discovered, the *easiest* path did not lead to changing the product, upgrading quality, reducing prices, divestiture, diversification, or going out of business—all of which are normal market responses to changing consumer demands. Instead, the easiest path led directly to the halls of government, where the remedy could be found in legislative and regulatory devices that mandated the direction of consumer choices.

This development was neither sudden nor contemporary. Although unions have offered their services for more than one hundred years and have always found willing buyers as employment patterns shifted and as the value of the union "bundle" changed, it was intervention by government that produced the only major, sustained increases in the number of unionized workers. Regardless of whether the government actions that produced this result are characterized as pro-union "greasing the skids" or merely "restoring balance to the employment relationship," political influence was used to change the otherwise normally occurring schedule of costs and benefits associated with a market exchange.

Through laws, court decisions, and agency actions engineered by union influence, the government has forced the parties in employment relationships to make decisions about union services that they would not make absent such government intervention. The parties have also been forced to evaluate alternatives that they would not have considered otherwise or that they would have rated differently *but for government intervention*. Although there is undoubtedly some theoretically as-

certainable but presently unknown number of employees who positively benefit from union services and who thus "purchase" the commodity in the normal market, there is also a similarly undeniable number of employees who are union members only by virtue of coercion, ignorance, or both. For the latter category, unions have *always* had government to thank.

It took a while for some elements of the labor movement to recognize this complex and perhaps unpleasant fact. A few among the leadership possibly never can or never will accept the notion that their activities should be disciplined by the market choices of consumers. In any event, by the mid 1970s, a large portion of the movement's leadership had come to accept the realistic view that their problems might be solved by a return to government protections and privileges. As labor columnist Abe Raskin noted, unions entered a "pushbutton" phase when they found it increasingly difficult to win employee support through traditional organizing techniques, and turned instead to devices created, permitted, perpetrated, or protected by government.¹⁸⁵ Although there are certainly differences between Raskin's point and the argument being developed here, the two are fundamentally congruent. Raskin implied that there has been a change in the factual situation, while this article suggests that the factual situation is now as it always has been: What has changed is the union leadership's perception of it.

The steady decline in union membership, the declining win-loss ratio in certification elections, and the rising number of successful decertification attempts have all challenged the notion that union services are a hotly desired product.¹⁸⁶ To check this decline, perhaps even to reverse it, would seem to require something beyond unfettered employee choices. The rush of other producers to protect themselves with governmental regulation and similar market interventions may have served as a model for unions. To a significant degree, however, it was the experience of union political action that led so many others

185. See Raskin, *Organizing Obstacles Are Not Just Legal*, N.Y. Times, July 24, 1977, § 4, at 4, col. 3; see also J. BENNETT & M. JOHNSON, *PUSHBUTTON UNIONISM* (1980) (a detailed analysis supporting Raskin's proposition).

186. The growing phenomenon of dissident unionism might also be listed as an indicator of dissatisfaction. It is mentioned here rather than earlier because the numerous dissident movements in fact do not reject union services per se but, instead, criticize current union structures as unrepresentative of "real" worker interests. For details regarding this phenomenon, see a useful publication of the Association for Union Democracy entitled *Union Democracy Review*, which began to appear in 1972.

onto this particular path. One thing is beyond debate: This was precisely the train of events that describes the development of modern PACs. PACs were originally a distinctly union phenomenon. In this regard, at least, all other would-be special interests have played "follow-the-leader" to union officials.

The fundamental question, however, remains to be addressed: Are unions acting properly in their strategic reassessment? The standard suggested by pluralistic democratic societies is the degree to which a group's actions (in this case, the political activities of unions) represent the opinions of its members.¹⁸⁷ Given such a standard, the evidence strongly confirms the proposition that unions routinely and, in many cases, egregiously violate the representation principle. Although there is a broad consensus among union members on such basic issues as the survival of their organizations, there are many more public policy issues on which the opinions of members diverge significantly from the positions of their officials.

In some cases, the disparity could not be more stark—as in the case of defense spending or the need for a constitutional amendment requiring a balanced federal budget; large majorities of members favor these actions, but the actions are opposed by the AFL-CIO leadership.¹⁸⁸ In other cases, a closely divided membership might favor the position of their officials on a public policy issue, but the activities and resources of the organization fail to reflect any diversity. Thus, for example, union members' opinions have been fairly evenly split on such issues as abortion, federal control of education, the regulation of union affairs, and the political philosophy of Supreme Court appointees, yet unions have taken specific positions on each of these matters with no regard for the high proportion of their members who think differently.¹⁸⁹

The elections of 1972, 1974, and 1976 marked the return of the union movement to active involvement in the electoral arena. The more traditional union leaders were shocked and frustrated by the McGovern debacle in 1972 and were increasingly irked by the rise of "New Politics" forces in the Democratic Party (forces which were receiving support from parallel

187. See D. HELDMAN & D. KNIGHT, UNIONS AND LOBBYING: THE REPRESENTATION FUNCTION 3-17 (1980).

188. See *id.* at 94-96.

189. See *id.* at 22-87, 96-97; National Survey of AFL-CIO Union Members, prepared for COPE by Opinion Research Survey, Inc. (Aug. 1980).

“New Unionism” elements in such national unions as the UAW, NEA, and Machinists). They decided that their only recourse was to control who governs and, therefore, who would be able to maintain the flow of government favors to the union movement. The liberal-labor alliance, which in earlier years had been activated principally to defend unionism on a purely intellectual level and only secondarily to support or oppose specific political measures, would have to be aimed at the electoral process. The result of this decision was the support of Jimmy Carter, largely because these traditional unionists were still thinking traditionally about politics.

Unfortunately, the liberal-labor alliance could accomplish very little in 1980 with a sitting Democratic President who would not back away from running again; but 1984 was another story. The alliance was equally unfortunate in 1984 with the nomination of Walter Mondale, a politician so closely associated with the union element of the liberal-labor coalition that the electorate had little difficulty rejecting him in favor of an extraordinarily popular sitting President, Ronald Reagan. The complete story of union involvement in the 1980, 1984, and 1988 elections has yet to be told, but the mold was set in the 1970s.

In the face of such singular failures to engineer a compliant Presidency (union successes in congressional and local elections being a *different* story), it must be remembered that these efforts cost literally millions of dollars each. Furthermore, each dollar, whether conveyed in direct cash or in-kind services, had to come from union members around the country. A relatively small portion can be accounted for in voluntary contributions to union political action committees and related union-sponsored agencies that were avowedly and aggressively in favor of George McGovern, Jimmy Carter, Walter Mondale, and Michael Dukakis. The remaining dollars, however, came from union members, many of whom voted for Richard Nixon, Gerald Ford, Ronald Reagan, and George Bush or who voted in primary contests for Democrats other than those who were eventually nominated. The issue being raised in this Article involves the propriety of such practices.

When the union movement relied primarily upon its ability to sell its services to employees by appealing to their self interests, and when those employees could accept or reject the

union “pitch” by making rational economic calculations, its resources could well be said to have been accumulated by essentially democratic means. As this has ceased to be true, the underlying principle of pluralist democracy is endangered proportionately by the divergence between the wishes and interests of members and the increasingly *private* political agendas of the movement’s leaders. As unions shift their efforts toward the political arena—to achieve goals they could not expect to accomplish otherwise or to protect past gains now in jeopardy from changes in employee perceptions—the problem of the relationship between members and an organization that can make demands upon their resources and loyalties must be confronted directly.

This problem implicates one of the most fundamental principles of democratic societies: the right of individuals to direct their resources toward objectives that *they* deem to be in their best interests. Only the government can claim the right to obtain its resources against the will of individuals, and then only if it is through approved procedures for approved purposes. No other private organization can exercise any similar claim because such a claim is one of the defining characteristics of state sovereignty. The state may choose to grant elements of this power temporarily to others but, again, such grants of power must be done in approved ways.

Yet unions claim for themselves the right to conscript, to tax, to spend, and to regulate on behalf of some larger, more nebulous notion of “the common good” reposing in a peculiarly class-defined group, “workers.” As the Supreme Court explained in a decision that continues to epitomize much legal reasoning when it comes to the powers and duties of unions,

the practice and philosophy of collective bargaining looks with suspicion on . . . individual advantages. . . . [B]ut the majority rules, and if it collectivizes the employment bargain, individual advantages or favors [such as superior ability, productivity, experience, training, or knowledge] will generally in practice go in as a *contribution* to the collective result.¹⁹⁰

Needless to say, the Court’s choice of the word “contribution” in this situation is tendentious at best and clearly inapposite. Contributions, in general parlance, are voluntary. No one in a plural democratic society, with its welter of overlapping alli-

190. *J. I. Case Co. v. NLRB*, 321 U.S. 332, 338-39 (1944) (emphasis added).

ances among autonomous interests, would give unions a second thought if their resources were truly obtained through voluntary contributions. That they are not is what makes union involvement in politics a pressing public policy concern.

