Burton Hall

# Law, Democracy and the Unions

SHOULD UNIONS BE DEMOCRATIC? The question seems almost pointless. Unionism, after all is a struggle for democracy, a struggle to democratize the industrial regime. It is nothing if it is not democratic. But what—and here is the rub—if democracy inside the unions is suppressed? Who, if anybody, shall step in and correct the situation—and in what manner shall it be corrected?

There are two choices: either protect the right of rank-and-file members to participate in governing the unions, or else turn the supervision and ultimate control of the unions over to some government (or other) official and entrust the unions' future course to his "special knowledge and discretion," whatever it may be. The first means to restore unions to that democracy which is their purpose and their strength; the second means to compound union bureaucratism with government bureaucratism and render the unions subservient to government manipulation.

Over the past six years these issues have been fought out in Congress, in the courts, and in the conference rooms of the U.S. Department of Labor. The results are frightening. For, in December 1964, at the urging of the AFL-CIO and of the government of the United States, the Supreme Court announced in *Calhoon* vs. *Harvey,* with Justice Douglas dissenting, that the *second* of the alternatives is now the law of the land. Union members' democratic rights are *not* to be protected, said the Court, and the rank-and-file is *not* to be trusted to govern the unions. Instead, the "special knowledge and discretion" of the Secretary of Labor is to be "utilized" in order to determine when, where and to what degree the choice of officials is to be subjected to the approval of the union membership.

To a generation of radicals, liberals and rank-and-file union reformers who have struggled to find a way of bringing democracy back into the unions the new dispensation cannot fail to appear as the blighting of their hopes. In 1959, it seemed that Congress had at last established the democratic rights of union members, by enacting a "bill of rights" which guaranteed their rights within their unions and enabled them to protect those rights themselves. How could an honest effort at union reform be turned into the subjection of unions to manipulation by the government? And what, after this victory-turned-defeat, is left of the demand for union reform, the demand for protection of union members' democratic rights?

IN SEEKING AN ANSWER, let's first go back a few years. The hallmark of unionism, its purpose and its reason for being, has indeed been the struggle for democracy. When Congress finally got around to providing legal protection for unionism it did so in the name of that purpose. Robert Wagner, Sr., told his fellow Senators in 1932 that by protecting the rights of workers to be represented through unions of their own choosing, "We can raise a race of men who are economically as well as politically free." Although the protection Congress afforded the unions, three years later, did not fully achieve Senator Wagner's vision it facilitated the spread of union organization in the late Thirties and early Forties.

The Wagner Act included a formal prohibition on employer-domination of unions; other than that it made no provision as to internal union democracy. Instead, one of its unintended side-effects was to encourage such bureaucratic and sweetheart tendencies as existed in the legitimate unions; for, by protecting each employer-recognized or NLRB-certified union against displacement and competing representation, it made the established union leadership less dependent upon the support of the rank-and-file workers. Bureaucratism hardly needed any such encouragement. It had already appeared to one degree or another in many unions. Its characteristic expressions—an over-friendly attitude toward employers and public officials; the suppression and repression of the union rank-and-file—have been familiar and notorious since the end of the last century. But not until recent decades has bureaucratism—and the consequent struggle, within the unions, between the rank-and-file membership and the union officials—become the central issue of the labor movement.

So it was that, in the 1940s and 1950s, one current of liberal opinion led a campaign for union reform. The American Civil Liberties Union, beginning in 1942, called for legislation (including a labor union "bill of rights") that would protect the democratic rights of union members inside the unions. Its arguments were articulate and specific: they boiled down to the proposition that only a union which is itself democratic can bring democracy into the industrial regime. At first, there was little response. But when the McClellan Committee's investigation, in the later 1950s, brought union bureaucritism, sweetheart agreements and the suppression of union members' rights to the attention of the mass public, the ACLU's arguments took on overwhelming force.

"Much that is elicited in the Committee's findings of misconduct by union officials," said the McClellan Committee in its Interim Report, "can be substantially improved, in the Committee's view, by a revitalization of the democratic processes of labor unions." Obviously, the first step was to protect the democratic rights of union members. But the original bill, sponsored by Senators Kennedy and Ervin, as reported out of the Senate Committee on Labor (of which McClellan was not a member) contained only the mildest provisions regarding union democracy and no protection of union members' rights. Its emphasis was upon financial "disclosure" and reporting; other matters were treated almost as afterthoughts.

The only provision dealing with union elections—now contained in Title IV of the Labor Reform Act (i.e., the Kennedy-Ervin bill as amended and

enacted)—did set down some of the minimal standards of democracy in elections. It did not even pretend to protect the rights of members or enforce these standards. Instead, it authorized the Secretary of Labor to use them in determining, *after* an election had been conducted, whether violations of those standards had been so extreme or wide-spread as to have affected the outcome of the election. If he should find that they had, he was directed to bring suit to set the results of the election aside and order it to be re-run. This procedure was to replace (and, under the Act, does replace) the rights that union members had previously enjoyed to bring suit in State courts to challenge the results of elections already completed. But it was not to foreclose members from challenging election procedures in future elections, whether by suit in State courts or anywhere else.

Whether good or bad, in itself, that "reform" was most certainly a weak one. When the Kennedy-Ervin bill reached the Senate floor for debate, Senator McClellan (joined by a curious mélange of mostly conservative Republicans and opposed to a man by Establishment liberals) attacked it as inadequate. McClellan urged the Senate, in language reminiscent of Senator Wagner's 25 years earlier, to adopt a "bill of rights" to protect union members' democratic rights within their unions.

SENATOR MCCLELLAN'S PROPOSED "bill of rights" was anything but a polished product of careful draftsmanship. For one thing, it relied for protection upon the Secretary of Labor, surely as weak and indifferent a reed as could have been chosen. But the "bill of rights'" more fiery opponents—chiefly, the AFL-CIO hierarchy and its political satellites—produced an uproar as soon as the Senate adopted it, and the uproar enabled the Senate, a few days later, to replace Senator McClellan's "bill of rights" with a rewritten and stronger "bill of rights" proposed by Senators Kuchel, Clark, Neuberger, Church and five others. The "Kuchel Substitute," among other improvements, made the rights of members enforceable by the members themselves, through suit in federal courts. As Senator Clark remarked, "it takes the Federal bureaucracy out of this bill of rights and leaves its enforcement to union members, aided by the courts." And the rights it guaranteed to union members included not only freedom of speech and assembly but also the equal rights to nominate candidates, to vote in union elections and referendums and to participate in union meetings—and to do so "subject to reasonable rules and regulations" in the unions' own constitutions and bylaws.

This occurred during the early consideration of what is now the Labor Reform Act. Before the bill became an Act it suffered many changes, even a change in popular name (which occurred when Congressmen Landrum and Griffin tacked onto it a string of Taft-Hartley "tougheners" which had nothing to do with union reform or union democracy). But as enacted, the new Act retained in curious juxtaposition the two proposals concerned with union democracy: the provisions of the original Kennedy-Ervin bill (Title IV of the Act) which authorized the Secretary of Labor to challenge the results of completed elections under certain unusual circumstances; and the union members' "bill of rights," now Title I of the Act, which the Senate had added to the bill.

The two titles could not (it would seem) conflict with each other since they approach the matter of union elections from different directions, one attacks the results of elections already completed (when it is too late to protect union members' rights with regard to them) while the other seeks to protect union members' rights in the future—specifically, in future elections. But they represent opposing political attitudes and vastly different political tendencies. Title IV places the power and responsibility to reform the unions in the hands of the Secretary of Labor—while Title I places that power and responsibility in the hands of the union rank-and-file. And between those contrary political tendencies there has been a very substantial conflict these past five and one-half years.

The principal victories for reform, under the Act, have been won, under Title I (the "bill of rights") with regard to those rights not directly related to union elections. In a series of cases presenting fact-situations typical of conditions inside most bureaucratized unions the courts have (and, with increasing consistency, still do) enjoined union officials from expelling or otherwise disciplining members for having criticized them. Thus a federal court enjoined the officials of the Seafarers' International Union from expelling a member for having introduced a resolution at a union meeting calling for reform of the union's shipping rules. Similarly, another federal court enjoined the New York Painters' District Council No. 9 from depriving a member of his union rights as discipline for having criticized, in a leaflet he distributed to the membership, a local union President-Business Agent's mishandling of checks drawn on the union's account. So, too, with expulsion of members from the American Bakery and Confectionery Workers Union for having called their local union's president a "dictator."

But the nerve center of union democracy is the electoral process and it is here that the contrary political tendencies of the two titles come into conflict. Should union members be enabled to protect their rights to nominate candidates and to vote? Should they be entitled to challenge any rules and regulations which unreasonably interfere with their exercise of those rights, or which totally negate those rights? Or should their only protection be to challenge the results of an election *after it has been completed* and to hope that the Secretary of Labor will conclude that the election results should be set aside?

THAT ISSUE WAS PRESENTED BY THE ARGUMENT that the two Titles "contradict" each other, that the ability of the Secretary of Labor to cause the results of completed election to be set aside must necessarily foreclose the courts or the members themselves from protecting their rights in current or future elections. On its face, the argument seems almost childish. But it has been championed by some rather imposing social forces. First, by the separate union officials; next by the AFL-CIO itself; then by spokesmen for the government of the United States; and finally by the Supreme Court of the United States.

The issue arose in several cases, in which rank-and-file members sought to challenge electoral rules and regulations which effectively deprived them of their rights under Title I. But the case in which the issue has been decided—and as a result of which union members have been stripped of all directly

enforceable democratic rights regarding elections—arose in regard to a small union of what might be called "labor aristocrats," the Marine Engineers Beneficial Association (MEBA). That union was beset, from 1949 to 1959, with an intensive attack pressed against it by the Seafarers International Union (SIU). After two major MEBA strikes had been broken and MEBA's jobs and contractual rights on three major shipping lines had been lost to the SIU affiliate, MEBA's officials surrendered. They "merged" MEBA with the SIU's subsidiary, allowing the SIU to take control of the new, "merged" MEBA. To make the surrender safe against the MEBA membership, the "merged" MEBA abolished all local unions and divided itself into three, more easily manipulable, "districts." The SIU's subsidiary became one of the three districts, District No. 2: the other two—District 1 and the Pacific Coast District—comprised the old MEBA membership on the East (Atlantic and Gulf) and West Coasts respectively. Officials were appointed to govern the districts and they "promulgated" bylaws under which they did the governing.

The conversion to district structure became effective January 1, 1961; meanwhile, the chief purpose of the "merger"—to facilitate the wholesale transfer of former MEBA jobs and bargaining rights to what now became District No. 2 (the SIU's subsidiary)—proceeded apace: the SIU subsidiary had numbered not more than 300 members at the time of the "merger;" by 1964 it exceeded 3,000 members.

The former MEBA members began to protest. In the Pacific Coast District they even won some support from their appointed officials, who conducted a running opposition skirmish against the National officials of the "merged" MEBA and against the SIU's domination. But on the Atlantic and Gulf Coasts the members' protests were suppressed by National officials who had conveniently appointed themselves to serve as President and Secretary-Treasurer of District No. 1.

This happy arrangement could proceed only for a limited period, since the law requires that every local labor organization conduct elections every three years. So the districts' first elections were scheduled for the Fall of 1963, to follow the National MEBA elections which were to be held in the Summer of 1963. But the officers took precautions: in March 1963 they met in convention and amended MEBA's constitution to make rank-and-file electoral opposition virtually impossible. Already, the districts' "promulgated" bylaws limited each rank-and-file member's nominating rights to the right of nominating *only* himself. The new amendments extended this limitation to National offices as well—and, in addition, prohibited most rank-and-file members from nominating even themselves. This latter prohibition was imposed via a series of eligibility restrictions, one of which required that a candidate for any National office or district presidency must have served already as a full-time paid official. Members who had been ashore for any considerable period of time in recent years were prohibited from running for any office.

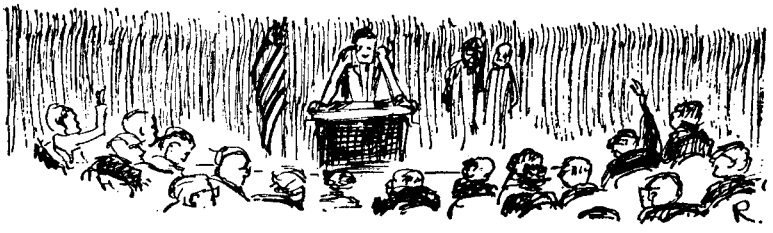
It was then that suit was brought. Three District No. 1 members challenged the nominations-and-eligibility requirements on the ground that they prohibited most rank-and-file members from nominating any candidate at all, surely a complete infringement of their rights under Title I to nominate candidates. MEBA's attorneys countered with the argument that nominations

and eligibility requirements were "Title IV rights," since nomination and eligibility were both mentioned in the election standards adverted to in Title IV, and that the members should be barred from protecting such rights under any other title. Surprisingly, the district court accepted that argument and declared that it had no jurisdiction over the members' suit. But on the members' appeal, the federal Court of Appeals reversed and held that—regardless of whether an election in which members were deprived of their nominations might or might not be subsequently upset under Title IV—the members were entitled to assert and protect their rights to nominate candidates in advance of the election under the "bill of rights" Title I. Having held that there was jurisdiction to consider the plaintiffs' claim, the Court went on to find that the members' rights to nominate candidates in fact had been infringed; indeed, said the Court, the infringement was so extreme that it "would have been deemed invalid at common law, long before the LMRDA [the Labor Reform Act]."

But all this was preliminary to the main event. The MEBA officials raised the claim once more of a "contradiction" between Title I and Title IV—and they raised it to the Supreme Court of the United States. They asked the Supreme Court to review the case—not on the merits, but only on the question of whether the federal court did or did not have jurisdiction to consider the members' complaint—and the Supreme Court agreed (in January 1964) to hear it. The case was argued in October 1964 and on December 7, 1964, the Court dropped its bombshell: it declared that union members could not protect their democratic rights in, or with regard to union elections, by any method other than the politically and bureaucratically tortuous, post-election path that leads to the Secretary of Labor's door.

The issues argued—between the MEBA members and the MEBA officials —were simple: whether or not the fact that nominations procedures and eligibility requirements are mentioned in Title IV must necessarily preclude any pre-election remedy for infringement of members' rights to nominate candidates that might be brought under Title I. What made the case of interest—before the final decision—was the alignment of forces as *amici curiae* (or "friends of the court"). Shortly after the Supreme Court had determined to consider the case, the ACLU and the Workers Defense League decided to enter the case as *amici curiae* on the side of the union members. On the side of the MEBA officials, as *amici curiae,* were the AFL-CIO and then, somewhat later, the Government of the United States.

The AFL-CIO submitted a brief, as "friend of the court," which called for a "compartmentalized approach" to the Labor Reform Act. Title IV—and



under it, the Secretary of Labor—was to be assigned a full jurisdictional monopoly on the protection of any and all electoral rights that were to be protected at all. Union officials, said the AFL-CIO, should be encouraged "to police [their] own election standards and procedures" and to do so without "intrusion" by members' suits in the courts. Such a liberal, laissez-faire approach would "ensure the knowledgeable and responsible union leadership needed to advance the best interests of the union's membership." If some outsider had to poke his nose into the way in which union elections are conducted, after the election was over, it had best be, said the AFL-CIO, the Secretary of Labor—because his "expert's appraisal" could be counted on "to avoid improper interference.'

The Secretary, it turned out, agreed with this flattering view of his "expert's appraisal." His viewpoint, translated into legal argument by the government's Solicitor General (on behalf of the United States, as *amicus curiae*) was that the Court should "center in the Secretary control over litigation involving the substantive rules under which union elections are conducted" by nullifying the "bill of rights' " protection of members' electoral rights.

And the Court went along with that argument.

According to the Court, "Section 402 of Title IV . . . sets up an exclusive method for protecting [electoral] rights, by permitting an individual member to file a complaint with the Secretary of Labor challenging the validity of any election because of violations of Title IV." Thus, all electoral rights become "Title IV rights," which can not be protected except by the procedures of Title IV. "It is apparent that Congress decided to utilize the special knowledge and discretion of the Secretary of Labor," said the Court, "in order best to serve the public interest."

NOW LET'S TAKE A LOOK at that "special knowledge and discretion" and the manner in which it is exercised. Of all politically appointed government officials, the Secretary of Labor is the closest to the union officialdom. His appointment is, as a rule, conditioned upon his political acceptability to those union officials who support the Administration and his role, largely, is to round up "labor support" for the Administration. Small wonder, then, that among the most important of the suits brought by the Republican Secretary of Labor, in the early days of the Labor Reform Act, were those brought under Title IV against certain former CIO union officials allied with the Democratic Party. Small wonder, too, that when the Democratic Administration took office shortly thereafter, those suits were voluntarily dismissed before trial. And it should occasion little surprise that the Democratic Labor Secretaries have concentrated their attention, so far as Title IV suits are concerned, upon (a) the Teamsters' Union and other independents, (b) those few, former AFL unions whose officials are or were allied with the Republican Party, and (c) rebellious or maverick locals of AFL-CIO unions with whose national officials the Administration is on friendly terms.

Closeness in politics is a two-way street. The government official who, for reasons of political friendliness, uses his "discretion" to go easy on a union official today will quite probably ask for a proof of the official's political friendliness tomorrow. Indeed, over the past few years, more has been asked

of union officials and more has been given by them. To travel much further down that path would mean total surrender of the unions' political autonomy and their submission to outright Government manipulation.

The deprivation of union members' electoral rights and the violation of the electoral standards prescribed by Title IV are widespread throughout the union establishment—in those segments which are politically "friendly" as well as those which are "unfriendly" to any given Administration. The Secretary, therefore, has ample scope to make political hay out of his "special knowledge and discretion." Especially so if recourse to the Secretary of Labor is to be—as, under them Supreme Court's ruling in the *Calhoon* case, it is—the rank-and-file union member's *only* protection against unfair election procedures. For under those conditions, the Secretary has—in his "special knowledge and discretion"—the sole power to impose or desist from imposing "democracy" (in measured doses) upon any union officialdom.

In this area too the case of the marine engineers is illustrative. The Court of Appeals' ruling that District No. 1's combination of nomination and eligibility requirements infringed the rights of members to nominate candidates made it clear that each of MEBA's 1963 elections was invalid, since substantially the same combination of nomination and eligibility requirements was in force in all of them. Particularly so in the National MEBA election—for the National MEBA constitution, in addition to limiting each member to the right of self-nomination only, declared that any member who had not previously served as a full-time, paid official could not be eligible for candidacy to *any* National office. As a result, only 47 of National MEBA's 10,000 members were eligible for office (and most of them were incumbent officials). Regardless of what the Supreme Court ultimately said as to jurisdiction under Title I, it was and is apparent that the restrictions on nomination and eligibility violated the standards prescribed by Title IV.

Shortly after the National MEBA elections of 1963, three members protested to the Secretary of Labor, pointing out, among other things, that they had been denied their rights to nominate candidates and to be candidates. (One of these protesting members, the Treasurer of New York's former Local 33, the largest in MEBA, had been barred from nominating himself because his had not been a salaried office). The result was a series of conferences, from which the protesting members were excluded, between the Department of Labor's officials and the MEBA officials. After many delays and extensions of time (which were not even communicated to the protesting members), the Department indicated that it would not bring suit with regard to the National MEBA election—but would bring suit instead with regard to the maverick Pacific Coast District, whose officials were once more feuding with National officials. The protesting members' attorney telephoned the Department to find out why. He was told, by an Assistant Solicitor in the Department, that the Labor Department had "talked with Mr. [Lee] Pressman [the MEBA's 'National Counsel']" and "we agreed to do it this way." Thereafter, the protesting members each received a letter from the Assistant Solicitor, full of administrative gobbledygook, which told them that, "Taking into consideration all the factors . . . , it was our conclusion that the Pacific Coast District case presents a more promising prospect for successful litigation." And that—

surely an edifying example of the Secretary's "special knowledge and discretion" (or, perhaps, of his "expert's appraisal")—was the only explanation that the protesting members ever received as to why the Secretary refused to protect *their democratic rights.*

That example could be duplicated many times over; every union member and every member's lawyer who has ever brushed up against the Secretary of Labor in a Title IV protest can recount a similar tale of political and bureaucratic wheeling and dealing. However heartwarming or even inspiring such displays of political friendliness may seem to those who regard all friendliness as a blessing, to rank-and-file trade unionists they are apt to be distasteful. And even more distasteful may be the *quid pro quo* required for such shows of friendliness.

Is this what reform of the unions must mean in practice? If it is, then trade unionists might well regard all labor relations legislation, from the Wagner Act on, as a trap and a snare. Professor Commons pointed out years ago, that "if the State recognizes any particular union by requiring the employer to recognize it, the State must necessarily guarantee the union to the extent that it must strip it of any abuses it may practice." His conclusion need not follow in its entirety, but it is largely true: once the government "certifies" or gives to a particular union special powers with regard to workers and protections against rival unions, it must take some measure of responsibility for the internal affairs of that union. Does this mean that unions must submit to government manipulation in the name of "reform?"

Even a dictatorial union officialdom is apt to be better, from the workers' standpoint, than one which is merely the patsy for the political administration in Washington. It is a bastard "reform" which is used as a manipulative device for the bureaucratic subjugation of free trade unionism. Is there no escape from that subjugation—no new course for the unions, which can lead to union democracy *and* to independence from the governmental apparatus?

In the light of the *Calhoon* decision, the hope that rank-and-file trade unionists, through the simple exercise of their democratic rights within the unions, might transform bureaucracy into *de facto* democracy now seems an empty one. "Reform," in the wake of *Calhoon,* means the wheelings and dealings of the Secretary of Labor, the intrusion of the government bureaucracy into union affairs and the closer "growing together" of the unions and the state power. It means the government's use of Title IV proceedings—or, the threat of their use—to keep union officialdoms in line; and it means one more barrier to any independent social or political role on the part of the unions.

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*An Article Review:*

# The Paradox of Samuel Gompers

IT SEEMS TO ME that the author of *Samuel Gompers** has a responsibility, if he is to live up to the blurb on the jacket cover which counsels that "it is necessary to understand Gompers and his times, if we are to come to terms with our own times," to give the reader a glimpse of this basic understanding. Instead, neither the character of the period nor of the man emerges in this book. A biographer has an obligation to analyze and demonstrate why his subject emerged from the background to become a figure clearly visible to his times and ours. Why, out of the thousands of active men in and about the socialist and labor scene in the 1870's and 1880's, was Gompers able to achieve a commanding position in the labor movement? Why was he able to persist in his influence for over forty-three years? What were the particular forces which supported him or compelled him to orient in a particular direction? Was there a pattern of shifts in the man's philosophy, and if so, what were the ends these shifts in ideas served? What function did Gompers as president of the AFL serve for those who, like Matthew Woll, wielded tremendous influence behind the scenes? Certainly, one problem of the biographer is to portray the freedom of achievement of the subject as well as the limitations imposed by his environment on him. The satisfaction the reader obtains from a well-wrought biography is to observe the molding of a personality which gradually emerges out of the flux and flow of a society. Basically, the responsibilities that the biographer must bear are missing in the book.

The tone and viewpoint of the book are set by Louis Filler in his introduction:

> Was Gompers a labor statesman or a labor faker? Who is presently in a position to say? If one is content with the labor picture, thinks 'things are pretty good,' and likes to think in a vague way that they will get better, I suppose he will be willing to concede that Gompers was all right, though I doubt that this frame of mind, if one can call it that, would make it urgently necessary to him to look into the details of the question. If one is an idealist who believes that a crusade for universal peace and prosperity must succeed by the end of this year, I imagine he might find himself indignant with Gompers on a number of scores.

It is discouraging to meet these words even before the reader begins the work. However, if the reader persists in mining and refining the many nuggets of information amply supplied by Mr. Mandel, an outline of Samuel Gompers begins to appear. I am going to take the liberty of using a number of interesting and relevant facts provided by Mr. Mandel to suggest my own brief interpretation of Samuel Gompers since an overall view is clearly lacking in the book.

SAMUEL GOMPERS WAS, it may be theorized, a "marginal man," a concept developed by the sociologists, Robert E. Park, Everet Stonequist and their associates at the University of Chicago. The concept of marginality is used to explain the dynamics which condition the innovator and to explain the paradoxes that such a figure frequently represents. The erratic conduct of the marginal man is explained by the uncertain status that he has in two or more groups. According to Park, he "is one who fate has condemned to live in two societies and in two, not merely different but antagonistic cultures." He is, he suggests, a stranger who

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* *Samuel Gompers: A Biography*, by Bernard Mandel. The Antioch Press, Yellow Springs, Ohio, 1964. 566 pages. $8.00.