

PART ONE: INTERNAL RELATIONS BETWEEN UNIONS AND THEIR MEMBERS

GENERAL REPORT

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I. INTRODUCTION

Comparative study of the relationship between trade unions and their members is obviously of greatest difficulty. In most countries there is relatively little positive law either in the form of judicial decisions or statutes, for the traditional and deeply rooted conception of unions as private voluntary associations strongly discourages law making concerning their internal affairs. Indeed, one of the dominant themes running through all of the national reports is that in a democratic society unions should be self-governing. Although in Great Britain there are a substantial number of court decisions, and in the United States many decisions and now a most significant statute—the Labor Management Reporting and Disclosure Act (LMRDA)—the positive law largely reinforces rather than denies this theme of union self-government.

If one is to study the relationship between the union and the individual member, one must look beyond the judicial decisions and statutes to the union's own internal law. This is expressed, in the first instance, by the union's constitution or rules; these are the union's governing statutes which define the rights of the individual within the union. However, examination of the texts 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. One must, therefore, look to the rules and practices actually applied within the union.

This brings one to the point of the first and nearly insuperable difficulty—a general ignorance of the internal life of trade unions. A preoccupation with the relation between unions and employers has blunted any concern with the relation between the union and its members. Study of the role of the union in the social process has not been matched by similar examinations of the internal structure of union government and its practical operation which enable us to see with any clarity the rights of the individual within the union. The various national reports upon which this paper is drawn have sought to go

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beyond the positive law and the formal union rules to the actual practices of unions. But they have often been handicapped by the unavailability of adequate studies of union government. Any comparisons or conclusions which might be drawn in this General Report must, therefore, be highly tentative and may be unintentionally distorted. Because of these limitations, the purpose of this report is not to make careful comparisons but rather to use the national reports to suggest the lines along which comparisons may be meaningful. The objective here is not to draw conclusions but rather to seek to formulate relevant questions to ask concerning the relationship between the union and its members.

II. THE SOURCE OF OUR CONCERN WITH THE RELATION BETWEEN A UNION AND ITS MEMBERS

The threshold question is: Why should one be specially concerned with the relationship between the union and its members? Why should one inquire into the internal processes of unions any more than those of social clubs, athletic associations, political parties or religious organizations? Why should one single out unions from other voluntary associations for separate consideration? The answer to this basic question will inevitably determine the direction of the whole line of inquiry.

The concern with the relationship between the union and its members 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 labor market. More important, the collective agreement vitally affects, if not practically controls, the individual's employment contract. In addition, the union may provide, and thereby 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 otherwise, exercises substantial regulatory power over the working life of every individual who comes within its domain. It is true that the scope of the union's control and the tightness with which it binds the individual differs among the various countries—a situation which shall be explored at a later point in some detail. But in every country 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. Thus, wages negotiated by the union may be more important to the member than taxes levied by the government; and denial of a pension will bring equal hardship to the individual. In a democracy, then, the exercise by any group of such power

over its members raises pressing questions as to the rights of members within the organization.

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 labor 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 organize in order to encourage the process of collective bargaining, with the explicit objective of thereby avoiding government regulation of 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 labor market. Even in England where collective agreements are not legally binding, unions and collective bargaining are considered essential instruments in ordering a democratic society. When the collective agreement is "extended" to other employers or other employees by government order as in France or Germany, or the majority union is certified as the exclusive bargaining agent as in the United States, the designation of unions as instruments for governing the labor market is undisguised. The contract 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, in the particular subjects allocated to control through collective bargaining and to direct government control, and in the various devices used to integrate these two forms of control. But in these differing degrees and varying forms is found the common principle that the control exercised by unions through collective bargaining is a form of governing power allocated to it by government in the ordering of society.

In addition, unions in many countries are recognized by government as the representative of employees generally in the naming of official bodies and in the developing of governmental policies. For instance, in countries as disparate as Chile and Germany, the labor representatives appointed to bodies governing social security programs are in practice those nominated by the trade unions; in both Sweden and Germany the unions designate lay judges for the labor courts; and in England, 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.

This allocation of power and control to the union in democratic countries commonly performs two vital political functions. First, it creates centers of power and instruments of control apart from the state

so that the state does not become unmanageable or dangerously large. Collective bargaining, therefore, shortens the reach of central legal control by establishing a separate structure of industrial government as an alternative to suffocating statism. This function was explicit, for example, in the reestablishment of unions and collective bargaining in post-war Germany, but it has been no less important in shaping the roles of unions in other countries. Second, allocation of power to unions widens and deepens the channels of democratic expression. Historically, the union movement has been built on the democratic model. Union officers are chosen by and responsible to the membership; and its policies express the desires of that membership. Unions are allowed to share governing power at least in part because they provide a voice through which workers speak. 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.

This, of course, paints the role of the union with a broad brush which ignores important modifications in each country. The purpose at this point, however, is to emphasize common basic elements and not to delineate details. By painting these basic elements in bold relief, we begin to see the source of our special concern with the relationship between the union and its members. Unions, though separate from the state, are an integral part of a total structure for governing society and are relied upon by the state to perform vital functions in the governing process. Concern with the relationship between the union and its members is akin to concern with the relationship between the state and its citizens. In broader terms, it is the problem of 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.

III. THE AREAS OF INQUIRY

This statement of the source of the concern and the nature of the problem helps suggest the relevant questions to be asked in studying the relationship between the union and its members. These queries in turn help direct attention to those comparisons which may prove most meaningful in understanding relational structures. 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? This has been sketched in general terms, but there are signifi-

cant national differences, 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 to be subject to the union's control? This includes inquiring as to what freedom he has to choose between available unions and what freedom he has to stand outside the system of collective control. Third, what rights does the individual have within the union's own governmental processes? Although there are important rights arising out of proceedings before union tribunals and the distribution of benefits to union members, the central concern here is the right of the member to have a voice in the decisions of his union. A fourth area of inquiry, though subordinate to these three, raises special problems such as to what extent can the union require political conformity of its members or compel them to contribute to particular political parties or causes?

It is evident that these areas of examination do not stand 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; hence, the need for a fair hearing before a member is expelled is directly related to the value of continued union membership. To make comparisons area by area tends to disjoint the relationship, but it is beyond the reach of this report to make fully integrated comparisons for the dozen countries involved. The purpose here is the more modest one of suggesting a framework of analysis, illuminated by examples from the various countries, which may help in the study of this relationship between the union and the individual.

In examining this relationship any inquiry should not be confined to the formal legal rules, for it is evident that the relationship is largely a product of private institutions which are less defined 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 of the entire inquiry—to what extent does the state intervene in the affairs of these private institutions? Here one confronts 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 organizations 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 the state. How dif-

ferent countries adjust or reconcile these competing demands may ultimately provide a most illuminating and instructive comparison, but this can be seen only as a part of the total relationship of the union and the individual defined by both private and governmental action.

IV. THE SCOPE AND NATURE OF UNION CONTROL

The first basic element of the relationship between the union and its members is the power and control exercised by the union over the individual. The extent to which the union regulates the life of the individual measures one's concern for the rights of the individual in relation to the union. The scope and nature of the union's control 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 determine the size and shape of the union's control. By identifying those factors and recognizing their variations, the complexity and subtlety of elements affecting the union's control may emerge. Such specification should also provide a valuable tool for analyzing the pattern of any particular country and marking out relevant differences between various countries. The following are the factors most critical in measuring the union's control over its members.

A. The Areas of Economic Life Subject to Union Control

In most countries, the primary instrument through which the union regulates the working life of its members is collective bargaining. Therefore, the union's control depends in the first instance upon which terms and conditions of employment are regulated by legislation and which are left to the private collective process. For example, in France, collective agreements commonly regulate little more than wage rates, while hours of work, overtime, holiday and vacation pay, dismissals and notice of termination are regulated by legislation; in Belgium and Germany, most of these subjects are left to collective bargaining, although dismissal and notice of termination are controlled by law; and in Great Britain and the United States, even these latter areas are governed by bargaining. Thus, in France the union through collective bargaining has a voice only in determining the individual's wages, but in the United States the union's control reaches almost every aspect of his working life, including his right to continue in his employment. The fact that a particular subject is left to collective bargaining does not, however, mean that the union exercises any actual control. In Sweden, for instance, proposals have been made repeatedly for legislation to regulate dismissals. These proposals have all been rejected on the grounds that this subject should be regulated by the parties; yet

collective agreements still contain clauses reserving to the employer the right to dismiss. Hence, the union exercises at best very limited control.

The allocation of control over terms and conditions of employment may be very complex, and the determination of where effective control rests may be equally difficult. British minimum wage laws are normally less than the negotiated rates, so effective control is attained through bargaining. Minimum wages in France, however, have often set the pattern for negotiated rates so that collective agreements have sometimes been little more than echoes of government control. Statutory pensions may be the only ones available, as in the case of Swedish non-salaried workers, but the statutory pensions may be substantially supplemented by negotiated plans, as in the case of many industrial workers in the United States. Laws regulating hours of work may permit derogation by collective agreement, as in Germany and Sweden, but there still remains the question of how much the law is in fact modified by union-employer action. These examples are but illustrative in emphasizing that the union's control over particular subjects cannot be distilled from the bare words of statutes or collective agreements, but must be measured by close study of the practical workings of the system.

The union's control through collective bargaining is only partial for it is shared with the employer, but because the union provides benefits directly to its members, it often has unilateral control over certain important rights. For example, British unions pay provident benefits for unemployment, sickness, accidents, marriage dowry, old age and death. These supplement the social insurance payments by the state which provide only bare subsistence. Thus, the individual looks to the union for adequate protection from the cradle to the grave. Union controlled supplementary benefits play a lesser but still significant role in countries as divergent as Chile and Germany; in Brazil, the union's obtaining of legal recognition depends on its providing certain welfare services for its membership. In many other countries unions provide few, if any such benefits, leaving these entirely to the state or collective bargaining. Unions in most countries also provide extensive legal services to aid members in enforcing a wide range of rights arising out of the employment relationship, but in the United States many unions leave solely to the individual all but enforcement of the collective agreement. The important point here is that, to the extent that the union provides such benefits, the individual becomes dependent on the union and its internal processes. If a member is expelled he may lose his sickness pay; if the union changes its pension program, his old age is vitally affected; and if it denies him legal services he may in fact be unable to enforce his legal rights. The various benefits provided

directly by the union, added to the various subjects regulated through collective bargaining, measure for each country the scope of the union's control over the economic life of the individual.

B. The Tightness of Collective Control

The union's control over terms and conditions of employment within its sphere of influence depends upon the tightness with which its collective action binds the individual and limits his freedom in taking individual action. This is primarily the question of the extent to which the individual is bound by the collective agreement. In the United States the individual is wholly subservient to the terms of the collective agreement—he can bargain for neither better nor worse terms but must conform to those negotiated by the union. In Sweden the union member is similarly subject to the collective agreement. At the other pole, collective agreements in Great Britain establish only a usage which can be freely varied by individual employment contracts; the individual would seem to have equal freedom in Chile and Argentina. In between, the collective agreement in most continental countries can be varied only by individual contracts which are more favorable to the employee. This statement of the legal effect of the collective agreement, however, may obscure the actual freedom exercised by the member. Thus, while in Great Britain the individual is legally free to bargain for different terms, in practice, variances are relatively rare; by comparison, in Germany, the normative terms in the collective agreement are often significantly lower than those negotiated at the shop level.

The individual may be further subservient to the union if it controls the enforcement of individual rights arising out of the collective agreement. For example, in Norway an individual union member cannot take his case to the labor court. If the union refuses to press his case, he can do nothing. Thus, his rights under the collective agreement are wholly controlled by the union. Some state courts in the United States have similarly given the union complete control over enforcement of individual rights, but under recent decisions this is now subject to federal law and these cases are no longer binding. Sweden, as contrasted with Norway, allows the individual to take his case to the labor court if the union refuses. In most countries, however, the union exercises no such domination over enforcement for the employee is considered to have an individual employment contract which he can enforce on his own behalf in the labor court or other appropriate tribunal. Again, the purpose here is not to define the legal effect of the collective agreement, but rather to suggest the varying degrees of authority by which the union may control the individual's terms of employment and his

rights under the collective agreement. The greater that authority, the greater our concern for protecting the individual in relation to the union.

C. The Strength of the Union

The third and perhaps most important factor in measuring the union's control over the individual is the union's strength, that is, its actual ability to make its policies and decisions effective in the labor market. Even though the collective agreement regulates all significant terms and is rigidly binding on all employees, the union has no real power over the individual if it is too weak to do more than ratify terms dictated by the employer. This is not a matter of law, but of economics. Thus, while the legal status of the union and the collective agreement is much the same in Korea and the United States, most unions in Korea do little more than keep an office, and so have little impact on the rights of the individual. French unions have far less regulatory power than German unions because, among other things, they lack the membership and financial resources to bargain effectively with the employers' associations.

The strength of the union does not necessarily turn on the percentage of the total work force organized, but rather on the relative strength of the union and the employers with which it bargains. For example, in the United States the level of unionization is relatively low, but in the organized sectors unions are often quite strong. In some industries such as trucking, construction, garment and coal mining, the union can practically dictate terms within the organized sector. Thus, the union's voice in regulating the individual through the collective agreement may be dominant even though the proportion of the work force governed is relatively small. The strength of the union also depends almost as much on the extent of employer organization as on the extent of union organization. Unions have been dominant in some industries in the United States only because small employers have failed to form effective organizations; conversely, unions have been subordinate in France because they have been confronted with strong employers' associations. In Belgium, Sweden and to a lesser extent other continental countries, strong unions have been matched by equally strong employers' organizations.

There are many other elements which affect the strength of the union relative to the employer. Those include the effectiveness of economic weapons such as strikes, boycotts and lockouts; the presence of foreign or non-union competition; the level of employment; and intangibles such as the loyalty of members to the union, and the cultural climate of the community. These elements, combining in different ways from country to country, determine the ability of the union to influence the

terms of the collective agreement. They thereby help measure the impact of union decisions on the working life of the individual.

The union's influence in regulating the labor market can be vitally affected by the role of government in the bargaining process itself. Legal limitations on economic force directly affect the relative strength of union and employer, but intervention in the negotiation of the agreement may more subtly reinforce or negate the union's influence. Proposals made by government mediators or boards for a settlement can, thus, exert substantial pressure. The government may be neutral between the parties and guided by its own policies; whether its proposal aids one side or the other is incidental. However, the government may not be wholly neutral as in Argentina during the Peron regime when it supported the unions' demands in return for political support. Union policies and decisions were, thus, reinforced by the government and gained added influence in fixing terms of the collective agreement. During the Frondizi regime, the government's weight was placed on the other side and the unions' effectiveness was weakened. Claims that governments of other countries have at times played a similar though more restrained and subtle role are not unknown. Whether and to what extent this is true is not important here, for the point is simply that the strength of the union to make its decisions effective in the labor market may be affected by such government intervention.

D. The Availability of Competing Unions

Rival unions may battle each other until they are impotent against the employer and unable to exert any influence in the labor market. The availability of a competing union affects the relation between the union and the individual, however, in another more profound way. If there is but one union available, the individual must either come within its control or remain unorganized; if he can not agree with the union's policy, his only alternative is to stand alone. But if there are competing unions the individual can choose between them; if he does not approve of the program or policies of one, he can join another. This limits the union's control over him and requires it to be more responsive to his wishes and needs.

The extent of competing unionism in various countries covers a broad spectrum. In South America, the dominant pattern is for the government to charter or permit but one union for each industry or enterprise. By contrast, Belgium has two major competing federations of roughly comparable size, the Socialist Belgian General Confederation of Labor (FGTB) and the Confederation of Christian Trade Unions (CSC). In Germany, an industrial worker may now choose between the Socialist German Confederation of Trade Unions (DGB) and the younger Confederation of Christian Trade Unions (CBG), while

salaried and public employees have additional choices of joining the German Salaried Employees Union (DAG) or special unions of public employees. French workers have an equally wide range of choice. In England and the United States, unions are not divided along political and religious lines as on the continent, nor are there competing federations. Rival unionism is sharp in some segments of some industries but almost non-existent in most industries. Particularly in the United States competition is spotty, non-ideological, and often fratricidal.

The availability of a competing union does not always have the same significance. In the United States, competing unions may have quite different collective bargaining policies, but in most European countries the competing organizations normally cooperate in collective bargaining and end with a common collective agreement. The individual's choice between unions, therefore, is based on differences in other policies or activities of the unions, often their benefit programs. In Sweden, the small Syndicalist organization (SAC), which attempts to compete with the dominant Confederation of Trade Unions (CLO), has a radically different bargaining policy, but the employers' associations refuse to make a collective agreement at variance with one made with the CLO union. The Syndicalist member is, then, in fact governed by the CLO agreement whether he chooses or not. However, the Syndicalists' policies concerning political action, benefit funds, union structure, and internal union processes are markedly different from those of the CLO unions and to this extent provide a choice. Even though the policies of a competing union are not significantly different, or it is too weak to make its policies effective, its very presence makes the union-member relation less binding, sensitizes the union to the desires of its members, and provides an avenue for symbolic protest against union policies. For this reason the availability of competing unions is an important factor in measuring the union's control over the individual.

E. The Reliance on Related Institutions

The union's role in regulating the labor market may be reduced because employees' interests are represented through institutions other than the union. In Germany, for example, the statutory works councils (Betriebsrat), which are elected by the employees in the plant and are no part of the union structure, represent the employees at the plant level. The works councils negotiate local agreements covering matters such as piece rates, work schedules, job classifications, and dismissals. At times, works councils may negotiate the minimum wage rates fixed by the union's national agreement, supplementary pensions, and sickness benefits. Under such circumstances, the union's control becomes remote, if not secondary, and inquiry might equally concern itself with the relation between the works councils and the individual. In France,

plant level representation is through statutorily created shop stewards' committees (*délégués du personnel*) and enterprise committees (*comité d'entreprise*), both elected by the employees and organizationally separate from the union. In sharp contrast, the statutory works councils in Belgium (*délégation syndicate*) play a very small role and local representation is through shop stewards provided for by the collective agreement and selected by the unions. Swedish unions hold complete control at the local level through local officers and union directed enterprise councils (*företagsnämnden*). In these last two countries, as in the United States, representation of the employees is solely through the union with no encroachment by parallel institutions. Thus, the relevant inquiry becomes not the legal status of works councils or the organizational relation of shop stewards, but rather whether the policies and decisions at the local level are governed by the union or by some other institution.

Accurate assessment of this situation of control is often obscured by formal organizational structures. In electing works councils, for example, unions present lists of candidates, either officially as in France, or unofficially as in Germany. In either case the overwhelming majority of those elected are union candidates, and the union potentially controls this legally separate body. Union control, however, does not always become a reality, for those nominated by the union often become quite independent once elected. In Great Britain, shop stewards are chosen by the union and are organizationally a part of the union, but here too the formal structure may be deceptive. Steward councils often refuse to feel bound by union policies and act on their own. They thereby become, in effect, independent institutions representing the employees, and tend to reduce rather than extend the impact of union decisions on the individual.

F. Summary of Factors Measuring Union Control

These are five of the more critical factors used in measuring the scope and nature of the union's control over the individual. There may well be others equally important, but identifying these five may at least suggest the kinds of factors which must be considered if one is to understand this first basic relationship between the union and the individual. No attempt has been made to analyze these five factors in detail, but even from the rough sketch certain significant characteristics of our problem emerge. First, each major factor itself is composed of numerous elements which go far beyond legal rules, express agreements, or formal structures. To measure the unions' control one must see, therefore, the union in the context of the whole collective system. This requires a deep and extensive probing to determine the role which the union plays in making the decisions which ultimately govern

the individual. Second, the making of any general comparisons is nearly impossible in that the complex elements interact to form unique patterns which defy simple characterization. After applying the various factors, one might safely say that French unions have less control over the individual than have Belgian unions; similarly, one might reasonably compare the control of unions in Argentina and Brazil if he knew the impact of the latest change of governments. But can it be said that the control exercised by British unions is greater than that exercised by German unions? Or that unions in Sweden exert less control over the individual than unions in the United States? And which union in the United States? This might begin to suggest the limitations and usefulness of comparative study in this area. Third, the application of these factors to the various countries indicates that in every country which has a substantial trade union movement, unions exercise a significant measure of control. Although the patterns vary, unions in all of these nations hold some form of regulatory power, with members to some extent dependent on the union for valuable benefits. Thus, union policies influence the terms of employment and union decisions vitally affect the members' welfare. This notion, then, leads into two other significant areas of inquiry: What freedom does the individual have in determining whether to be subject to the union's control, and what rights does he have to participate in determining its policies?

V. FREEDOM OF THE INDIVIDUAL TO CHOOSE WHETHER TO BE SUBJECT TO UNION CONTROL

The individual's freedom to choose whether to be subject to union 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 of its regulations. Second, he may be compelled to follow a collective agreement even though he is not a member, and to this extent be controlled by the union. The first situation obviously raises the basic problem 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 of these point directly to the fundamental question in this area of inquiry, *i.e.*, to what extent is the relation with the union voluntary and to what extent is it compulsory? One cannot, by labeling unions "voluntary associations," avoid inquiring into this basic question of the ways and degrees to which the individual is compelled to be subject to the union's control. The primary purpose of this particular discussion, then, is to search out and identify the major factors, both legal and economic, which determine the scope and limitations on the individual's freedom of choice.

A. *Freedom of Association*

The various national reports make clear that in almost every country the relation between the union and the individual is rooted deeply in the concept of freedom of association. This freedom has three broad thrusts which are important here. First, it is commonly considered to include the freedom of workers to form unions and, therefore, provides the supporting base for the right of unions to organize. Second, it asserts that unions should be free to govern themselves and to define their relations with their members. One of the direct results of this broad principle, previously mentioned, is that the state should not intervene in the internal affairs of unions. Finally, freedom of association logically includes freedom of the individual to decide with whom he will associate. The primary cause of the problem with which one is immediately concerned, therefore, is the right of the individual to choose which, if any, union he will join. Although all countries declare their adherence to freedom of association as a basic right, this freedom is in no country unlimited. The limitations which must be examined may be legal, imposed by the state; or they may be economic, imposed by the union or the employer.

1. Legal Limitations on the Individual's Freedom of Choice as to Union Membership

Union membership is seldom compelled by law. The only example reported is in Chile. There, if an industrial union gains the support of 55 per cent of the employees in the establishment, it obtains legal status as the employees' representative and all of the employees automatically become union members. In Brazil, the only unions allowed are those created by the state. Only one union is created for each occupation and area, and that union is, by law, made the representative of all employees within its jurisdiction. Membership is not compelled, but each employee is required to contribute to the union an amount fixed by law and deducted from his wages. To become a member, he must make an additional payment. Although this is in form a lesser compulsion than that in Chile, it is in fact greater. While in Chile, an individual is required to become a member only if the union has won the voluntary adherence of the majority, the individual in Brazil is compelled to support a union which rests on *no* voluntary adherence by the workers. It would seem, however, that in both countries compulsory membership imposes no burden other than payment of union dues.

Even though the law does not compel membership or financial support, it may limit the individual's freedom of choice by permitting only a single union. In Argentina the law states that "workers are entitled to form unions freely," but the only union allowed to represent the employees trade interests, engage in collective bargaining, or par-

ticipate in government agencies is the one designated by the state as "most representative." The individual has no practical choice but to join that one or none at all. In the words of the Argentine reporter, "the freedom to organize as set forth by the law, if not nonexistent, is in any case relative." Any law which conditions the union's functioning on its meeting certain legal requirements may, if a union is thereby barred, narrow the individual's freedom of choice. For example, in the United States a union proven to be Communist controlled can be, in effect, legally dissolved. An order has now been issued but is being appealed applying this law to a substantial union. If the order is enforced, the employees now represented by this union will be denied their first choice of unions, and employees in other plants where this union attempts to organize will have less choice—indeed, these employees may be left with no choice at all.

2. Economic Limitations on the Individual's Freedom of Choice as to Union Membership

Far more important than legal compulsions to join or support a union are economic pressures which may make union membership, in effect, mandatory. The most direct and effective economic device is the union security or organization clause in the collective agreement. These clauses may take many forms, *viz.*, requiring membership to obtain a job, giving preference in jobs to union members, requiring membership within a limited time after obtaining a job, or requiring all employees to give financial support to the union, and other variations. But all have the common element of making an individual's employment dependent in one fashion or another on his union status. The law in the various reporting countries has responded to such use of economic pressure in four different ways, each having a significantly different impact on the individual's freedom.

First, the individual may be compelled to become and remain a member of the particular union. Thus in Great Britain, unions may freely bargain for the closed shop or strike at any time to compel the discharge of employees who are not in good standing in the union. The same seems to be the case in Peru. The impact on the individual in these instances is multiple and severe. He can be deprived of any freedom either to choose between unions or to remain unorganized; but more important, if he violates any union rule and loses his good standing, the union can cause him to be discharged. He is compelled not only to join the union and support it financially, but also to obey all of its laws and abide by its decisions. Expulsion thus deprives him both of his rights within the union and his right to his job.

Second, the individual may be compelled to join some union but not any particular union. For example, Swedish law protects the "positive"

right of association—the right to join and support the union of one's choice; but it does not protect the “negative” right of association—the right to remain unorganized. The union cannot cause the discharge of one who belongs to another union but only one who belongs to no union. Here the impact on the individual is significantly less than in the first situation for he is completely free to choose between unions. Nor can he be compelled to obey union rules, for if he is threatened with expulsion by one union he may be able to quickly join a competing union and obtain immunity.

Third, while not required to become a member, the individual may be compelled to contribute financial support to a particular union. An illustration of this can be found in the United States, where under the Taft-Hartley Act, the majority union as statutory bargaining agent may negotiate an agreement requiring all employees it represents to tender regular dues and initiation fees thirty days after becoming employed. The individual is not required to take an oath of loyalty to the union, attend union meetings or obey any union rules; and if he is expelled, he loses his membership rights but not his job. The effect on the individual is, then, solely to his pocketbook for he is still required to contribute financial support. Under the U.S. Railway Labor Act, the individual enjoys greater freedom since he can comply with one union's organization clause by maintaining his membership in a competing union which represents his craft or class.

Fourth, the individual may be guaranteed the right to join any or no union as he chooses. For example, in Germany, the Constitution (Art. 9, par. 3) expressly prohibits as a violation of freedom of association the use of economic pressure to compel a person to join a particular union, and, according to the German Report, it is generally agreed that this and other constitutional protections also cover the freedom not to join any union. Similarly, in France, Switzerland, and Korea the individual's full freedom of association is protected either by constitution or statute.

These four broad categories emphasize the different ways in which the employee's freedom may be limited. Such general statements of the legal rules, however, gloss over many details, and those details may significantly change the effect of the law. For instance, in Sweden, the law protects only those already employed and not those seeking employment. Therefore, agreements requiring the employer to hire only members of the particular union are completely valid and enforceable in the labor court. Members of a competing union are thus protected only so long as they remain employed. Once they are laid off they may be barred from new employment. This is important, for closed shop clauses are most prevalent in industries such as construction where employment is typically short term. The legal protection, therefore, gives little actual protection. While Belgium prohibits making employ-

ment depend upon membership in a particular union for the purpose of maliciously interfering with freedom of association, this does not prevent a union from adopting and enforcing a rule that members will work only with trade unionists. This qualification was held not to be a malicious interference with freedom of association, but a protection of a legitimate occupational interest. These examples serve to remind us to distrust generalities in this area, and further emphasize the need to examine the legal rules with greatest care to determine the extent to which they protect the individual's freedom of choice from economic pressure.

This inquiry, however, must press beyond the legal rules to the critical question of the extent to which workers are, in fact, compelled to become members. In Sweden, the law does not protect the individual who wishes to remain unorganized, although the dominant employers' associations have barred all contractual provisions making employment dependent on union status. There, organization or security clauses occur only in contracts with employers who do not belong to these associations. As a result, such clauses are relatively rare, covering at most ten per cent of all those governed by collective agreements. In England, where no legal limits exist on economic pressure to compel membership, it has been estimated that less than one-fifth of all workers are directly affected by the closed shop. The United States statistics, in spite of laws in nearly half of the states prohibiting all forms of union security, show that nearly 75 per cent of all employees covered by collective agreements are required to contribute to the union. This figure, however, must in turn be seen in the context of the comparatively small proportion of the work force covered by collective agreements in the United States. In looking beyond the legal rules one should not assume that the law is scrupulously obeyed or enforced, for at least in the United States and perhaps in other countries, unions and employers have at times found such legal commands less imperative than their economic convenience or institutional needs. Nor can one look only to written provisions in collective agreements, since it is clear that informal measures may be equally effective in enforcing closed shop conditions. These are but suggestive of the many elements which must be examined in each country if one is to determine the extent to which union membership is in fact voluntary or compulsory.

Economic pressure to join the union may come in a less direct and compelling form through the union's benefit program where those benefits are payable only to union members. Thus, if the union provides benefits such as sickness insurance, pensions or widow's allowances, and the individual worker cannot practically obtain equivalent protection elsewhere, he must join the union to provide for these needs. More important, he must continue in good standing or forfeit his benefits. These benefits can, therefore, provide the pivot for press-

ing him to conform to all union rules. In some countries this has proven to be a lesser though adequate substitute for the union security agreement.

Finally, an individual may have no practical freedom to choose between unions simply because there is only one union available. He must either join that union or remain unorganized, a less than wholly satisfactory alternative. In a number of countries the unions have sought to achieve this result. The Swedish Confederation of Trade Unions permits no choice between member national unions, and has all but eliminated competition with the Central Organization of Salaried Employees (TCO). The only alternative is the Syndicalists with whom the employers' associations refuse to deal. In England, the Bridlington Agreement has sought to curb competition between unions belonging to the Trades Union Congress (TUC); and in the United States the No-Raiding Pact has sought the same objective within the AFL-CIO. The point here is not whether these devices are good or bad, but rather that the effect is to narrow the individual's freedom of choice as to union membership. The presence or absence of competing unions is simply another factor to be considered in determining the extent to which membership in a particular union is voluntary or compulsory.

B. Union Control Over Non-Members

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 the union's collective agreement. In every reporting country, the collective agreement is applied in some fashion and degree to non-union employees. The outward reach of the collective agreement may take four general forms, each of which curtails the individual's freedom to choose whether to be subject to union control.

1. Exclusive Legal Representative

In the United States, 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. Whether the individual chooses another union or remains non-union, he is represented and bound by the majority union. The union's relation to the individual is clearly compulsory, though certain tempering elements should be considered. The union must be the voluntary choice of a majority of the employees and that majority is officially determined by secret ballot. The election district or bargaining unit is relatively small, normally a single plant or even a single craft or department within a plant, and seldom larger than the

plants of a single employer. Employees can also continue their membership in the minority union although it cannot represent them, and they can demand another election when the collective agreement terminates or within three years of an election. Thus, the individual's freedom is suspended for a limited period by majority rule exercised in relatively small units. The exclusive representation principle also operates in South America, but at least in Argentina and Brazil it takes quite a different form, as previously noted. In Argentina, the union designated "most representative" by the government becomes the sole union and its contracts bind all employees regardless of membership. The union need not be the voluntary choice of a majority, nor can the employees by their vote unseat it. In Brazil, the unions are entirely a creation of the state. Each union is made the legal representative for all employees in its occupational group and binds them by its collective agreements. Yet, only ten to fifteen per cent of the workers are members.

2. Extension by Legal Order

In most European countries a collective agreement made with a number of employers or an employers' association can be "extended" by government order to apply to outside employers and their employees, and non-union employees of employers initially and voluntarily covered by a collective agreement. For example, in Germany, the collective agreement itself establishes compulsory terms only for union members employed by contracting employers, but if the Minister of Labor finds that extension is in the public interest, the collective agreement constitutes a "common rule" and all employees of all employers in the trade or industry are governed by the agreement. In France, as in the United States, the contracting employer is bound by statute to apply the collective agreement to all of his employees regardless of union membership. By extending the contract, however, the Minister of Labor brings employees of other employers within the union's collective control. Extension does not rest on a voluntary choice of the employees. In France, the collective agreement must have been made by "the most representative organizations," but this does not mean that a majority of the employees, even of the contracting employers, are union members. Indeed, in most instances only a small minority even purport to be union members. In Germany, employers who have been parties to the agreement must employ at least one-half of their non-union employees within its extended scope, but there is no requirement that the agreement initially be made with a majority union, though this is probably the normal case. The same is true in Switzerland, but with the added requirement that minorities, especially regional minorities, must be protected.

There is no need to delineate the detailed rules or procedures for

extension of collective agreements in various countries. All have in common two basic characteristics which are important. First, extension has the effect of making the collective agreement applicable to individuals who are not members of the union, and in that respect subjects them to the union's control. Second, the union's control is not always based on majority rule of the employees involved, for extension can be and often is ordered when less than half of the employees affected are union members. The intrinsic character of extension ought not be viewed apart from extrinsic facts which measure its practical impact. Extension is apparently the exception in Germany but almost the rule in France, while the English version under the Terms and Conditions of Employment Act of 1959 seems to have little practical effect. In some countries such as Belgium and Switzerland, the negotiating unions actually have a clear majority, but in other countries such as France the union has a small minority. Finally, extension may place no practical bonds on the individual where the terms of the collective agreement carry little legal weight, and where the individual's ability to bargain for better terms is substantial.

3. Extension by Collective Agreement

Sweden has no statutory provision for extension of collective agreements; in legal theory, the agreement binds only union members. However, the collective agreement may require the employer to apply the same or equal terms to non-union employees. This provision is legally enforceable in the Labor Court. Indeed, the requirement is considered so natural and essential that it will be read into the agreement by the Labor Court in the absence of an explicit clause to the contrary. While non-union individuals or competing unions can also theoretically bargain for different terms, agreement by the employer exposes him to legal sanctions—if he agrees to some term less than that in the collective agreement he will be liable for breach of contract; if he agrees to some term better, he may be liable for breach of contract and also provide evidence of a violation of freedom of association. The end result is that the employer cannot safely deviate from the terms of the agreement with the dominant union. The practical impact is much like the American exclusive representation rule whereby non-union employees are governed by the collective agreement regardless of their choice. In Sweden, although the majority of the employees of a particular employer may not be union members, the employer and his workers may still be bound by the collective contract because the number of employees of all the employers in the employers' association comprises an overwhelming majority. One significant difference is that the Swedish union clearly has no control over claims arising under the individual's contract of employment since the individual obtains no legal rights

through the collective agreement. By contrast, in the United States the individual's rights are rooted in the collective contract, and the contract commonly provides that the union alone has control over all rights claimed through it. This provides the basis for the argument, which is likely contrary to section 9(a) of the Taft-Hartley Act, that in the United States the union can surrender, compromise, or refuse to enforce individual rights under the collective agreement.

4. Extension by Pressures for Standardization

Within a single enterprise there are strong pressures for standardization of terms and conditions of employment between employees performing similar work. The larger the enterprise the greater these pressures become. Between various employers, particularly where there develops an employers' association, there are sometimes other less compelling but still weighty pressures for equalization of employment terms. In England, the non-union employee has full freedom to bargain individually, but the terms negotiated by the union either nationally or locally establish a standard from which he can only in rare instances deviate. Practically, even though not legally, the collective agreement becomes a "common rule" by which the individual is governed. There is no need here to explore the many ways and extent to which such pressures may operate; it is enough to call attention to the fact that regardless of the legal rules, these economic and institutional forces may give the union effective power to compel the individual to conform to the union's collective agreement. If we are to see the full extent to which an individual is subject to the union's control, we must include these forces in the scope of our inquiry.

Apart from the collective agreement, the union may extend its influences or control over individuals outside the union through many other channels. For example, in France the shop stewards (*délégués du personnel*) and works councils (*comite d'entreprise*) are elected from lists submitted by the "representative" unions. These bodies which represent all of the workers at the local level on a wide range of important matters are made up of union militants nominated by the union. Sitting on government bodies which administer social insurance legislation are elected representatives of insured persons selected from lists submitted by the chief trade unions. In Germany, unions do not participate officially in works councils but they generally submit lists of candidates which are almost always elected. To the extent that the unions thereby control the policies of the works councils, they become in effect the exclusive representatives of all of the employees at the shop level. Through these and many other institutions, unions are recognized as the spokesmen and guardians of the interests of all employees, thereby

subjecting individuals who are not members of a union to the union's policies and decisions.

C. Summary

The fact that the law in almost every country classifies unions as "voluntary associations," and considers the relationship between the union and the individual to be rooted in the basic right of freedom of association, is doubly deceptive. It is deceptive first, because it gives an appearance of common values and common legal principles which conceals a wide range of differences. The terms "voluntary association" and "freedom of association" do not always describe identical concepts. Even though they may have a common core, they often differ in those very details which are most significant in our study of the relation between the union and the individual. The use of these terms is deceptive secondly, because the relationship between the union and the individual is seldom wholly voluntary and the individual's freedom of association is often less than complete.

Unions are voluntary in most countries in the sense that the law itself neither commands the individual to become a member nor prohibits him from becoming a member. The national reports make plain, however, basic differences as to whether economic force can be used to deprive the individual of his freedom of association. In a number of countries the individual, under pain of losing his livelihood, may be compelled to join or support a union. Although the form of the pressure applied and the measure of allegiance required varies, the relationship to that degree ceases to be voluntary. But union security or organization clauses are not the main instrument of union control over the individual. The main instrument is the collective agreement and other institutions through which the union helps regulate terms and conditions of employment. In almost every country, the union's sphere of influence does not end at the boundaries of its membership but, in fact, extends to those who may belong to other unions or who are unorganized. Whether this is achieved by formal legal devices such as exclusive representation by a majority union or extension of collective agreements, or whether it is achieved by less formal devices of establishing patterns which are in practice imposed on others, the consequence is clear—the individual is, realistically speaking, subject to the union's control regardless of his choice.

VI. THE RIGHTS OF THE MEMBER WITHIN THE UNION

In the preceding sections the identification of the principal factors which measure the scope and nature of the union's control over the individual and the degree of his freedom to choose whether to be sub-

ject to the union's control has been sought. One comes 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 and provides his benefits? The importance of those rights, like the reasons for one's entire inquiry into the relationship between the union and the individual, is rooted in the special purpose which unions serve in a democratic society. Proceeding from the premise that one of the vital functions of unions is to widen and deepen the democratic process, the inquiry should be focused on those rights which are central to fulfilling that function.

The rights with which one is primarily concerned can be roughly grouped under four headings: (1) The right to become and remain a member of the union; (2) The right to participate, directly or indirectly, in the decisions of the union; (3) The right to fair procedures in union tribunals; and (4) The right to have union funds used for proper purposes. These are not so much rights which the individual has against the union, as rights which he has within the union. In measuring these rights the critical question is the extent to which they are, in fact, recognized in the union's governmental process. This recognition may be far less a product of legal rules than of union practices, and the individual must 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, that is, the extent to which the state will intervene to apply its law in the union's internal process. This fundamental question of the relative role of the state and the union in defining and protecting the individual's rights is preliminary to any meaningful discussion of the scope of those rights.

A. The Role of the Law in Defining and Protecting the Rights of Members

Legal theory in both civil law and common law countries has traditionally characterized the relationship between the member and his union as one of contract. The union's constitution and by-laws are considered a contract of association, and the individual by joining the union agrees to be bound by the terms of that contract. This contract theory, however, has been sharply criticized as artificial and inadequate. If the union is not a legal entity, critics reason, then the contract must be with each of the thousands of other members, most of them unknowing and unknown. Neither party to the contract has any choice as to its terms since those terms are prescribed by the constitution and by-laws. It is an inflexible contract of adhesion, but at the same time lacks any stability for it is constantly subject to change through the union's

process of amendment. The member is deemed to agree not only to the expressed rules but also to the future decisions of unnamed union officers and tribunals acting under rules yet conceived. Opponents thus contend that this fiction strains even the elastic concepts of contract. The significant function of the contract theory, however, is not to describe the relationship between the union and its members, but rather to explain the relationship between the law and the union's internal rules—the relationship between the public law of the state and the private law of the union. Contract theory can thus be employed to rationalize the role of the law in defining and protecting the rights of members within the union. In rationalizing that role, the theory implicitly asserts three basic principles which provide a useful framework for analysis and comparison.

First, the contract theory asserts that the law should properly concern itself with the relationship between the union and its members. By characterizing 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 such deficient protection occurs the law should intervene. The contract theory thus denies that the union is wholly autonomous in administering its internal affairs. The Hungarian Report makes this clear by contrast. There it is stated that union by-laws have no legal significance and that no legal sanctions are available either to the union or to the members to enforce rights against one another. Resort is solely to the internal organs of the union which are vested with "self-administration" as an attribute of autonomy. The same view is reflected less explicitly in the Yugoslav Report. These two reports, however, are the only national reports which proceed from the premise that the law has no role in enforcing rights within the union. The French and Belgian Reports, which criticize the contract theory and urge the institutional theory, do not reject the basic principle that the law should concern itself with the relationship between the union and its members.

Although the law has a place in enforcing rights within the union, union self-administration of those rights may also have a significant role. The important question thus becomes one of the interrelation of the legal process and the union process, and here the law in the various countries shows marked differences. In the United States, the courts developed the doctrine that the law should not intervene until available appeals within the union had been exhausted. Although this doctrine was subject to various exceptions and often circumvented by the courts themselves, it expressed the principle that enforcement of rights within the union should be first through the union's processes and only as a last resort through the legal processes. Although recent legislation has endorsed this principle, it has tended to crystallize the rule by limiting the time in which a member can pursue his internal

remedies. In England, however, this doctrine of deference to union self-government has little if any vitality; and in Sweden, it has been explicitly rejected. The role of union self-administration may be further reflected in the weight given by courts to decisions of union tribunals. Here again are marked differences. For example, in expulsion cases, the union's findings of fact are apparently conclusive on the courts in Belgium and France; the findings will be followed unless clearly erroneous in England, are generally given only limited weight in the United States, and are replaced by the court's own evaluation of the evidence in Sweden. In various other ways the legal process may show different degrees of deference to union process. These examples but suggest the kind of inquiry required to analyze or compare even at the theoretical level the relative role of the legal and union processes in enforcing rights within the union.

In practical terms it must further be recognized that although the law stands ready to intervene, its help may seldom be sought. Thus, the legal remedies may be inadequate, legal enforcement may cost more than the rights are worth, the members may be unaware of their legal rights, or, as is suggested in several of the national reports, members may be extremely reluctant to carry their internal union disputes to outside tribunals. These elements, too, vary from country to country and any meaningful perspective of the role of the law must include this factual dimension.

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. The function of the court is to enforce the union's substantive law. 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 its membership. 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 court must interpret it, choosing between possible meanings. In both the United States and England where there have been enough cases to discern a pattern, the courts have not only refused to be bound by the union's interpretation but have often read their own views as to proper conduct and procedure into the union's rules. The French Report cites a recent case in which the court read into the constitution the right of a majority of a union to change its affiliation to another confederation. Thus, by this interpretive function, the courts assume

a supplementary but significant role in defining the rights of union members.

The contract theory encompasses a third basic principle—that the law places limits on the union's freedom to write its own rules. Contract theory incorporates the general principle that provisions in a contract may be declared illegal or ineffective because they violate legal rules or contravene social policy. For example, in the United States, union rules prohibiting members from suing to enforce their rights in the union, from testifying before legislative committees, or from criticizing union officers, have been declared "contrary to public policy" and, therefore, void. In England, union trial procedures which do not provide the accused with adequate notice of the charges, opportunity to be heard, and an unbiased tribunal, are deemed violative of "natural justice" and invalid. And in Peru, union rules cannot impose obligations which constitute an "abuse of rights." Statutory provisions may similarly invalidate or supersede union-made rules. Thus, the contract theory is used to make union rules subordinate to legal rules and policies.

It is self-evident that the contract theory does not prescribe the role of the law in defining and enforcing rights within the union, but that it only offers a rationalization for that part which the law does play. However, it does serve to emphasize that both legal and union institutions have concurrent roles. The union has the primary role in defining substantive rights, but these may also be shaped by the law through interpretation or supplanted by overriding social policies. While the law is available to help enforce these rights, it does not preclude enforcement through the union's own processes. The contract theory also helps us focus on those questions which measure the relative role of the legal and union institutions; in the process the degree of autonomy enjoyed by the union may thereby be gauged. How freely do the courts use their power to interpret union rules? To what extent are union rules circumscribed or supplanted by legal rules? How much deference is given to decisions of union tribunals? Is legal protection used only as a last resort after union processes have failed? These critical questions the contract theory poses but cannot satisfactorily answer. At best it can but rationalize such diverse systems as the closely controlled state-created unions of Brazil and the nearly wholly autonomous unions of Belgium. These significant questions, then can be answered only by detailed study of the actual operation of the law in each country.

One critical factor in measuring the role of the law remains. The impact on union self-government may be radically different depending on 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. This seems to be the pattern of regulation in South American countries such as Argentina and Brazil.

The recent LMRDA in the United States has quite a different thrust, however, for its dominant premise is that union members should govern their own affairs. The law is directed primarily toward protecting the democratic process within the union, leaving free the decisions to be made through that process. The right of members to criticize 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 union is left free to design its own structure of government with the one limitation that it must meet minimum standards of democratic rights. The underlying assumption is that if union decisions are the product of a democratic process they thereby acquire added validity, and that union self-government has added claim when it is democratic government. 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. In this fashion, the LMRDA seeks to meet the responsibility of government for how the power allocated to unions is exercised, and at the same time attempts to preserve the independence of unions as instruments for the distribution of power and to keep their decisions free from state control. The Act endeavors to, thus, resolve the self-government problem by requiring of unions no more than adherence to democratic structures and principles which they themselves have historically avowed.

B. *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 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; in special circumstances, it may effectively bar a person from working at his trade. Second, exclusion from the union may deprive the individual of various social benefits provided by the organization. The importance of this depends on the particular benefits offered and their practical availability elsewhere. For example, pensions or medical insurance may be difficult to obtain through other

channels, and strike benefits are provided *only* by the union. A member who is expelled may, furthermore, be unable to replace life insurance cancelled by his expulsion. Denial of membership, thirdly, bars the individual from any participation in the union's decisions which affect his welfare. Thus, he cannot speak at union meetings; he cannot vote in union referenda; and he cannot be a candidate for union office. Where the union exercises substantial control, the individual's right to participate may be considered the most important interest involved, especially where power has been allocated to the union for the purpose of strengthening the democratic process.

1. Admission

The national reports show that in every country union membership is generally open to all occupied within the jurisdiction of the union. Even where unions are organized along religious or political lines, as in most continental countries, all who seek to join are freely admitted without any inquiry into their political views or party affiliation. Exceptions to the general rule of open membership exists, however, and they are best known in the United States. There, a substantial number of unions have constitutional provisions barring "Communists," "Nazis," "Fascists" or other "subversives," but these are seldom used to deny admission. More notorious are the small number of unions which by formal rule or informal practice enforce racial bars.

When confronted with denial of admission, the law has protected the individual's right to work. Courts in the United States have consistently ruled that a union security agreement cannot be enforced against persons arbitrarily excluded. This result is now incorporated in the Taft-Hartley Act. A Brazilian court intervened when a union refused admission of new members in order to retain a monopoly over jobs; and in Sweden, a man excluded because it was believed he had cooperated with the Nazis in Norway, was ordered admitted when the court found that he was dependent on membership for obtaining employment. The law has not given such consistent protection, however, to the individual's right to participate. Thus, courts in the United States have refused to order unions to admit Negroes even though the union was by statute the exclusive bargaining representative. Recent United States legislation, while protecting democratic rights within the union, does not protect the right to join. In sharp contrast, Swiss law gives this interest in union membership explicit recognition. There, the federal statute requires that a collective agreement cannot be extended to non-members unless they are able to join the union. The individual's right to participate is, thus, tied directly to the union's statutory power to represent him in collective bargaining.

2. Expulsion

In every country the union is considered to have inherent power to discipline members who violate union rules. The principal sanction is to deprive the individual of some or all of his membership rights. Expulsion, the most common penalty, totally destroys all of the valuable interests in membership; fines condition those interests on a payment of money; and suspension or barring from union meetings may curtail the right to participate in union government. In analyzing these various forms of union discipline, two significant elements must be examined—the offenses which are punished, and the procedure through which guilt is determined and the penalty imposed. The national reports suggest that union rules and procedures in the various countries bear striking similarity on several crucial points.

Union rules customarily name a wide range of offenses for which members may be disciplined. More important, these rules almost always include blanket or catch-all clauses which can be used to punish almost any conduct. For example, members may be expelled for "trouble making" in Brazil, "notorious misconduct" in Belgium, "unedifying behavior" in France, "action unworthy of a member" in Hungary, and "jeopardizing the honor or interests of the union" in Switzerland. Such provisions typically give no adequate guide or warning to the members as to what conduct is prohibited. The more critical danger, however, is that these blanket clauses may be used to punish members for exercising basic rights or as a means to curb the democratic process within the union. For example, in England, a member who brought suit in the courts to prevent the union from using its funds to support the Labor Party was expelled for "conduct detrimental to the union"; in Sweden, a member who in a union debate opposed the adoption of a resolution barring Communists from union office was expelled for "acting disloyally"; and in the United States, members who distributed a leaflet criticizing the incumbent officers during a union election campaign were disciplined for "conduct in violation of their obligation as union members." The way union disciplinary clauses are applied is largely unknown, and these cases emphasize the importance of making critical factual inquiry which goes beyond the union rules to discover the conduct actually punished. The central focus of this inquiry should be on the extent to which discipline is used to curb the member's basic rights.

Disciplinary procedures commonly begin at the local level and progress upward through the union hierarchy with final appeal to the union's national convention. A hearing may be held before the local membership or executive committee with a right of appeal to the officers of the central organization as in England, France, and the United States; or the local officers, after investigation, may make recommenda-

tions to the national officers who then give the accused the opportunity to explain his position, as in Germany, Hungary, and Sweden. These procedures commonly manifest two important characteristics. First, they are customarily informal, 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, *i.e.*, 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, therefore, may be influenced by political considerations. A number of national reports have emphasized the inadequacy of disciplinary procedures. The Swiss Report states that the original procedure "is too summary and often neglected," and the Belgian Report states that the procedures are "systematic and may give rise to abuses." There is obvious room for critical study of the extent to which union disciplinary procedure in each country meets the standards generally considered by that country to be appropriate for adjudicating other interests comparable to those involved in union membership.

Legal limitations on union discipline vary widely even though commonly expressed in terms of the contract theory. The courts in some countries scrutinize the discipline closely to discover defects. In England for example, the tool of judicial interpretation is used to protect the individual. There, unambiguous union rules are strictly construed, ambiguous rules are construed against the union, and blanket clauses are limited by the court to protect the member from harsh or arbitrary treatment. Procedural flaws in the United States are often found by the courts to justify the invalidation of the discipline, while in Sweden, the judiciary seems to ignore altogether the union's procedure and re-judge the merits of the case directly. On the other hand, in Belgium and Switzerland, the courts apparently do not scrutinize the discipline so closely; this has resulted in a situation of far less protection for the member.

Explicit limitations on punishable offenses have been most fully developed in the United States. Among the many prerogatives expressly protected by the LMRDA are the right of free speech and assembly within the union; the right to nominate, vote for, and support candidates for union office; and the right to sue the union. Any discipline of a member for exercising these rights is unlawful. Even prior to the statute, however, the courts had used the contract theory to give substantial protection to these rights. While some tendency to protect such rights might be found in the English and Swedish cases, legal limitations on offenses seem wholly undeveloped in the other reported countries.

By contrast, several national reports indicate that the law does re-

quire that disciplinary procedures provide the accused a fair hearing. It is not at all clear, however, what each country considers essential for a fair hearing, and the standards may be markedly different. In England, the accused must be given adequate notice of the charges, opportunity to hear witnesses and cross-examine them, and opportunity to present his evidence; also the hearing must be before an unbiased tribunal. Under the German system, an oral proceeding need not be held, and the accused's right may be little more than an opportunity to present a written answer to the charges. Such comparisons are, of course, worth little unless seen in the context of legal procedures which are considered acceptable in the corresponding countries. Thus, when the union adjudicates the right to membership, the major consideration again becomes whether the law in a particular country requires union procedures to meet standards of fairness considered essential in legal procedures for adjudicating comparable individual rights.

3. Resignation

When a member seeks to withdraw from his union, it raises problems totally different from those raised when he seeks to become or remain a member. Withdrawal may free him from two obligations: first, the duty to support the union financially; and second, his duties under a future collective agreement to which he would be personally bound because of his membership. The right to resign is generally recognized both by union practice and legal principles, but this right is not always absolute. In Germany, while the right to resign is considered a part of freedom of association, a requirement demanding a three or six months notice of intent to withdraw is generally considered legal. Similarly, a Swiss statute provides that the maximum notice which can be required is six months prior to the end of the year. In Sweden it is further argued that the union can prevent withdrawal even after reasonable notice where withdrawal is motivated by a desire to escape financial obligations, particularly during a labor dispute. In none of these countries, however, does there seem to have been explicit discussion as to whether an individual who has disavowed the union can be bound by a subsequent collective agreement.

C. 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, decisions which vitally affect his welfare. This participation may be direct, through referenda, or it may be indirect through the election of officers and representatives. The central question concerns the extent to which the member, along with his fellow members, is able to make his voice heard and have his wishes weighed in the union's decision-making

process. This inquiry, though simple to state, is as difficult as it is important. Study of formal union structures is inadequate, if not misleading, for the formal structure is but an outer shell. Inquiry must go to the inner political life of the union, the interacting forces and complex processes through which decisions are, in fact, made. Such a probe is far beyond the reach of the reports here. The principal contribution of comparative study is to suggest some of the factors to which we should direct our inquiry.

One of the first factors to be considered is whether participation is direct or through elected representatives. Although decisions above the local level are normally made by representatives, there may be important exceptions. Except for France and Sweden, in all of the countries reporting, the calling of strikes is generally submitted to a membership vote; this is legally required in Argentina, Chile, Korea, and Germany. Collective agreements, however, are seldom submitted to the members for ratification with the exception of Hungary and the United States. Only rarely, as in Switzerland and sometimes in the United States, are decisions of the national union made in its congress subject to referenda; but where unions lack strong national organizations as in Chile or Korea, they may show a high level of direct democracy.

A second and closely related factor is the remoteness of the decision-making from the individual members. Decisions made at the local level are more likely to be made by direct vote of the members after face to face discussion in a local meeting. Even if the decisions are made by officers or delegate bodies, the individual will still have more ability to make his views known and felt. But as decisions are made at upper levels of the union structure, the individual's voice fades and his sense of insignificance grows. This same factor might be expressed in terms of the distribution of power between local and central governing bodies of the union. In some countries, such as Germany, the local organization is often weak, and power is centralized in the national union; in others, such as Belgium and Sweden, the national union dominates, but local branches have meaningful functions; in Yugoslavia, there has been a deliberate effort to decentralize unions to get them closer to the members. Even within a single country, unions may vary. Thus, in the United States, the mine workers are more centralized than the carpenters, and the steelworkers more centralized than the auto workers.

In studying this factor, it is most important to look beyond the formal structure to see where the power is really exercised. For example, in both England and Sweden the national unions negotiate national agreements; the practical ability of local branches to alter or ignore the terms of the national agreement, however, is significantly different in the two countries. Even though the national union has certain powers, traditions of local autonomy may inhibit their use. In this area the

law plays no overt role, for in no country has the law attempted to regulate the allocation of power within the union structures. The cases and statutes in the United States may tend to favor local autonomy by protecting the local against being taken over arbitrarily by the national union. French decisions upholding the right of a subordinate unit to secede by majority vote may also give the local a measure of independence from the national union. These instances, however, have at best slight effect on the distribution of power and the remoteness of decision-making from the membership.

A third factor affecting the individual's right to participate is the responsiveness of the union election process to the desires of the members. Distortion through fraud in counting the ballots is the least significant element; it is extremely rare in practice with but a few instances known in the United States and one notable instance in the Electrical Trades Union in England. A much more important element is the directness of the election. In Belgium, for example, the local section elects an executive committee which in turn selects delegates to the regional section. This body then selects delegates to the national committee which is responsible for the selection of national officers. Participation through such an indirect election process muffles the voice of the member. In contrast, some unions in the United States provide for direct election of national officers by the membership. Responsiveness may be further deadened by the lack of any significant opposition or of widespread 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 typical. These elections may provide the occasion for criticizing the incumbent officers' performance and policies, but the importance of this practice depends heavily upon the importance of decisions to be made at the local level.

The national reports bear melancholy reminders of how closely unions commonly conform 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 swallows or stifles all organized opposition. The bureaucracy is able to perpetuate itself in power by its advantages in access to information, control over channels of communication, and disciplined organization. Although the officers are practically irremovable, the voices of the members do not necessarily go totally unheard. The officers normally conceive of themselves as democratic leaders, not oligarchic rulers, and are conscientiously concerned with fulfilling the wishes of their members. In addition, union officers 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 individual rights to the basic right to participate. The right of the union member to be fully informed concerning his union's affairs is not merely for the purpose of enabling him to discover wrongdoing. Far more important is his ability to know the policies and performances of the officers so that he can offer meaningful criticism 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 organize opposition groups within the union permits members who disagree with certain policies to make themselves heard and their weight felt rather than being dismissed as isolated malcontents. Although these rights are not overtly denied by unions, there still remains the question as to what extent unions affirmatively encourage the exercise of these rights by keeping members fully informed. Rather than managing the news, to what degree are normal channels of communication, including union publications, made available to those who criticize the present leadership; and to what degree is organized opposition within the union's political process recognized and treated as entirely legitimate?

In the United States the recent LMRDA has as its central purpose protection of the right to participate. To this end it has guaranteed 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 one's choice by secret ballot. In addition, the law has sought to reduce the advantage held by incumbent officers in election contests. Thus, every candidate has a right to have campaign material mailed to all of the members, and is entitled to equal access to the list of union members with their addresses. The law also prohibits the use of any union funds to promote or aid in the candidacy of any person in a union election, thereby limiting among other things, the use of the union newspaper as a campaign organ for incumbent officers who seek reelection. These limited measures will not repeal Michel's "iron law of oligarchy," but they may give those who seek to change the union's policies or leadership an increased ability to present these issues to the membership and obtain a vote that more fully reflects the breadth of dissatisfaction. This will make the right to participate more meaningful by enhancing each member's opportunity to make his desires known.

D. *The Right to Fair Procedures in Union Tribunals*

The union as a self-governing institution engages in both the legislating of interests and the adjudicating of rights within the union. When the union undertakes to adjudicate rights, the question is immediately presented as to whether the union's procedures are appro-

priate for the determination of those rights. The problem is clearly posed and acknowledged in expulsion cases, but many other rights are also adjudicated by union officers or bodies. The problem of appropriate procedure arises 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. These are substantial rights which are not to be given or denied by chance or favoritism. 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 or union bodies also raise procedural problems.

The individual's right to a fair hearing when expulsion is involved is readily recognized even though that right is not always protected. But the importance of guaranteeing a fair procedure when these other rights are adjudicated is often overlooked. As pointed out earlier, many disciplinary procedures manifest serious weaknesses; they are often devoid of even the most elementary safeguards to insure fairness. This is not to suggest that all adjudications must be pressed into the same procedural pattern, or that all legal systems must rely on the same safeguards. But questions do arise when union procedures wholly fail to meet those standards which would be expected if government agencies were adjudicating similar rights.

The most serious problem arises out of the lack of any regularly constituted judicial structure within the union. Union tribunals are seldom separate organs but are simply the politically selected officers wearing judicial caps. Appeals are to other officers at a higher level in the political hierarchy. Political considerations may intrude; yet even if they do not, the individual may have reason to doubt whether his right has been adjudicated objectively and fairly. The awareness of this special problem is reflected in some of the national reports. In Sweden, most union constitutions provide that if a member is expelled or any other internal dispute arises between the union, a local branch, an officer, or a member, it should be referred to arbitration. Union rules in Belgium usually provide a final appeal to arbitration; the same is true of some Swiss unions. In the United States, the auto workers have created a special appeals tribunal known as a Public Review Board made up entirely of neutral persons outside the union. Its explicit purpose is to provide an independent body to whom members can appeal from decisions of union officers. A few smaller United States unions have established similar bodies, but most have rejected this device as allowing "outsiders" to meddle in union affairs. In two other instances members who proposed public review boards have found themselves expelled for "unbecoming conduct," their expulsions being upheld by appeals tribunals composed of union officers.

The law, it seems commonly accepted, requires that the individual

be given a fair hearing in discipline cases. However, in countries other than England and the United States the requirement of fairness seems to lack specific content for there has developed no body of decisions. Nor is it clear to what other determinations this requirement of fairness applies. In expulsion cases, when members of the tribunal are obviously hostile or biased, the courts in England and the United States have invalidated the procedure. Even these courts, however, have been unable to reach the more subdued unfairness which can arise from the inherent political nature of the tribunal.

E. *Rights in Union Funds*

In all of the reporting countries union members have relatively direct control over the fixing of dues and relatively remote control over the use of union funds. Union dues are almost always governed by the national congress or local meeting but expenditures and investments are determined by the officers or committees. In Belgium and Germany, union finances are not fully disclosed in fear that this will enable employers to gauge the union's strength. As a result the union member is handicapped in even knowing how funds are handled, much less exercising any indirect control. In other countries such as England, Sweden, and Switzerland, unions give full reports to their members even though this information comes into the hands of employers. Union finances present no substantial problems in France, however. Most members feel no obligation to pay their dues regularly or in full, and as a result the relative poverty of unions means that funds at best are meagre.

Legal controls over finances tend to be greater than over any other phase of union affairs. In South American countries, state control may be nearly complete. In Brazil, for instance, unions are financed by a state-imposed tax on all workers within the union's jurisdiction; expenditures are closely supervised. In Argentina, union funds are supervised by the Ministry of Labor; and in Chile, expenditures and investments are regulated by legislation. The thrust of the law in these countries is to prescribe the purposes for which union funds may be used and to circumscribe the members' power of self-government. The law in England presses in the opposite direction—it insists that the decisions of the members, made through their process of self-government, be followed. An increase in dues levied by the officers without taking a ballot as required by the rule book is invalid, and expenditures made in violation of the union's rules or regularly made decisions will be prohibited. In addition, union members have a legal right to inspect union books of account to determine whether the union's rules and decisions are being followed. To aid in making this inspection, members are entitled to use outside experts capable of making the necessary

search and analysis. If an officer is found to have paid out money improperly, an individual member may obtain a court order requiring him to restore the amount to the union treasury. The law in the United States gives the individual substantially the same rights in this regard as in England.

Even where the law proceeds from the premise that its role is to reinforce the union's self-government of its financial affairs, the question remains whether the law places limits on the union's rules. Clearly, the right of union members to inspect union records as recognized in England and the United States is one such limit on union self-government, for the member has this right regardless of the union's rules. Another such limit is illustrated by the 1959 Labor Management Reporting and Disclosure Act in the United States. It made explicit the prohibition against union officers from entering into any transaction which created a conflict of interest between his personal interests and those of the union. The Statute also declared invalid any provision in the union constitution relieving the officer from liability for violating this fiduciary obligation. In cases where union members have voted to appropriate union funds to pay the legal expenses of an officer accused of mispending or embezzling union funds, the courts have declared the action of the membership invalid, at least until the officer has been found innocent. The significant point is that in this specific area the democratic process is not fully relied upon to protect the member's interest.

VII. UNION POLITICAL ACTION AND THE INDIVIDUAL

When a union engages in political action either by advocating certain governmental policies, supporting a political party or aiding the election of particular candidates, it raises difficult questions of the rights of individual members who may prefer other policies, belong to other parties, or oppose those candidates supported by the union. As has been emphasized earlier, the union exercises substantial control over the economic welfare of the individual, and it is this power and control of the union which makes membership in the union such a valued and protected right. Questions arise when the union requires the individual, as a condition of enjoying the rights of membership, to adhere to the union's political program. If a union which has a closed shop expels those who advocate different policies, the right to work is conditioned on political conformity; and even in the absence of a closed shop the member's interest in sick pay, pensions, or strike benefits may compel him to silence. If a union gives funds to a political party, an individual for whom the union bargains collectively is compelled to contribute as a price for his right to participate in the decisions which regulate his terms and conditions of employment.

This states the problem in stark form but greatly oversimplifies it, for the union's economic and political activities are seldom so neatly separated. French unions, because of their economic weakness, have commonly sought to achieve their economic objectives through legislation. Swiss unions, by contrast, have actively opposed legislation to increase social benefits because they preferred to seek these through economic action. In most countries, however, unions have used collective bargaining and legislation as alternative paths to the same objective. The relation between the union and the individual in this political sphere also must be seen in the total political context of each country. This includes the relationship between the union and the political party and the role of both the union and the party in the political structure. For example, in Switzerland the line between the union and the political party seems clearly drawn, but in Sweden the union and the party have traditionally been considered complementary parts of a single labor movement. The national reports from Hungary and Yugoslavia emphasize the divergent patterns possible in the relation between the union, the political party, and the state. Beyond the competing interests of the individual and the union are basic considerations of freedom of political action and debate, and the integrity of the political process. A statement of the problem in full context for each of the reporting countries is obviously not possible here. At most some of the elements most directly related to the rights of the individual can be suggested.

The impact on the rights of the individual is sharpest when the union compels him to conform to its political beliefs or program. Membership in a particular political party is not required by unions in any of the reporting countries, even though the union may have a close ideological affinity and working relation with a political party. Problems do arise, however, when individual members openly advocate a position on a political issue opposite to that of the union. For example, it is reported that in France, members of a teachers union were disciplined because they opposed the union's view on state monopoly of education; another union disciplined members who publicly disapproved of the union's views on the solution of the Algerian problem. In the United States, union members have been expelled for petitioning the legislature to oppose a law the union supported, for urging the election of a Republican candidate for President, and in a recent case, for advocating legislation prohibiting union security agreements. Whether the law will protect a member from such discipline is not completely clear in most countries, but the general principles stated in a number of national reports would seem to prohibit union restraints on the member's political freedom. The principle and its application is most expressly stated in the Swiss Report. There is now no serious doubt that such discipline is unlawful in the

United States. Those who were expelled in the case above for advocating prohibition of all union security arrangements were subsequently ordered restored to membership by the court; the free speech guaranty in the LMRDA also gives added protection.

The requirement of political conformity may assume a more limited form of exclusion with regards to those supporting groups considered to be anti-democratic and, therefore, opposed to the union's basic purposes. The legal reaction to such restraints is considerably less protective. Although Swiss law guards the members' political freedom, the union is entitled to expel those whose political activity is directed toward the establishment of a dictatorial regime. Similarly, courts in the United States have upheld the expulsion of Communist Party members and those supporting Communist activities. The difficult problem arises in determining when a group's activities are so anti-thetical to the union's purposes as to place them beyond the bounds of protected political activity. The view of what is acceptable or tolerable political action is obviously not the same in all countries and this is inevitably reflected both in union practices and legal protections.

Far more common than requiring political conformity is requiring financial support of the union's political program. Whether the money spent for political purposes comes from the union's general fund or from a special assessment, the member is required to contribute as a condition of continued membership. Union political expenditures may take three forms. The union may contribute directly to a political party; it may help finance a candidate's election campaign; or it may spend money advocating adoption of particular legislation. Unions in the German Trade Union Federation (DGB), for example, make all three forms of expenditures. They contribute to the Social Democrats as a party, aid candidates in the Christian parties (Christian Democratic Union and Christian Socialist Union) who are union representatives, and promote a broad legislative program. Swiss unions, by contrast, are limited largely to the third form of expenditure and any contribution of union funds to a political party is flatly forbidden. At most, a union may urge the election of a member who is a candidate for public office.

The complexity of the problem of protecting individual rights when the union spends money for political purposes, and the varying degrees of recognition given to those rights may be suggested by sketching the devices and rules developed in Sweden, England, and the United States.

The Swedish Confederation of Labor (CLO) and its member unions, both at the national and local level, make substantial contributions from their general funds to the Social Democrat party and particularly to its campaign funds in election years. In addition, the unions support a number of newspapers and an extensive educational program, both of which help promote the union's political program. The question

of individual rights, however, has not been centered on this use of union funds but on the device of "collective affiliation." Local unions may by majority vote "collectively affiliate" with the Social Democrat party. Technically this means that every member of the local union becomes a member of the party and pays his party dues through the union which serves as collecting agent. In practice, the union simply pays over to the party the amount equal to the party dues for the members collectively affiliated, sometimes with no increase in the total dues collected from the members. Although the practical effect is quite like the union making contributions from the general funds, this is considered to raise a serious problem of individual rights for the dissenting member. As a result, the union permits any member to avoid being collectively affiliated by signing a reservation form. The individual is then not listed as a party member, and the union is not to pay over dues for him. Only in a few unions does the reserving member receive back the amount of party dues, for it is feared that this would encourage reservations. The amount normally goes into the union's general fund or for some other purpose. Over a third of all CLO members are collectively affiliated, and of these about two per cent sign reservation slips. The net effect of reservation, of course, is not to protect the individual from being compelled to support the Social Democrat party but only to permit him to assert that he is not a member of the party. It should be mentioned that the Central Organization of Salaried Employees makes no contributions to political parties or candidates and has no collective affiliation, but it does use union funds to promote its political program.

The English system gives far more recognition to political dissenters within the union. If a union wishes to contribute to a political party, support candidates for office, organize political meetings or distribute political literature, it must establish a separate fund. Such "party-political" activities cannot be financed out of the union's general fund. Any member who does not want to support the union's political program can contract out by notifying the union. He is thereby excused from paying that portion of union dues which is allocated to the special political fund. A member who contracts out cannot be excluded from any benefits of the union, placed under any disability or discriminated against in the union's other activities. Thus, he cannot be barred from local union office, denied strike benefits or assessed dues on a different basis. Over a million members, more than ten per cent of all union members, have contracted out. The union can establish a political fund only after a majority have voted by secret ballot to do so, and the union's political fund rules must be approved by a government officer, the Registrar of Friendly Societies who also enforces these rules. Party-political purposes which can be financed only out of the special fund do not include all political discussion. Thus, union newspapers

and magazines can be financed from general funds if they are not predominately concerned with party-political matters. To this limited extent the individual may be compelled to help support advocacy of political issues with which he disagrees.

In the United States, the rights of the individual are less clearly defined, but are moving toward or beyond the extent of protection recognized by the English rules. The Taft-Hartley Act in 1947 prohibited unions from making any contribution, direct or indirect, in an election for a federal office, but it did not regulate union contributions in state and local elections. Thus, unions created special funds made up of voluntary contributions to support candidates in national elections, but continued to contribute from general funds in state and local elections. The political parties could allocate their funds to offset limitations placed on the use of union funds. The rationale of the statute was that union funds could be used to discuss political issues, advocate proposed legislation and promote a political program, but that union funds could not be used to help elect particular candidates. The line between political education and support of a candidate has proven difficult to draw, however, and court decisions have tended to confuse rather than clarify the legislation. There is serious doubt, then, whether the Taft-Hartley Act has placed any practical limitations on union political action or provided any effective protection for dissenters.

Of far greater practical importance are recent Supreme Court decisions holding that a union cannot use funds exacted from a member under a union security agreement to support political causes which the individual opposes. The Court pointedly suggested that if a union wished to use money for such purposes it could create a special fund as unions do in England and exempt dissenting members from contributing that portion used for political expenditures. Two significant differences, however, appear. First, the decision applies only where the union has a security agreement. Thus, while the union cannot condition an individual's right to work on his contributing to political causes, the Court has not said that the union cannot condition his right to participate in union decisions concerning collective bargaining on his making such contributions. The rule is in principle, therefore, narrower than that in England although in practice it applies to three-fourths of all employees under collective agreements. Second, unlike the English system, the expenditures to which the member may object are broadly stated as those used for "political purposes" or to advance "political causes"; these have also been described as expenditures "not germane to collective bargaining." This probably puts much *greater* restrictions on expenditures than the English rule, and forecloses a union with a union security agreement from using general funds for any form of political education or activity, and possibly, for expendi-

tures for any purposes other than those related to negotiation and administration of the collective agreement.

These three countries represent, in one sense, the range of the spectrum of the reporting countries. Apparently in no country other than Sweden are union members required to disavow their party membership, and in no countries other than England and the United States are union members legally protected from being required to help support political causes. This, however, is obviously not a meaningful comparison. In countries such as Belgium or France, where competing unions represent opposing political viewpoints, the individual may have as much freedom of choice, in practical terms, as to what political causes he supports as in England. On the other hand, there is reason to believe that the political conformity imposed on union members in some countries and the compulsion on them to support a particular party is far more oppressive than the technical collective affiliation in Sweden. This again emphasizes the necessity of not viewing the relation between the union and the individual solely in legal and formal terms, but of seeing that relation in the context of the industrial and political society of which it is a part.

VIII. SUMMARY

This general report has not attempted to explore all aspects of the relationship between the union and its members. Interesting legal problems which have been carefully analyzed in the national reports have not been touched, *e.g.*, the legal status of the union and its ability to sue and be sued in the courts; the liability of the member for acts of the union and the right of the member to union assets; and the requirements that a union obtain a charter from the state, register, or meet other standards to have legal existence. These are troublesome problems in every country and comparative analysis would be intriguing and suggestive, but this must wait until another day.

The purpose of this report has not been to make a systematic comparison of the relation between the union and its members in the twelve reporting countries. I am not persuaded that such a systematic comparison is particularly useful, and I have serious doubts whether it is possible. In each country the legal rules, the political institutions, the collective bargaining systems and the union structures combine to form unique patterns. The relation between the union and its members must be examined in the context of a particular national pattern, and shaped to fit the needs of that pattern. The problem of understanding the relationship in its full breadth and depth is of greatest difficulty because of the multitude of complex elements which make up the specific pattern. Examples drawn from the national reports help us to identify some of these elements and see how they interact to form

different patterns. The purpose of this general report has been simply to suggest some lines of inquiry which might have general usefulness in studying the relation between the union and its members and to indicate some of the major factors which must be considered if that relationship is to be seen in its total context. It has not been an attempt to analyze the relationship but to identify some of the factors necessary for an analysis.

Implicit in the whole report is the strong conviction that our common and most compelling consideration is that in a modern industrial society, and particularly one that seeks democratic goals, the trade-union plays a crucial role. The very source of its significance is that it speaks for and on behalf of a large number of citizens in governing many aspects of their economic life. Therefore, the relationship between a union and its members is a vital element in the total social process. Our larger concern, then, is not with the nature of the legal relationship, but rather with the suitability of this social process. Thus, the ultimate problem is to shape that relationship so that it helps and not hinders us in achieving our democratic goals.†

† This Report is reprinted here as it was given at the Congress in Lyon. Since preparing the Report, the author has had an opportunity to study more intensively problems of labor law and labor market institutions in the countries of the Common Market. Further study has reinforced his belief that the framework of analysis, general conclusions, and the importance of the problem as presented here are essentially sound. However, closer knowledge of the details would lead him to make some minor alterations in detailed references to legal rules or practice in particular countries.