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SHOULD LABOR UNIONS BE INCORPORATED?

Nicholas Unkovic*

I. IMPORTANCE OF THE PROBLEM

No nation is stronger than its workers. This is true particularly in periods of great stress, such as the present world turmoil. The men composing the great craft, industrial and other unions not only share in, but to a great extent are responsible for the success of their country. No products could be created without them, no transportation services would function, no coal would be mined, no homes built, no machines operated. Civilization, as we know it, would cease without them.

Every person in the United States of America is dependent upon the cooperation and work of the wage earners. A general strike on the part of the manual wage earners would be ruinous to our country. All the purposes of government would be defeated. People would be merely hostages to the labor officials who would declare a general strike.

When defense measures are needed, and needed promptly, for the preservation of America, and when unprincipled military dictators are rampaging throughout many countries, it is of the first importance that labor and capital not only cooperate, but that each be responsible to the people.

With this in mind, the problem of whether or not unions should be incorporated is one of such immediate necessity and urgency as to require grave study and appropriate action duly considered and speedily carried out.

Let us turn to the history of labor union regulation.

II. HISTORY OF LABOR UNION REGULATION

Labor union regulation has had considerable history. Its development has not been uniform in various countries. Some nations have been much more strict than others in the regulation of labor unions. In order to approach this problem from a proper prospective, we must be familiar with the background of the regulatory measures taken by different countries. We will, therefore, briefly review the history of labor union regulation in some of the more important countries, to wit,

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A. Great Britain

After the Black Death the Ordinance of Labourers addressed to the Sheriff of Kent was enacted in 1349.¹ It has been said that the Ordinance of Labourers was the result of the inability of the medieval craft guilds to maintain control over working conditions.² Two years later the Statute of Labourers³ was enacted and later other similar acts were passed giving the Justices of Quarter Sessions the power to fix wages.⁴ The Statute of Apprentices⁵ consolidated the prior law and was a comprehensive labor code. It aimed at the improvement of the technical skill of artisans, it placed restrictions upon the mobility of city and country laborers and most important it defined accurately the relationship of master and servant. It also fixed hours of service and the term for which labor contracts should run. A breach of a labor contract was made a penal offense. On the whole, the Statute of Apprentices, which was also known as the Statute of Elizabeth, showed a less repressive attitude toward labor than the previous laws.

On account of the complication of the British industrial structure, the introduction of the factory system and the problems brought on by the Industrial Revolution, a hands-off policy was adopted, and workers and employers contracted for labor without government intervention. Trade unions arose as the workers' answer to this development.⁶ The unions petitioned Parliament to enforce the disregarded statutory wage scales. As a result the combination laws, which punished the organizing of workmen as a criminal offense, were passed, commencing in 1720.⁷ Following the passage of these laws, unionization of workmen was met with strong repressive measures. Workers who asked for an increase in wages often were sentenced to jail. The Combination Act of 1824⁸ repealed the earlier Combination Laws and provided that a combination of workmen to obtain a wage increase or

¹ Edw. III, 1349, in substance this ordinance states that "because a great part of the people, and especially of workmen and servants, has now died in this plague, some, seeing the necessity of masters and great scarcity of servants, will not serve unless they receive exclusive wages, and others preferring to beg in idleness, rather than to seek their livelihood by labour. We, by the unanimous consent of our prelates and nobles, have thought fit to ordain that every man and woman of our Realm (having no property and being less than 60 years of age, and with certain other exceptions) shall be bound to serve and receive wages as in the twentieth year of our reign or in the five or six last years preceding."
² V. Henry Rothschild, 2nd, Government Regulation of Trade Unions in Great Britain (1938) 38 COLUMBIA LAW REVIEW 1.
³ 325 Edw. Ill. st. 1 (1351).
⁴ LANDIS, CASES ON LABOR LAW (1934) 3, n. 16.
⁵ Eliz., c 4 (1562).
⁷ Geo. I., c 13 (1720); 39 Geo. Ill., c 81 (1799); and 39 Geo. Ill., c. 60 (1800).
⁸ Geo. IV, c. 93.
lessening the hours of work should not be subject to indictment or prosecution for conspiracy. In 1825 another combination act hamstrung labor combinations.\(^9\)

It will be seen that the general common law doctrine of conspiracy was used in England for a long time to defeat attempts at collective bargaining. Under this doctrine illegality was deemed to arise from a mere existence of a combination. It was the combination which was held unlawful regardless of the legality of the intended act. This doctrine provided the basis for much early English legislation on statutory conspiracy.

The Grand National Consolidated Trade Union of Great Britain was organized; however, gradually that movement died out and in its place Model Trade Unions appeared, which not only sought promotion of collective bargaining, but assured their members benefits during unemployment, sickness and old age, and the payment of funeral expenses. The officers of the leading unions composed the Cabinet for the Trade Union Movement. Court decisions continued adverse to unions and a Royal commission was appointed in 1867 to investigate trade union matters and its work resulted in the Trade Union Act of 1871.\(^10\) The Act expressly provided that "the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust." The Act further provided for the voluntary registration of unions, safeguarded union funds and provided a legal basis for the conduct of union affairs. This legislation, however, was accompanied by the Criminal Law Amendment Act which in effect outlawed and placed severe penalties upon all picketing in the conduct of strikes and lockouts.\(^11\) Other legislation in the 1870's clarified the rights of labor unions more favorably.

In the *Taff Vale* decision\(^12\) of 1901 the Law Lords held that an unincorporated union was liable for damages and costs arising out of breach of contract and loss of property and business in a railway strike under the theory that where there is power there must be a corresponding responsibility. In 1906 the unions secured the passage of the Industrial Disputes Act,\(^13\) the main object of which was to relieve the unions and their members from pecuniary responsibility for acts connected with trade disputes which caused a breach of an employment contract or hindrance of a business to another person. Some kinds of picketing were declared legal, and sympathetic as well as primary strikes were included in the term "Trade Disputes." Further, courts could no longer entertain suits by members of a trade union against their own organization in respect to corporate acts.

Little change was made in the labor laws in England until 1927. In 1926 the unions declared a general strike which paralyzed Britain. As a result of the
strike, Parliament passed the Trade Disputes and Trade Unions Act of 1927. Responsibilities and obligations were fixed upon labor unions and their financial operations were subjected to careful scrutiny. Legal and illegal strikes were defined. An illegal strike or lockout was one where the object was any other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers were engaged or was one designed to coerce the Government either directly or by inflicting hardship upon the community.

The British act does not eliminate a strike within an industry for higher wages, shorter hours, or better working conditions. If a union member refuses to strike, he cannot be deprived of the union benefits. Thus, in order to call a strike, the consent of the workers is needed, and a worker may refuse to strike and the union cannot discipline him legally.

The British act prohibits mass picketing and violent picketing. Picketing must not intimidate workers.

No English trade union member under the Act can be required to make any contribution to the political fund of the union without his consent. There cannot be any check-off, unless each union member authorizes it in writing. Full accounts of all expenditures must be filed with the Government. No Government employees, generally speaking, can belong to labor unions. With regard to government work in England, the law forbids any public authority to make membership or non-membership a condition of employment or the basis for discrimination.

Many persons have condemned the British Act of 1927 as imposing too severe limitations upon trade union activity; however, this Act has had no substantial effect upon British trade labor unions, which since the Act, have made greater progress than ever before. Labor troubles in England have been greatly eliminated since the Act of 1927. On the whole industrial peace has reigned. There has been little violence and few labor disputes. There has been little display of employer-employee enmity. Since the Act, the turbulent period of unions in England has ceased.

Representatives of capital and labor in England should be proud of having adopted, in the words of Winston Churchill, "a middle way."

In the stress of today's turmoil, we find that labor union leaders are not only represented in the British Cabinet, but are foremost among those defending the British Empire.

A review of the history of the labor rights of the British labor movement is instructive to all nations.

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14 17 & 18 Geo. V, c. 22 (1927); Alpheus T. Mason, The British Trade Disputes and Trade Unions Act of 1927, (1928); 22 AM. POL. SCI. REV. 143-153; and H. A. Millis, The British Trade Disputes and Trade Unions Act (1928) 36 J. POL. ECON. 305-329.
15 George E. Sokolsky, Labor, Incorporated (July 1937) AMERICAN MAGAZINE, 65.
17 The best work on British Trade Unionism is SIDNEY & BEATRICE WEBB, HISTORY OF TRADE UNIONISM (1920 ed.). Other important works are: COLE, A SHORT HISTORY OF THE BRITISH
B. France

In France the dominant working class philosophy has been class-conscious and revolutionary, with its influence strongly felt upon the trade labor movement. This is a striking difference from the history of the trade unionism in Great Britain and in the United States, for in the latter countries, unions have primarily sought the improvement of working conditions within the existing social order.\textsuperscript{18} Trade unions were first organized by law in France under the Trade Union Act of 1884.\textsuperscript{19}

That statute imposed duties and obligations upon labor unions just like those imposed upon business corporations by the various states in the United States. Trade unions were given a legal status, provided they were registered. The provisions of the Trade Union Act apply to organizations not only of employees, but of employers. Both types of organizations are considered trade unions. Persons engaged in similar work may form a trade union upon filing with local municipal officials copies of the union by-laws and the names of all officers and directors. Labor federations, as well as local branches, must register. Labor union officials must be French citizens and must not have been convicted of a crime as a result of which they would lose their right to vote.\textsuperscript{20}

The French law is different from the English, for it does not provide for the auditing of accounts or for publication of financial statements; however, the French law is compulsory, for unless a labor organization is registered, it cannot have any privileges conferred by the Trade Union Law.\textsuperscript{21}

By judicial construction, civil service employees are not permitted to belong to trade unions, or have trade unions.\textsuperscript{22} The Act was interpreted to mean that trade unions could not engage in purely political activity nor could employees be penalized for failure to take part in political activity. In recent years, this has not been followed by the unions themselves as evidenced by the affiliation of the labor movement with the Popular Front.

\textsuperscript{18}Sobernheim \& Rothschild, (Sept. 24, 1938) Regulation of Labor Unions and Labor Disputes in France 37 MICHIGAN LAW REV. 1025.
\textsuperscript{19}Act of March 21, 1884, 27 B.L. (Ser. 12) 617 (1884), now C. Tr. III Art I et seq.
\textsuperscript{20}1938 C. Tr. III, Art. IV, as amended by the Decree-Law of Nov. 12, 1938, Art. XVIII, J. O. 12869 (Nov. 1938).
\textsuperscript{21}TRAITE ELEMENTAIRE DE PIC LEGISLATION INDUSTRIELLE, 5th ed., Sec. 357 et. seq. (1922).
\textsuperscript{22}Sobernheim \& Rothschild, Supra note 18, 1032.
Recognition of trade unions by employers has been a subject of judicial legislation in France. The law on the subject has not been uniform.

In France the labor injunction is unknown and trade unions may be sued for damages. Picketing is not very common. It was in France, however, that the sit-down strike is purported to have had its origin. This type of strike is generally declared illegal as a trespass. Wide use is made of blacklisting of employers, products, and of employees. Unions have the right to strike if the purpose is one for which unions may be formed, and sympathetic and general strikes are legal.

Since 1936 legislation has been enacted which gives collective bargaining agreements meeting certain conditions the force of law. The Government has used the collective bargaining agreement as an instrument for the regulation of industrial relations.

French officialdom, prior to the recent downfall of France, sought the extension of collective labor agreements negotiated by employer associations and the unions throughout the entire industry, in order to standardize labor conditions and eliminate unfair labor competition.

Since 1938 the French have sought peaceful settlements of all collective labor disputes by means of compulsory mediation and arbitration. Thus, in France prior to the recent debacle, labor had the right to organize effectively. A strike was generally accepted; however, checks and balances were implemented into the law in order to protect the rights of the country and of the public. Like the history of Trade Union Regulation in England, that in France is instructive.23

C. SWEDEN

In the Eighties labor unions commenced a great growth in Sweden. This growth has continued despite a grave setback following the failure of a general strike in 1909. Likewise centralized employer associations have grown up.

In Sweden, perhaps more than in any other country, industrial peace has been achieved without extinguishing freedom of association.

Since 1906 the Government has mediated labor disputes. Collective labor agreements for many years have been common. Although originally many were for a period of four years, they have recently been limited to one to two year periods. In 1928 the first important act respecting collective bargaining agreements was adopted.24

This Act made labor agreements binding upon both parties with liability for damages in case of breaches by individuals or associations. Strikes, lockouts, and

23 For history of labor unions in France see PIC, TRAITÉ ELEMENTAIRE DE LEGISLATION INDUSTRIELLE (5th ed. 1922); LOUIS, HISTOIRE DE LA CLASSE OUVRIÈRE EN FRANCE (1927) 42; HUMBERT, LE MOUVEMENT SYNDICAL (1912) 3, 6; CLARK, A HISTORY OF THE FRENCH LABOR MOVEMENT (1930); and Sobernheim and Rothschild, REGULATION OF LABOR UNIONS AND LABOR DISPUTES IN FRANCE (1939) 37 Mich. Law Review, 1023.

24 The historical passages in the portion of this article on Sweden are based chiefly upon Robbins & Heckscher, COLLECTIVE BARGAINING IN SWEDEN (1938) 24 American Bar Ass. Journal 926.
boycotts were made illegal if used to affect changes of a contract during its term. During the same year a second Statute established a Labor Court to adjudicate questions arising under the bargaining agreements. In 1936 the principles of collective bargaining were extended to the white-collar classes.

The success of the Swedish system appears to lie in the fact that labor unions grew into strong federations governed by persons with a high sense of social responsibility. This is likewise true of the employers' associations. The Government has constantly urged the parties to bargain collectively. In effect both the labor unions and the employers' associations are quasi-public associations cognizant of their great powers and responsibility. The experience of Sweden clearly shows that labor unions and employer associations may at one and the same time both have great powers, yet be disciplined not only by the Government, but by themselves. Thus, the greatest good for the greatest number is achieved. Lessons, too, can be learned from the Swedish experience.26

D. OTHER COUNTRIES

Although Section 51 of the Australian Constitution grants to the Parliament of the Commonwealth power to make laws with respect to "Conciliation and Arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state," generally speaking, the law with regard to collective bargaining and industrial disputes is subject to much confusion.

Nor has Canada developed legislation similar to that in the United States.27

E. UNITED STATES

Few records of labor problems were kept in the United States prior to 1800.28 Some authorities state that the first recorded strike was that of cartmen who owned their own horses and carts in New York, in 1677. In 1741 the bakers of New York refused to heat their ovens because the "assize" or price forced by the authorities was deemed too low. The printers of Philadelphia struck in 1786 for a minimum wage of $6 a week.29 Labor difficulties in the shoe industry culminated in an indictment for conspiracy of several journeymen cordwavers and Recorder Levy of the Mayors Court in Philadelphia in 1806 ruled that a combination of employees to raise their wages was a criminal conspiracy.30 There were five other

27Pearce, Trade Unions in Canada (1932) 10 Canadian Bar Rev. 349, 414.
prosecutions for criminal conspiracy against cordwaivers between 1806 and 1815. In 1821 the Supreme Court of Pennsylvania expressed the view that a combination of employers to depress wages was criminal as their effort was to decrease wages below what they should be. Chief Justice Shaw of Massachusetts in *Commonwealth v. Hunt* technically quashed an indictment for conspiracy among employees not to work for any employer who should employ a person not a member of the defendants' society. Only three cases involving conspiracy concerning labor matters are known from 1842 to the Civil War.

With the industrial development launched by the Civil War, legislatures in many states passed anti-strike and anti-union legislation. The Supreme Court of New Jersey in 1867 in *State v. Donaldson* held certain defendants guilty of criminal conspiracy for having combined to compel the discharge of several workers who were not members of their union on the ground that "The effort was to dictate to his employer whom he should discharge from his employ." This case was generally followed.

Labor unrest following the Civil War culminated in the "Molly Maguire" incidents in northeastern Pennsylvania and in the great railway strike of 1877. Federal troops, as well as State Militia, were called in the railway strike. Widespread strike legislation followed these incidents. The use of an indictment for criminal conspiracy was made obsolete by the decision of Judge Drummond, Circuit Judge for the 7th circuit, when he found strikers in the Great Railways Strike of 1877 guilty of contempt for interfering with the general orders of the Court, directing railway receivers to operate their trains. The United States Supreme Court approved of the use of injunctions in labor controversies in the celebrated case of *Debs v. The United States* in 1895.

The Sherman Act of 1890 made illegal "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce."
This Act was held by the courts to apply to both capital and labor. Everyone is familiar with the more recent development of labor legislation in the United States. In the Railway Labor Act,\textsuperscript{40} Clayton Anti-Trust Act,\textsuperscript{41} the Norris-LaGuardia Act,\textsuperscript{42} and the present National Labor Relations Act\textsuperscript{43} and other federal acts the rights of labor unions have been greatly advanced. A few of the states have passed their own labor relations acts,\textsuperscript{44} most of which have been modeled after the provisions of the Wagner Act. However, within the past few years these state acts have been so amended as to make their provisions more equal as between employee and employer.

The development of the labor movement since the last century in the United States has been at times tinged with violence and irresponsibility. Neither the employers nor the employees have gained that sense of social responsibility so notable in Sweden, nor that solidity exemplified in England.

This has been particularly true since the split between the American Federation of Labor and the Congress of Industrial Organization.

III. \textbf{CASE FOR INCORPORATION}

For many years corporations have been subject to regulatory measures by the legislatures of various states and by the Congress of the United States. Corporation officers are by law held responsible for the conduct of their companies to the stockholders and to the public. For breach of duty a corporation or its officers may be sued. For its action the corporation and its officers are accountable to the various bureaus of the Federal and State Governments. All books and records of corporations are open at all times for state or federal investigation or supervision. To be an officer or a director of a business corporation in the United States demands, of

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\text{operated to restrain commercial competition in the marketing of the products. The Court further held that suppression of restraints upon competition which affect interstate commerce, rather than the policing of interstate transportation of goods and property is the basic purpose of the Sherman Act. In the words of Justice Stone, "\textquoteright\textquoteright\textquoteright\textquoteright The Sherman Act is concerned with the character of the prohibited restraints and with their effect on interstate commerce. It draws no distinction between the restraints effected by violence and those achieved by peaceful . . . means. Restraints not within the Act, when achieved by peaceful means, are not brought within its sweep merely because, without other differences, they are attended by violence." Chief Justice Hughes and Justices McReynolds and Roberts dissented and stated that direct and intentional prevention of the movement of interstate commerce is restraint of trade within the prohibition of the Sherman Act.}
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\textsuperscript{40}44 Stat. 577-578 (1911), 45 U. S. C. sec. 151 et. seq.
\textsuperscript{41}38 Stat. 730 (1914), 15 U. S. C. sec. 12 et. seq.
\textsuperscript{42}47 Stat. 70 (1932), 29 U. S. C. sec. 101 et seq.
\textsuperscript{44}PENNA. LABOR RELATIONS ACT, ACT OF JUNE 1, 1937 P.L. 1168, 43 P.S. 211.1 et seq., as amended by the Act of June 9, 1939, P.L. 293; MASS. STATE LABOR RELATIONS LAW, c. 343, Acts 1938, approved May 19, 1938, as amended by c. 318, Act 1939, approved June 26, 1939, Sec. 4A; MICH. LABOR RELATIONS LAW, PUBLIC ACT NO. 176, LAWS 1939, approved and effective June 8, 1939, Sec. 17; MINN. LABOR RELATIONS ACT, c. 440, LAWS OF 1939, approved April 22, 1939, effective immediately, Sec. 11; WIS. EMPLOYMENT PEACE ACT, c. 111 of Wis. Statutes, as enacted by c. 57, Laws of 1939, approved May 3, 1939, effective May 4, 1939, Sec. 111.06(2); N. Y. STATE LABOR RELATIONS ACT, c. 443, LAWS 1937 (Ch. 32, Secs. 700-716, Supp. 1937), approved May 20, 1937; UTAH LABOR RELATIONS ACT, c. 55, LAWS 1937, approved and effective March 23, 1937; and VA. SESSIONS LAWS OF 1938, S.J.R. 1, L. 1938.
necessity, responsibility that cannot be shirked. To form a corporation the incorporators must inform the state of the names and addresses of its incorporators. It must disclose its purpose and its name. It must generally advertise that it is seeking incorporation, thus giving others an opportunity to object. The articles of incorporation are recorded with the proper officials so that all persons who deal with the corporation may have knowledge of the same. By reason of the laws governing the incorporation of business concerns, the public is greatly benefited. Why should not the public be benefited also by requiring that labor unions be incorporated? It has been often stated that to require labor unions to organize is not only to shackle labor, but is to block the wage earner's rise. However, this is not true. If our legislators have found it necessary to prescribe the manner in which business firms should be incorporated, likewise the same should be applied to labor organizations. The public would be greatly benefited in many ways by laws requiring incorporation of labor unions.

In order to incorporate a labor union, the purposes and officers would have to be set forth in the application and an advertisement or general notice given to the public of the intention to incorporate. In this way the public would be informed of a matter vital to its interests. If the object of the proposed labor union corporation be contrary to law, the public could demand a hearing. It would be easier to enforce responsibility for contracts if labor unions were incorporated. Of this there can be no question. The records of the union, if incorporated, would be open to inspection by the proper public bodies. Political and strike funds of labor unions could be examined. Racketeers would be prevented from securing control of weaker unions and using them for criminal purposes. By requiring incorporation, the constitution and by-laws of a union would have to be reasonable and would have to be on public file. In this way union officials could not become so entrenched as to deprive union members of a proper voice in the selection of officers. Strikes could not be called without being responsible to the members and without the consent of the members freely and voluntarily given. There is no question but that the public would be greatly benefited if labor unions were required to incorporate. The Federal Government represents and is responsible to all of the people. In like manner, the State Governments are responsible to the citizens of the various states. The relations of both the State and Federal Governments should be such as to always remind us of this fact.

Neither the Federal nor the State Governments should take sides as between labor and capital, for if a strike or lockout threatens an industry affecting public interests, it is the duty of the Government to safeguard the public.

Trade unions should and must be consulted equally with representatives of employers by Government when matters relating to industry are under discussion. This is particularly true since unions are an important factor in modern life in America.

The exact legal status today of labor unions in America is somewhat confused. Their origin is shrouded in the past.\textsuperscript{46} It has even been held that a labor union, being an unincorporated association, was not suable and not subject to court decrees.\textsuperscript{47}

In some jurisdictions statutes have been passed with regard to the suability of unincorporated labor unions. However, even before the passage of such enabling statutes, equity courts recognized the shortcomings of prior decisions and began permitting actions to be brought by and against certain members of unincorporated associations through certain representatives of such organizations recognized by law as empowered to represent all the members. The practical reason for doing this was the fact that in many cases it was impossible to bring all members into court individually. One of the outstanding decisions with regard to the suability of unincorporated associations is the case of the United Mine Workers of America \textit{v.} the Coronado Coal and Coke Company.\textsuperscript{48} Chief Justice Taft there held that unincorporated labor unions are suable because of the growth and necessity of such organizations and in view of the fact that in equity it had been a practice for one person to represent many, and the fact that public policy requires such responsibility and power with regard to unions, and additional fact that portions of the Anti-Trust Law favor such interpretation.

In Pennsylvania the Supreme Court, under its rule making power on May 1, 1939, established rules 2151-2175 relative to "Unincorporated Associations as Parties."\textsuperscript{49} Under these new Pennsylvania rules, an action may be prosecuted by an association in the name of a member or members as trustee ad litem for such association and in actions against associations it is sufficient to name as defendant either the association or any officer of the association as trustee ad litem for such association. To enforce liability upon members of such association in their individual capacity, such members must be added as parties defendant under the Pennsylvania rules.

It has been correctly stated that "The legal principles governing the contract and tort liability of members of unincorporated labor unions have never been clearly formulated." Beyond the generalization that the substantive law relating to unincorporated associations is applicable, neither the courts nor writers have essayed a definite statement of the nature or extent of the obligation.\textsuperscript{50}

The liability of trade unions both in tort and contract cases generally depends

\textsuperscript{46}Setaro, \textit{The Legal Genesis of Labor Unions} (1938) 72 U. S. LAW REV. 514; J. MacDonell, \textit{Trade Unions and the Law} (1914) 137 L. T. 142-143.


\textsuperscript{48}259 U. S. 344, 42 Sup. Ct. 570 (1922).

\textsuperscript{49}UNINCORPORATED ASSOCIATIONS AS PARTIES, 332 Pa. cvii.

\textsuperscript{50}Note, \textit{Civil Liability of Members of Unincorporated Labor Unions} (1929) 42 HARVARD LAW REV. 550.
upon the rules of agency. It is hard to define whether or not a labor union is a profit or a non-profit association. It has been held that the authority to pledge the general credit of the members of a non-profit association must be specifically proved. The extent of the implied authority of the officers of a union should depend upon fair inference from the facts of any particular case. It would seem that a union member does not give the union officials authority to pledge his general credit, but does give them authority with regard to collective bargaining. However, it has been held that individual members acquire no rights under a contract made by the union officials relating to employment.

The tort liability of union members is less clear than their contract liability. Some courts have held that members voting for a strike may be held responsible for the tortious acts of their fellow-members. It has been suggested that rather than have individual members responsible for the torts of their unions that the funds of the union should be subject to execution, and in fact rule 2158 promulgated by the Pennsylvania Supreme Court provides that judgments against an association will support execution on the property of the association. Thus we see readily that the law regarding the liability of both unions themselves and of their members for unlawful acts of the unions is far from clear.

With the growing recognition of the rightful demands of labor and with labor securing its proper function in the system of American Government, it is now time for trade unions to be regulated in a fair and reasonable manner. It has been seen that the law concerning labor unions is anything but clear. In fact, it has been said by the Supreme Court of Pennsylvania that "There is no such entity known to the law as an unincorporated association." Federal or state incorporation laws would instantly clarify the law regarding trade unions.

In fact, in the past several years many independent labor unions have become incorporated as non-profit corporations. By so doing, the powers, duties, and responsibilities of such incorporated unions have been established clearly by both statutory and case law. In the Court of Common Pleas of Allegheny County, Pennsylvania, so many cases of unions seeking incorporation arose that a special

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52 West v. B. & O. Ry., 137 S. E. 654 (1927).
54 Grant v. Carpenters' District Council, 322 Pa. 62, 64, 185 A. 273 (1936).
rule was passed relative to them.\textsuperscript{55}

Old line unions have objected vigorously every time that newer unions have sought to incorporate, claiming that generally the latter unions are company dominated within the meaning of the state and national labor relations laws. The Supreme Court of Pennsylvania in the case of \textit{Elkland Leather Workers Association, Inc.},\textsuperscript{56} held that the decision of a lower court granting incorporation was binding upon the appellate court even though it was contended in the court below that the applicant was a company dominated union. This ruling has since been followed.\textsuperscript{57} In New York the Membership Corporation Law, Section 11, Subdivision 1-A, requires the approval of the Board of Standards and Appeals where a certificate of incorporation specifies among its purposes "The organization of working men and women, and wage earners for their mutual betterment, protection and advancement, or for regulation of hours or labor, working conditions and wages." Under the New York Act it has been held that where membership is limited to employees of a single employer, it does not violate public policy and such a union may be incorporated under the New York law.\textsuperscript{58}

Many of the benefits to the general public of incorporation of labor unions have been set forth above. Further there is a distinct advantage to the members of the labor unions that their bodies be incorporated. This point has not been brought to the attention of union members. Let us look at the advantages to union members of incorporation. In an incorporated union members know clearly what are the rights, powers and duties of the union officials. Members are not personally liable for the debts or obligations of the union. Membership books open to inspection are kept. Statutory regulation promotes orderly procedure and reasonable rules. The rights of the members are set forth clearly and members as such can seek redress much more easily in courts against the union and with greater facility. Gov-

\textsuperscript{55}December 31, 1937, pursuant to the action of the Judges of this court at a meeting held December 29th, 1937, the following rule was adopted, to be designated as Rule No. 71-A, in re Charter Applications: "Whenever preliminary objections filed to the granting of a character to a corporation of the first class, organized for the purpose of engaging in 'Collective bargaining,' allege that the charter applicant is in fact a 'company dominated union,' in violation of Section 6 (b), of the Act of June 1, 1937, generally referred to as the 'Pennsylvania Labor Relations Act,' or, in case of interstate commerce, a 'company dominated union,' in violation of the corresponding section of the Act of Congress, generally known as the 'National Labor Relations Act,' the Presiding Judge in the Assignment Room shall, upon presentation of such preliminary objections, sign an order staying all proceedings and directing the institution of proceedings to determine the fact before the Pennsylvania Labor Relations Board, or the National Labor Relations Board, within ten (10) days, upon trial and determination of which the exceptants shall secure a certified transcript of the record of such proceedings, file the same at the Number and Term of the Charter application, notify the opposite party in interest, and praecipe the same for the next Argument List. Failure to institute proceedings within ten (10) days shall be considered a waiver of that right, and, on motion of the other party in interest, the case shall proceed in accordance with the rules already established."

\textsuperscript{56}330 Pa. 78, 198 A. 13 (1938).

\textsuperscript{57}Independent Garment Workers Union of Valley View Case, 335 Pa. 209, 6 A. (2d) 775 (1939).

ernmental regulation is a distinct help and not a hindrance. Instead of disorderly haphazard union growth, statutory provisions regarding incorporation would be a beacon light for the future progress of the unions. Labor unions themselves would be benefited by incorporation for they could with greater ease seek the protection of the courts against the inroad of unscrupulous racketeers or undesirable leaders.

Many arguments have been advanced against incorporation of unions. This position was set forth by Paul W. Ward as follows:59

"Not content with suggesting that labor leaders draw enormous salaries, squander union funds, charge their followers exorbitant dues, and indulge in various forms of racketeering, they seek to impress upon an easily gulled public an idea that existing labor legislation grants unions vast rights, privileges, and power without imposing reciprocal safeguards, responsibilities, and duties. All of which is merely the groundwork for an attempt to block the wage earner's rise by (1) limiting picketing, strikes, and boycotts, (2) imposing compulsory arbitration and the outright prohibition of strikes, and (3) requiring unions to incorporate on the same basis as profit-making corporations—which would lay them open to innumerable forms of debilitating court attacks. • • • •

"The most dangerous form of legislative attack is that which aims to forcing unions to incorporate or otherwise submit to regulation. It is the most dangerous because it can be made to seem so sweetly reasonable. Its proponents can even point out that the great Justice Brandeis when he was in active practice as a friend of labor spoke out in behalf of union-incorporation laws. They will not go on to say that unions then were seeking legal standing and that their fight for the right to incorporate was successfully opposed by the employers. They will prefer simply to elaborate Brandeis's argument that incorporation would make labor unions less 'reckless and lawless.' All the pat arguments now being trotted out in favor of union incorporation or regulation are based on a premise that unions are irresponsible agencies. It is certainly not a premise to which employers would subscribe who have had long contractual relationships with unions. The records are full of contrary testimonials from management in the railroad, printing, and garment industries, to mention only a few. It is pertinent to point out in this connection that the National Railroad Adjustment Board has trouble not with the unions but with the roads.

"Another apparently persuasive point in the argument for union incorporation is that under existing circumstances employers have no redress against unions in that they cannot sue them for damages as they easily could do if unions were obliged to incorporate. This argument is disingenuous. The United States Supreme Court in a unanimous decision handed down in 1922 in the Coronado Coal cases involving the United Mine Workers (which the C. I. O.'s chieftain, John L. Lewis, even then headed) ruled that unions are suable in the federal courts both for injunctions and money damages, and in the Coronado cases damages of $27,500 actually were paid. What is true in federal law also is true in state law. In many states unions are suable for damages under codes relating to voluntary unincorporated associations. But the records of the federal and state courts show very few instances in which employers have felt they had any grounds for suing unions for damages. They have preferred to sue out injunctions, taking advantage of the notorious liberality of the judiciary where anti-union injunctions are sought, and their preference is easily understood. In the case of a damage suit, the employer must be able to prove his case or foot the bill. But in injunction cases he is not obliged to prove anything.

"Now that labor is meeting with increasing success in limiting the use of injunctions in labor disputes—through the Norris-LaGuardia Act applying to federal courts and a growing number of complementary state laws—employers are eager to find new excuses for tangling the labor movement up in what is merrily called the judicial process. Laws requiring unions to incorporate would serve that purpose. * * * * *

"The most 'Reasonable' aspect of the argument for union incorporation is the suggestion that since business organizations incorporate it is no more than fair to require that unions follow suit, and that this would subject both to the same legislative treatment. Its reasonableness breaks down on close analysis. It is a concept which places business corporations, organized for profit, on the same footing as unions founded by propertyless workers to protect and promote the social and economic welfare of their families. There are many other points of difference that might be enumerated. It will suffice to point out that governments traditionally recognize a distinction between profit-making and non-profit associations and make special provision for them in the incorporation and tax laws. But much more to the point of all this is the fact that, whereas employers want to make incorporation of unions compulsory, there is no compulsion upon employ-
ers to incorporate. They are free to operate either as individuals, as
copartnerships, or as voluntary associations. Thus, to force unions
to incorporate would not place them on a parity with employers but
would deprive them of the freedom of selection open to employers."

Matthew Woll, Vice President of the American Federation of Labor, has
stated that "the incorporation of trade unions would give business corporations a
rope with which the labor movement could be hobbled or strangled." An
analysis of the objections of labor leaders and others to the incorporation of the
unions shows that their opposition is based upon the theory that the struggle of
the capital and labor is an internecine warfare. Such is not the case as the Swedish
and English situations show clearly. Both the labor leaders and the employers must
look at the problem from a larger aspect—that of the greater good for the greater
number. The Government and the public must and do have the most important
interest in this problem. Their rights shall and must be respected.

Another problem arises with regard to the incorporation of unions. This is,
should unions be incorporated under an act of Congress or by the various state
legislatures? There would be many advantages in a statute requiring the federal
incorporation of labor unions. One of the primary interests of the Federal Gov-
ernment is national defense. Under a law requiring the incorporation under a
federal incorporation law, the national government could regulate sit-down strikes,
violemt picketing, slow-downs, strike-breaking, and lockouts affecting both the
public welfare and national defense. Arbitration and mediation could be made
compulsory.

A Federal incorporation law further would tend to national uniformity in
treatment of matters relating to labor unions. Unions with locals in many states
would not be subject to different laws in each jurisdiction. Firms with plants and
factories in many states would have one law to regulate their relations with labor
unions. There would be a uniformity of law enforcement and judicial interpre-
tation under a federal statute. The union and business leaders would both know
the road to reasonable cooperation because it would be well marked.

Further, nearly every business of any size, under the late decisions of the
United States Supreme Court, in some way or other, affects the flow of interstate
commerce and thus properly would come within the federal jurisdiction. An act
for the federal registration of labor unions was introduced in the House of Repre-
sentatives, on March 9, 1939, by Representative Hoffman of Michigan.

Many believe that the Hoffman Bill goes too far. It has not been acted upon
by the present Congress nor is there any likelihood that it will be considered at this

60 WOLL, LABOR INDUSTRY AND GOVERNMENT (1935) 131.
61 A BILL
To provide for the registration of labor organizations having members engaged in interstate or
foreign commerce and to impose duties upon such labor organizations and the members thereof and
to impose liability for unlawful acts upon such organizations and the members thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**DEFINITIONS**

**SECTION 1.** (a) The term "person" includes one or more individuals, partnerships, associations, corporations, voluntary organizations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(b) The term "Labor organization" means any organization of any kind or any agency or employee-representation committee or plan in which employees participate and which exists for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(c) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or between points in the same State but through any other State or Territory or the District of Columbia or any foreign country.

(d) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led, or tending to lead, to a labor dispute burdening or obstructing commerce or the free flow of commerce.

**ONLY REGISTERED LABOR ORGANIZATIONS MAY SOLICIT MEMBERSHIPS**

**SECTION 2.** It shall be unlawful for any labor organization or its representatives having as members one or more employees of persons engaged in commerce to engage in any activities affecting such commerce, or to attempt to persuade, urge, or incite others to engage in such activities, or either directly or indirectly to solicit or receive or renew memberships in any organization until it has filed application for registration and such application has been duly approved pursuant to this Act. It shall also be unlawful for any person to solicit or receive such memberships on behalf of any labor organization until such organization has complied with this Act.

**REGISTRATION OF LABOR ORGANIZATIONS**

**SECTION 3.** Any labor organization which has, or is desirous of soliciting or receiving, as members one or more employees of persons engaged in interstate commerce may register with the Secretary of Labor by filing a registration statement in such form as shall be prescribed by the Secretary of Labor setting forth the information and accompanied by the documents below specified:

(a) An agreement to comply with, and to enforce so far as possible compliance by its members with, the provisions of this title and of any amendment thereto and any rule or regulation made or to be made thereunder.

(b) Copies of its constitution, rules, regulations, and bylaws.

(c) An agreement to furnish the Secretary of Labor with copies of any amendments to such constitution, rules, regulations, or bylaws forthwith upon their adoption.

(d) The name of the organization, the names of officers, place of headquarters, and such other information as the Secretary of Labor may by rules and regulations require as being necessary or appropriate in the public interest or for the protection of the public.

(e) An agreement to furnish the Secretary of Labor with changes of officers or headquarters forthwith upon the happening of the event.

(f) An agreement to file with the Secretary of Labor annually a copy of the report of the auditors of the accounts of the applicant which audit shall show the receipts and expenditures, duly itemized, showing the sources from which the receipts came and the person or persons to whom payments were made and also showing the balance on hand at the close of the fiscal year.

**APPROVAL OF APPLICATIONS**

**SECTION 4.** Applications shall be approved by the Secretary of Labor within thirty days after the filing of the application if and only if—

(a) The constitution, rules, regulations, or bylaws of the labor organization show that the organization is such that the officers and representatives and the policies of the organization are
session. Some of its features are desirable. Others, perhaps, are too harsh. Federal incorporation or registration statutes reasonable in their terms and fair in their application will perhaps be passed by Congress in the near future by reason of the growing complexity of industrial relations.

An important feature that is overlooked by many persons who oppose either the incorporation or registration of trade unions is the fact that today in America labor unions have come of age. Their growth in recent years has been stupendous.

selected and determined upon by vote of the membership of the organization, such vote to be either by direct ballot or by representation; and

(b) The constitution, rules, regulations, or bylaws provide for an annual audit and report to the membership of the accounts of the labor organization, such audit to show the receipts and expenditures, duly itemized, showing the sources from which the receipts came and the person or persons to whom payments were made, and also showing the balance on hand at the close of the fiscal year.

Upon the approval of the application the registered labor organization shall be deemed a body corporate, and shall be entitled to the privileges of and be subject to the duties of bodies corporate, including the duty to respond in damages in civil actions for breach of contract or for injuries to persons or property.

SIT-DOWN STRIKES

SECTION 5. It shall be unlawful for any labor organization or its representatives, or members thereof, or any organization, person, or persons whomsoever, without authority of law, to take, seize or hold possession of the property of any employer engaged in commerce for the purpose of enforcing its demands upon said employer or employers, or for any purpose whatsoever. It shall also be unlawful for any labor organization or its officers or representatives to attempt to persuade, urge, or incite others, either directly or indirectly to engage in a sit-down strike, or unlawfully to take, seize or hold the property of any employer for the purpose of enforcing its demands upon said employer or employers, or for any purpose whatsoever.

ACTIONS BY OR AGAINST LABOR ORGANIZATIONS

SECTION 6. (a) Any registered labor organization may sue or be sued in its registered name. Process may be served upon any labor organization by serving any of the officers named in the application for registration or supplementary statements filed pursuant to the agreements contained in the application.

(b) The acts of the officers or duly accredited representatives of any labor organization shall be deemed to be the acts of the labor organization.

(c) In the case of a judgment for civil damages or criminal penalties rendered against any labor organization, execution may be levied against the funds of the organization in the hands of the treasurer or other person having custody thereof.

(d) Nothing in this Act shall be construed as in any way restricting the criminal or civil liability of any officer or member of any such organization under the laws of any State, Territory, or the District of Columbia, or under the Federal statutes.

REVOCATION OF REGISTRATION

SECTION 7. The registration of any labor organization shall be canceled and revoked by the Secretary of Labor if the labor organization fails to comply with any of the agreements contained in the application for registration; or if a judgment against the organization remains unsatisfied; or if the Secretary of Labor finds that any organization is failing to comply with the provisions in its constitution, rules, regulations, or bylaws concerning voting by the membership for officers, representatives, or policies; or concerning reports to the membership of financial audits.

PENALTIES

SECTION 8. Any person or labor organization violating any of the provisions of this Act shall be punished by a fine of not more than $5,000 or by imprisonment of not more than one year, or both.
Its importance in the Federal and State Governments, in politics, and in industrial relations cannot be minimized. True, in the early stages of trade unionism stringent incorporation statutes harshly administered could and would hamper the growth of labor organizations. Yet where labor organizations have attained maturity, as they have today done in America, they should have no fear of reasonable incorporation or registration statutes. The very power of the trade unions themselves would insure fair and proper application of such statutes and impartial interpretation thereof.

We must regard the right of workmen to join labor unions for the purposes of collective bargaining as a fundamental principle of our society. No one can have any quarrel with the basic principles of the National Labor Relations Act. This, of course, presupposes impartial administration thereof.

It is as important to the employer as it is to the employee that collective bargaining contracts be honored.

As the rights of labor increase, responsibilities must in like measure be increased. Either voluntarily or by statute, a reasonable cooling-off period should be provided in labor agreements before use of economic weapons by either employer or employee. Such a cooling-off period could be better enforced if both the employers and employees are responsible in law. The gain to the public therefrom would be immeasurable.

The Government of the United States of America represents all the people and to them solely is it responsible. Its relations with both the labor unions and with employers must be governed by that primary fact. It cannot, and must not, take sides. It must be, and should be, impartial; however, if a serious labor dispute, strike, lockout, or violence imperils less essential public service or the public welfare, then the Government must safeguard the interests of its citizens. One way of doing this is by governmental mediation either voluntary or compulsory. Another way of doing this is by the incorporation or registration of labor unions and also of employers' associations, for the latter, as much as the former, must be responsible to the Government.

Some persons perhaps are afraid unnecessarily that in America some labor unions have made immense political capital by reason of their forceful leaders. Other unions have remained aloof from politics. Whether or not participation by labor unions as such in politics tends to promote class cleavage, it is desirable that such activities be controlled reasonably. This is another reason why unions should incorporate, or at least be required to register.

62 Wendell Willkie, Address on Labor at Pittsburgh, October 3, 1940, NEW YORK TIMES, October 4, 1940, Page 16. "However, labor agreements have two parties—the employer and the workers. With increased rights to labor go increased responsibilities. There must be genuine and persistent effort to reach agreements on the basis of facts, not force. And once reached, those agreements must be kept by both parties. In such agreements, entered into by free men and the basis of facts and in good faith, let us find the foundation for the great America we want to build—the new America—an America big enough for all of us."
In the future the question of federal incorporation versus state incorporation of labor unions will arise. There are some advantages to unions from state incorporation that are superior to that of federal incorporation. This is particularly true in the case of smaller unions whose strength is centered in one or a small number of states. The local state officials are better qualified to deal with local problems involving employers and labor unions. The immense growth of independent labor unions since the National Labor Relations Act must be considered, since most of these unions involve a single plant and thus their entire activity would be within the confines of a particular state. Further the conditions that apply in one state, for example Pennsylvania, would not apply in another state, for example Georgia or Arkansas. The problem of federal incorporation versus state incorporation of labor unions is a grave one. One solution would be to require all labor unions whose activities directly affect the flow of interstate commerce to be incorporated under a congressional act. All other unions would have to be incorporated under the laws of their respective states. There should be no duplication of incorporation.

IV. Conclusion

A basic premise of the consideration in this article of the incorporation of labor unions is the fact that in America today the unions have come of age. They are in fact a tremendous driving force of incalculable importance. Their power is enormous.

With this in mind, coupled with the fact that both capital and labor are responsible to the Government, which in turn is responsible to the people, labor unions should be subject to compulsory incorporation of a reasonable nature. Such incorporation statutes should and must be fairly and impartially administered and interpreted, so that labor may not lose its legitimate gains nor be restricted in its proper fields. There can be no question but that if labor unions should be incorporated, employers’ associations should likewise be required to incorporate.

Labor unions have sought the protection of the National Labor Relations Act and other similar statutes. Since they have shown faith in the Government in that regard, unions surely must have faith in the Government to adequately and reasonably supervise the unions themselves by means of fair and impartial incorporation statutes.

Both the leaders of industry and the leaders of labor must accept their high social responsibilities. One way of attaining this object is by statutes requiring the incorporation of labor unions and also employers’ associations. In this way the greater good for the greater number would in fact be achieved in a problem of vital and pressing importance to America.

PITTSBURGH, PA., SEPTEMBER 30, 1940.  
NICHOLAS UNKOVIC