

Internal Relations between Trade Unions and Their Members

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OUR PREOCCUPATION with the relation between unions and employers and that between unions and political processes has diverted us from studying the underlying relation between the union and its members. Study of this relationship is of the greatest difficulty. The relationship cannot be viewed in purely legal terms, for in most countries there is relatively little positive law concerning internal union affairs. We must look beyond the judicial decisions and statutes to the union's own internal law. The union's constitution or rules are the governing statutes defining the rights of the individual in the union. But examination of these documents is not enough, for they are so overlaid with custom and reshaped by institutional forces that the words may fail to reveal the rules applied in practice. We must, therefore, look to the rules and practices actually applied within the union.

Our first stumbling-block is that we do not know enough about the internal life of trade unions, for few searching studies have been made of the structure of union government and its practical operation. However, our greater obstacle is that we lack a framework of analysis which will enable us to examine the union's internal process and relate it to the political, economic and social processes of which it is an integral part. We have no standard for measuring the rights of the individual in the union or the relevance of those rights to society. The purpose of this paper is to try, with the aid of national reports from 16 countries, to suggest a framework of analysis which may be useful in further studies.

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The purpose here is not to define what the relationship between a union and its members should be in any country. It is rather to suggest some of the relevant questions which will aid in defining and evaluating that relationship in each country.

The source of our concern with trade unions

The threshold question is: Why should we be specially concerned with the relationship between the trade union and its members? From among voluntary associations such as social clubs, political parties or religious groups, why should we single out unions for separate consideration? Our answer to this basic question will inevitably determine the direction of our whole line of inquiry.

Our concern with the relationship between the union and its members, I believe, has its roots in the special role which unions in a democracy perform in ordering society and their impact on the lives of individual workers. First and foremost, the union engages in collective bargaining. The collective agreements which it negotiates with employers establish terms and conditions of employment which serve to regulate the labour market. More important, the collective agreement vitally affects, if not practically controls, the individual's employment contract. In addition the union may provide and control access to essential social benefits such as pensions, medical services, unemployment benefits, or legal services to enforce rights relating to employment. Thus the union, as collective bargaining representative and in other ways, exercises substantial regulatory power over the working life of every individual who comes within its domain.

The scope of the union's control and the tightness with which it binds the individual differ between the various countries, but in every one which has a trade union movement worthy of the name decisions made by the union can affect the member as immediately and conclusively as decisions by government itself. Wages negotiated by the union may be more important to the member than taxes levied by the government. Denial of a pension brings equal hardship to the individual whether it is by a union official or a state agency. In a democracy the exercise by any group of such power over individuals raises pressing questions as to the rights of members within the organisation.

Our special concern with the internal processes of unions is reinforced, if not compelled, because the union's power and control is a product of deliberate government policy. In the labour market, regulation through collective bargaining is consciously chosen as the alternative to government control. In some countries, such as the United States, the law has protected the right of unions to organise in order to encourage the process of collective bargaining, with the explicit objective of avoiding government

regulation of the terms and conditions of employment. In countries like Sweden collective bargaining developed without any legal protection but it has long been heavily relied upon by the Government as an integral part of the regulation of the labour market. When the collective agreement is extended to other employers or other employees by government order, as in France or the Federal Republic of Germany, or when the majority union is certified as the exclusive bargaining agent, as in the United States, the designation of unions as instruments for governing the labour market is undisguised. The agreement negotiated by the "representative" union is explicitly given the imprint of government, making it applicable to all workers, union and non-union alike. Countries differ widely in the degree to which they rely on collective bargaining, but whatever that degree the control exercised by unions through collective bargaining is a form of governing power allocated to them by government in the ordering of society.

In addition, unions in many countries are recognised by government as the representative of employees generally in nominations to official bodies and the developing of governmental policies. In countries as disparate as Chile and the Federal Republic of Germany the labour representatives appointed to bodies governing social security programmes are in practice those nominated by the trade unions; in both the latter country and Sweden the unions designate lay judges for the labour courts; and in the United Kingdom wage orders establishing minimum standards must follow the recommendations of a wage council on which an officer of the interested union commonly sits as an official member. In these and many other ways unions are drawn into the councils of government and share directly the power of government.

In democratic countries this allocation of power and control to the union commonly performs two vital political functions. First, it creates centres of power and instruments of control apart from the State, which then does not become unmanageable or dangerously large. Collective bargaining shortens the reach of central legal control by establishing a separate structure of industrial government as an alternative to suffocating statism. Second, allocation of power to unions widens and deepens the channels of democratic expression. Historically the trade union movement has been built on the democratic model, its officers chosen by and responsible to the members, and its policies expressing the desires of the members. Unions are allowed to share governing power at least in part because they provide a means for making the voice of the workers heard. Through collective bargaining unions carry a measure of democracy into industrial government; through union representation in government agencies workers gain a voice in decisions which touch vital interests. Thus unions serve as instruments for distributing power in the ordering of society, and power is allocated to them with the hope, if not the obligation, that they provide channels of democratic control.

Our concern with the relationship between the union and its members is akin to our concern with the relationship between the State and its citizens. In broader terms, it is with the relationship between the governing power and the individuals governed. The special role of unions and their impact on the lives of individual workers set them apart from almost all other voluntary associations, and justifies if not compels separate study of union processes. The most nearly comparable organisation is the employers' association which, it seems to me, should be subject to similar study.

The areas of inquiry

This statement of the source of our concern and the nature of our problem helps to suggest what relevant questions should be asked in studying the relationship between the union and its members. There are at least three basic areas of inquiry. First, what is the scope of the union's control over the individual and how closely is he bound by its decisions? The answer has been sketched in general terms, but there are significant variations and it is important to identify some of the factors which measure the size and nature of the union's control. Second, what freedom does the individual have to choose whether or not to be subject to the union's control? This question involves an inquiry as to what freedom he has either to choose between available unions or to stand outside the system of collective control. Third, what rights does the individual have within the union's own processes of government? The central concern here is the right of the member to have a voice in the decisions of his union, but there are also other important rights arising out of proceedings before union tribunals and the distribution of benefits to union members.

It is evident that these areas of inquiry are not independent of one another, for the relationship between the union and the individual is a product of the interaction of these basic elements. The importance of the individual's right to participate in making the decisions of the union varies with the union's power and control; the need for a fair hearing before a member is expelled is directly related to the value of continued union membership. It is impossible here even to suggest all the lines of interaction. The most that can be done is to identify some of the critical elements which must be considered if we are to examine more closely and see in better perspective this relationship between the union and the individual.

As we noted at the outset we cannot confine our inquiry to the formal legal rules, for it is evident that the relationship is largely a product of private institutions and defined less by legal rules than by the informal law of collective bargaining structures and union rules or practices.

Indeed, the fragmentary character of the positive law reflects the most difficult and fundamental question which is implicit in the whole inquiry—to what extent does the State intervene in the affairs of these private institutions? Here we confront a tension between two opposing demands. On the one hand, government cannot allocate control to private groups and deny responsibility for how that power is exercised. In a democracy, where concern is not only with the substance of regulation but also with the process through which decisions are made, government cannot be indifferent to the internal processes of organisations to which governing power has been allocated. On the other hand, one of the primary purposes of this allocation in a democracy is to avoid monolithic state control. But this purpose is defeated if the State so closely supervises unions that they lose all independence and become little more than administrative arms of state control.

The scope of union control over the individual

The first basic element in the relationship between the union and its members is the power and control exercised by the union over the individual. Its scope and nature in each country is significantly different, for it is the product of various factors which combine in widely varying patterns. The important task at this point is not to detail the various national patterns but rather to identify the principal factors which measure the size and shape of the union's control. Among the most critical are the following: (1) the areas of the individual's economic life—such as wages, job security, medical care or pension—within the union's sphere of control either through the collective bargaining process or through benefits administered by the union; (2) the union's economic strength or ability in dealing with employers to make its policies effective and enforce its decisions; (3) the extent to which an individual within the union's sphere of control is free to bargain on his own behalf and able to obtain benefits different from those provided by the union; (4) the availability of competing unions between which the individual may choose if he is dissatisfied with the one to which he belongs; (5) the existence and effectiveness of related institutions (such as works councils or shop stewards) through which workers are represented when conditions of employment are determined; and (6) the extent of governmental control of the labour market either in regulating particular terms or in enforcing wage policies which restrict the union's freedom.

Each of these major factors is itself composed of numerous elements including legal rules, institutional structures, economic conditions and social attitudes. Thus the economic strength of the union may depend not only on its size or financial reserves but also on the legality of secondary strike funds, the nature of the employers' association, the level of

unemployment, and the sense of solidarity among workers. To delineate all of the factors and elements is beyond the scope of this paper, but enough has been said to suggest the direction and nature of the inquiry which must be made to determine the nature and pattern of union control in each country. But even without full inquiry it is quite clear that in every one of the countries under consideration which has a substantial trade union movement unions hold some form of regulatory power and exercise a significant measure of control over individual workers within their sphere. It is this power and control which directs us to the other two areas of inquiry.

Freedom of the individual to choose whether to be subject to union control

The individual's freedom to choose whether or not to be subject to the union's control may be curtailed in two distinct ways. First, he may be compelled to become a member of the union and therefore subject to all its regulations. Second, he may be compelled to follow the union's collective agreement even though he is not a member, and to this extent to be controlled by the union. The first obviously raises basic problems of the individual's right of freedom of association, but the second may be equally or even more important in defining the relationship between the individual and the union. Both point directly to the fundamental question in this area of inquiry—to what extent is the relation between the union and the individual voluntary and to what extent is it compulsory? The primary purpose here is to search out and identify the major factors, legal and economic, which determine the scope of the individual's freedom of choice and its limitations.

Union membership is seldom compulsory by law. In Chile, when an industrial union is supported by 55 per cent. of the employees, all employees are declared to be members; but this imposes no burden other than payment of union dues. In Brazil workers are not compelled to join the state-created unions but are compelled to pay for their support. Far more important than legal compulsion to join or support a union are economic pressures which may make union membership practically compulsory. The most direct and effective economic device is the union security or organisation clause in the collective agreement which makes a worker's employment dependent on his union status. Other devices, such as clauses providing special benefits for union members, impose significant though less compelling pressures on the individual.

In general the law has responded to such a use of economic pressure in four different ways, each of which suggests a different impact which these union security clauses may have on the individual's freedom.

(1) The individual can be compelled to become and to remain a member of a particular union, as under English law. The impact on the individual is multiple and severe. He can be deprived of freedom either to choose between unions or to remain unorganised; and, more important, if he violates any union rule and loses his good standing the union can cause him to be discharged.

(2) The individual can be compelled to join a union but not any particular union, as under Swedish law. The impact on the individual under this rule is significantly less, for he is completely free to choose between unions. Nor can he always be compelled to obey union rules, for if he is threatened with expulsion by one union he may be able quickly to join a competing union and obtain immunity.

(3) The individual can be compelled to contribute financial support to a particular union but not to become a member, as in the United States. The impact on the individual here affects solely his pocketbook—he is required to contribute financial support.

(4) All forms of union security clauses may be outlawed and the individual guaranteed the right to join any or no union as he chooses, as in Belgium, France, the Federal Republic of Germany and Switzerland.

These four broad categories emphasise the different ways in which the individual's freedom may be limited. However, the legal rules are in fact seldom so simple, and we need to examine with the greatest care their practical operation if we are to measure the extent to which they do actually protect the worker's freedom of choice from economic pressure. Even more, our inquiry must press beyond the legal rules to the critical question of the extent to which workers are in fact compelled to become members. The prevalence of union security arrangements in practice is not measured by the legal rules. Thus in Sweden less than 10 per cent. of the persons under collective agreements are subject to organisation clauses; in the United Kingdom, with no legal limits on economic pressure to compel membership, less than 20 per cent. of all workers are directly affected by the closed shop; but in the United States, where the law allows only compulsory dues, nearly 75 per cent. of all employees covered by collective agreements are compelled to contribute to the union; and in Belgium, in spite of the apparently broad legal guarantees, a number of unions have negotiated clauses providing special benefits to union members.

Economic pressures to join the union may be less direct and compelling in form where the union has benefit programmes such as sickness insurance, pensions, or widows' allowances. If the individual worker cannot obtain equivalent protection elsewhere he must join the union to provide for these needs. More important, he must keep in good standing or he may forfeit all his accumulated rights in these benefits. Thus benefits, pivoted on union membership, press him to conform to all union rules.

In some countries this has proved an adequate substitute for union security clauses.

Even though the individual can and does refuse to become a member of the union he may not thereby escape the union's collective control, for he may be compelled to follow its collective agreement. The outward reach of the collective agreement to non-union employees may take four general forms, each of which curtails the individual's freedom to choose whether or not to be subject to the union's control.

The first form is exemplified by the United States. There the union designated by the majority of employees in a bargaining unit becomes the exclusive representative of all employees. The employer can negotiate with no other union and its collective agreement becomes binding on all employees regardless of union membership. The union's relation to the individual is clearly compulsory. However, it must have previously been voluntarily chosen by a majority of the employees, normally in secret ballot. The dissenting individuals can continue their membership in the minority union although it cannot represent them, and they can demand another election when the collective agreement terminates.

The second form is common in many European countries. There a collective agreement made with a number of employers or an association can be "extended" by government order to outside employers. Extension does not rest on a voluntary choice by the employees, for it is generally not required that a majority of the employees covered be union members or desire coverage. The effect of extension is to make the collective agreement applicable to employees regardless of their union membership or individual choice.

The third form of union control over non-members is exemplified by Sweden. There the collective agreement may require the employer to apply the same terms to non-union employees, and if he departs from these terms he makes himself answerable to the union. Although the non-union individual is not legally bound, he is in practice subject to the terms of the collective agreement regardless of his choice to remain a non-unionist.

Finally, the union's collective agreement often governs non-members simply because of the strong pressures for standardisation of terms and conditions of employment among employees doing similar work. Regardless of legal rules the collective agreement tends to establish a "common rule" which governs all employees.

Our central purpose here is not to measure how voluntary the relation between the union and the individual is in the various countries, nor to judge how voluntary it should be. Here, as throughout this paper, the purpose is to suggest a framework of analysis for closer and more systematic inquiry into the voluntariness of that relation. However, even the limited information available makes it plain that in most countries unions are fully voluntary only in the sense that the law itself neither commands

the individual to become a member nor prohibits him from joining. In many countries an individual is compelled by his employment or some lesser economic pressure to join or support a union. In almost every country the union's sphere of influence does not end at the boundaries of its membership but in fact extends to workers who belong to other unions or who are unorganised.

The rights of the member within the union

We come now to the most important and also the most difficult area of inquiry: What rights does the individual have within this collective body which acts as his representative? More precisely, what rights are of primary concern, and how shall they be measured? The basic guide must be found in the reasons for our whole inquiry into the relation between the union and the individual; namely the special purpose which unions serve in a democratic society. One of the vital functions of unions is to widen and deepen the democratic process. Therefore we should focus our inquiry on those rights which are central to fulfilling that function.

The rights with which we are primarily concerned can be roughly grouped under four headings: (i) the right to become and remain a member of the union; (ii) the right to participate, directly or indirectly, in the decisions of the union; (iii) the right to fair procedures in union tribunals; and (iv) the right to have union funds used for proper purposes. In measuring these rights the critical question is the extent to which they are in fact recognised in the union's process of government. This recognition may be far less a product of legal rules than of union practices, and the individual may often seek vindication of his rights under the union's own law administered by its own tribunals. These rights are thus defined and protected by two bodies of law—the public law of the State and the private law of the union. This poses the basic question of the relation between these two bodies of law; or more explicitly, the extent to which the State will intervene to apply its law in the union's internal process. This basic question of the relative role of the State and the union in defining and protecting the individual's right is preliminary to any meaningful discussion of the scope of these rights.

Legal theory in both civil-law and common-law countries has traditionally characterised the relation between the member and his union as one of "contract". The union's constitution and by-laws are considered a contract of association, and by joining the union the individual agrees to be bound by its terms. The contract theory has been sharply criticised in many countries as artificial and inadequate to analyse or understand the relationship between unions and their members. Its significant function, however, is not to describe the relation between the union and its members but rather to explain the relation between the law and the union's

internal rules—to rationalise the role of the law in defining and protecting the rights of members within unions.

In rationalising that role the contract theory implicitly asserts three basic principles which provide a useful framework for analysis. First, that the law should properly concern itself with the relation between the union and its members. By characterising rights within unions as contract rights it declares that those rights are worthy of legal protection, that the union's processes may not always be adequate to protect or enforce them, and that when that occurs the law should intervene.

The second basic principle asserted by the contract theory is that the rights to be enforced are those prescribed by the union itself. The union, by adopting its constitution or rules, writes its own body of substantive law governing its internal affairs, which it is the function of the courts to enforce. The contract theory thus expresses the fundamental value of union self-government. It is for the union to design its own structure of government, select procedures for making decisions and define the rights of members within the union. The role of the law is to require that the union's self-determined procedures and rules be followed. Enforcing the union's substantive law, however, is not always a mechanical function. Union constitutions are typically general and many provisions are vague or ambiguous. Before enforcing the contract the courts must interpret it, choosing between possible meanings. By interpreting, the courts assume a supplementary but significant role in defining the rights of union members.

The third basic principle is that the law places limits on the union's freedom to write its own rules. According to the contract theory provisions in a contract may be declared illegal or ineffective because they violate legal rules or contravene social policy. Thus in the United States union rules prohibiting members from criticising union officers have been voided as "contrary to public policy" and in the United Kingdom union trial procedures which do not provide the accused with all the elements of a fair trial are deemed to be in violation of "natural justice" and invalid. The contract theory is thus used to make union rules subordinate to legal rules and policies.

It is self-evident that the contract theory does not preclude the law from protecting rights within the union, but instead justifies legal intervention. Nor does it define the rights to be protected, but rather rationalises the legal protection given. However, it does serve to emphasise that both legal and union institutions have concurrent roles. The union has the primary role in defining the substantive rights, but these may be shaped by the law through interpretation or supplanted by overriding social policies.

One critical factor in measuring the role of the law remains. The impact on union self-government may differ radically according to the kinds of rights which the law seeks to establish and protect. If the law fixes union dues, limits the purposes for which union funds can be used,

requires the union to provide certain social benefits or determines the suitability of union officers, it thereby transfers the making of these decisions from the union members to the State. Legal definition of such rights impoverishes union self-government. The law, however, may have quite a different thrust. Recent legislation in the United States, for example, is directed primarily towards protecting the democratic process within the union, leaving free the decisions to be made through the process. The right of members to criticise union policy is protected, but the choice of policy is left to union processes; elections are closely regulated, but the members decide who shall be the officers; union funds must be used only for union purposes, but the law does not prescribe those purposes. The underlying assumption is that if union decisions are the product of a democratic process they thereby acquire added validity; that union self-government has greater weight when it is democratic. Thus protection of basic democratic rights reduces the need and justification for legal control over union decisions, and the role of the law is self-limiting.

THE RIGHT TO MEMBERSHIP

The threshold right of an individual within the union is his right to become and remain a member. Denial of membership may deprive him of three valuable interests. First, it may interfere with his employment if the collective agreement has a union security provision or the union in fact enforces such a requirement. The severity of this injury depends upon the nature of the union security arrangement and its pervasiveness in the area and industry. Second, it may deprive him of various social benefits provided by the union. The importance of this depends on the particular benefits provided and their practical availability elsewhere. Third, it bars him from any participation in the union's decisions which affect his welfare. He cannot speak at union meetings, he cannot vote in union referendums, and he cannot be a candidate for union office. Where the union exercises substantial control, the individual's rights to participate may be considered the most important interest involved.

The union may deny an individual some or all of these rights flowing from union membership by either refusing to admit him to the union or disciplining him by expulsion. At times exclusion may not be complete, but may partially deprive the member of his full rights. In general a union admits to membership all who work within its jurisdiction. Exceptions exist, however: some unions in the United States exclude "Communists," "Nazis" or other "subversives"; and in other countries where unions are organised along political lines workers adhering to hostile political groups are sometimes excluded. The law seldom compels the union to admit an individual to membership, but Switzerland protects the basic right to participate by requiring that a

collective agreement cannot be extended to non-members unless they are able to join the union. In the United States the Civil Rights Act of 1964 prohibits any exclusion because of race, religion, sex, or national origin.

Denial of membership rights through disciplinary action presents far more serious problems and requires most careful study. In an analysis of union discipline two elements must be examined: the offences which are punished and the procedure through which guilt is determined and the penalty imposed. There is reason to suppose that union rules and procedures are strikingly similar on crucial points of potential danger to the union's democratic processes. Union rules customarily name a wide range of offences for which members may be disciplined. More important, these rules almost always include blanket or catch-all clauses prohibiting "trouble making", "notorious misconduct", or "unbecoming conduct" which can be used to punish almost any conduct. Such provisions give no adequate guide or warning to the members as to what conduct is prohibited and, more important, may be used to punish members for exercising basic rights or to curb the democratic process within the union. The way in which union discipline clauses are applied is largely unknown: it seems to be of importance that critical factual inquiries should be made, which would go beyond the union rules to discover the conduct actually punished. The central focus of that inquiry should be on the extent to which discipline is used to curb the member's basic rights.

Disciplinary procedures commonly manifest two characteristics which are particularly relevant here. First, they are customarily informal, are conducted without lawyers, and reflect the layman's view of what is adequate to determine guilt or innocence. As a result they often ignore safeguards which the law considers crucial. Second, the tribunals are normally the regular political or administrative bodies of the union, the local meeting, the officers or executive committees, and the union convention or congress. Neither trial nor appeal is to a separate and independent judicial body. The decisions may therefore be influenced by political considerations.

Legal limitations on union discipline vary widely even though commonly expressed in terms of the contract theory. In some countries the courts scrutinise the discipline closely to discover defects: they may interpret the constitution to protect the individual, discover procedural flaws to justify invalidating the discipline, or even rejudge the merits of the case directly. In other countries the courts apparently do not scrutinise the discipline so closely and give the member far less protection.

Explicit limitations on punishable offences have been most fully developed in the United States, where there is a prohibition of disciplining for the exercise of basic democratic rights such as freedom of speech within the union, the right to support candidates for union office, and the right to sue the union. In other countries legal limitations on offences

seem wholly undeveloped. In many countries, however, the law requires that disciplinary procedures provide a fair hearing for the accused, although the standards of fairness may be markedly different from country to country.

THE RIGHT TO PARTICIPATE

One of the individual's most significant rights within the union is his right to participate in the decisions made by the union which vitally affect his welfare. The central question is to what extent is the member, along with his fellow members, able to make his voice heard and have his wishes weighed in the union's decision-making process? This inquiry is as difficult as it is important, for a study of formal union structure is inadequate if not misleading. Inquiry must be made into the inner political life of the union, the interacting forces and complex processes through which decisions are in fact made. Our limited purpose here is to suggest some of the factors to which it should be directed.

The first to be considered is whether participation is direct through referendums or indirect through the election of officers. Decisions above the local level are normally made by officers, but there may be important exceptions. In all of the countries considered except France and Sweden the calling of strikes is generally decided by a membership vote, but collective agreements are seldom submitted to the members for ratification (except in Hungary and the United States). Only rarely are other decisions of the national union made subject to referendum.

A second and closely related factor is the remoteness of the decision-making from the individual members. Decisions taken at the local level are more likely to be by direct vote of the members, but even if they are made by officers or delegate bodies the individual will have better opportunity to make his views known and felt. The more decision is made at the upper levels of the union structure, the fainter is the voice of the individual and the greater his feeling of insignificance. No common pattern of distribution of power between the local and central governing bodies is evident: one is struck by the complexity of power relationships within the union and the necessity for scrupulous factual study to determine where power is in fact exercised.

A third factor affecting the extent of the individual's participation is the responsiveness to the desires of the members shown by the election process through which the persons to represent them are selected. Distortion through fraud in counting the ballots is the least significant element. Far more important is the directness of the election: whether officers are elected directly by the members or by delegates who have been elected by the members or even by other delegates. Responsiveness may be further deadened by the lack of any opposition or campaigning for

office. Open contests for national union offices are practically unknown in some countries and are not common in any. Contests at the local level are more usual and the election may provide the occasion for criticising the officers' performance and policies.

Probing and critical analysis of the decision-making process of unions is sorely needed, for unions commonly conform closely to Michel's classical "iron law of oligarchy" in political parties. Unions, particularly at the national level, are largely controlled by a one-party bureaucratic structure which is able to perpetuate itself in power by its advantages in access to information, control over channels of communication and disciplined organisation. Although the officers are practically irremovable, they normally conceive of themselves as democratic leaders, and are conscientiously concerned with fulfilling the wishes of their members. In addition, they often feel far less secure than they are in fact, and are consequently sensitive to criticism and anxious to placate dissatisfied groups.

Within this context we can begin to see more clearly the relevance of certain more specific individual rights to the basic right to participate. The right of the union member to be fully informed concerning his union's affairs enables him to make meaningful criticisms and suggestions. The right of the member to speak freely serves both to inform and arouse other members and to make officers aware of the reasons for dissatisfaction. The right to organise opposition groups within the union enables members who disagree with certain policies to make their voices heard. Although these rights are seldom overtly denied by unions in any country there is question as to what extent unions affirmatively encourage the exercise of them or even consider criticism and organised opposition within the union's political process as entirely legitimate.

In most countries the law gives little or no protection to these rights, which are elements of the basic right to participate. Recent legislation in the United States, however, has as its central purpose protection of the right to participate. It guarantees the right to speak freely, to form groups with other members, to participate in union meetings, to nominate candidates and work for their election, and to vote by secret ballot. In addition, the law has sought to reduce the advantage held by incumbent officers in election contests by giving opposition candidates equal opportunity to present their position to the members. Such legislation adds another line of inquiry: how effective is such legislation in giving practical protection to these rights?

THE RIGHT TO FAIR PROCEDURES IN UNION TRIBUNALS

The union as a self-governing institution engages in both the legislation of interests and the adjudication of rights within the union.

The problem of appropriate procedure arises in expulsion cases, when the union decides who shall be entitled to a pension, to sick pay, to strike benefits or even to legal aid in enforcing claims against the employer, for these are substantial rights and not to be given or denied arbitrarily. Procedural problems are also raised by the determination of disputes concerning the validity of elections, the right to particular offices, the liability for certain dues and assessments, or the constitutional power of certain officers. The individual's right to a fair hearing when expulsion is involved is readily recognised, but the importance of guaranteeing a fair procedure is often overlooked when these other rights are adjudicated and the procedures for adjudicating yet others are even more incomplete and are often devoid of even the most elementary safeguards to ensure fairness.

The most serious problem arises from the lack of any regularly constituted judicial structure within the union. Union tribunals are seldom separate organs but simply politically selected officers wearing judicial caps. Appeals are to other officers at a higher level in the political hierarchy. Political considerations may intrude and, even if they do not, the individual may doubt whether his right has been adjudicated objectively and fairly.

An awareness of this special problem is evident in several countries, such as Belgium, Sweden and Switzerland, where union constitutions provide for some method of arbitration of internal disputes. In the United States three unions have created special appeals tribunals made up entirely of neutral persons outside the union to provide an independent body to whom members can appeal from decisions of union officers, but most unions have rejected this device as allowing "outsiders" to meddle in union affairs.

RIGHTS IN UNION FUNDS

Membership control of union finances is one of the most important elements of participation in union decisions, for power over the purse is one of the most strategic powers in any structure of government. While union members have relatively direct control over the fixing of dues they have remote control over expenditures, which is far more important in tailoring union policies. In some countries, such as the United Kingdom, Sweden and Switzerland, unions give full financial reports to their members, and the officers are thus made accountable for the conduct of union affairs. But in others, such as Belgium and the Federal Republic of Germany, union finances are kept secret. Although the justification given is to prevent employers from gauging the union's strength the consequence is to deprive the members of the possibility of criticising or exercising control.

Legal controls over finances tend to be greater than over any other phase of union affairs but they may take two critically different forms. In South American countries the thrust of the law is to prescribe the purposes for which union funds may be used and thus to circumscribe the member's power of self-government. The law in the United Kingdom presses in the opposite direction: it insists that the decisions of the members, made through their process of self-government, be followed. In addition, union members have a legal right to inspect union account books to determine whether the union rules and decisions are in fact being followed.

Conclusion

This paper can have no real conclusion, for it seeks to establish a beginning, not to reach an end. The purpose has not been to describe the relationship between the union and the individual, but to build a framework of analysis for studying that relationship. The framework, however, is not neutral, for implicit in the study is the central concern for strengthening and enriching democratic values. The premise is that unions are an essential element of a democratic society. There is, therefore, urgent need to devote searching study to those questions which will enable us to understand more clearly the special function of unions and the role their internal processes play in our achieving democratic goals.

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