

UNION ETHICS TRAINING: BUILDING THE LEGITIMACY AND EFFECTIVENESS OF ORGANIZED LABOR

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This essay argues that the implementation of serious ethics training at all levels of labor unions will significantly contribute to union effectiveness by enhancing union legitimacy—understood as an amalgam of legal, pragmatic, and moral legitimacy—and by paving the way to stable recognition of the labor movement as an integral part of American society, necessary to economic prosperity and the realization of fundamental American moral and social values. It proceeds from an examination of how several labor campaigns have been enhanced in effectiveness by stressing concerns with professional responsibilities to the public, and broadly shared moral values. The concept of legitimacy developed in these contexts by Chaisen and Bigelow is expanded to include the internal operations of unions with emphasis on implementing pervasive democratic principles and introducing a broad concept of fiduciary responsibility to activists and leaders at all levels, which encompasses but surpasses the legal concept.

Introduction

All of our divided labor movement seeks the same thing: greater union effectiveness. This practical goal, however, is itself justified only if it is a means by which workers secure a better life, a fuller share, more dignity, and more self-determination. These are *moral goals*, consistent with the most fundamental American values.¹

The meaning and requisites of union effectiveness are currently under intense scrutiny and this essay does not pretend to propose a complete analysis or suggest a decisive course of action. Yet the current economic and political circumstances under which the inquiry takes place—primarily accelerating globalization and outsourcing, the global “war on terror” and a capitalist ideology out of control—profoundly affects any useful concept of union effectiveness. They affect the prospects of all labor organizations, even those that are among the most “business unionist” in orientation and function.² Realization of union effectiveness and of its ultimate objectives therefore require power beyond individual workplaces. They require industrial power, legislative power, power to affect and mold international trade policies, and power to remake public conceptions of unions so that they are seen as legitimate representatives of all working people.

Union effectiveness also requires union legitimacy both in union objectives and methods of operation. Legitimacy, this essay contends, is most consistently achieved and maintained by compliance with a set of ethical principles that are made part of the training and education of every union actor and activist.³

Union ethics training is understood as training in a broad code of ethics that bears many resemblances to professional codes of ethics, in structure and function. It relies more heavily than most traditional ethics codes on inspiration, and on the concrete realization of aspirational principles, than on the sort of statute-like codes characteristic of professions like the law.

Union ethics training is only one element of ongoing efforts throughout the labor movement and the labor studies community to reestablish the socially valuable, if not essential, place of unions in American culture and to create public understanding of the values inherent in unionism and their centrality among traditional American values.

Union ethics training, of course, must be more than window dressing. Without the thorough commitment of union leaders to union ethics principles and training, and the full understanding of these principles by union rank and file, the vital role of unions in American society and labor's moral legitimacy are merely theoretical and prospective. Worse, the enunciation of union principles becomes deception and manipulation, a source of vulnerability exploited by the opponents of labor.

Forms and Constituencies of Legitimacy

To early nineteenth-century workers who joined together to better their working conditions, and so their lives, there was undoubtedly no problem of legitimacy. They were weak as individuals, stronger acting together from a shared need to relieve shared deprivations. Family, close friends, and community understood the necessity of these actions.

But the larger society and the courts did not. Understood as conspiracies to harm business, and as undermining the sanctity of contract and the ideal of individualized pursuits, any rights or recognition enjoyed by workers who would join together in labor organizations were begrudging and circumscribed.

With the passage of early twentieth-century labor legislation, specifically, the Norris-LaGuardia Act in 1932 and the Wagner Act in 1935, unions were given legal legitimacy and collective action was given legal protection.

Pragmatic and Moral Legitimacy

Practical unionists care about legitimacy primarily as it effectively advances union goals. Viewed as a conglomerate, the unions' goal is to improve the quality of life of workers. Their main focus is to alter the structure of the labor-management relationship so that workers have the means and opportunity to live better lives, and so that workers are accorded the respect and consideration that is the right of every individual.

To do this, unions must extend their power by attracting new members through organizing, by attracting needed public and community support, by maintaining and strengthening membership commitment and voluntary participation, and by political involvement where necessary.

In a profound and compelling examination of the various concepts of legitimacy, Chaison and Bigelow⁴ argue that “pragmatic legitimacy,” the ability to address and meet the needs and advance the interests of particular groups of workers, is well served by *moral legitimacy*, which conceives union activity in terms of a broader, morally justified purpose.

The examples which are developed are worth close attention:

- The UPS strike in 1997, which translated the struggle into one representative of and for the benefit of all part-time workers;
- The organizing campaign at Harvard university, which addressed both the terms and conditions of employment of Harvard’s clerical and technical workers, and their values, arguing that the union would “improve Harvard as an education and research institution,”⁵ and would “give workers access, for the first time to the decision making processes at the university.” (Citations omitted);⁶
- The campaign against NAFTA, which positioned the participating unions as defenders of all American workers, and as proponents of fair and workable trade policies;
- The campaign of the Massachusetts nurses, which joined working conditions and threats to patient care to arouse the public and garner the support of both the public and of nurses who saw themselves first as professional care givers and only second, as workers.⁷

In both the anti-NAFTA and nurses’ campaigns, the unions “managed legitimacy by identifying existing processes and goals with widely shared values and norms.”⁸

In each case, the pragmatic legitimacy of the unions’ efforts was immeasurably assisted by the moral legitimacy of the campaigns.

Moral and Cognitive Legitimacy

Pragmatic legitimacy, as a way to enlist membership support and to recruit new members is, however, precarious at best. It can be lost as easily as it can be gained, and loyalty to the union or interest in joining it on this basis can dissipate with a failed campaign or two. Moral legitimacy will create broader support and a stronger commitment to the union, which may survive failures of pragmatic legitimacy.

The highest form of legitimacy, what Bigelow and Chaison, after Mark Suchman⁹ call “cognitive legitimacy”, is earned only by those institutions believed to be necessarily “there,” whose existence and necessity is unquestioned. Schools

and banks are central examples. Cognitive legitimacy will allow an organization or institution to weather storms that would topple temporary or occasional losses of pragmatic or moral legitimacy. The authors do not believe that unions do or can have such cognitive legitimacy. This may not be so, as evidenced by the more institutionalized status of Unions in some European countries.

Legal Legitimacy

Legal legitimacy is arguably an important component of both pragmatic and moral legitimacy. To the extent that the law legitimizes various union activities, such as organizing and collective bargaining, strikes, and arbitration, it creates a structure that becomes part of the social and political landscape, and enables the union to accomplish some of its goals. To the extent that the behavior of unions and their officers and agents comply with the law, unions avoid the moral condemnation of friends and enemies alike, and divest enemies of an intuitive public relations weapon in both organizing and political contexts.

As Levine notes in an interesting philosophical analysis of "The Legitimacy of Labor Unions,"¹⁰ Federal law recognizes a right to join unions. In requiring that certain conditions be met before a labor organization becomes the representative of a group of workers,¹¹ federal law also defines which unions are legitimately representative of specific groups of workers and entitled to make negotiating demands of employers. The legitimacy of negotiating demands and the means for making those demands are also a part of labor law. Thus, for example, if a subject of bargaining of bargaining is permissive, it may not be demanded by force of economic action. If a bargaining issue is illegal, it may not be demanded at all. If an otherwise proper demand is made improperly, as by secondary action undertaken by unions covered by the Labor Management Relations Act, then the union's actions are no longer "legitimate" in this sense of legally sanctioned.

The usefulness of legal legitimacy is limited, however. It enables unionists to claim that a recalcitrant employer is "violating the law" when not negotiating with the representative of his employees, or when otherwise violating employees' Section 7 rights. It enables a willing employer to definitively know which labor organization he must talk with when competing unions vie for representational status. And certainly legal legitimacy will usually eliminate some of the more obviously brutal weapons historically used by employers against workers and their organizations: Pinkertons, State police, federal troops.

But without further appreciation of a union's legitimacy in speaking for basic human rights and for a fair distribution of the goods workers produce, such violations of labor law do not create indignation in any but the most directly affected. These legal violations do not ever compel the wrongdoers to resign in shame from their positions. They are never a basis for claims that those responsible have breached their fiduciary duty to the business.

The downside of legal legitimacy is that labor's opponents would limit further the scope of union activity to what is *specifically provided* for by law¹², or they would attempt to scale back the legal sanction so as to make unions less

effective in even this narrow range. The other downside is that workers may come to believe that their organizations are actually legally protected, that the law is the only source of legitimacy, and that it is only within the law's structure that unions will advance.

In fact, the law expressly defines only a narrow swath of permissible union activity. Interunion activity, alliances, and pledges are regulated only to a limited extent, as in the LMRA's provision for expedited settlement of jurisdictional controversies,¹³ and that Act's prohibition of secondary activity.¹⁴

Legal Legitimacy and Internal Union Operations

Legal legitimacy is also required in Unions' internal operations. Initially, legal regulation of these operations derived from a loss of moral legitimacy in the organization's treatment of its members and the nonmembers it represents. Specifically, legal requirements of democratic procedures, member free speech and full electoral participation, nondiscrimination, and financial accountability, contained in the Labor Management Reporting and Disclosure Act of 1959 and in judicially created principles of fair representation, resulted from documented abuses. These abuses were not pervasive, but neither were they isolated incidents. They were sufficiently common that the broader polity, perhaps with encouragement from Labor's enemies, found further legal regulation necessary.

Notwithstanding the importance of union autonomy and the diversion of member dues to legal compliance with documentary requirements, much of what the LRMDA and the Duty of Fair Representation demand as partially constitutive of labor organizations' (legal) legitimacy, is also necessary, I would argue, for moral legitimacy.

Moral legitimacy is not solely a function of the ends sought by labor organizations, but of the means used as well. The exercise of collective power, derived from the strength of numbers, from accumulated dues and political influence, is not morally justified—to members, to those who would be members, or to the public—solely by virtue of the ends sought or achieved.¹⁵

Legal and Moral Legitimacy in Internal Union Operations: The Role of Ethics Training

The overarching goal of union ethics training would be to teach activists, elected leaders and staff how to integrate principles of democracy, fiduciary duty, fair representation, and training of new activists into all their union activities. Its ultimate guiding principle would be to engender a personal understanding of the uniquely important, vital role of unions in benefiting all working men and women, in strengthening America, and realizing American values.

Although individual unions and their locals act properly in representing the interests of particular groups of workers, this must be understood in a broader context, where mandates to realize democracy, fair representation, fiduciary

duty, and member activation are recognized alongside those to organize, act in solidarity with other workers, and promote unionism as an essential and beneficial feature of American society.

Even the more limited objectives of “business unionism” are better attained in the context of broader goals, affiliations, and perspectives—especially in light of globalization and a hostile administration. For this reason business unionism in its most rigorous forms must be left behind. All unions will benefit from the acknowledgment of the moral legitimacy and social and economic necessity of unions, both in their narrower struggles and in the broader efforts that create frameworks for those narrow struggles, such as labor legislation, trade regulation, and public support.

Ethics training could be conducted at all levels of union organization, as part of all functional training, including grievance representation, organizing, negotiating, mobilization, union administration, and community outreach. It could also be offered as stand alone seminars for officers and activists at all levels.

Ethics training would increase obedience to the laws that provide minimum standards of fiduciary responsibility, financial accountability, democracy, free speech and member involvement, fair representation, and nondiscrimination among represented workers. Compliance with these laws is necessary for a number of reasons. First, most of these laws—notwithstanding efforts of the enemies of labor to make them oppressive and intrusive—are aimed at making labor organizations more democratic and representative institutions.¹⁶ They are aimed also at preventing what might be euphemistically called “conflicts of interest” experienced by labor leaders who might choose personal benefit over service to the union and its membership. Second, these are so often bare minimums that should not be subject to debate. Lastly, exposure of the union to legal penalties and adverse publicity based on corruption or malfeasance should be avoided in almost all circumstances.

Ethics training would promote legal behavior by placing it in an ethical context, rather than an externally imposed coercive one. The ethical context itself, moreover, would derive not from legal requirements, but from the shared objectives of unionists to provide for themselves and their fellow and sister workers better working and nonworking lives, more autonomy, more respect.¹⁷ Fiduciary duties would not be merely burdensome legal requirements, a list of steps to “CYA.” They would be expanded in content well beyond the law and would be understood as responsibilities and privileges of *service*, providing at the same time opportunities for personal growth, development, and prestige.

Ethics training, as it moves beyond promoting legal compliance, would also aspire to perfect democratic processes, to expand real leadership opportunities to members of every ethnic, racial, religious group and to every sex and gender, to acknowledge the interdependence of all representative labor organizations, and to increase working relationships with progressive community groups.

Ethics training, as it reflexively acknowledges its goals of moral and cognitive legitimacy, will teach that all work contributes importantly to the well-being of the broader society, and that the well-being of those workers, and the quality

of their working conditions is a vital component of providing quality services and products.¹⁸

To the extent these values of diligent and honest representation, democracy, nondiscrimination, and a recognition of the public interest, become functional principles within the union, the union gains legitimacy as an institution, and consequently, becomes more effective.

Why Ethics Education Is Important for Unionists

Choices arise in all union work, at all levels.¹⁹ These choices are not solely of an instrumental nature, where a unionist decides which of several courses will most effectively achieve the appointed end. No choice that affects the interests and needs of people ever really is. Diverse values, conflicting rights and expectations, multiple objectives, and significant public relations concerns together generate dilemmas as to the wisest course.

Developing skills, instincts, and understandings that enable unionists to recognize and appropriately weigh these will make them better decision makers in their roles as representatives, leaders, persuaders, and planners.

Ethics training is a means by which such understanding and skills are developed. It does not replace, but rather builds upon, training in collective bargaining, organizing, and mobilizing. Ethics training is practical, not philosophical; ethical principles are an inherent part of decision making.

Nonetheless, objections will derive from a belief that ethics training is, at best, window dressing for international leaders and staff, and at worst, harmful to unified action. But leadership must thoughtfully consider their objectives and principles. They must act with insight, understanding, care, and integrity. Leadership within a union, even the most bureaucratically structured, is dispersed throughout the organization, to the locals, to committees, to stewards, to internal and external organizers and mobilizers. The circumstances under which activists at every level fulfill their “institutional tasks” are too complex, shifting, and immersed in human idiosyncrasy, not to require judgment and character for their performance. To this end, ethics training at the level of staff, local leadership, unit activists, and even inactive membership is valuable.

Properly implemented, ethics training will further a number of Labor’s broader objectives. For example, views about unions held by the public, potential members, legislators, and even active members are less favorable because of the dishonesties of a few labor leaders and the self-seeking or negligence of a few others. The serious and effective implementation of ethics training based on standards adopted by individual unions will work to allay these concerns. This translates to more effective organizing, less intrusive legislation, more public support of union activities, and more involvement of individual members.

This must not be mere window dressing. Unlike the public relations concerns of “Corporate Ethics Officers,” the ethical principles that should guide unionists at all levels coincide with the essential functions, goals, and justification

of unions. Moreover, although as Americans, union activists have essentially the same psychologies and ego-needs of the most ambitious of corporate players, they begin with a special subset of values and goals: activists abhor abuse and injustice; they are willing to speak up and stand up for a brother or sister having problems; they are willing to set aside personal comfort to work for something humane and right. These views, feelings, and motivations are present to greater or lesser degrees in union activists, but they are a real base upon which to build a commitment to realizing ethical principles in union activities.

Another union objective, articulated but often not effectively pursued, is the attraction and development of new leaders and activists. Some members who want to lead are paid; most are not. We are a movement primarily of volunteers. Unions need activists to serve on committees, to do research and writing, to mobilize, to organize. They need activists to provide ideas, energy, and talents, to lead, and to educate others to the goals and importance of the labor movement.

Ethics training will include principles that will advance this vital goal: the development of the union's human resources. This requires respect, fairness, opportunity, and, ideally, the nurturing of the individual skills and talents of every member, every activist, and every staff member. It also requires that there be democratic decision-making procedures that conclude when united action is essential.

Lastly, ethics training can better assure compliance with those laws that are intended to regulate internal union practices, some of which—like those that enforce democracy, financial accountability, and the duty of fair representation—are not just legal intrusions on union autonomy, but also codify appropriate principles and restraints on unionists. If union activists embrace and understand the validity of these principles in carrying out their union work, they are less likely to be tempted to transgress or test the limits of the law to redefine these duties. This will not preclude legal actions against the union, which will have to be defended, but it will prevent many of them.

Principles of Union Ethics Training

The method of ethics training is to pose questions that get participants thinking consciously and concretely about values, about the purpose of unions, and about their own motivations for involvement. This creates a framework for extracting and discussing principles of democracy, fairness, fair representation, solidarity, and fiduciary duty. It establishes a *personal reference* for discussions of how best to recruit and keep members and activists—who may be similar or dissimilar in their motivations.

One goal of ethics training is to foster an understanding of such ethical and quasi-legal concepts as democracy, fairness, fair representation, solidarity, and fiduciary duty, so as to develop the ability to evaluate complex factual situations with a view to realizing these concepts.

Democracy

Notwithstanding the mandatory nature of membership when a union shop clause is in effect, voluntary commitment to the union's goals and active support of its initiatives is necessary for success. Even a strike, which requires the most united, coordinated action must be made the members' own purpose or it cannot succeed.

Loyalty to the organization and its members is a better way to enlist member creativity and sacrifice than the threat of sanctions. The opportunity to debate policy and suggest strategy, to have one's views addressed and considered, and then to have the course fairly decided by democratic procedures fosters such loyalty.

Democratic procedures and an institutional commitment to democratic principles also create legitimacy for union actions, to the extent these are undertaken on the basis of members' consideration of shared values and purposes, and not merely the personal or political needs and advantages of incumbent leaders.

Democratic principles and procedures, when viewed from outside the union, realize the effectiveness of membership. They assure potential members that the organization becomes theirs upon joining, and that they have the opportunity to persuade their sisters and brothers of the importance of their needs or the validity of their views.

From the perspective of the larger community, democracy constitutes the union as a true representative of its members, as the law requires, and as the political ideals we share as a nation recommend and applaud. Even in America, the bastion of unfettered individualism, democratic decision-making procedures, fairly and honestly undertaken, can properly oblige individuals to goals that broadly benefit larger groups.

Union democracy can thus operate to increase member involvement, organize new members, and forestall many public criticisms of labor and its actions.

Unions may differ, for historical, structural, or other reasons, as to which decisions should be submitted to membership vote. Clearly, unions are and can only be representative democracies with respect to many of their functions. Feasibility, expense, and logic will dictate the use of representatives who are appointed as well as elected. But the goals of member involvement and the need to assure that those representatives are fully compliant fiduciaries must never be forgotten.

A "culture of democracy" must be a practical goal in every union. To engage in effective united action and to build solidarity in pursuit of union goals, the separation derived from personal and ideological differences must be removed. Democratic procedures that are, and are perceived to be, fair and open are necessary if this culture is to develop, as is the use of these procedures to select leaders and determine the broad outlines of union policy.

Unions are not and should not become "debating societies," transfixed by procedural and conceptual complexities. Their mission is to act as effective agents of their members, and for this, real democracy is essential.²⁰

Fairness, Fair Representation, and Fiduciary Duty

The duty of fair representation or “DFR” has hung over unionists like a hammer, suggesting the possibility of legal action should some especially critical and demanding constituent not be satisfied. To the extent that the DFR has become a legally defined concept and the main source of constituent action against union representatives, union lawyers must certainly mount defenses and warn stewards and elected and appointed union representatives about how to prevent such actions—all defensively formulated. Further debasing the duty, the discussion of the DFR is often connected in training sessions to the begrudging caution that nonunion members who are within the represented bargaining unit must be equally represented in most contexts. Thus, the “free-rider” resentment is joined to discussions of the DFR.

The Duty of Fair Representation, however, is a bare minimum that is rarely violated. The legally recognized DFR requires only fair, but not necessarily competent, committed, careful, or loyal representation. It should be expanded in the consciousness of unionists to include these stronger obligations as part of ethical standards communicated to new and seasoned activists by leadership and education departments. This will not only increase the likelihood that the legal requirements are met, but it will have positive consequences for organizing, mobilizing, and maintaining membership support. More fundamentally, these expanded representational duties—ethically but not legally mandated—are justified in themselves as appropriate standards of behavior for unionists.

To the extent that every individual has, by choice or law, given the union the authority to bargain, settle grievances, and administer a binding collective agreement, this authority must be exercised in the name and in the interest of those members, each and all. Any concept of fiduciary responsibility will include duties of good faith, care, and the exercise of prudent judgment—as if the fiduciary were handling its own affairs.

The law requires fair representation, diversely interpreted from one Federal Circuit Court to another. It imposes express fiduciary duties in connection with the reporting and disclosure requirements of the Labor Management Reporting and Disclosure Act.²¹ The letter of the law should be regarded as an absolute minimum, not because the sources of the rules are worthy of respect, but because it is a duty of union actors to protect the institutions from the legal, public relations, and monetary sanctions of illegalities. And although it would have been preferable if the legal mandates had instead been instituted by unions themselves as internal regulations, they have been acknowledged as broadly and appropriately restricting union behavior. They are therefore part of the public perception of union behavior.

An extension of these “legal” obligations is also called for because cutting corners or “merely” strict compliance is prone to error and risk-taking.

The probable consequences of the recognition of a broader concept of fair representation, as an ethical duty, also argue for its obserrance:

- Members will support their unions more fully, when their representatives are more dedicated to their individual welfare, and are more honest and responsive to their needs.
- Nonmembers will be drawn to join if they believe that unions will do as they promise.
- Organizing will gain in integrity if members are convinced to join an organization that is genuinely committed to them, and respectful of their persons and their needs.
- Corruption for individual gain will be less likely and more severely sanctioned internally if the union by deeds and words functions on a higher moral plane.
- By strengthening their judgment and decision-making ability, and by emphasizing the importance and worthiness of their endeavors, activists will find greater rewards in their work.
- Public relations initiatives that emphasize these efforts will help gain the broader public understanding and support that Labor so vitally needs.

Inculcating a more precise understanding and acceptance of their role as fiduciaries will go a long way in developing effective union activists. It is fiduciary responsibility that is undertaken by the NYS American Federation of Labor–Congress of Industrial Organizations (AFL–CIO) when it says: “We have an obligation to our members to keep our integrity as a movement above reproach. We have a responsibility to carry out our duties for the benefit of those we represent, and ONLY for the benefit of those we represent.”

Fiduciary duty is “the highest standard of duty implied by law.”²² A fiduciary is one in whom trust and confidence is placed, and of whom “scrupulous good faith and candor” is required. A person acting in a fiduciary capacity deals in business or property that is “not his own, or for his own benefit, but for the benefit of another,”²³ Fiduciary duty is the duty to act for someone else’s benefit, while subordinating one’s personal interests to that of the other person.

The full concept of a fiduciary, derived from agency law and found in diverse legal contexts, such as corporate law and partnership law, and in many established professional codes, cannot be transplanted into the law governing union representation. In addition to the importance of minimizing legal regulation of union activities,²⁴ the unusual agency status of unions and of individual representatives makes a complete, detailed list of legally enforceable fiduciary duties infeasible and undesirable.

At the level of international representation, diverse and often conflicting union concerns and objectives confront leadership. Even where only one of these, such as collective bargaining, is at issue, differences among represented constituencies may necessitate choices and compromise. No derivative of agency law principles can direct these choices. Recognition of the claim of every

member and of every constituency and an ability to objectively, intelligently and empathetically evaluate these claims is what is called for.

Difficulties with answering the more fundamental questions—Who are fiduciaries within the labor movement? *To whom* are their fiduciary duties owed? What is the source, and what are the contours of these duties?—argue against any complete delineation of strict duties, and even more strongly against the wisdom of legal regulation and remedy.

There are some strict fiduciary duties that are imposed by law. Section 501(a)²⁵ of the Labor Management Reporting and Disclosure Act (LMRDA) expressly defines some fiduciary duties to which specific union officers and agents are bound. It can be argued, however, that the principles underlying many of the LMRDA's mandates define fiduciary duties for those in a position to implement them or to prevent their violation, for example, those relating to election procedures and free speech guarantees.

By assuring that the union and its agents comply with mandatory law, those agents are protecting the union. On most counts, those requirements are also ethically warranted and vital to the moral, political, and economic mission of labor unions.

In addition to LMRDA requirements, the unobjectionable functional assignment of responsibilities within union constitutions and bylaws lay out specific duties owed to the organization or its members by designated officers or committee members.

Behind such strict fiduciary requirements are some guiding generalizations: a union that has come to exclusively represent the members of particular bargaining units is an agent for those bargaining unit members. This is straightforward; the undertaking is to represent the members of the unit—whether they are union members or not—as their exclusive collective bargaining agent, for the purposes of negotiating wages, hours, terms and conditions of employment. Moreover, the union acts only through its own agents, who carry out these duties.

But here clarity ends. In negotiations, for example, the union, as fiduciary, must be faithful, diligent, and careful in negotiation and administration of agreements that encompass wages, hours, terms, and conditions. But where does substantive direction come from? Does it come from the expertise of elected representatives or from the expressed directives of membership? Are union negotiators and administrators bound to advance the interests of their constituents or rather to work toward what the constituency demand of them, if these diverge? Certainly, where the expressed directives cannot all be complied with, leadership must make decisions with a view to what is best for the entire group. If the elected leader disagrees with the members, she is bound to honestly explain her reasons and argue for her position. And then, in all but the most extreme of circumstances, she must abide by the wishes of the membership as expressed to her.²⁶

As an institution, the union itself is owed fiduciary duties. To the extent that the union, as agent, exercises the collective strength of bargaining unit members for their benefit, then a “necessary and proper” means to fulfilling the union’s

fiduciary's responsibilities would be to maintain union strength and effectiveness. This would include negotiating union security clauses and establishing interunion affiliations and support.

Fiduciary Duties as a Function of Union Role

Balances and priorities must be effected. Are fiduciary duties equal—or even competing—between those owed the union as an institution, the bargaining unit members, and the individual elected union leaders? The answer may be a function of the institutional role of a particular fiduciary. Thus, for example, the duties owed by a volunteer steward or local committee person may be substantially different from those owed by an international staff representative.

Paid union employees have duties that stem from law—from agency law and labor law, as well as from the union constitution. But are fiduciary duties, especially the duty of loyalty, owed primarily to the members, to the union, or to elected officials? Normally, this should not be a problem if all goes well.

Appointed staff performs tasks assigned by the elected officers who are the central repositories of fiduciary duties to the members. As such, they may well be properly subject to the directives of elected political leaders.²⁷

Yet staff is often on their own to attend to complex situations where they must make decisions and provide advice and assistance to members. If there is fundamental conflict between the two functions, ethical dilemmas arise.

It is in this context that ethical training—within particular unions—would be beneficial in sharpening instincts and reassuring both elected leadership and staff of their appropriate, reasonable, and permissible roles and options.

It is here also that the resolution of the apparent pull between conceiving the union primarily as a “democratic institution” or a disciplined, action-oriented organization shifts toward the latter. Staff is paid to carry out the mandates of officers, and, where their assigned functions require, of the members.

The extent and nature of fiduciary duties may differ, depending on whether the fiduciary is elected or appointed, and on the fiduciary's place in the organization. For example, both international presidents and local and unit leaders should promote democratic participation in the union. On the local level, this may call for maximum information, training, and a direct responsibility in developing and encouraging volunteer activists. A commitment to union democracy on the part of international presidents, however, might require support of direct election of officers or the funding or staffing of these local training and education programs at the union's lower reaches.

Stewards and business agents are fiduciaries who have the most direct and intimate contact with members, and directly affect the job security of individuals. Consequently, they will have special duties of candor, integrity, and fairness. The business agent who can determine whether a man works or a woman faces another member's sexual harassment must be especially diligent.

Perhaps the most difficult of fiduciary duties falls to the volunteer steward. The steward is the face of the union in the office, on the shop floor, and at the

construction site. She passes information in both directions; she encourages members to know and assert their rights and to give time to the union. In an open shop, she is often the one who approaches prospective members. What she does in processing grievances reflects on one of the union's most basic functions: its representation of the individual in the contest with management over individual rights and job prospects.

The power to do good is great, as is the power to harm. Sometimes all that is required is good and an easy manner; sometimes confrontation is necessary, together with a full knowledge of the applicable laws, regulations, and contract provisions. It is the union's responsibility to assure that these agents are competent, and that they have the information they need, the understanding of where to go for available technical or legal assistance, and the ability to make proper decisions.

If labor unions do not honestly and diligently represent their members, organizing campaigns are a fraud. If frontline agents are left unprepared, unmotivated, or unarmed, then a burden is placed upon these volunteers that they are not equipped for.

A Professional Ethics Code for Unions

There is no lack of vision in union constitutions and bylaws, and in the occasional broadly conceived "codes of ethical practices" of labor organizations. Many of these propose and commit to worthy practical objectives. Constitutions and bylaws and more narrowly conceived ethics codes also contain rigid prescriptions and mandates on the behavior of union officials and representatives, with respect to self-dealing, handling of union finances, and other official matters.

Union ethics codes should conjoin the two in such a way as to enable unionists to realize the aspirational principles in their everyday work and to consult the more rigid codes when the intuitive mandates of honesty and responsibility must be realized in complex circumstances.

Many unions have recognized aspirational goals or codified the responsibilities of financial and other officers. Some have adopted "codes of ethics" aimed at assuring that legal regulations are complied with and at keeping government prosecutors at bay.

These efforts are worthy. Their limited scope may derive from the nature of the "regulated beast," that is, autonomous, politically contentious labor organizations, with diverse histories, constituencies, and objectives.

Most union activists may not think of themselves as members of a profession, as do accountants, nurses, therapists, lawyers, and teachers. Other than such historically imposed conditions as *not* being a communist or a felon, there is nothing akin to "licensing requirements."

If we look briefly at the purposes, structure, and enforcement mechanisms of professional codes of ethics, however, we can see that some of these are usefully transferable to a set of ethical standards for unions. For example:

1. Most professional ethics codes are grounded on public recognition of a defined profession and on members' regarding themselves as members of that profession. The profession is an aggregate, but it is also an entity that has its own interests and concerns, and its ethical code is, in part, formulated to advance these. Some of these concerns will require the support of legislators. Thus, professional organizations use lobbyists, who will explain the professions' needs in terms of the interests of its constituents or of the public.²⁸

Application to the labor movement is obvious: ethical codes of individual unions should reflect understanding that each union and each "practitioner" within the union affects and is affected by the public perception of unions and union activists; that there must be unified and coordinated efforts to assure the best legislative milieu for union activity and the highest public evaluation of the role of unions within American society.

2. Most professions seek a positive public image. It is important to a profession that its members be regarded as having integrity. And the profession must be seen as beneficial—or at least not harmful—to the broader society. Many professions are reduced in the public's estimation if members lack integrity, cannot be trusted, or otherwise advance their own interests to the detriment of others. This translates into a loss of clients or principals who would use the services of the professionals.

Corruption and misfeasance in the labor movement, as rare as it is, has certainly contributed to the lack of trust of labor unions, by both the public and prospective members.

3. To the extent that the public believes that a profession is vital to the interests of the broader community, professions will gain clout, clientele, and financial and legislative support. Thus, professional codes of ethics will often include provisions that aim at educating consumers or the public to the value of the professions' work.²⁹

Every union should understand the importance of the public perception about the place of labor unions in American society. The projection of a positive labor image through articles, events, studies, and polished advertisements, must be supported by the entire "profession." And within this occupation, integrity, compliance with rules of conduct and a commitment to the public good must be the face shown the public. That the labor movement makes a unique, vital, and broad-based social contribution is the core truth that legitimizes a code of union ethics.

4. A profession gains in public estimation if it sets standards, enforces those standards, and somehow assures the public that a mechanism is in place to assure compliance. Part of the *purpose* of such mechanisms is to avoid direct government regulation. But such mechanisms may also make the professional organization or its certification much like a trademark, guaranteeing quality.

Such an effective ethics code would contain standards of diligent representation, ongoing training, honest organizing, and full compliance with fiduciary duty that would be publicly applied to unions that sought to organize new workers.

5. The codes of ethics of particular professions will, of course, emphasize some principles over others; integrity may be evidenced through some behaviors rather than others. For example, all codes reject conflicts of interest, between the professional's own personal interest and those she serves. Many require continued professional development.³⁰ Some relate the profession's mission to the highest political or moral principles, for example, free speech (journalists),³¹ the rule of law (lawyers),³² the importance and value of public service (public administrators),³³ enhancement of the quality of life, and the dignity and well-being of every individual using health services (healthcare).³⁴

Most professional practitioners, no doubt, believe strongly in these broader purposes, and were drawn to the profession by this connection. Others, while not imagining they were saving the world, or performing some broadly humanistic task, may nonetheless believe that their profession is vital to the realization of other important principles.³⁵

If lofty goals do and should inform any profession, it is that of the union activist. Whether conceiving of himself as merely assuring a living wage to his coworkers, requiring an employer to recognize the needs of single parents for flexibility, or enforcing a zone of privacy for a worker, the union activist is a human rights activist, preserving human dignity, and enabling working men and women to share fairly in the good things his or her labor produces.

6. Most professional organizations, in promoting their ethics codes, stage educational events, provide written materials, journals, or videos, and have committees charged with helping members resolve ethical dilemmas.

These tools are readily accessible to labor. Every training session, on every substantive area of organizing, running elections, steward training, etc., can include a module on the ethical components of the tasks. All journals can include exercises, articles, etc.; all conferences can have a workshop. And every union can have an ethics officer or committee that can be consulted, perhaps confidentially, on ethics issues.

7. Some professions impose discipline on members who do not follow the rules, often in tandem with laws to maintain the integrity of a profession and its commitment to public service. Most, of course, prefer self-regulation. Some, like attorneys, argue that given the work of lawyers, there is inherent danger in government control of their day-to-day activity.³⁶

Enforcement can take the forms of fines, censure, decertification or expulsion by the professional association. These, in turn, will affect how the individual professionals disciplined can gain clients or practice their profession.

Here again, application in the union context is difficult, but essential. The AFL-CIO now has in place a number of rules, especially those dealing with interunion disputes, and has at its disposal the sanctions of censure or expulsion.³⁷ These are also good, as far as they go. What is needed, though, is the ability to affect a union's ability

to organize new workers if the censure or expulsion remedy is applied. For better or worse, the road beyond this is a tightrope of narrow proportions: government or legal intrusion is undesirable; the government should not have the power to effectively “decertify” unions that are expelled or censured. Nor should the AFL–CIO undermine the ability of such “renegade” unions to represent the members it has, any further than what follows from the severing of AFL–CIO affiliation.

If an enforceable set of ethics standards is possible, within the “labor movement” or even within individual labor unions, unions must publicly espouse commitment to a moral mission that Americans can understand and embrace. And they must do all they can to assure the public and prospective members that they will deal appropriately and effectively with those members who lack the integrity to comply with ethical standards.

Clearly, Labor will always need to deal with those whose interests conflict with effective labor organization and representation. This will not change. But unions must remove all obstacles to gaining the support of *the majority of citizens*, and the active involvement of those whose interests are served by joining with us.

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Notes

1. That union effectiveness is the primary or best means for realizing these values is a broad thesis that must be explored elsewhere.
2. Consider, for example, Border Patrol agents, who were, after 9/11, quickly inducted into the war on terror, which became also a war on federal labor unions. Moreover, no union whose members’ jobs are subject to outsourcing is unaffected by globalization policies. No union whose members work in industries that claim competitive pressures from economic transformations can be oblivious to the need for industry-wide competitive protections so that workers are not in competition in the race to the bottom.
3. Legitimacy itself is a multifaceted concept. In section II, below, Levine’s analysis of legal legitimacy and Chaison and Bigelow’s theories of pragmatic, moral and cognitive legitimacy will be used to create the framework into which suggestions about Union Ethics training are made.
4. B. Bigelow and G. Chaison, *Unions and Legitimacy* [2002].
5. *Id.*, p. 43.
6. *Id.* P. 44.
7. *Id.*, pp. 72–86.
8. *Id.*, p. 86.

9. See Suchman, Mark, C., "Managing Legitimacy: Strategic and Institutional Approaches," *Academy of Management Review*, [1995] 20 July: 571–610.
10. Peter Levine, "The Legitimacy of Labor Unions," *Hofstra Labor and Employment Law Manual*, 18:527–571[2001] pp. 527–28.
11. Specifically, a showing of majority support by members of a legitimate bargaining unit and subsequent voluntary recognition, victory in an NLRB sponsored election, or an order to bargain as the result of a successful Unfair Labor Practice charge brought against the employer.
12. For example, there are those who would reduce unions' political influence, by requiring individual members to make voluntary contributions for Union political activities. Expenditure of dues, the argument goes, for anything other than collective bargaining and contract administration is improper.
13. LMRA, Sec. 8(b)(7).
14. Sec. 8(b)(4).
15. Means and ends are not always easy to distinguish. The NAFTA campaign sought to save jobs; its intermediate goal was to defeat NAFTA. The end of supporting the UPS workers was assisted by also having the objective of advancing the goals of all part time workers. The objective of organizing the clerical and technical workers used the means of greater attention to values held by these workers, beyond bread and butter issues. So too, the objective of better health care was both means and end, in the efforts to win better conditions for nurses.
 These are negotiating issues and campaign techniques. To prepare union members for the kinds of campaigns that earn this sort of greater public support, other processes and objectives must be addressed: internal union activity and training.
16. See statement of Clyde W. Summers before the subcommittee on employer-employee relations committee on education and workforce U.S. House of Representatives, at <http://republicans.edlabor.house.gov/archive/hearings/105th/eer/ud5498/summers.htm>.
17. If we consider the codes of ethics of most professionals, we see that this is not so idealistic or unrealistic. Every profession is justified, and justifies itself in terms of its contribution to better lives for those it serves.
18. This argument is of course easier to make about the nursing profession than many others.
19. As one of my students has said, ". . . labor leaders are basically honest and ethical but they can easily become overwhelmed by the volume and details of a given situation. [They] don't . . . often stray from the proper decision if the road is clear." Thus, this essay's proposal is not about "crushing union corruption."
20. Unions do not have—because they cannot have—the mission of "perfecting" the people they represent, making them better citizens, improving their moral fiber, providing and inculcating enjoyment of the higher pleasures of civic action and community connection.
 Objections on these grounds to the fullest possible union democracy are "straw men." It is necessary to gather and cull what is true and what is not, and to realize in practice the balance that is needed for the growth and effectiveness of the labor movement.
21. Labor Management Reporting and Disclosure Act, 29 U.S.C. Chapter 11, subchapter VI, sec. 501.
22. *Blacks Law Dictionary*, p. 625, 6th ed. [Black 1999]
23. *Id.*
24. Legal regulation is undesirable, first, because legislative motivations are so often "mixed," and legislators will undermine legitimate union efforts while apparently espousing indisputable "values." It is also undesirable because the labor movement is and should be a volunteer movement of workers, not of lawyers; the more rigorous and intrusive legal regulation is, the harder it is to recruit and adequately train the army of stewards, organizers, mobilizers and educators that are needed. Finally, excessive legal regulation is undesirable because democratic unions should not give leadership or decision making authority on policy, strategy, or tactics, to its own lawyers. The job of union lawyers is to serve elected union leaders and enable them to avoid the legal pitfalls and traps that might prevent implementation of the leaders' chosen policies, strategies, and tactics.
25. LMRDA, *supra*, n. 2; SEC. 501. (a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions

of the governing bodies adopted there under, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

26. This suggested resolution, of course, is subject to the union's agreed or historically established selection and melding of the frequently inconsistent incidents of direct and representative democracy.
27. Internal politics and individual union traditions may strengthen this presumption and logic—or weaken it. In one union, a regional staff representative was told “Your duty is not to the members; it's not even to the union. It's to [the *International Union president*].”
28. In fact, some organizations contain standards for their lobbyists, e.g., see Guidelines for Association Lobbyists, American Society of Association Executives, pp. 218–19, in Rena A Gorlin, ed., *Codes of Professional Responsibility, Ethics Standards in Business, Health, and Law*, 4th ed. (1999 BNA Books).
29. See, e.g., *Code of Ethics, American Chiropractic Association* in Gorlin, p. 277, “Doctors of Chiropractic should assist in maintaining the integrity, competency and highest standards of the chiropractic profession . . . [They] should promote public confidence in the chiropractic profession.” p. 742, Gorlin, “A priority goal of the professional lobbyist should be to increase public understanding of the process and this objective should be pursued in every possible way—public appearances, media contacts, articles in company and other publications, and contacts in the normal course of everyday life.” Code of Ethics/Guidelines for Professional Conduct, American League of Lobbyists.; Statement of Principles of the American Society of Newspaper Editors, [Gorlin, p. 195], says of the principles that they are “intended to preserve, protect and strengthen the bond of trust and respect between American journalists and the American people, a bond that is essential to sustain the grant of freedom entrusted to both by the nation's founders.”
30. See, e.g., Code of Professional Conduct, *American Institute of Certified Public Accountants* (Gorlin, p. 12); Standards of Ethical Conduct for Practitioners of Management Accounting and Financial Management, [Gorlin, p. 23]; Code of Professional Standards for the Practice of Public Relations, [Gorlin, p. 5] Public Relations Society of America; Model Rules of Professional Conduct, American Bar Association [Gorlin, p. 630]; Code of Ethics of Clinical Social Work Federation. [Gorlin, p. 520]
31. Society of Professional Journalists, [Gorlin, pp. 196–201]; some, like the Public Relations Society of America, recognize that the profession itself depends upon “the fundamental value and dignity of the individual . . . the free exercise of human rights, especially freedom of speech, freedom of assembly, and freedom of the press . . .” [Gorlin, p. 58].
32. American Bar Association Goals, <http://www.abanet.org/about/goals.html>
33. “We are advocates for greater effectiveness in government—agents of goodwill and professionalism—publishers of democratic journalism at its very best—purveyors of progressive theory and practice and providers of global citizenship. We believe that by embracing new ideas—addressing key public service issues—and promoting change at both the local and international levels, we can enhance the quality of lives worldwide.” http://www.aspanet.org/scriptcontent/index_codeofethics.cfm
34. Code of Ethics, Gorlin, p. 259, American College of Healthcare Executives.
35. For example, “the honesty and transparency of the financial markets” to which competent practitioners of the brokerage trade are essential.
36. Model Rules of Professional Conduct, American Bar Association, [Gorlin, p. 626]. “The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. . . . Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.” <http://www.abanet.org/cpr/mrpc/preamble.html>

An argument might certainly be made that the labor movement shares some of these tasks, and similarly needs independence from most government regulation.

37. See, e.g., Article XX of the AFL-CIO Constitution, <http://www.aflcio.org/aboutaflcio/about/constitution/art20.cfm>

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