Unions, the Rule of Law, and Political Rent Seeking

Armand Thieblot

Under the Obama administration, the influence and involvement of trade unions in government policy decisions has surged to unprecedented levels. Some of the more egregious examples include the proposed Employee Free Choice Act, which abolishes the secret ballot among workers deciding on union representation and imposes forced interest arbitration of contract disputes; the selective protection of union healthcare benefits from proposed "reform" legislation; the awarding of assets seized from major automotive companies to the United Automobile Workers; and the involvement of union personnel, especially members of the Service Employees International Union, in electioneering efforts and counter-demonstrations on behalf of the Democratic party. That all of this has occurred within less than a year is especially troublesome. What makes it more so is the well-established pattern, on the part of unions, to disregard and disrespect the rule of law.

Unions disrespect the rule of law in two principal ways, one more obvious than the other. First, in the past and still today, they violate it by disobeying or ignoring whatever it happens to be in its contemporaneous guise, whether common law injunctions, tort law prohibitions, Taft-Hartley unfair labor practices, or Landrum-Griffin

---

Cato Journal, Vol. 30, No. 1 (Winter 2010).

Armand Thieblot is President of A.J. Thieblot & Son/NCSDO, an economic consulting firm with special expertise in labor policy analysis. He has authored, among others, about a dozen books on union activities in the construction industry, on union corruption, on union violence, and on labor policy issues.

reporting requirements. They do this as economic rent seekers—hoping to secure for themselves and their members rewards greater than the value society accords them in a free market. Second, they dishonor the very principles of the rule of law by engaging in a corrupt, symbiotic relationship with lawmakers. They do this as political rent seekers—hoping to secure rewards of their own choosing, independent of economic or market restraint.

The first section of this article covers the relationship between unions, the rule of law, and economic rents from the origin of the union movement through the changing patterns of the three phases of its growth cycle as measured by membership. Each phase is about 40 years long, although there are no sharp edges or defining moments to mark transitions. The first phase, development, lasted from about the end of the 19th century through the New Deal and to the beginning of World War II. During this time period, union membership rose from about 15 percent of the manual, nonfarm workforce to around 40 percent by 1940. Unions began the period striving to neutralize the economic rents of other factors of production, especially those of capitalists—a class including not only financiers, but also industrialists, merchants, businessmen, ship owners, rich people in general, and large-scale employers in particular—who were assumed to possess it in excess. By the end of the period, with considerable help from government, unions had not only succeeded, they had acquired substantial economic rents of their own.

The following phase, maturity, lasted for roughly the next 40 years, until about the beginning of the 1980s. Union membership rose to something over 60 percent at its peak. During this period, still with massive government help, unions perfected extracting rents from their economic opponents—succeeding to the point that in some cases the rents of others became negative, causing them to withdraw from the system and thereby reducing the opportunities for unions in turn. During the period of the ensuing third phase, decline, that started about 1980 and still persists, union membership fell back to pre-1918 levels, except in the public sector. In their decline, unions have begun to morph into well-financed institutions seeking a different kind of economic rent, one whose source is not another factor of production but the polity as a whole. There may be another phase in the making.

The second section discusses this more recent, self-substituting union movement that grew from the change in union orientation

away from private industries and away from dependency on traditional organizing and financing measures towards a unionism wholly interrelated with government and politics. When Samuel Gompers, then head of the American Federation of Labor, was asked in the early 1920s what unions wanted, he famously replied, "More." At the time, everyone correctly understood that unions' targets were the capitalists from whom additional wages and benefits would be wrested by force, and also that if unions were successful, capitalists would have to be content with "Less," thus, just a transfer of economic rents within the system from one factor to another.

By the 1980s and 1990s, however, when unorganized capitalists had become thin on the ground and those already organized had mostly been rendered uncompetitive by past concession to union demands, unions' new guiding trope became "More government." To achieve it, unions became mordantly political. In economic terms, after unions had absorbed all of the readily available economic rents from their capitalist opponents, they have turned to seeking rents from new sources beyond the system—from the polity at large (from taxpayers), using government as the intermediary. For want of a better term, I call this political rent seeking. It should be of general concern that, not being bridled by most of the competitive restraints posited by Gordon Tullock (1967) in his classic exposition of rent seeking, unions engaging in political rent seeking may be nearing the point of dominance over the auction of government rents to the point that they can, or may soon be able to, write their own labor laws, and thus their own rewards, free from any normal economic or competitive restraints. This should be of general concern.

Unions from Their Origin through the Period of Membership Growth: The Creation of Labor Law (1741–c. 1900–c. 1940)

Unions and unionism existed in the United States well before 1900, and the early period was not without its labor drama. The first recognized labor dispute occurred in 1741 when the journeymen bakers of New York struck for higher wages and were promptly tried for conspiracy. As summarized by Morgan Reynolds (2009), standard union tactics developed very early: "By 1810, union tactics were fully formed: bargain 'collectively,' demand fixed minimum pay rates, enforce closed shops, stage strikes with picket lines, scab lists, strike

funds, and traveling cards, and promote . . . solidarity." Their primary goal, after collective organization, was "more," and they wanted employers and business owners to give it to them: more wages, more control of jobs, more of a voice in how firms were run.

Even before 1800, labor organizations had formed in the big cities, and the shoemakers of Philadelphia had already conducted strikes in 1796, 1798, and 1799. These were illegal activities under the common-law protections of private property rights. Their activities were sometimes suppressed, but mostly by dint of the threat of enforcement action rather than the fact of it unless ordinary tort laws restricting violence, sabotage, and coercive intimidation were massively violated. Thus, when unions took to the streets in the first great labor dispute that might be called national, the railway strike of 1877, and engaged both in an illegal conspiracy that stopped intercity traffic and in serious rioting and destruction of property, state troops armed with Gatling guns were called out, and 26 men died in the ensuing gun battles. The strike eventually failed, but union leaders were not prosecuted for having called the strike or participated in it, only those individuals caught red-handed were prosecuted. Law enforcement by either police or judicial action was powerless to prevent recurrence of labor actions or violence within them. A pattern was being set.

The 1877 railway strike was only one of approximately 1,400 that the Bureau of Labor Statistics later identified as having occurred up until then. During next quarter century, until 1905, unionists engaged in 36,757 more strikes, directly affecting 181,407 establishments and costing close to $500 million in lost wages. In both the 1894 Pullman strike and the 1902 anthracite coal strike, some 660,000 strikers threw themselves out of work and at the very least interfered with their companies' rights to operate their private property as they saw fit. At the Carnegie Steel (Homestead) lockout in 1892, entrenched workers fired on Pinkerton detectives hired to protect strikebreaking replacements, attempted to sink the barges they arrived on with cannon fire, and poured oil into the river and set it on fire before the Pinkertons surrendered.

There was violence on both sides, of course, and posturing and proselytizing in terms one might find not much different today. According to one contemporary anti-union view, "Organized labor knows but one law, and this is the law of physical force—the law of

the Huns and Vandals, the law of the savage. All its purposes are accomplished either by actual force of by the threat of force" (Carlton 1920: 174). On the union side, protagonists argued that "the violence occurring during a strike is often exaggerated; and much violence is due to outsiders or to the unauthorized acts of irrepressible members of the union." Or again, "The typical strike is waged in an atmosphere so surcharged with menace, that wide-spread intimidation and sporadic acts of violence are precipitated as inevitably as the atmosphere of the earth precipitates dew" (p. 174). Finally, "The intense hatred manifested towards the strike breaker or 'scab' is a cause of much violence during the course of a strike" (p. 175). There was no mystery that what occasioned the violence was the seizure or protection of the economic rents that were assumed to exist and to lie with capital.[1] Then as now, the only disagreement was over the justness of the laws that the holders of economic rents used to defend them against acquisitive aggressors.

The law and the judicial system of the period favored employers and industrialists, especially after the Sherman Act of 1890 defined antitrust activities in ways that could be interpreted as applying to labor collectives. These were turbulent times of active industrialization and the invention of entirely novel industries that needed large-scale workforces. Both sides escalated their positions. Employers used their newly polished judicial injunctions and brushed up defensive labor agreements called "yellow dog" contracts, in which workers agreed as a condition to initial employment to not seek unionization. (A sort of reverse of the card-check unionization now

[1]Economic rent, as the term is used in this article, is related to, but different from, the term "rent seeking" promulgated by Gordon Tullock (1967; 1998). Tullock uses the term more restrictively, to describe the waste of resources when firms seek favors from government (e.g., monopolies or tariffs). As used here, economic rent should be understood simply as the *unwarranted* excess paid to any factor of production that could not be sustained in an ordinary competitive market. In this context, unions' economic rent is the sum of money paid to union workers (plus the cost of their administration) above the cost of replacing them with equally productive and qualified nonunion workers—what is also called the "union premium." Capital's economic rent is any *unjustifiable* excess or profit beyond what would satisfy an alternative capitalist or enterpriser engaged in the same undertaking, not just that deriving from government-created restraints on trade.

proposed.) Unionists ignored injunctions, took up the secondary boycott, demonized employers as capitalistic oppressors, and cast themselves as victims. America was still largely agrarian, and had been designed as a classless society of independents. Concepts of the victimized worker, of industrial working class solidarity, or of proletarian struggle were not then part of the national ethos (Reynolds 2009). But they were beginning to be.

The big changes that were afoot and that would move the United States into a new era of industrial unionization did not arise from the unions themselves, and certainly not from their organizing efforts, but came from outside the union movement. Journalists and politicians (such as writers Upton Sinclair, Ida Tarbell, or Edwin Markham; jurists Louis Brandeis or Felix Frankfurter; or presidents Theodore Roosevelt or Woodrow Wilson) in the rising Progressive movement after the turn of the century were adopting new concepts of social equity and social responsibility, as well as new views on the role of government in directing interpersonal affairs. Among other things, these progressives began to credit unionism and collective bargaining with star status in promoting human rights, often failing to differentiate societal needs from union wants. They began to negotiate (among themselves) the terms under which economic rents might be transferred from capitalists to unions.

Under this tutelage, the general public now began to embrace a set of societal obligations towards members of the laboring class that was undifferentiated from the new panoply of collective rights specific to the union wage-work environment, some of which could be had by assertion, and others only by a call on the traditional rights of employers or of individuals. As a result, an entirely new body of law began to evolve that was specific to labor and its conditions, but composed of two separate though related pieces: "substantive" working-condition laws relative to human rights on the one hand (wage-and-hour laws, workplace safety laws, and child labor laws); and "procedural" labor-relations laws relative to union rights on the other (collective bargaining, permissible union actions, bargaining, and strikes) (Heldman, Bennett, and Johnson 1981: 41). Because the factor that related them was that unions supported both, unions were given credit for both as well, despite the fact that many unionists at that time, especially in railroads and industries using heavy machinery, had already positioned themselves as the captains of the blue-collar trades.

The Clayton Act of 1914, limiting labor injunctions and endorsing picketing and related union tactics, was among the first of the procedural laws. (The substantive working-condition laws are not of concern here.) It would be perfected by the Norris-LaGuardia Act of 1932, which guaranteed the collective right to strike for any purpose, the right to pay strike benefits, the right to disregard "yellow-dog" contracts, and exemption from antitrust restrictions, among other things. This act, alone, effectively moved the center of the code of law to the union side of the conflict. The same actions by unions that had formerly been violations of law would now not only be tolerated, they would be affirmatively protected, even promoted as sound public policy.

Perhaps the most significant developments of the new rules of labor law before the New Deal were the now-forgotten Adamson Act of 1916 that imposed an 8-hour day (with no diminution in pay) on railroads to avert a rail strike, and the establishment of the cabinet-level U.S. Department of Labor in 1913, whose secretary was empowered to act as a mediator and to appoint commissioners of conciliation in labor disputes. With these began the new role of government in procedural labor relations. Thenceforth, government would take an ever more active role not only in moving public policy and the rule of law from anti-union to neutral to full-fledged pro-union, but also in involving itself selectively and purposefully in the minutia of the business-labor interface. Union access to rent sharing, facilitated by government, had begun, as had the duty of employers to create the rents for unions to share.

Unquestionably, the main statute affecting unionization for the private sector was (and still remains) the National Labor Relations Act of 1935, also called the Wagner Act. Applying to all industries except railroads and air transport (similarly though separately governed by the Railway Labor Act of 1926), the NLRA sets the basic ground rules for union involvement in how employees and employers should reach agreement about their economic relationships. The NLRA expressly encouraged not just collective bargaining, but unionized collective bargaining—preferably by national organizations—on the assumption that employees had always wanted to be unionized but had been perpetually frustrated in this goal by obstinate employers. "The Act assumes that collective bargaining itself is impossible, infeasible, or impractical without a unionized context, i.e., that only a union is able to engage in collective bargaining.

Accordingly, the NLRA makes unionization the 'natural' state of affairs, with all procedures designed to facilitate or to promote its achievement and to frustrate those who would oppose it" (Heldman, Bennett, and Johnson 1981: 49).

Unions in Maturity: Institutionalized Violence, Maximized Economic Rents (c. 1940–c. 1980)

Much was expected of the labor legislation of the New Deal. A basic assumption underlying the NLRA was that any law making collective bargaining the national policy would, by elevating the status of workers to equal participants in a new form of industrial democracy and giving them an extra share of the rewards of the capitalist system (economic rents), transform the social order and bring on a new era of labor peace and prosperity (Daykin 1950). The new attitude and the new laws did not, however, bring industrial peace. Nor could they move the rule of law so far in the unions' directions that unions could not find ways to transgress it. What they could do was allow some unions to achieve, and sometimes to exceed, the systemic limits of economic rent sharing.

Unions were undoubtedly grateful for their new sanctification and for the boost given to their organizing of the industrial workforce. In 1930, before the New Deal, union membership had retracted from a peak at the end of the World War to about 3 million persons—perhaps 20 percent of a workforce comprising manual laborers employed outside of agriculture. Because of the new laws and attitudes, by 1940 membership had greatly expanded, reaching nearly 9 million members and 45 percent of that work force, and by about 1960, 19 million and over 60 percent (Reynolds 1959). Clearly, government's efforts in condoning and promoting unionism had been successful. The body of labor law now included not only the NLRA and the Railway Labor Act, but also the Davis-Bacon Act, the Walsh-Healey Public Contracts Act, and the Byrnes Act (prohibiting the interstate transport of strikebreakers) among others, as well as by the regulatory output of the immense number of bureaus and agencies that the new laws spawned such as the National Labor Relations Board.

From almost a standing start at the beginning of the period, the body of labor law had expanded exponentially after the first break-

throughs and despite initial opposition to government involvement in either procedural or substantive labor issues by strict constructionists on the Supreme Court. By 1980, labor lawyers, consultants, and specialists had to be conversant not only with about a dozen labor-specific federal laws, but also with some 250 volumes of NLRB decisions, 87 volumes of labor cases, 22 volumes of various publications of the Bureau of National Affairs dealing with labor relations, and 22 volumes of Fair Employment Practice cases (Heldman, Bennett, and Johnson 1981: 74), in addition to specialty regulations and findings relating to employees of airlines and railroads, agricultural workers and immigrants, pieceworkers, part-timers, apprentices and youths, minority group members, women, and disabled persons. And this was only at the federal level: at state and local levels there were literally untold volumes of cases and decisions emanating from various labor-related boards and commissions, and there was also a virtual avalanche of materials on private and public sector arbitration decisions. Furthermore, at all levels there were executive orders and decisions and magisterial, state, district, circuit, and Supreme Court cases adjudicating labor issues and dictating often conflicting details of how employers could or could not react to unions or deal with individual workers. Labor relations had become the most highly regulated aspect of American society, and labor law, itself, had become big business.

The astonishing thing is that almost all of the overwhelming volume of this material that involved procedural issues was related to facilitating how unions could get the "more" that Gompers had alluded to—how they could get access to a greater portion of the economic rents generated by the capitalist system. Only three pieces of federal legislation, the Taft-Hartley Act of 1947, the Landrum-Griffin Act of 1959, and the Hobbs Act of 1946, proposed any restraints. The first mainly blocked closed-shop unionism and added several unfair labor practices by unions to the original NLRA that only recognized "unfair labor practices" by management; the second imposed a reporting requirement on how union leaders were spending union funds; the third prohibited extortionate behavior by unions. Despite howls of protest by unions, neither of the first two did much to change the tenor of the law (Leef 2005: 30). The Hobbs Act, never easy to invoke against union leaders, was eviscerated in 1973 by the Supreme Court's *Enmons* decision, which

improbably, found acts of union violence and extortion to be exempt from prosecution if exercised in pursuit of a "valid union objective."[2]

In less than 40 years, the rule of labor law had been utterly transformed. Not only had it moved from adjunct simplicity to Kabuki complexity, it had encompassed entirely new theories of empowerment and invented property rights to jobs and work that made unions and their leaders stakeholders in employers' economic activity as a matter of government fiat, and even allowed them to conduct their own audits of it. All of this was presumed necessary to protect individual workers from the putative evils of the capitalistic oppressors who had given them their jobs; but unions, not individual workers, were given the huge leg-ups of the new laws and attitudes; many individual union members simply found themselves beholden to a different set of bosses, who took part of their pay for dues. One unintended consequence was that unions had to continually demonstrate their bona fides as rent seekers. They had to show their effectiveness in getting "more" for members. Like sharks, they had to keep moving forward or risk dying.

Other unintended consequences set in. First, following the rule of "what you subsidize you get more of," unions sometimes expanded dramatically into areas where they had little justification for existence, such as into government and public service employment. Second, following the rule of "be careful what you wish for," government's empowerment of unions' rent seeking rendered American products overpriced compared to the rest of the world's because of their embodied excess labor costs. Third, following Alinsky's seventh

[2]In its *Enmons* decision of 1973, the United States Supreme Court reviewed the facts of a labor dispute at Gulf States Utilities Company and noted that union members had fired rifles at three of the company's transformers, drained the oil from another, thereby destroying it, and blown up an entire substation with dynamite. The Court also acknowledged that these were bad actions, that they had been perpetrated by union members during a labor dispute, and that their intent was to force management to give in to various demands of the union—clear characteristics of extortionate violence. It then improbably decided that the Hobbs Act should not apply. Hobbs, the Court said, could prohibit only "financial" extortion of "wages"; physical violence or extortionate behavior for any other purpose (for example, to "send a message" to "scabs" by shooting through their windows at home) was thus exempted unless used to obtain something "wrongfully," that is, unless the perpetrator had no "legitimate claim" to that something. Since the NLRA had made strikes in support of collective bargaining legal, and had found striker replacement to be one of the things that could be legally bargained over, it decided that the union's violence was not actionable under Hobbs.

and eighth Rules for Radicals ("a tactic that drags on too long becomes a drag," and "keep the pressure on"), unions escalated both their demands and their tactics. History had taught them that the most aggressive unions were the most successful.

Although the act of organizing was now emphatically legal, there were still employers who resisted and employees who disdained the collective. Extra-legal violence was sometimes used to try to change their minds. It accompanied the still-illegal sit-down strikes to win recognition at Goodyear Tire and at GM in 1936 and at Ford in 1941, and violence accompanied a great many other of the strikes and confrontations that characterized labor relations at the end of World War II, especially those in the "great strike wave" of 1946, when almost 0.5 percent of that year's entire industrial productivity was lost. I have written elsewhere extensively of the history and purposes of union violence beyond the rule of law during this period (Thieblot and Haggard 1983; Thieblot and Northrup 1999). Among many others, the United Mine Workers provides an example.

Coal mining came out of World War II as the country's most organized industry, employing the country's highest-paid industrial workers. Technology was cutting into the demand for coal, however, especially for the high-priced union coal. Therefore, in 1948, the UMW set out to eliminate residual competition and establish sovereignty over the entire eastern coal field region: any coal that was not produced by the UMW would be "scab" coal, to be repressed as necessary by dynamite, gunshots, and other violence. It was not enough that the UMW had monopolized labor supply in the coalfields; now the UMW had to create a monopsony for its employers as well—making them the only sellers of coal. Unionized employers needed access to greater economic rents if the union was going to be able to seize them in turn.

Thus began the UMW "organizational drive" that would continue sporadically over the next two decades. At mine after nonunion mine, the UMW established a reign of terror, turning itself into the Godzilla of the Appalachians. It engaged in mass picketing and intimidation using roving caravans, "striking" and shutting down unorganized mines, and beleaguering mine property; it attacked mine owners and operators, nonunion miners, members of non-UMW unions, independent contractors, transporters, customers, suppliers, and others by assaulting, shooting, verbally abusing or threatening them and their families, by bombing, firebombing, van-

dalizing, sabotaging, or jackrocking their cars, homes, and personal property; it sabotaged or destroyed mining equipment and already-mined product, flooded mines, stranded nonunion miners underground, and extorted employers; it attacked transporters of nonunion coal and interdicted the movement of goods throughout the region, even foodstuffs.

Although some of these actions were performed under coloration of the expanded labor laws, much of it was simple thuggery and directed not towards "more" for union members or against union employers, but "more cost" for nonunion individuals and independent operators, many of whom were only peripherally related to the union or its putative opponents, and who should have been entitled to bystander status in the conflict. The drive succeeded in creating a reign of terror, and the succession of gaudy union contracts continued. It was a Pyrrhic victory, however, because the laws of economics prevailed. The UMW had essentially wrung all the economic rent out of its employers that could be had, so that union employers, even with the UMW's help, could produce no more of it to share. Union employers began to disappear, taking union jobs with them. By the end of the 1970s, UMW membership was down to a small fraction of what it had been, and the union had run out of amenable targets to organize or viable demands that could still be satisfied by their existing employers.

Unions in Decline: From "More" to "More Government" (c. 1980–Present)

The UMW was not alone. Whether or not they had duplicated the UMW's tactics of violence and aggression, by the end of the 1970s, many other industrial and craft unions had also, through their victories, forced their own employers into bankruptcy, offshore, or into niche marketing, selling only into protected local monopolies or to price-inelastic government buyers. In maturity, unions had conquered what could be conquered in their trades or industries and had wrested so large a piece of the economic pie for their members and themselves through aggressive rent seeking that it could not be sustained. In the process, they had destroyed their employers' competitiveness with respect to both domestic and world markets. They had, in short, become victims of their own success. Additionally, with the exception of government employees, there were few unorgan-

ized masses left to organize and therefore neither need for their old organizational tools, nor places left to use them.

Public-sector unionism did not require much effort after President Kennedy's 1962 Executive Order 10988 promoted unionism in the federal bureaucracy and "orderly relationships between employee *organizations* and management" (Reynolds 2009: 10). Government jobs quickly became the "healthy" part of organized labor, where external competition provided little or no discipline against union inefficiency, cost, or privilege and a few, albeit illegal, strikes were all that was necessary to enforce the message. From 900,000 in 1960, the number of government union members grew to 7.8 million by 2008, almost half of them—3.2 million—teachers.

One reason why public employees were easy to organize is related to the source of the economic rents unions were seeking here as elsewhere. Government is unique in being able to assign itself economic rents and compel them by force (taxes). Government employer-negotiators giving "more" to unions do not have to contemplate "less" for themselves; nor do they have to worry about rising prices for their products (governments are monopsonists of most of their products and services—except TVA electricity and, some now say, automobiles and perhaps health insurance); governments need fear no threat from cheaper alternatives (there is only one government at a time), and they have no apparent limitations of having to cover their costs or earn a profit (plus they have the option of deficit spending). In sum, "unlike businesses, governments face little incentive to hold down labor costs" (Bellante, Denholm, and Osorio 2009: 2).

Government unions flourished during this period, but in both private and public industries unions were becoming mature as organizations, and as with any organization in maturity, they began to devote more of their attention to cash flows, asset management, executive succession, pay levels, benefits, retirement plans, and general organizational administration. Their internal management began to expand at the top, to pay higher salaries to greater numbers of administrators, to hire more organizational professionals (lawyers, public relations specialists, investment counselors), and to spend more of their time on financial matters. Unions were on the road to becoming financial institutions first and harbingers of collective bliss, second (Lester 1958).

What unions turned to (if they were not content to allow their jobs just to attrite, as they did in railroads, garment making, and seafaring,

among others) was to change their orientation away from aggressive organizing and tendentious labor disputes to more-businesslike maneuverings.[3] Part of this was the result of the increasing complexity of collective bargaining, where negotiations for medical and pension benefits, supplemental unemployment benefits, downsizing and relocating conditions, seniority and manning levels, and the like required a higher level of sophistication and knowledge, a greater number of on-board professionals, and more union time devoted to administering and enforcing agreements. (A recent UAW "master contract" runs to 1,500 pages; a single prevailing wage determination for a project involving laborers or operating engineers may cover a bewildering list of 150 or more job titles or descriptions drawn from local union contracts for each and specify a dozen different minimum "prevailing rates" with as many different fringe benefit amounts.)

Unions were also becoming rich. In 2001, the total funds collected by the 26,151 union organizations that filed the annual reports required by the Landrum-Griffin Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) that I was able to review for that year exceeded $16 billion, well beyond Senator Everett Dirksen's definition of "real money." ("A billion here, a billion there, and pretty soon you're talking about real money.") The AFL-CIO and the top 50 international, local, and regional organizations were being served by at least 20,450 officers and other staff employees, of whom 3,069 received direct compensation in excess of $100,000 per year; most also received retirement, medical, and dental benefits; many in the top echelon were comped with free use of luxury vehicles, union-provided gasoline, entertainment budgets, fancy sports tickets; a few even had the services of union chauffeurs, gardeners, bodyguards and other servants and the use of union penthouse apartments, vacation resorts, and comparable luxuries.

Unions' discretionary spending had also become immense. For example, at least three unions held conventions for themselves in

[3]Strike violence was associated with many unions during the period of maturity, and it continued thereafter. Nevertheless, whereas the decade preceding 1980 had seen an annual average of 1,487 strikes involving over 1,000 workers, the decade preceding the present (2009) has seen only 21. The likelihood of violence in any particular strike was as great in 1999 as 20 years earlier, but the overall quantity was much less because of the far smaller number of strikes. As a result, although union violence has continued, it no longer characterizes labor relations.

2001 costing over $5 million, including the Ironworkers, who spent $9,751,132 for their party in the same year when the union was struggling to recover from over $5.5 million in losses stemming from "investments" in a fraudulent union-related investment scheme.

With such lavish salaries, benefits, and perks, it is no wonder that election to local office is so prized in so many unions, and once attained is held onto as long as possible. Local office-holding also offers, to at least some, the possibility of using the office for extortion, solicitation of bribes or kickbacks (especially from directing union investments in insurance, health, and retirement plans), selling labor peace, vending the opportunity to work, licensing selected employers to ignore union contracts, and placing family or friends in no-show jobs or positions of union authority, all of which behaviors I observed while reviewing the National Legal and Policy Center's Union Accountability Project database of union corruption, derived from public sources since 1998 (Thieblot 2006: 514–28).

This change in unions and their leaders has been accompanied by erosion of union ideals, and by increased opportunities and temptations for personal enrichment that grew with their increasing financial power, the expanding volume of funds under union control, and the changing living standards of union hierarchs (Lester 1958: 62). The concentrated power to call strikes and to allocate employment in the hands of local union officials, as in the hands of business agents in building construction, facilitated shakedowns, kickbacks, and other iniquitous action, sometimes also accompanied by labor racketeering (Hutchinson 1970; Fitch 2006; Jacobs 2006).

But most of these matters involve personal transgressions—for example, embezzlement, self-dealing, nepotism, suppression of opposition to union governance, and selling labor peace. They are far from insignificant, but they involve personal violations of principle, trust, or law better covered in a different forum (see, e.g., Thieblot 2006). There are also the broader financial transgressions that are generalized or systemic to unions. Besides corruption itself, these include extortionate racketeering, political influence buying, and coercive rent seeking. These have a more direct connection with the relationship between unions and the rule of law, and especially as pertains to political influence buying, reflect the increasing change in union orientation from economic rent seeking to political rent seeking.

Influence Buying, Rent Seeking, and Labor Law: The Shift from Economic Rents to Political Rents

By the start of the 2000s, the union strategies and tropes of earlier successes were overused and shopworn, and unionism was in decline. The rule of labor law had been rewritten as far as complicit regulation and administration could take it, and the uncollected rewards from economic rent sharing in private industries were becoming scarce. Unions were increasingly dependent on government, and it is not difficult to see why. Among the benefits more government brings are a direct increase in the number of government workers, increased probability of legislation favoring organization of the remaining industrial holdouts such as big box stores and mass merchandisers (e.g., Employee Free Choice Act), greater government involvement in wage and work condition settlements favoring unionized workers, more government attention to labor perspectives on legislation peripheral to collective bargaining but which might open up new vistas for union advance (e.g., global warming initiatives, health care reform, immigration reform), and even more pro-labor administration of related labor programs such as prevailing wages, apprenticeship training, or immigration laws.

But the principal benefit to private unions in their maturity is government's willingness to interfere with product markets to either handicap the competitors of unionized firms or industries (import restrictions, buy-American requirements), to ignore or insist upon excessive union costs (prevailing wage laws, union-only project labor agreements), or to stifle competition (no tax breaks for children in charter schools, union-centric licensing)—all of which have the effect of driving up market costs of nonunion alternatives, thus allowing unions to "compete on a level playing field." Almost all of these government-sponsored actions result in increased consumer taxes or increased consumer costs to be transferred first to government, then to unionized firms or industries, and finally to unions. The principal benefit, in short, is government's ability to create unwarranted excess that it is willing to share with unions (political rents).

An example of the greater government involvement that unions are currently seeking is the Employee Free Choice Act, which would allow a union to demand as a matter of right a card-check substitute for the secret ballot election, which would fundamentally change the basis of industrial democracy. Another often overlooked part of the

same bill foresees compulsory interest arbitration that has been described as "a repudiation of the central feature of the Wagner Act" —good faith bargaining to a conclusion acceptable to all parties. This provision would essentially eliminate participation by both employers and workers in collective bargaining, turning the whole matter over to government decisionmaking under the guidance of labor bosses and union leaders (Epstein 2009).

There is no legal impediment to unions using their organizational resources to fund or bolster the campaigns of politicians committed to an agenda that includes passage of such legislation, or of providing other government rents to unions. So long as unions steer clear of violating the various campaign financing laws, they are as free to participate in classic government rent seeking as any other group or individual. And participate they do.

Since 1989, according to the Center for Responsive Politics (www.OpenSecrets.org), unions have contributed over $509 million directly to political campaigns, and that does not consider amounts given through Section 527 organizations, political action committees, or other adjuncts and fronts. Their actual total political spending may be anywhere from 10 to 50 times greater than these direct campaign contributions. The Service Employees International Union, for example, was noted by CRP as having contributed $2.69 million to political campaigns in 2008, but a *Wall Street Journal* article (May 16, 2009) reveals SEIU itself documented spending over $85 million. Andy Stern, president of SEIU, is reported to have taken the union $25 million into debt and used up nearly half of its assets—worth about $30 million—supporting selected political candidates in 2008 alone.

Not only is the amount of dollars unions are willing to devote to politics astounding, so is the proportion of their treasuries they are willing to commit to the purpose. To continue with the SEIU example, one out of every five dollars spent by the SEIU for any purpose in 2008 went to support selected political candidates over and above contributions from members and locals, and even that does not include all the salaries and staff cost of union political operatives and lobbyists. (Other unions noted to have spent large proportions of their total outlays on politics in 2008 include the American Federation of State, County and Municipal Employees, the International Brotherhood of Teamsters, and the United Automobile Workers, who dispensed, respectively, $63 million, $13

million, and $11 million (32 percent, 7 percent, and 4 percent of their total annual budgets). Another *Wall Street Journal* article from before the election (May 20, 2008) reported, "The AFL-CIO has approved a record political budget of $53 million to help fund 200,000 union workers on the street," that the SEIU "intends to pay 2,000 union members the equivalent of their salaries to work on Democratic campaigns," and that "total union political spending may top $1 billion in 2008."

Their expenditures are highly partisan (on average, 94 percent of their contributions go to Democrats), but unions should be perfectly free to spend and to direct their money as they wish, as long as they do not use forced dues directly for the purpose. Some argue, furthermore, that despite the large amounts and the high proportions of organizational resources devoted to influencing elections to favor friends and ideological fellow travelers, unions do no more than any other ordinary government rent seeker. Actually, this is not true. There are several factors that make union political rent seeking more significant than any other's, over and above the fact that no other individuals or interest groups come within an order of magnitude of the level of union support. (The largest—and only—donor by CRP's reckoning to have supported Republicans since 1989 to the same degree that unions supported Democrats is Amway/Alticor Inc., number 87 among the top-100 donors on a list that includes 24 unions overall and 6 of the top 10.)

In Tullock's classic analysis of government rent seeking, rent seeking is economically wasteful but is in large measure self-limiting. Here is the classic analysis in a nutshell:

> Economic theory predicts that the sum total of funds spent to acquire political privilege exceeds the value of those privileges. People hire lobbyists because they know that in so doing they will increase the likelihood that they will be favored in the political process. However, competing firms will compete by hiring their own lobbyists. . . . Adding the money spent by all firms will exceed the value of the rent. The process is difficult for the losers. They spend their resources and receive nothing in return [Garfield 1996].

For example, among CRP's 100 largest contributors to election campaigns (i.e., the largest rent seekers) are both the American Medical Association (number 14 on the list) and the American

Association for Justice (formerly the Trial Lawyers Association, number 5), each seeking government rent sharing whose specifics are very likely to be diametrically opposed. Therefore, the contributions of one or the other are likely to be pure economic waste. Similarly, if two major defense contractors (such as Boeing and General Dynamics, both also on the list) practice rent seeking with respect to the next important weapon system, the contributions of the loser after the contract is let will have been waste. But note that this is not the case with respect to union rent seeking, for three reasons: First, a rent-seeking win for one union is a win for all because unions are specifically designed to have exclusive representation and to be noncompetitive, at least for this sort of thing. Second, seeking government favor is what unions now do for their members to demonstrate their bona fides as leaders. Even if their efforts fail, they can show their members that they attempted something significant on their behalf. Third, companies are the common rivals of unions, but unions are not the common rivals of companies. Therefore, government rent providers make more friends and fewer enemies supporting unions rather than companies.

Another factor is the public-relations disconnect between unions that practice rent seeking and corporations, trade associations, or special-interest groups doing it. Unions are deemed to remain the presumptive spokesman for the working man even while seeking political rents for themselves, and they are excused from the accusations of selfish motivation that routinely are charged to, say, an AT&T or a National Rifle Association.

Yet another factor is that unions are able to supply political candidates with much more efficient access to what it is that political candidates want—warm bodies and votes. Not all members toe the union line, but many recognize the close relationship between their union's (or any union's) success and their own economic prosperity based on the union premium. They vote for union-backed candidates. Unions also support voter registration drives and populist actions that magnify the impact of their rent-seeking expenditures. Finally, unions are also able to provide in-kind support for candidates, and not just for manning phone banks. Increasingly they deploy highly trained lawyers and political consultants to be behind-the-scenes functionaries in campaigns and even after candidates are elected. These are among the reasons why union political rent seeking is tremendously more effective that that of any competing or opposing organization.

A central tenet of public choice theory is that all individuals, whether in the public sector or the private sector, act in their own self-interest. "Politicians and bureaucrats, therefore, can be expected to allocate the taxpayers' dollars in ways that benefit them personally. In effect, politicians view social programs as a way of directing political benefits to themselves, often regardless of whether the intended beneficiaries of the programs are helped" (Bennett and DiLorenzo 1985: iv). Under this theory, it could be said that politicians and bureaucrats themselves are rent seekers, seeking organizational rents from the unions and other interests that seek political rents from them—a symbiotic relationship based on corruption.

Looking back on the many rent exchanges that have occurred during and since the election of 2008, one sees on the one hand rent-seeking expenditures by unions of upwards of $1 billion by some estimates; on the other hand one sees dozens of examples of rent-sharing payouts to unions within the first few months after inauguration—including rescinding of four Bush anti-union executive orders and issuing two pro-union ones; the Lilly Ledbetter law; the 35 percent tariff on tires imported from China; the scrapping of the Mexican-truck experiment; the buy-American provisions in the $787 billion bailout package; the dropped plans for free-trade agreements with Panama, Colombia, and South Korea; the preferential treatment of unions in the GM and Chrysler bailout deals; the changes in voting rules under the Railway Labor Act elections favoring unions; the rescinding of the more vigorous reporting requirement under LMRDA implemented in 2004; the muzzling of employer free speech during union elections and contract negotiations; the appointment of dozens of vocal union activists to putatively neutral jobs, commissions, and boards; and the fact that Andy Stern (SEIU), Richard Trumka (AFL-CIO) and John Sweeney (AFL-CIO) have been among the most frequently entertained guests at the White House. This much of what appears to be a quid pro quo raises questions of whether there can be any way to stop or divert substantive union control over the economic activities of the entire country. If unions are successful in perfecting political rent seeking to the degree that they formerly perfected economic rent sharing they will be in the position of being able to alter the rule of law and write their own rewards without restraint by competition or economics. They may be there already.

References

Bellante, D.; Denholm, D.; and Osorio, I. (2009) "Vallejo con Dios: Why Public Sector Unionism Is a Bad Deal for Taxpayers and Representative Government." Cato Institute *Policy Analysis* No. 645 (September).

Bennett, J. T., and DiLorenzo, T. J. (1985) *Destroying Democracy: How Government Funds Partisan Politics*. Washington: Cato Institute.

Carlton, F. T. (1920) *The History and Problems of Organized Labor.* Revised ed. Boston: D. C. Heath.

Daykin, W. (1950) "Origin and Function of Labor Legislation." *Labor Law Journal* 1 (10): 775–82.

Epstein, R. A. (2009) "The Ominous Employee Free Choice Act." *AllBusiness* (1 September). Available at www.allbusiness.com/government.

Fitch, R. (2006) *Solidarity for Sale.* New York: Public Affairs.

Garfield, R. (1996) "Rent Seeking Hobbles Economic Growth." *Joint Economic Committee Report.* Available at www.house.gov/jec/growth/rentseek.htm.

Heldman, D. C.; Bennett, J. T.; and Johnson, M. (1981) *Deregulating Labor Relations.* Dallas: Fisher Institute.

Hoxie, R. F. (1921) *Trade Unionism in the United States.* New York: Appleton-Century.

Hutchinson, J. (1970) *The Imperfect Union.* New York: E.P. Dutton.

Jacobs, J. B. (2006) *Mobsters, Unions, and the Feds.* New York: New York University Press.

Leef, G. C. (2005) *Free Choice for Workers.* Ottawa, Ill.: Jameson Books.

Lester, R. A. (1958) *As Unions Mature*. Princeton, N.J.: Princeton University Press.

Reynolds, L. G. (1959) *Labor Economics and Labor Relations*. Englewood Cliffs, N.J.: Prentice-Hall.

Reynolds, M. (2009) "A History of Labor Unions from Colonial Times to 2009." *Mises Daily*. Available at www.misis.org/story/3553.

Sowell, T. (2007) *A Conflict of Visions*. New York: Basic Books.

Thieblot, A. J., and Haggard, T. (1983) *Union Violence: The Record and the Response by Courts, Legislatures, and the NLRB.* Philadelphia: Industrial Research Unit, University of Pennsylvania.

Thieblot, A. J., and Northrup, H. R. (1999). *Union Violence: The Record and the Response by Courts, Legislatures, and the NLRB.* 2nd ed. Fairfax, Va.: John M. Olin Institute, George Mason University.

Thieblot, A. J. (2006) "Perspectives on Union Corruption: Lessons from the Databases." *Journal of Labor Research* 27(4): 513–36.

Tullock, G. (1967) "The Welfare Costs of Tariffs, Monopolies and Theft." *Western Economic Journal* 5: 224–32.

_____ (1998) *The Economics of Special Privilege and Rent Seeking.* Boston: Kluwer Academic Publishers.