A Comparative Study of the Labor Movements and Legislation in the United States and South Korea

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A COMPARATIVE STUDY OF THE
LABOR MOVEMENTS AND LEGISLATION
IN THE UNITED STATES AND SOUTH KOREA

by

Ki Yop Lim

A Thesis
Submitted to the
Faculty of The Graduate College
in partial fulfillment
of the
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Ki Yop Lim
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1972
"Labor, like Israel, has many sorrows."—John L. Lewis
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ABBREVIATIONS

United States

AFL..........................American Federation of Labor
AFL-CIO......................American Federation of Labor and Congress of Industrial Organizations
ARU..........................American Railway Union
CIO..........................Committee of Industrial Organization
COPE..........................Committee on Political Education
LLPE..........................Labor's League for Political Education
NAM..........................National Association of Manufactures
NLB..........................National Labor Board
NLRB..........................National Labor Relations Board
PAC..........................Political Action Committee
UAW..........................United Automobile Workers

South Korea

COPE. (Ch'ong Kyou). Committee on Political Education (Chōngch'i Kyoyuk Uiwŏnhoe)

FKTU (Taehan Noch'ong). Federation of the Korean Trade Unions (Taehan Tongnip Ch'oksŏng Nodong Ch'ong Tongmaeng)

FKTU (Hanguk Noch'ong). Federation of the Korean Trade Unions (Hanguk Nodong Chohap Ch'ong Yŏrnaeng)

FKTU (Hanguk Noryŏn). Federation of the Korean Trade Unions (Hanguk Nodong Chohap Yŏrnaeng)

GCKTU (Chŏn P'yŏng). General Council of the Korean Trade Union (Chosŏn Nodong Chohap Chŏnguk P'yŏngūnhoe)
LCA.........................Labor Committee Act (Nodong Univënhoe Pëp)
LDAA.......................Labor Disputes Adjustment Act (Nodong Chaengüi Chojông Pëp)
LSA.........................Labor Standards Act (Künlo Kijun Pëp)
LUA.........................Labor Union Act (Nodong Chohap Pëp)
MWH.........................Maximum Working Hours (Ch'ego Nodong Sigan)
RCL.........................Regulation of Child Labor (Adong Nodong Pëpkyu)
WCL.........................Wages for Civilian Labor (Ilpan Nodong Imkën)
INTRODUCTION
CHAPTER I

INTRODUCTION

The labor movements in both the United States and South Korea have been largely governed by their environments. Numerous institutional factors, of a social, political and economic nature, as well as the structures of the movements themselves, were important in shaping origins, characteristics, and power relationships in the development of the labor movements. However, the two labor movements in both countries have followed fundamentally different philosophies in their historical progress.

The rise of the industrial factory system in modern societies has produced a distinct labor class and created a situation which required the adjustment of workers to the economic and social demands of industrialization. As the factory system arose the economy took on its contemporary characteristic of specialization of function, and an increasing number of workers were destined to remain "hired hands" throughout their lives. At

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1 Labor unionism exerted as much power as it could in both the economic and political fields, following what Samuel Gompers once characterized as "the line of least resistance." Reed, Louis, The Labor Philosophy of Samuel Gompers. New York: Kennikat Press, 1966. p. 11.

this point, the labor union proved to be a powerful vehicle of the labor movement to provide workers with a shield of protection from the consequences of the new industrialism.

Before the rise of the factory system, there was little need for labor organizations in American society. When agriculture constituted a nation's leading pursuit, almost every individual owned his tools and in effect act as his own employer. This applied not only to agricultural workers but also to small handicraft workers during the early days of the labor movement in the United States.

With the growth of the industrial factory system, however, workers found it increasingly necessary to organize into labor unions, despite the opposition of capital or the employer. These unions frequently sought higher wages, minimum rates, shorter hours, and improved working conditions. The unions fought on both economic and political fronts not only for better wages and hours, but also for improving their status. Each attempt met militant opposition from employers, the courts, and the government, resulting in unfavorable social and economic conditions. Wages, hours, and various working conditions had been matters of

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3 loc. cit., p. 15.
contention between labor and management. It is the totality of the economic environment and growth of the American labor movement.

Throughout the history of the labor movement in South Korea, however, there was no ideological uniformity that has characterized the movement in the United States. The most critical circumstance conditioning the labor movement in pre-liberation Korea was that the Japanese ruled the country with dictatorial power for many decades. Thus the early history of the Korean Labor movement was largely one of a nationalistic struggle against the colonial rule of Japanese imperialism. Unlike the development of the labor union movement in the United States, the evolution of the Korean labor movement has tended to be political rather than economic. It can be said, therefore, that the changes in the economic environment in the United States and in the political environment in South Korea respectively have been the most important factors in shaping the labor movements in these two countries.

In the area of industrial legislation in both America and Korea today, however, the relationship between labor and management are closely regulated by the states. The main function of law is to set the standards of acceptable conduct in society, and in doing

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so it is expected to maintain a strict neutrality between groups. The labor movements thus are generally accepted as a necessary and useful force in liberal pluralist societies, where the activities of the labor unions have been assimilated into the framework of the law. However, in the growing struggle between labor and management, the law intervened in the majority of cases in favor of capital by finding many union activities to be illegal. Although the legal intervention might deal with rights, obligations, liberties, coercion, contracts and other judicial concepts on a case by case approach, the practical effect was to decide the substance of the struggle under the guise of determining purely legal questions of conduct. At heart, the issues were not legal at all but social, economic, and political, and the law was merely a forum in which the contending forces battled. Since the accumulated decisions provided the precedents on which future

6 The major categories of labor law are those bodies of the law that have dealt with conditions of employment and the relationships between management and organization of workers. The background for a study of labor law, consequently, must be found in those sections of our history that are pertinent to the problems covered by these legal categories. Cohen, Sanford, Labor Law. Columbus, Ohio: Charles E. Merrill Books, Inc., 1964. p. 3.

7 The transformation of the legal concept of the labor movement from a "criminal conspiracy" to a "protected activity" has been assessed in a historical perspective. For more details, see Cohen, loc. cit., pp. 99-107. In Sec. 20 of the Korean Criminal Code, it clearly defines "conduct which is conducted in accordance with law, or in pursuance of accepted business practices, or other conduct which does not violate the social mores shall not be punishable." Thus, the provisions of Sec. 20 of the Criminal Code shall be applied to the collective bargaining process and other legal acts of the labor unions, which have been done to attain the
cases would be decided, some reaction against the law was clearly necessary for the future progress and stability of the labor movement itself.

Therefore, it was necessary that labor unions become more powerful in all phases of social, economic, and political environment in the development of the labor movement in both the United States and South Korea. Although both the American and the Korean legal systems have had the capacity for evolution in time with changing social phenomenon, the labor legislation demanded by the unions on behalf of the workers could not be developed within the normal growth of the labor movement.

At the conclusion of the Second World War, the American labor movement was faced with a serious legislative challenge. Because of the growth in union membership and the occurrence of numerous

purpose enumerated in the foregoing section 1. However, an act of violence or any other destructive action shall not be considered as a legal act under any circumstances whatsoever (Sec. 2 of the Labor Union Act). The theories of its implications on both Sec. 20 of the Criminal Code and Sec. 2 of the Labor Union Act are discussed in the following articles, see Lim, Ki-Yop, "Nodong Chaengũikwǒn ŭi Pŏpiron [Legal Theory on the Rights of Labor Disputes]." Nak Wŏn [Campus Paradise], Seoul, Kŏn-Kuk University, II (October 1965), 74-9; "Kŭnloja kibonkwǒn Wǒn Sayŏngja Kyŏngyŏngkwǒn [Basic Right of Labor and Management]." Kŏndae Hakbo [Kon-Kuk Academic Journal], Seoul, Kŏn-Kuk University, XVI (February 1964), 32-46; and also, "Nodong Chaengũikwon ŭi Chŏngdangsŏng Pandaniron [Legal Theory on the Rights of Labor Disputes: Relating to Criminal and Labor Laws]." Pŏp Chŏng [Journal of Law and Politics], Seoul, Korea, Pŏp Chŏng Sa, CLXXV (January 1965), 75-7.

work stoppages during the War, widespread resentment grew against labor, and many people concluded that labor unions had become too powerful in the United States. The forces that wished passage of restrictive legislation seemed stronger than they had been since before the 1930's.

In contrast, the basic formation of the first labor legislation in South Korea was a result of the labor policy of the American Military Government that was established in 1945 when the allied powers occupied Korea following the Japanese surrender. Korean labor, which had been close to slavery for many years under Japanese rule, was now told to carry on the quite sophisticated labor movement patterned after American labor law by the military authorities. The labor movement in South Korea thus became very important by finding its freedom of action increasingly expanded by the law which provided for fair labor practices, collective bargaining, and minimum labor standards.

Within this context, it should be useful to review the historical aspects of the American and Korean labor movements and labor legislation for the purpose of analyzing some of the important areas of impact, such as origins, characteristics, and power relationships. These subjects are significant because of the need to understand two different societies which exist in the

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United States and South Korea.

**Purpose of Study**

The differences between East and West have fascinated many scholars and thinkers in the twentieth century. Some have found that the differences were so enormous that the two ways of life could never be reconciled with each other in social, cultural, and other systems. However, the changing nature of the economic and political environments has been the most important factor that has shaped the philosophies of the labor movements in both the United States and South Korea. The differences between the two countries, therefore, are more important than the similarities in accounting for the development of the two labor movements.

It is also indicated that the main difference between continental law based on statutes and common law based on cases is that the method of the former is deductive, while that of the latter is inductive. It can be said, thus, that Korean law is basically statute law while American law is case law. "Law," said Savigny, "is an unconscious emanation of volksgeist, and is, therefore, not transferable from one culture to another."

Today many countries all over the world are, however, developing a common belief in the necessity of industrialization. In this process a rudimentary common culture is developing, and the legal experiences of the more advanced countries, like their technology and scientific skills, are being borrowed by the developing nations. There is nothing wrong in finding out what other countries have been doing and profiting from their experiences.

"The life of the law," wrote Holmes, "has not been logic: it has been experience." A sophisticated insight into the law of a society cannot be derived solely from a study of the statutory phraseology and the logic embodied in court rulings, but must be drawn, as Holmes suggested, from the broader base of the total historical experience of that society. This is the underlying basis of comparative study in law and social science, which adds momentum to the scholar's quest for truth. Thus, the world-wide social, economic, political, and legal changes and the attendant "mingling of culture" which mark this century have greatly

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12 Korean labor law is of recent growth, and much of it is borrowed from the United States and Japan, because those countries have had a wider, longer, and more varied experiences of industrial disputes.


14 Comparative law is not a body of rules and principles. It is a method, a way of looking at legal problems. The German term Rechtsvergleichung, and to a lesser degree the French droit compare, are more accurate in that they emphasize the nature of the subject as a process or method. See Schlesinger, Rudolf B., Comparative Law. London: Stevens and Sons Limited, 1960. p. 1.
accelerated interest in comparative study.

The purposes of this study, therefore, are to compare and contrast the development of the labor movements and labor legislation in the United States and South Korea, and try to answer the following questions. What fundamental differences exist between the two societies and how did such differences affect their respective labor movements? What were the major tactics used in the development of trade unionism and how did labor legislation develop in these two countries? These questions specifically will be considered in the following propositions.

**Proposition One**

A labor movement is primarily caused by an economic consideration. It normally occurs as an economic struggle between labor and management for improving working conditions.

This proposition will explore whether or not the labor movements were reflections of the economic struggle for improving working conditions between labor and management. It will also test as to whether the two labor movements differ in their development and character in both countries, and help determine

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It is assumed that legal systems are clearly a part of the political, social, and economic development, just as are educational systems and other areas of the culture. Friedman, Lawrence M., "Legal Culture and Social Development." *Law and Society Review*, IV (August 1969), 29; Lim, Ki Yop, "Munhwa wa Pópiron [Culture and Legal Theory]." *Kyoyuk Munhwa [Journal of Education and Culture]*, Seoul, Korea, Institute of Korean Education and Culture, VII (April 1966), 64-9.

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what the main themes have been in the struggle between labor and management in these two societies.

**Proposition Two**

The outcome of the struggle between labor and management reflects the power relationships among labor, management, and government in the development of labor legislation.

This proposition will deal with whether or not labor organizations play an important role in influencing the enactment of labor laws. It will explore how labor legislation was developed in the two countries, and what were the major factors in the power relationships between labor and management in these two societies.

**Scope of Analysis**

This study is devoted to investigating the historical aspects of labor union activities. The analysis of the study is composed of two separate parts: 1) labor movement, and 2) labor legislation in the United States and in South Korea, concerned mainly with the origins, characteristics, and power relationships. The main body of the thesis is divided into six major sections, and each section deals with a specific problem area. All of the relevant components of the various problems must be examined before an evaluation can be given.

Chapter I is introductory in nature, including the purpose of study, the scope of analysis, the source of data, and research
methodology. Chapters II and III deal with the social, political, and economic backgrounds of the labor movements in the United States and South Korea. They examine the environments within which the labor movements existed, including their actions, objectives, and philosophies. Chapters IV and V are concerned with labor legislation which relates to union activities in both countries. They deal with a wide range of responses made to the legislation by the two labor movements and also cover important provisions of the labor legislation, especially the doctrines used by the courts against the unions and the legislative development in both countries. The efforts to pass legislation such as the Taft-Hartley bill in the United States, and the Labor Union, the Labor Disputes Adjustment, and the Labor Standards bills in South Korea are examined as samples to test the power relationships involved in the enactment of labor legislation.

Chapter VI evaluates the results of the propositions examined with a brief summary of the preceding chapters and with a conclusion of the vital differences between the two labor movements and the labor legislation of each country.

Source of Data

In each of the areas of discussion in this study, the research was conducted mainly in the relevant literature. The principal aids in research among the specialized literature proved to be quite helpful in obtaining information on the historical aspects of the labor movements in the United States and South Korea. The
materials developed by interest groups such as the AFL-CIO and the FKTU, as well as the regular and monthly reports of these organizations were very useful, as mentioned in the bibliography. Also, government publications and legal sources were used in this study: these include special reports of administrative agencies, particularly the Bureau of Labor Statistics of the United States Department of Labor, the Office of the Labor of the Korean Ministry of Health and Social Affairs, as well as documents from the Congresses in both the United States and South Korea. Law and professional labor relations journals, especially the Yale Law Journal, the Harvard Law Review, and the Monthly Labor Review, were helpful in this study. Numerous other books and articles included in the bibliography were also used in the course of the research.

Research Methodology

The research was composed of three major facets. The first, library study and reading, was performed in the university library. This facet of the study involved an extensive review of the pertinent issues in the field of labor relations. The second facet of the research involved the collection of documents related to the development of the labor movements and labor legislation. The third facet of the research involved the analysis of these data concerning the power relationships between labor, management, and government in both countries.

The writer realized the insufficiency of some documents, and
it was very difficult in analyzing the two topics of labor
movements and labor legislation in both the United States and
South Korea at the same time because of the wide scope and
complexity of the subject areas. For this reason, most of
this study is concerned with the comparative approach to the
historical aspects of the development of the labor movements and
labor legislation in both countries.

Also, there were some difficulties in the languages involved.
In translating Korean into English, this writer does not entirely
agree with the Romanization of McCune-Reischauer system. It is
based on an old Korean spelling system, as well as an improper
pronunciation of Korean consonants and vowels. The South Korean
government has announced a new standard Romanization system for
the Korean language. This system also follows neither the proper
practice nor the McCune-Reischauer system. Therefore, the
Korean translated in this thesis inevitably follows the
Romanization of McCune-Reischauer system which was published by
the U.S. Joint Publications Research Service. However, in the
Korean usage a person's family (last) name precedes his given
(first) name. The Romanization of Korean names except for the
name Syngman Rhee is thus applied according to the Korean usage

16 Korea Week, Washington, D.C., April 30, 1972; See also,
the article "You Can Master Han-Geul (Korean) in 15 Minutes,"
which is found in the Korean government guidance book entitled
Korea. Seoul, Korea: Ministry of Culture and Information,
that placed the surname first in this paper.
PART ONE LABOR MOVEMENTS
CHAPTER II

AMERICAN LABOR MOVEMENT

In the United States, democracy is a symbolic ideal of a social, economic, and political system, which promotes a type of government, a political philosophy, and the American way of life. The goals of American democracy are considered synonymous with such allied concepts as liberalism, individualism, and equalitarianism. Under the philosophy of democracy Americans enjoyed freedom of speech and assembly in social, economic, and political activities.

Thus the United States, as Thomson has pointed out, has been a more open and liberal society than any other country, and Americans have more faith in individualism and self-confidence in their own abilities. This observation has considerable validity, especially before the 1880's when America was still an agricultural

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1 The word democracy derives from the two Greek roots, demos and kratia, meaning the people or mass (the demos) and power, authority, or government (kratia). It means the authority of the people or the people's power. Abraham Lincoln described it unforgottably in his Gettysburg Address as "government of the people, by the people, for the people." Ekirch, Arthur A. Jr., The American Democratic Tradition: A History. New York: Macmillan Co., 1963. p. 2.

2 Loc. cit., p. 4.
and mercantile society. Today, however the onrush of rapid industrialization has destroyed many of these values cherished by Americans in the development of the labor movement.

Social and Political Philosophies

No doubt the general basis of the American tradition has stemmed from the religious background of the seventeenth century, which was based on Christian values developed in Europe. As the most important tenet of a democratic society, traditional American culture stresses individualism, which allows opportunities for individual talents to develop and provides an arena within which diverse individuals can struggle for the achievement of their own interests. This concept of democracy is a fundamental aspect of the American tradition and its heritage. Thus American democracy has been defined as an order of community life in which the values of human dignity are cherished. It holds that each individual has a worth and a dignity of his own that society must recognize and respect. It gives each individual freedom to hold and express personal beliefs and to cultivate and enjoy particular interests in such varied areas of human activity as the social, economic, and

political aspects of life. Basically, however, American democracy is compelled to put its faith in the majority's judgements and majority consent. Thus the American Constitution calls for a political democracy in which there is a large measure of social equalitarianism.

The United States has been free of all the limitations of a feudal tradition, and it has had no permanent ruling class, either in a personal or in a geographical sense. The rule of law has seemed to Americans to be an essential part of their tradition and the outstanding guarantee of their freedoms. It stresses the protection of individual rights from the arbitrary interference of political power and provides the foundation for democratic constitutionalism.

Given these political philosophies of democracy, American government and politics are fundamentally the products of the interactions among citizens, both public and private. Within the context of widely shared and deeply held common values, Americans have conflicting political goals—differing ideas about which

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7 Laski, op. cit., p. 18.
8 loc. cit., p. 34.
9 loc. cit., p. 31.
policies are "in the public interest." Americans make various claims on and through the instruments of government. One way to describe this political activity (writing, speaking, voting, lobbying, forming organizations), designed to secure a political goal, may be related to an interest.

The American Constitution, furthermore, provides for the separation of powers and checks and balances, which helps create a series of civil rights. In fashioning these barriers, the Constitution guarantees these civil rights as essential elements in the American political system. It created the ideal of a democratic society which would protect the individual from the arbitrary power of his government.

Therefore, Americans believe in the concept of individual

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11 loc. cit., p. 252.

12 Separation of power is a major principle of the American government whereby power is distributed among three branches of the federal government—the legislative, the executive, and the judicial. The separation is not complete in that each branch participates in the functions of the other through a system of checks and balances. Thus government power is split up into three separate parts, each of which keep balance and check upon the actions of the other. Marriam, Charles E. and Merriam, Robert E., The American Government. Boston: Ginn and Co., 1966. p. 143.


14 Peltason and Burns, op. cit., p. 389.
rights. They believe that the majority should rule, but that its power should be limited by law, and any minority should always retain the right to criticize. The rule of law is a fundamental principle of democratic constitutionalism in the United States. The belief in the right of criticism for everyone brings us to another fundamental principle of a democratic society. The men with democratic feelings and convictions look upon "everyone being" as members of the same moral community and as initially endowed with the same fundamental rights and obligations. In this sense, American democracy does not recognize the existence of rigid ranks and social hierarchies.

In American society, all men have an initially equal right to membership in the same moral community and adherence to the principle of social equality. American democracy provides lawful procedures for the active and explicit registering of dissent, so that opposition will always exist. Interest groups are one method that enables people with common interests to try to influence the government. Particularly, organized labor has affected governmental and public policy in the development of the American labor movement.

The labor unions in the early period of the labor union

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movement made many vain attempts to grow, but the environment was not conducive to increasing the strength of organized labor. They fought on both economic and political fronts, not only for better wages and hours, but also for improving their status. Each attempt was met by militant opposition from the employers, hostility in the courts, and unfavorable economic and social conditions towards organized labor. All of these factors prevented the growth of the organized labor movement during its infancy, and continued to do so for more than one hundred years.

However, the labor movement in the United States today is an accepted and permanent part of the American social scene, and organized labor is now admitted, by friend and foe alike, to be a powerful factor in all phases of economic, political, and social life. It can be said that the democratic society in the United States has been transformed from individualism to collectivism, that is, from Status to Contract as Main indicated when a feudal system develops into a progressive society.

Growth of Industrial Capitalism

The American trade union movement dates originally from the

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17 Individualism is the central idea in the political system of a constitutional democracy and in the economic theory of laissez faire. It places primary emphasis upon the worth, freedom, and well-being of the individual rather than that of the group or society. Collectivism is often associated with socialism and communism, and it rejects the economic freedoms of capitalism. However, in this paper collectivism means a social movement calling for the private ownership of the means of production by groups
early nineteenth century. The sweeping character of the economic transition in the United States has been one of great significance to the development of the American labor movement. Although the typical free worker in 1790 was either a farm proprietor or a farm hand, today the typical worker is employed in a manufacturing or a service industry. In 1790 he lived in a rural area, but today he is an urban resident. In 1790 his probable occupational ambition was to become a propertied proprietor, but today his probable ambition is to have a better job. These few contrasts summarize in a broad way the transition from a simple, rural, agricultural society to a complex, urban, industrial one.

There is no particular point of time that can be isolated and identified as the start of the industrial revolution in the United States. It is clear, however, that the drive toward industrialization did not achieve full momentum until after the end of the Civil War. Prior to the war, the economy was shaped in large part by the dominating forces of planter capitalism in the South and mercantile capitalism in the North. In a few industries, and especially in textiles, there had developed a factory type of production in which the entrepreneur owned the instruments of production. The typical enterpriser, however, was a merchant or

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a financier interested primarily in merchandising rather than in production.

The economic face of the nation changed rapidly after 1860. As the Civil War ended, the period of mercantile and planter capitalism came to a close, and the age of industrial capitalism began. The factors involved in this transition to industrialization are summarized by Professor Cohen:

The growth of industry was indeed phenomenal between 1860 and 1890, and the number of manufacturing establishments increased from 140,000 to over 350,000. During the same years, the number of wage earners grew from about 1.3 million to over 4.2 million. In a period that has been described as the golden age of invention, the laboratories and workshops literally poured out new products. Between 1860 and 1869, the United States Patent Office granted 77,355 patents; between 1890 and 1899 the number was 234,749. The railroad network, which consisted of only 30,000 miles in 1860 and was primarily centered in the Northeast, spread out to cover the entire nation by the end of the century. Business was soon to become big business and new ingenious forms of business organization were devised as aggressive and often ruthless businessmen sought to build and consolidate industrial empires. The economy, in short, was undergoing an industrial revolution, and in the United States, as elsewhere, rapid industrialization resulted simultaneously in progress and problems.

Thus, the changing nature of the economy has been one of the most important factors that have shaped the character of the American

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Cohen, op. cit., p. 6.
labor movement. Conditions of work became increasingly a matter of social concern. New Pressure groups emerged in response to what were visualized as economic threats, and frequent breakdowns in the performance of the economy ultimately convinced many of the need for more government participation in economic life. Wages, hours, and various working conditions had been matters of contention between employees and employers in the United States for many decades.

Early Labor Organization

With the growth of industry and the factory system, workers found it increasingly necessary to organize labor unions, despite the opposition of many enterprise owners. They found that there was no equality in bargaining power between an individual worker and a factory owner or corporation backed by large financial resources. Only through collective action could they bargain on anything like equal terms.

The first trade unions in the United States derived their origin from the small crafts such as those of carpenters, shoemakers, and printers, who formed separate organizations in Philadelphia, New York, and Boston as early as 1791, largely to resist wage reductions. In addition to the welfare activities, these unions frequently sought higher wages, minimum rates,

shorter hours, enforcement of apprenticeship regulations, and establishment of the principle of exclusive union hiring, later known as the "closed shop."  

The first authenticated strike was called in 1798 by the New York tailors to protest a reduction in wages and a sympathetic strike of shoe workers in support of fellow bootmakers also occurred in 1799 in Philadelphia. The unions fought on both economic and political fronts not only for better wages and hours, but for the extension of the suffrage and the abolition of child labor and sweatshop conditions.  

As the unions became stronger the wage question increased in importance, and employers organized to resist wage demands. Where the circumstances appeared favorable, employers attempted to destroy the effectiveness of a union by hiring nonunion workers and by appealing to the courts to declare the labor organization illegal. The legal fight against unions was carried through the courts in Philadelphia, New York, and Pittsburgh between 1806 and 1814. Unions were prosecuted as "conspiracies in restraint of trade" under an old English common law doctrine which said that combinations of workmen to raise wages could be


regarded as a conspiracy against the public.

This doctrine of conspiracy involved two concepts. The first one was that a maximum wage could be fixed by law, and the second was that workers could be compelled against their will to work. The combination of these two ancient ideas produced the rule that a working man could be forced to work and at a prescribed wage--the average or standard rate in his particular occupation. Therefore, when workers struck in an effort to force a raise in wages, they were guilty of a "criminal conspiracy" under common law. These concepts were applied to the efforts of workers to organize in the United States on many occasions in the early nineteenth century.

Slowly, judicial attention was shifted from the question as to whether a mere combination of workmen was a conspiracy to one as to the means they used to gain their ends. Thus while unions, as such, became regarded as "lawful," strikes, boycotts, and other attempts of workers to secure their demands were the subjects of legal action in the courts for many decades.

Rise of the Knights of Labor

During the union-employer struggles of the decades, the

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The early conspiracy cases, combined with a business recession following the Napoleonic wars in Europe, seriously affected the trade unions, many of which passed out of existence. See The Philadelphia Cordwainers Case, Cordwainer Commonwealth v. Public (1806).

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Daniels, op. cit., p. 10.
labor movement itself became the scene of a decisive contest over its future structure. The Knights of Labor was originally organized in Philadelphia in 1869 by a group of tailors under the leadership of Uriah Smith Stephens. From an estimated membership of 80,000 in 1879, the Knights of Labor grew rapidly until by 1886 it claimed over 600,000 members throughout the country. Structurally, the Knights consisted of a national body or general assembly exercising centralized control over numerous district assemblies.

The new organization was founded on the principle that "An injury to one is an injury to all." It had as its objective the co-operation of all workers without regard to their trade or skill, or lack of skill. Not only did the Knights of Labor admit workers to its ranks, but it also admitted the small shopkeeper and the farmer. It favored co-operation to take the place of the wage system; land reform; legislation of benefit to workers and farmers, and mutual benefits for smaller employers; compulsory arbitration and the outlawing of strikes and boycotts. It approved in fact, "any action that would advance the cause of humanity, lighten the burden of toil, or elevate the moral and social condition of mankind."

The Knights' program called for the eight-hour day, equal pay

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for equal work by women, abolition of convict and child labor, public ownership of utilities, and the establishment of cooperatives. During the 1880's, the Knights engaged in a series of strikes for better wages and made wage agreements with employers. Their most successful struggle, with the powerful Gould railway system in 1885, brought them particular prestige. However, after formation of the American Federation of Labor, the Knights steadily lost ground. In 1890, the Knights reported only 100,000 members and ceased to be an influential factor in the labor movement although continuing in existence until 1917.

Strategy of the American Federation of Labor

With the formation of the American Federation of Labor (AFL) in 1886, basic philosophy of the labor movement emerged. Devoted to "pure and simple unionism," its main goals were higher wages and improved working conditions. The new organization started with a membership of 138,000 in 1886. In the next decade, it had an uphill fight for survival. The Federation under Samuel Gompers, president from its inception until his death in 1921, grew as the result of concentrating largely in the beginning years.

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on the organization of skilled workers into national unions and securing better labor conditions for workers through collective bargaining and strikes.

However, the emergence of the labor movement as an influential national economic group did not occur without opposition or setbacks. In the 1890's, large corporations, which had appeared on the economic scene, vigorously fought efforts to unionize their employees. At times, these clashes resulted in violence, injuries, and even death.

One of the most spectacular labor battles in the railroad industry during these days was the strike against the Pullman Company led by the American Railway Union (ARU) of which Eugene V. Debs was the moving spirit. With business conditions unfavorable, the company, in the earlier part of 1894, cut wages sharply and laid off numerous workers. The strike began in the model company-town of Pullman, Illinois, and centered in the Chicago area. When the strike was called, the Federal Government ordered out troops to protect the property of the Pullman Company. The presence of these troops, the issuance of sweeping injunctions, and the arrest of Debs for contempt of court resulted in the breaking of the strike and in the death soon after of the ARU.

30 For example, the unsuccessful struggle of the Amalgamated Association of Iron and Steel Workers against the Carnegie Steel Co. at Homestead, Pa., in 1892 was climaxed by a pitched battle between company-imported Pinkerton detectives and strikers. Before the National Guard intervened to restore order, ten deaths resulted.

31 Twenty-five persons were killed and sixty were injured during this controversy. Elsewhere in the country industrial disputes sporadically flared into open violence. See Dankert, op. cit., p. 35.
With the return of prosperity in the late 1890's, the labor movement began steadily to advance. From a membership of less than a half million, within and without the AFL, it grew by 1904 to a membership of over two million. One of the most important labor events during this period was the five-and-a-half month strike of the miners in 1902 for union recognition, the nine-hour day and other improvements.

Despite general employer opposition to unions, an increasing number of collective bargaining agreements resulted from direct negotiations between unions and employers. The stabilization of industrial relations and the attainment of job security are considered by many authorities as important factors in the success of AFL trade unionism during that period.

Commonly referred to as business unionism, therefore, the philosophy of the American labor movement is known to Labor Day orators as "bread and butter unionism." According to Selig Perlman, it is clearly stated in this way:

...a labor movement reduced to an opportunistic basis, accepting the existence of capitalism and having for its objective the enlarging of the bargaining power of the wage earner....

This type of unionism attempts to achieve its gains through the collective bargaining process, rather than through the political process.

With the decade of the 1930's came significant changes in the union environment, changes which were especially conducive to attracting large numbers of workers to the ranks of the various unions. With the advent of the Great Depression, the general public made a direct reversal of opinion about unions and began to recognize and concede the right and the need of workers to organize for mutual benefit. An unprecedented change in the government's philosophy of the role of trade unions in an industrial economy occurred at this time also, and culminated in the passage of Section 7(a) of the National Industrial Recovery Act. It had attempted to persuade industry to recognize employee rights to organize and to bargain collectively, but the absence of any power to enforce these "rights" rendered them virtually useless in the face of management's understandable hesitancy to aid the growth of organized labor.

To effectuate compliance with Section 7(a), and to adjudicate its initial interpretation, President Roosevelt set up the National Labor Board (NLR), supplanting it, in 1934, with the

34 Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerned activities of the purpose of collective bargaining or other mutual aid or protection.

National Labor Relations Board (NLRB). The latter board had essentially the same powers as its predecessor, and it continued to function in labor dispute until the National Industrial Recovery Act was declared unconstitutional by the Supreme Court in 1935.

When the act was declared unconstitutional, Congress enacted another, the Wagner Act of 1935. Certain provisions of the Act outlawed various management anti-union practices and gave workers the right of self-organization. Prior to this time unions had been merely tolerated; now they were actively encouraged by Congress and the Administration.

Challenge of the Committee of Industrial Organization

The new favorable climate for unions opened the door to organizing millions of skilled and unskilled workers in the large industrial plants, and that potential growth brought about several changes in the nature of labor organizations. Diverging opinions arose among national union officials as to the type of organization


37 Beginnings of this change can be seen in specific areas, such as the Lloyd-LaFollette Act (1912), the National War Labor Board; policy in the World War I, the Railway Labor Act (1926), and the Norris-LaGuardia Act (1932).
best suited for these workers. Some officials insisted upon craft
unions or similar units such as the AFL had traditionally formed.
Others felt that a large industrial union would best serve the
workers. In the end these differences led to the formation of the
Committee of Industrial Organization (CIO) in 1935—a radical change
from the AFL's traditional concept. A bitter rivalry developed
between the two federations, and the dream of one gigantic labor
organization was all but ended, at least for this era.

World War II with its accompanying high levels of employment,
and the general prosperity with relatively high levels of
employment in the period following the war were also important
factors contributing to the membership growth. According to
Professor Sumner Slichter, the whole period was one of a seller's
market for labor unions. Consequently, in the ten year period
from 1935 to 1945, union membership increased fourfold, from three
and a half million to almost fourteen and a half million.

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38 Most writers will agree that these were the major factors
in providing a favorable climate for growth. See for example,
Dunlap, John, "Structural Changes in the American Labor Movement."
Monthly Labor Review, LXXX (February 1957), 150 and Harrington,
Michael and Jacobs, Paul (Ed.). "The Position of Trade Unions in
the American Economy." Labor in a Free Society, Berkeley:
39 Harrington, and Jacobs, loc. cit., p. 18.
40 U. S. Bureau of Census, Historical Statistics of the United
1960. p. 98 and "Wages in Structural Clay Products Manufacturing."
With the growth of union membership and numerous strikes during the early postwar years, labor organizations again became suspect for a time, and in 1947 the Taft-Hartley Act was passed to rectify certain union abuses. Despite this fact, and contrary to the dire predictions of certain labor officials, unions continued to flourish, although not in the spectacular fashion of the two preceding decades.

New Era in American Unionism

For about ten years after the passage of the Taft-Hartley Act, a new era in the American labor movement opened its prestige with the formation of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) in December 1955, after twenty years of often bitter and costly rivalry. The merger of the two Federations, rivals since 1935, brought into one organization various unions which are made up of 120 national and international unions and more than 60,000 local unions.

The objects and principles of the Federation are clearly spelled out in its Constitution: a) to improve wages, hours, and working conditions, b) to bring the benefits of free collective bargaining to all workers, c) to support legislation which will aid

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workers and oppose harmful legislation, d) to encourage workers to vote and exercise fully their responsibilities as citizens, e) to protect and strengthen democratic institutions and to preserve America's democratic traditions, and f) to safeguard the labor movement from Communists, fascists and other totalitarians.

The combined membership of all the unions affiliated with the AFL-CIO, as of January 1, 1970, is approximately 13,600,000 workers, in occupation as diverse as America itself—actors and entertainers, construction workers, barbers, steelworkers, machinists, bus drivers, railroad workers, garment workers, engineers, janitors, printers, telephone operators, newspaper reporters, school teachers, post office clerks, letter carriers, etc. This new, powerful organization created fear in the minds of businessmen and business organizations as well as the general public as to their potential economic and political power.

Today, labor unions are recognized as a generally accepted and permanent facet of American economic life in the United States. The major portion of union membership lies primarily in mining, construction, basic manufacturing, transportation and

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44 Goldfinger, op. cit., 2.
communications—the strategic sectors of the American economy.

The power and role of unions has been aptly expressed by Clark Kerr:

...Unions are well established and secure in most major industries of the nation. Their members number eighteen million. They can close down even the giants of American industry—General Motors and United States Steel. They negotiate 100,000 contracts covering the working rules that guide and govern important aspects of the life of industrial men in nearly every trade and every industry and nearly every town. Income, leisure, job security, retirement, pace of work, job opportunities, discipline—all are affected by union participation in the rule-making process. And union influence extends outside the industrial government of the nation into its political processes too. Unions affect the selection and the election of candidates. They are intimately woven into much of our economic life.

The highly influential labor economist, the late Sumner Slichter, called trade unions of the present generation the most powerful economic organizations in the century and the most powerful that ever existed in American history. One might debate Professor Slichter's conclusions regarding the relative strength of organized labor during the period, but certainly the rapid growth, both in number and in economic power, of this group

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has been one of the most dramatic changes in the relative balance of power between labor and management in the United States.

Political Unionism

The American labor movement today, as noted above, devotes its major attention to improved working conditions and higher standards of living for workers. Labor unions seek to achieve these objectives primarily through collective bargaining rather than through class propaganda warfare or through seeking political office directly. Nonetheless, American labor organizations have engaged in substantial political activities throughout their history.

Since the early nineteenth century, labor organizations have gradually turned to independent political activity. The factors leading to this development are explained by Mary Beard:

In the first place, property qualifications on the right to vote, which had been imposed by the first State constitutions, were abandoned and the ballot put into the hands of practically every workingman. In the second place, the prosecutions of labor unions in the courts of law had driven workingmen to a concerted action which rose above trade and craft lines. In the third place, the industrial revolution brought about by steampower and the factory system was making swift headway in creating great cities. It added rapidly to the number of industrial workers and created closer associations among them. In the fourth place, the idea was being advanced that the hours of labor should be fixed universally at ten per day by legislation rather than by the painful method of strike.48

This movement among workers in seeking to improve their status by political action spread to many leading industrial communities. In Philadelphia a number of craft unions formed the Mechanics' Union of Trade Associations in 1827. This citywide group soon began to nominate and elect candidates to "represent the interests of the working classes" in the Philadelphia city council and the Pennsylvania state legislature.

For a short time, these labor organizations were successful in electing their candidates to various public offices, but in general, they called the attention of the regular political parties and the public at large to the social and economic inequalities experienced by workers and by so doing helped to shape the course of much future legislation.

It is true that the pattern of political behavior which has been followed by organized labor in the United States is "nonpartisan political action." The principle of nonpartisan politics, summed up in the dictum "to defeat labor's enemies and to reward its friends," according to Samuel Gompers, received official sanction. Nonpartisan political action means that the

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loc. cit., p. 5.

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A number of States passed laws regulating the employment of women and children in industry and providing for protection against industrial hazards. Most States adopted workman's compensation laws.

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Political programs included such demands as the following: the ten-hour day, restriction of child labor, abolition of convict labor competition, free and equal public education, exemption of
labor movement will use pressure techniques and lobbying activities within the traditional two-party system to gain its objectives. The approach rests on the possibility of exchanging labor votes for governmental policy favorable to the organization. The determination of whether the labor movement will support individual legislators and parties is made by evaluating the voting behavior of the legislator or party.

In a limited sense, therefore, nonpartisan politics may be viewed as an extension of collective bargaining to government's relationship with labor. Of course, the agreements that are reached are not expressed in formal contracts nor are they enforceable. To the extent that labor attempts to win support on issues significant to the movement from all political parties, labor may be viewed as non-partisan. Up to the present time, this has been the dominant pattern in organized labor's political behavior. This nonpartisan political orientation has been traditionally associated with the AFL and the CIO, who have rejected the notion of independent political action and have relied on economic pressure and nonpartisan political action to achieve their goals.

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In 1830 nonpartisan tactics were incorporated into the program of labor when a New England convention of workers, artisans, and farmers proposed to secure legislative objectives by electing friendly candidates. In the following twenty years, workers' organizations pressed political candidates regardless of party for pledges to support their demands. The pledge and the lobby were employed by the Eight-Hour Day organizations of the 1860's in an attempt to win passage of legislation that would shorten the work day. During most of its existence, the Knights of Labor opposed the establishment of an independent labor party and relied upon the techniques of nonpartisan action.

In 1895 the AFL began to lobby formally in national politics. At that time it appointed legislative representatives to serve in Washington, D.C. The AFL sought to improve its lobbying effectiveness in 1921 by establishing a legislative conference committee to meet monthly during the Congressional session. The Conference Committee of Trade Union Legislative Representatives consisted of the legislative agent of the national unions and the Federation's officers and legislative representatives.

Later, this Committee became the Nonpartisan Political


Campaign Committee and was given the task of directing and coordinating the political work of the Federation, which included the responsibility for making national endorsements. During its existence, the appeals of the Nonpartisan Political Campaign Committee for support from the affiliates of the AFL produced widely varying responses. It was only after the Second World War that the Federation was able to involve the rank and file in its election campaign and lobbying activities to any significant extent.

It is inappropriate to attempt to establish a dichotomy between election and lobbying activities. Indeed both of these rest on collective bargaining techniques. Because labor is so vitally affected by state legislation, the state federations of the AFL and the CIO engage in extensive lobbying in order to block harmful bills, promote favorable measures, and secure friendly administrations. The affiliates also exert pressure for pro-labor programs at the state and municipal levels. These units of the AFL and the CIO present legislative programs and attempt to deliver the "labor vote" to the party and the candidates that the organization has decided to support.

In 1943, the CIO Executive Board created a permanent Political

56  loc. cit., p. 95.
57  ibid.
Action Committee (PAC). During 1944, the political expenditures of the PAC, nearly a million dollars, were the greatest effort ever made by an American labor organization in politics. At the same time, the AFL followed its traditional political policies; it published and distributed the voting records of Congress and periodically selected a nonpartisan campaign committee to influence congressional and presidential elections. Unlike the CIO, it maintained no permanent political department. As a result of the passage of the Taft-Hartley Act in 1947, however, and in response to what it deemed the anti-union sentiment of that Act, the AFL established Labor's League for Political Education (LLPE). The LLPE was a counterpart political organization to the CIO's PAC, raising and spending nearly a quarter of a million dollars for campaign activities in each of the 1950 and 1952 elections.

With the merger of the AFL and CIO in 1955, a permanent committee was created to supersede the PAC and LLPE. The new organization was known as the Committee on Political Education (COPE). It was given a threefold responsibility: to meet the need for political education for workers, to encourage workers to register and vote, and to urge union members to become active in political life. However, this is not a political party, nor is it wedded to either majority party. The COPE is financed through

58 Haber, op. cit., Pp. 259-60.
59 Ibid.
the voluntary contributions of union members. The primary function of the COPE is to provide year-around program of political education for union members and conduct nationwide non-partisan registration and get-out-the vote campaigns. The AFL-CIO president, George Meany, summing up the philosophy that led to establish the COPE, put it this way:

We don't tell people how to vote: we just want as many people as possible to go to the polls. Whatever the decision may be, we want it to be a real majority decision—a majority of all the people.60

It is not a secret that leaders of organized labor in America largely favor the Democratic party and its candidates for public office. Most, though not all, of labor's money and aid goes to the campaigns of Democrats. In the 1960 presidential election, for example, the AFL-CIO's COPE organization and individual unions contributed about a million dollars to the campaigns of favored Democratic candidates. In addition to this amount, which was contributed directly to candidates, perhaps an equal dollar volume of goods in kind—services, time and educational activities—was put into politics by labor. Also, in the 1964 election year,

60 AFL-CIO. This is the AFL-CIO. Washington, D.C.: American Federation of Labor and Congress of Industrial Organizations, 1969, p. 10.

61 A forty-five-year-old Federal law makes it illegal for any corporation to give money to candidates for the Presidency, Vice Presidency or Congress. But the donations were legal because the Corrupt Practices Act of 1925 does not prohibit corporate executives from contributing to political campaigns as individuals.
organized labor's political contribution of cash and services have approximated five million dollars. Among the most active lobby groups on general matters as well as labor legislation, the AFL-CIO reported spending $184,938 in 1969, a $30,000 increase over 1968 spending for lobby purposes. During the 1968 election year, the Litton Industries Inc. donated the total of $151,000 to Republican candidates. Republicans received $1,054,852 compared to only $180,550 for the Democrats in 1968.

It is true that American labor unions devote their major attention to control of the job, improved working conditions, and higher standards of living for workers. However, the American

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63 Congressional Quarterly: Weekly Report, XXVIII (July 1970), p. 1966. Among the most active lobby groups on general matters as well as labor legislation, the AFL-CIO devoted a major effort to opposing confirmation of Clement F. Haynsworth Jr. as Associate Justice of the Supreme Court, and it also lobbied heavily on the Tax Reform Act (HR 13270 PI 91-172).

64 This study was compiled by the Citizens' Research Foundation of Princeton, New Jersey. The five companies with the largest total contributions from executives, and the amounts given to Republicans (R) and Democrats (D), were 1) Litton Industries, Inc., $151,000 (R $151,000); 2) Ford Motor Co., $140,100 (R $87,100; D $53,000); 3) International Business Machine Corp., $136,250 (R $104,250; D $32,000); 4) General Motors Corp., $115,675 (R $114,675; D $1,000); and 5) Atlantic Richfield Co., $66,000 (R $56,000; D $1,000). The Western Herald, (Western Michigan University, Kalamazoo, Michigan), October 2, 1970.
labor movement has always been in politics, a fact which has often been obscured by its economic activities and its frequent avowals of political non-partisanship.

Therefore, if the non-partisan political pressure of the labor movement is to be successful, it demands the expenditure of vast amounts of energy and money, and the application of pressure when the major parties are formulating legislative proposals; when elections are in progress; when legislation is under consideration; and when administrative rules and procedures are being made. No matter what shape action takes at these four points, it always rests upon the promise of labor votes in exchange for officials, programs, and political decisions favorably disposed to labor. Non-partisan action thus involves the assumption that the major parties are not wholly instruments of employer interests and will serve labor when labor offers payment in the common coin of politics. These activities have assumed the pattern of pressure politics rather than party politics per se. The strategy of pressure politics rather than party politics makes very good sense in terms of the nature of


the American political system. It has permitted the development of the labor movement and its incorporation as an essential element in the Capitalist system. It is, indeed, a critical and influential element devoted to maintaining the system very much as it is.

In the following chapter we shall see how this differs from the labor movement in South Korea.
CHAPTER III
KOREAN LABOR MOVEMENT

Throughout the history of the labor movement in Korea, there was none of the ideological uniformity that characterized the labor union movement in the United States. Although the labor union movement, which paralleled industrial development, was becoming increasingly important in America, it was not taken very seriously in Korea, where the labor class in the modern sense had not been formed due to her pre-modern character as a traditional Confucian society.

For many centuries, the influence of Confucianism on Korean government and society had been decisive, and it constituted the basis of political philosophy as well as the cultural, social, and economic patterns of the nation. The heritage of its ethic, and its intellectual and political assumptions remain fundamental to

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1 Korea has been a society in transition, gradually transforming itself from a pre-modern state into a modern nation, and from a traditional agrarian society into an industrial society. For further discussion, see Paik, Hyun-ki, "The Korean Social Structure and Its Implications for Education." The Korea Journal, Seoul, Korea, VIII, (March 1968), 11-2.

Korean culture. Thus, the Korean labor movement in the processes of social and political development could not be discussed without understanding the traditional philosophy of Confucianism, and the result of this understanding must be subjected to re-evaluation in light of present reality.

Social and Political Tradition

From the beginning of her history, Korea was most receptive to Chinese cultural influence. Increasing political and cultural relations between China and Korea grew steadily during the T'ang dynasty, resulting in the Sinification of the Korean political and governmental system with the total adoption of social and cultural patterns. As early as the first half of the third century, Confucianism was transmitted from its homeland into Korea, but it did not flourish until the early part of the Yi dynasty, when it rapidly gained strength, partly because the founder of the dynasty used it to counter the influence of Buddhism, which had been espoused by the preceding Koryo dynasty. Through official patronage Confucianism came eventually to dominate every aspect of life in Korea during the latter part of the Yi period.


Confucianism, which constituted a background for traditional Korean culture, provided not only the guidance for the conduct of the government, but also the ruling principles of social, economic, and political life in Korea. The fundamental principle of Korean Confucianism was that of "Supreme Ultimate" (T'aeguk), which means the "moral law" and "law of nature" that controls the positive and negative forces of the universe through the Five Elements: Humanitarianism (In), Righteousness (Üi), Wisdom (Chi), Loyalty (Ch'ung), and Trust (Sin). This ethical concept was developed by the Principle of Divine (Sŏng-ni), which were the social, economic, and political philosophical doctrines expounded by Chu Hsi.

The ethical ideals of Confucian doctrine are summed up in the so-called Three Principles (Sam-kang) and Five Rules (O-ryun).

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During the Yi Dynasty (1392-1910), Neo-Confucianism (Chu Hsi) was almost a state religion and became not only the spiritual life of the ruling groups but also the criterion of common civilities and the Korean way of life. It is much broader than the classical humanist doctrine of Confucius in the sense that it developed a system of metaphysics which provided a new sanction for the old moral order. Choi, Jaihi, "Traditional Values of Korea and Problems of Modernization." International Conference on the Problems of Modernization in Asia. Asiatic Research Center, Korea University, Seoul, Korea, 1966. p. 81; Park, Chong-hong, "Historical Review of Korean Confucianism." Korea Journal, III, (September 1963), 5-11; Hong, I-sop, "Political Philosophy of Korean Confucianism." Korea Journal, III (September 1963), 12-16; Koh, Hesung Chun, "Religion, Social Structure and Economic Development in Yi Dynasty Korea." Unpublished Doctor's dissertation, Boston University, Boston, 1959. p. 170.

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Confucianism is a philosophy of life, a code of conservative morals, a hierarchy of human relationships, and a set of rules for man's behavior. Three Principles are the Obedience of Subjects for the King (Kumî Sinkang), the Obedience of Wife for Husband (Pŭki Pukang), and the Obedience of Sons for Fathers (Pŭki Chakang).
It teaches subjects to obey their ruler, children to obey their parents, wives to obey their husbands and trust between friends. The concept of loyalty to the king, respect for one's parents, strictness between husband and wife and blind obedience for elders were strictly enforced as the basis of social and political morality. Thus the autocratic environment of the Korean social system, which had been based on strict hierarchical human relationships, produced authoritarianism. As a result of Confucianism, the Korean people developed an authoritarian attitude in social and political life and failed to develop ideas of individual freedom and initiative, as was the case in American society.

In order to achieve such a social and political morality, the traditional social system in Korea was officially subdivided into four distinct classes: Nobility (Yangban), Medians (Chungin), Commoners (Sangmin), and Low-born (Chŏnmin). It was like a pyramid in shape, with the King on top, and the royal relatives, the nobles and the court officials comprising the ruling class.

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8 Park, Hyon-ki, op. cit., 12: Kim, Yong-mo, "The Social Background and Mobility of State Ministers of the Yi Dynasty." Korean Affairs, II (July 1964), 238-60.

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which was commonly known as the "nobility." Below them was the subject class, namely the "commoners" and the "low-born", which constituted the vast majority of the population. There was also a small intermediary class called the "medians", composed of the professionals who supplied the technical functionaries of the court, such as interpreters, accountants, copyists, and police officials. Each class was bound by specific restrictions, enforced by the ruling elite, which defined the modes of life even to the particulars of clothing, food, and habitation. Under such circumstances, it was inconceivable for one of a lower class to assert his right against a member of a higher class, and there was nothing but blind obedience to the upper class. Confucianism thus fostered a social custom of "deference to officials and contempt for commoners."

Because the basic unit of human relationship in traditional Korea was the family rather than the individual, absolute obedience to the superior was the fundamental principle. The Monarchical system in Confucian society was an extension of the family system; the king was believed to be the head of a large family while the people were considered his children. Emphasis was always placed on the concept of duties rather than rights. Under such

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10 Han, op. cit., p. 19.
circumstances it was impossible to develop a system of separation of powers. The outcome was, needless to say, "the development of a closed society" characterized by rigidity, blindness, and stagnation. This helped create the most important cause of factionalism today in Korean society.

Unlike the party system in American democracy, factionalism in Korea was politically disruptive, because there was no mechanism for reconciling policy differences. Confucianism emphasized ethics as the basis of good government, and opposing policies could not be accepted as the product of honest differences of opinion, but were commonly regarded as signs of the depravity of one's opponents. In other words, with good government considered to be the natural product of sound ethical standards, majority decisions would not suffice; unanimity was necessary. The democratic balance of partisan politics would have been unthinkable. Any opposition represented disloyalty, and was considered to be both treason and moral turpitude.

Thus Confucianism provided the basis for the autocratic political thought and institutions in traditional Korea and for the ethical concept that it was better to be ruled by "men of virtue and knowledge," rather than by "rule of law." It sustained the

11 Lee, Chong-sik, op. cit., p. 5.
concept of the self-righteousness of the men in power who could be described as men with Confucian hearts. The outstanding point of contrast between American political thought and Korean Confucianism is that the former is concerned with "supremacy of law" while the latter emphasizes "good ruler." While American political thought culminates in the sovereign law-making body, and the representatives of the people, Confucianism attains its richest fruition in the wise, virtuous and good ruler. Thus the "rule of virtue" is above the "rule of law" in the Confucian political system.

According to the Confucian principle, the king was regarded as the wisest and the most virtuous man in the world, and his main function was to teach and civilize the people so that they could live up to the ethical principles set forth by Confucius. The concept of an ethical justification for government and of an ultimate moral sanction applied to the emperor as well as to the officials. Therefore, government officials were to be selected from wise men, who were to be distinguished from the masses of the people by moral character and educational background. Instead of stressing practical and technical training, Confucius regarded the moral code as the essence of administrative knowledge.

In the political structure of a Confucian society, therefore, the king had absolute power, not only having the right to order his

14 Nahm, op. cit., 33-4.
15 Han. op. cit., p. 16; Reischauer and Fairbank, op. cit., Pp. 433-34.
people, but also to compel anything from their social and political life. As a consequence, there was no room for policy clashes outside of the Confucian principles, and the problems that caused so much partisanship were not accepted as being part of political system. It was impossible for the people to develop a positive critical spirit and to have opportunities for scholarly debate as well as for exchange of ideas. Instead of taking into consideration the opinions of others and persuading the opposition with reasoned argument, the ruling group exercised dogmatism and high-handed authority. This traditional pattern of autocratic rule manifests itself today, hampering the development of a democratic political system in Korea.

As in any Confucian society, the most important factor for determining social rank was "learning." Consequently, government positions were always monopolized only by those who were educated in Confucian principles. In theory anyone could take the civil service examination and be given a government post if he was successful on the test. However, in practice no one was permitted to take the examination unless he belonged to the upper class. Education was a privilege enjoyed solely by the ruling class, and commoners were entirely prevented from taking the examination.

17 loc. cit., 93.
18 Kim, Yong-mo, op. cit., 240.
Therefore, Confucian ideals have influenced occupational preferences, and the educated person in Korea was accorded a special status in line with government positions. Thus Korean Confucianism has been very discriminating in favoring the professions, quite contrary to the Western ideal that "all legitimate trades are equally honorable." In other words, Confucianism ranked occupations in hierarchical order from the highest to the lowest as follows; government official, farmer, artisan, merchant, and the laboring class. Laborers in Korea have not enjoyed honorable status due to Confucian influence, which placed undue emphasis upon governmental official positions as the highest in social status. Under this hierarchical status of an authoritarian society, the traditional ideal of Korean Confucianism did not have much respect for technical or manual laborers, but rather despised them. A laborer working with his hands could never have the same status as a government official or farmer. Thus labor was unable to improve its social status and industrial techniques could not be developed under such a feudal system. With the basic conception of Confucianism, Korea failed to develop the social and cultural bases needed for a modern industrial society, largely because of the absolute dominance of this traditional Confucianism.

The Confucian ideas of hierarchy which exerted a strong

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Choi, Jaihi, op. cit., p. 82.
influence on social life in Korea continued during the Japanese occupation, however, this idea has been somewhat weakened since 1945 due to the impact of the American occupation, which introduces democratic ideas and systems. Despite the weakened position of Confucianism, it still exerts a remarkable degree of influence on various aspects of social and political development in Korea. Therefore, one of the most fundamental causes of the failure of the Korean labor movement in terms of political development has been the nature of her social structure and cultural values, which have been dominated by her traditionalism. Thus, unlike the development of the unions in the United States, the evolution of the labor movement in Korea has been retarded primarily because of her social as well as her economic and political environments.

Origin of Early Labor Movement

Korea was the largest colony of Japan, which ruled by absolute dictatorial power from 1910 to 1945. Politically the Japanese suppressed all political freedoms by depriving the people


Korea became a Japanese protectorate in 1905 and was annexed formally to Japan in 1910.
of their basic rights, and economically it exploited the people by monopolizing all the basic means of production, such as the land, factories, mines, transportation, and other large economic organs.

Most of the land and industrial establishments were occupied by the Japanese, and the majority of the Korean working people had suffered economic deprivation for nearly a half century.

Needless to say, Korea was primarily an agricultural country with about 77 per cent of her people being engaged in farming in the 1920's. For over four thousand years Koreans have huddled together in small villages and grew food stuffs in the surrounding paddy and terraced lands. The land had been divided into: a) Private land owned by individual families, b) Crown land owned by the king but leased to private individuals, c) Municipal lands which were legally owned by the local governments, and d) Lands owned by the Buddhist temples. A good share of the local and central governments' incomes came from the rents paid by the occupants of the Crown and Municipal lands.

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However, Korea's land was redivided to provide for the needs of the Japanese economy, and it soon became the "rice bowl" of Japan. Thus, the Japanese had the last three classes of land placed under the direct jurisdiction of their central government. The Japanese were very much in need of increased supplies of rice, and already in 1906 they organized the Oriental Development Company (Toyo Takushoku Kaisha) in Korea. The purpose and program of the Company were stated in the following:

In order to participate in developing the natural resources of the Peninsula, the Company has been authorized under the protection of the Imperial Government to engage in agricultural and industrial undertakings by collecting and distributing the skilled farmers and other immigrants and by furnishing them with necessary funds.25

With this purpose in mind, the Company by 1910 had already taken under its administration 18,338.25 acres of land from the Crown lands, and had purchased 21,070 acres from Korean owners. Five years later the total had increased to 171,850.35 acres, of which only 24,590.65 acres had come from the Crown lands. Eventually 64 per cent of all dry land and 80 percent of the rice land came into the legal possession of the Japanese. The native

26 loc. cit., 1910-1911, p. 188.
28 Lauterbach, Richard E., "Hodge's Korea." Virginia
farmers were displaced or dispossessed, and the peasants were forced to become tenants or farm laborers. The Oriental Development Company in Korea was one of the powerful Japanese quasi-official corporations for the economic exploitation of Korea. Through such corporations, Japan dominated not only the political but also the economic lives of the Korean people.

Most of the land was owned by the Japanese, and the majority of the Korean tenants suffered under the Japanese. In the towns and villages there was great unemployment. Many peasants lost their lands and left for the cities, where they became part of a large unemployed mass suffering famine and poverty. The laborers and peasants realized that under these conditions their future would be either death or a continual struggle against the Japanese. Thus the Korean workers had to grope their way in the darkness of inexperience until they gradually built up a satisfactory vehicle for united action. It was reported that a dozen small labor organizations had been formed during the 1920's in Korea.

In 1920 the Korean Laborers Relief Association (*Choseon Nodong Kongje Hoe*) was founded by a socialist group under the leadership of


30 As early as 1918 landless peasants made up about 37.7 per cent of agricultural families, but by 1940 this figure had grown by another 21 per cent. See Grajdanzev, Andrew, Modern Korea. New York: John Day Co., 1944. p. 110.
of Pak Ch'ung-wha. Its objective was to gain cooperation of all Korean workers without regard to their skill or lack of skill. Not only did the Association admit workers to its ranks, but it also admitted nationalists as well as socialists. These groups included physicians, businessmen, rickshawmen, burden carriers, and 31 newspaper boys. It claimed to have a membership of about 15,000, and its specific aims were: a) to establish a proletarian society, b) to enlighten the workers, and c) to promote employment. However, it had primarily intended to take nationalistic cooperation in the Korean resistance movement to Japanese colonialism.

The Federation of Labor Unions of Korea (*Chosŏn Nodong Ch'ong Tongmaeng*) was also organized by Yun Pyŏng-dŏk in 1924, and after three years it was joined by several small industrial unions. The group then changed its name to the Korean Federation of Laborers and Farmers (*Chosŏn Nodongja Nongmin Ch'ong Tongmaeng*), which aimed to: a) fight Japanese imperialism, b) establish social welfare programs, and c) promote a proletarian society. The membership included transportation workers (4,358), cotton cleaners (3,078), printers (4,358), woodworkers (1,354), metal workers 31

32 loc. cit., p. 36.
33 *Yi, Pan-sŏng, Chosŏn Sahoe Undong Sa* [A History of Social Movement in Korea], Seoul, Korea, 1934, quoted in Kim, Yun-hwan and Kim, Nak-jung, op. cit., p. 46.
(2,583) and, daily laborers (9,574). Not all industrial workers were affiliated with the Federation, but it was the closest thing to a national labor movement developed in Korea up to this time.

Although all these organizations were concerned with the mutual relief of laborers and farmers, they were in fact a politically oriented socialist group rather than labor unions or farmer cooperatives. Therefore, the early labor organizations consisted of local and small groups which joined together with socialists and nationalists to form for the independent resistance movement against Japanese colonialism.

Beginning of Industrial Disputes

Industrialization in Korea had its beginning in World War I. The first factory was a brick yard established by the Japanese in

34 Asagiri, "Korea: Labor Movement." Labor Monthly (London), XI (September 1929), Pp. 568-70. Kim, Chung-yol, former Vice President of the Korean Federation of Trade Union, states that there were many unions in Korea during the periods from 1898 to 1910, that is, Sŏngjin Union in 1898, Jinnampo Union in 1902, Chosŏn Union in 1906, Sinchangri Union in 1908, Kunsan Union in 1909 and E-wŏn Union in 1910. In addition to those organizations, Kim, Yun-hwan and Kim, Nak-jung state there were several unions during the 1920's, such as, Koryangpo Union in 1913, Kŏjeo Union in 1915, P'yongyang Union in 1917, Choch'iwŏn Union in 1918, and Shint'aein Union in 1919. However, there is nothing for any documents relating to those labor organizations. See Kim, Chungyol, Nodong Munje Ch'ongnon [An Introduction to Labor Problems]. Seoul, Korea: Chip'yŏn Sa, 1969. p. 183, Pp. 192-3, and see also Kim, Yun-hwan and Kim, Nak-jung, op. cit., Pp. 14-5.

1907 in which a few dozen men were employed. The factory system did not develop in pre-Japanese days. Thus, the Japanese, preoccupied with administrative reorganization and agricultural reform gave little attention to Korean mineral reserves or manufacturing potential until the First World War.

To take advantage of the war time markets, tungsten, iron, and mines were developed and exports to Europe began. In addition cotton textile, sugar, cement, and iron manufacturing plants were constructed. By the time these were completed and operating at full capacity, however, the post-war depression had set in, and Korea's first industrial boom was over. The men and women employed in this early industry were at the mercy of the company authorities and the police. The bulk of the workers were uneducated recruits from rural areas; the companies exploited them as they wished.

During the seventeen-year period ending in 1927, according to a statistical report of the Government-General of Chosen (Korea), the number of factories increased 19.5 times, capital increased 51.1 times, employees 6.1 times, and the value of industrial products 18.8 times. In 1927 there were in Korea 4,914 factories, having 89,142 employees, including 6,163 Japanese, 4,632 Chinese, and the remainder Koreans. The number of employees in industry

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38 Asagiri, op. cit., 568. Approximately 28 per cent of the workers were either women or young children.
39 Although only a little over 40 per cent of the factories were
during the 1931-1944 era also jumped by almost one hundred per cent, and the gross value of production increased more than two and a half times.

The expansion of industry, however, did not seem to have been accompanied by a comparable advancement in the living standards of the Korean workers, nor was it accompanied by the elevation of Koreans to positions as technicians or administrators. Japan saw Korea as an integral part in its overall economic system, as expressed by Yonaihara:

\[\text{The invasion of the peninsula by Japanese capital is tantamount to assimilation of Korea by the capitalistic structure of Japan. While the Government-General of Chosen is founded on principles derived from the Japanese administration system at home, the economic structure built up in Korea is founded on the importation of Japanese capital.}\]

Under Japanese colonial rule, therefore, the country could not develop any integrated economy of its own, but it was an adjunct to the economic system of Japanese capital. In spite of the unfavorable circumstances under the Japanese, there were many intensified labor disputes during the 1920's, especially the general strikes in Seoul and Wonsan, which became major labor

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40 McCune, Shannon, Korea’s Heritage. Tokyo, Japan: Rutland, 1956 p. 225; Also see “Industry in Korea.” Far Eastern Review, XXXI (September 1935), 351; Grajdanzev, op. cit., p. 148.

disturbances in Korea.

In 1925 the workers in the Keijō Electric Power Co. (Keijō Daengki Kaisha) formed their own labor union and fought for improving working conditions. In January, 1925, the workers presented their demands to the Company: repair the streetcars, establish rest hours, create a pension system, set working hours etc. However, the Company did not accept these demands and the workers brought about strike and sabotage on February 12, 1925. The leaders of the union and fifteen workers were jailed, and thirty-nine workers were discharged by the Company. The Wonsan strike, however, turned out not to be as short as the Keijo Electric Company strike, and it was also very significant in the history of labor movement under Japanese colonial rule. The Federation of Labor Unions of Wonsan (Wonsan Nodong Yonhap Hoe), organized in 1925 under the leadership of Kim Kyu-sik, claimed a membership of about 2,200, most of whom were rickshawmen, tailors,

43 For further information on the Keijō Electric Strike, see Kim, Yun-hwan, Ilje ha Hanguk Nodong Undong-ui Chongae Kwajong [Development of the Korean Labor Movement under Japanese Imperialism].
45 Kim, Chung-yol, op. cit., p. 198; Kim, Yun-hwan, op. cit., p. 116; Dong-A Ilbo, (Dong-A Daily), Seoul, Korea, March 5-10, 1925, and February 14, 1925.
and dock and transport workers.

On September 17, 1928, a Japanese foreman of Munp'hyŏngni Petroleum Company, Kodama, was alleged to have flogged a Korean employee, Pak Chun-yŏp, without any reason. The principal terms of the settlement were the dismissal of the Japanese foreman, a subsidy to the strikers during the strike, the introduction within three months of a retirement pension system, accident compensation, and a minimum wage. In December, 1928, the company communicated to the workers its decision to enforce the agreements on the retirement pension plan, accident compensation, and a minimum wage, but stated that the company would negotiate terms only with the workers as individuals and not through their union.

This was seized by the Korean workers as an opportunity to better organize themselves, as well as an occasion for demanding

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47 For more detailed information on the Wonsan strike, see "Chosenjin Rodosha Mondae [Problems of the Korean Workers], Chosen keizaino kenkyu [A Study of the Korean Economy], Seoul, Korea, Keijō Imperial University, 1935, p. 320 and Pp. 456-65, also see Kim, Yun-hwan and Kim, Nak-jung, op. cit., p. 29; Kim, Chung-yŏl, p. 204.


just treatment from the Japanese management. The employer's refusal to recognize the union caused widespread opposition among the company's employees, and seemed to have been the most immediate and direct cause of the strike which the Federation of Labor Unions of Wonsan declared on January 14, 1921. The wharf workers at once refused to unload cargo on incoming ships on that day. They were joined by 1,500 transport workers, and the situation became increasingly grave. The local chamber of commerce of Wonsan (Wonsan Sangkong Hoeui) acted as conciliator, but no agreement was reached, as the employers would not compromise. The emotions of nationalism and sentiment against discrimination ran high throughout the country. Transport workers in the whole region of Wonsan joined in the strike, and labor organizations from all over the country sent their aid. However, the Japanese would not tolerate for very long a situation where commerce was completely obstructed and its colonial authority openly flaunted.

In this disturbance the leaders of the union were jailed, and the Federation of Labor Unions of Wonsan was suppressed by the

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50 Kim, Yun-hwan, Ilje ha Hanguk Nodong Undong Ui Chongae Kwajong [Development of the Korean Labor Movement under Japanese Imperialism], op. cit., Pp. 131-150.

51 Dong-A Ilbo, Seoul, Korea, January 15, 1929.

52 Kim, Yun-hwan, Ilje ha Hanguk Nodong Undong Ui Chongae Kwajong [Development of the Korean Labor Movement under Japanese Imperialism], op. cit., p. 31.
Japanese police. Never again under Japanese rule were the Korean workers to rise up in strike as they had done at Wonsan. The number of participants in the strike was small, but to have had any successful labor dispute under Japanese rule is very significant.

Therefore, the labor disputes in Korea were not simply spontaneous occurrences, but were politically motivated as part of the Korean nationalistic struggle against Japanese colonialism. Although the principal labor disputes arose over the workers' demands for increase in pay or against the reduction of wages, most strikes in Korea were encouraged by the Communists. As was characteristic in other Asian countries, the first seeds of the labor movement in Korea has its roots in the role of the Communists in promoting national resistance to the colonial power itself. It is to this development in the Korean labor movement that we now turn our attention.

Role of the Communist

The Communist movement in Korea under Japanese colonial rule had been one of the most important aspects of an anti-imperialistic national liberation movement. It was meant as an ideological


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weapon for national liberation and as an alliance of anti-imperialistic sentiment. This is essential to the understanding of the historical development of the Korean labor movement, which had been led by the Communists against Japanese colonialism.

The beginnings of the Korean Communist movement are shrouded in mystery. As early as 1917, Sin Kyu-sik and others organized the Korean Socialist Party (Chosön Sahoe Tang) in Shanghai. This group drafted a demand for Korean independence to be presented to the Stockholm International Socialist Conference. However, the Stockholm Socialist Conference not only failed to materialize, but also the Shanghai Korean Socialist Party quietly disappeared.

As early as 1919, Koreans living in the districts north of Vladivostock formed the Korean Communist Party (Hanin Kongsan Tang). In 1920 the Korean Communist Party (Koryŏ Kongsan Tang) was also established in Shanghai which opposed the Provisional Government of the Republic of Korea (Taehan Minguk Imsi Chongbu)


that had been formed there by the nationalist supporters of the March First Movement of 1919. This new trend in political thought occurred not only in Shanghai but spread among the Korean younger generation within Korea itself.

In 1922, the Seoul Young Men's Association (Seoul Ch'ŏng-nyŏn Hoe) was founded among Korean leftist students in Tokyo, both of which were active in fostering socialist and communist ideas. Shanghai and Tokyo became the two main centers for the ideological movements of the Koreans, and from these two centers revolutionary ideas were introduced into Korea until the Korean Communist Party (Chosŏn Kongssan Tang) was established in Korea itself in 1925. The Korean Communist movement was basically started for the revolutionary development in the proletariat, but it was mainly a movement of a few intelligentsia and their organizations.

In 1928 the approach was changed, and the Communist International (Comintern) expressed the purpose of developing leadership among the proletariat in the Korean Communist Party. The relationships between the Korean Communist Party and the Comintern did not begin until after the Fifth Congress in 1924, but they became more extensive between the Fifth and Sixth Congress (1924-28), when the Korean Communist Party was officially admitted as a section of the Comintern on September 1, 1928.

58 Hatada, op. cit., p. 129.
The Comintern attempted to secure the reorganization of the Korean Communist Party so that it included the more important strata of the working class combining the economic struggle with political demands. Therefore, the Sixth Congress of the Communist International formulated the general policy of the Korean Communist Party in this way:

It is necessary to absorb into the Communist party new faces, primarily from among the working class. The party membership must be changed from the intelligentsia to the laborers and the party leadership from intelligentsia leadership to labor leadership. This is the demand of the Korean proletariat for the nationalistic movement to imperialism and the directive from the Comintern.60

Armed with these tactical views, the Korean Communists struggled for the national emancipation and the interest of the proletariat. In order to perform the great duty of the Korean Communists the Comintern also attempted the anti-imperialist national united front to oppose Japanese imperialism. The Korean Communists rested in direct participation in the national revolution in opposition to Japanese colonial rule, and it was to struggle for proletarian hegemony in the anti-Japanese struggle by expanding the struggle for the political-economic benefits of

60 loc. cit., p. 155.
the masses. For this responsibility of revolutionary movement the Korean Communists made fundamental changes in their operation and the most important purpose of the Korean Communists Party became to gain mass support in uniting all anti-Japanese forces for national liberation and the interest of the proletariat.

The Wŏnsan strike, the popular support for this strike, and the wave of student demonstrations—all these have only been advance struggles, signaling the approach of new and larger mass movements of the proletariat. Thus, the Korean proletariat was beginning to play an increasingly important part in the labor movement in Korea. The greatest development of the Korean labor movement was the Wŏnsan strike and the support it received from the entire proletariat of Korea. That the struggle of the proletariat was becoming the chief factor in the labor movement in Korea was proven by the spontaneous outbreaks in the transportation, textile, mining, and other industries. The fifty large strikes were recorded in the 1920's, but they met the furious terror instituted by the Japanese colonists against them.

The Japanese imperialists did not permit a labor movement of

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62 Suh, op. cit., p. 364.
63 loc. cit., p. 284.
64 loc. cit., Pp. 284-85. Most of the labor leaders were imprisoned by the Public Peace Law which was enacted in 1925. Kim, Chung-yŏl. op. cit., p. 197. For more detailed information, see the Wando Nongmin Chohap Sagŏn (Wando's case of Farm People Union) in 1936 and Hamhŭng Kukje Chŏksaek Nodong Chohap Sagŏn (Hamhŭng's case of International Red Labor Union) in 1934.
any kind under these circumstances, and the movement of the working class was primarily concerned with the national struggle against the colonial rule of the Japanese, which was paramount during the 1920’s. The Japanese authoritarian rule, however, rejected and suppressed any political activities by Korean organizations. These critical factors associated with the origin of the Korean labor movement accounted in large part for its economic weakness. They fought only for national liberation from Japanese domination and seldom organized any activities for the improvement of wages or working conditions. Therefore, it can be said that the early history of the Korean labor movement was indeed largely one of a nationalistic struggle against the colonial rule of the Japanese, and it was heavily influenced by the role of the Communists.

In spite of this contribution by the Communists as one of anti-imperialistic national movement, following the Second World War the first federation of labor union, the General Council of the Korean Trade Union (GCKTU—Ch’ŏn P’yŏng—Chosŏn Nodong Ch’ohap

65 Even religious organizations, especially the Christian Church, were forced to close down during the last period of Japanese colonial rule. See, Osgood, Cornelious, The Korean and Their Culture. New York: The Ronald Press, 1951. Pp. 292-93.

66 This tendency was revealed most strikingly in the radical movements to attract large numbers of workers. However, the mainstream of American workers has never followed Communists agitation and influence by supporting political movements aimed at making basic changes in the fabric and structure of society. Bok, Derek C., op. cit., p. 1401.
led by the Communists was outlawed under the American Military Government. At the same time, the Federation of the Korean Trade Unions (FKTU—Taehan Nooh'ong—Taehan Tongnip Ch'oksong Nodong Ch'ong Tongmaeng) was recognized as the sole national labor federation for an anti-Communist movement in South Korea.

Struggle between the GCKTU and FKTU

With the end of World War II Korea was liberated from Japanese colonial rule. Instead of one nation, however, the peninsula was divided into two, corresponding with the foreign powers and ideologies that substituted for Japanese colonialism. In order to disarm the Japanese army the American and Soviet armies landed on the Korean peninsula in 1945. The northern part of the peninsula was occupied by the Soviet troops and the southern part by the United States army. For three years the United States and the Soviet Union made modest pretenses toward the reunification and independence for all of Korea. Negotiations in 1946-47 between the United States and the Soviet Union failed to establish a united national government on the Korean peninsula. As a result the

68 Hereinafter cited as the FKTU (Taehan Nooh'ong). For further information, see Kim, Yun-kwan and Kim, Nak-jung, loc. cit., Pp. 125-32; See also, Kim, Chung-yŏl, op. cit., Pp. 216-21.
Republic of Korea was formed under United Nations auspices on August 15, 1948, in the south, and a month later the Democratic People's Republic of Korea was established under the Soviet Union in the north.

The division of the land in 1945 created vastly unfavorable conditions for the economic as well as political development of Korea, for whereas most light industries were located in the south almost all heavy industries, sources of hydro-electric power, coal and iron were found in the north. Having been economically exploited and culturally deprived under the Japanese, and been territorially divided during the Allied occupation, the Koreans were confronted with an enormous task when it came to rebuilding their society and economy and in restoring their cultural heritage. Among the many challenges which they faced, the establishment of political stability and the development of a sound economy were the most urgent and immediate tasks to be accomplished.

When Korea was liberated from Japanese colonial rule, she experienced many grave economic and political problems. Korea faced a serious lack of skilled and qualified personnel because few Koreans had been permitted technical training during Japanese rule. Moreover, Korean industries had been developed and

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For more information, see Grajdanzev, op. cit., p. 79.
supervised almost exclusively by the Japanese, as an integral part of the Japanese economy. Of the some 188,000 Japanese males between the ages of 16-60 in Korea in 1944, over 52,000 were managers or professional and technical experts. In South Korea alone the Japanese employed some 39,000 Koreans on the railroads, but the highest skilled of these had advanced only to the level of station master. Japanese technicians and managers held the key positions in industry and trade. Many factories and firms, which represented over 80 per cent of the nation's industry in 1945, were at a standstill because Korean businessmen were incapable of operating them. The end of the Japanese occupation brought not the expected millenium, but rather economic chaos and division of the land imposed by foreign powers.

During this nationwide confusion, the GCKTU (Chŏn P'yŏng), the first Federation of labor union in South Korea was organized. mainly by the Communists under the leadership of Hŏ Sŏng-t'ae in November, 1945. The Communists and leftist groups had a tradition

72 Economic Cooperation Administration, The Economy of South Korea. Seoul, Korea: Korea Program Division, 1949. p. 3.
75 Kim, Yun-hwan, "Hanguk Nodong Chohap Undong Sa Yŏngu [A Study on the History of Labor Union Movement in Korea]." Kiŏm Nonmunjip [Commemoration Theses: Social Science], Sixtieth Anniversary of Korea University, Seoul, Korea: Korea University Press, 1965. p. 451; also Kyŏngyang Simmun (Kyŏngyang Daily), Seoul, Korea, March 8, and October 16, 1956.
to build a labor movement in Korea, and they symbolized the heroes who had actively fought the Japanese down through the years. Through the underground operation they maintained their ties with workers, and claimed a membership of 574,475. The GCKTU (Chŏn P'yŏng) sought various political and economical goals: a) a minimum wage system, b) a social security system, c) possession of industrial factories owned by the Japanese, d) an eight hour working day, 3) one month's vacation with pay, f) recuperation payments for women for a period of sixty days before and after child-birth, g) enforcement of collective bargaining, h) a guarantee of the right to strike, and i) support for the Democratic People's Republic of North Korea.

Although it claimed to be a body representing the workers, it soon became apparent that the GCKTU (Chŏn P'yŏng) was not merely a labor union organization in South Korea. As soon as it was formed they demanded the withdrawal of U. S. forces from South Korea and ownership by the workers of all industries and firms throughout the country. The political goal was to set up a leftist regime in

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77 Chosŏn Nodongja Simmun (Chosŏn Nodonja Weekly), Seoul, Korea, November 16, 1945; Seoul Simmun (Seoul Daily), Seoul, Korea, Maeil Simmun (Maeil Daily), Seoul, Korea, and Jayu Simmun (Jayu Daily), Seoul, Korea, November 4-7, 1945.
South Korea.

In December, 1945, the Moscow Foreign Minister's Conference was attended by the United States, the United Kingdom, and the Soviet Union. The conference agreed that Korea would be placed under a five-year trusteeship by the Allied powers plus China to prepare for full independence. The plan was a complete surprise to the Koreans, and violent demonstrations against it were staged throughout South Korea. Despite stiff opposition on the part of the Koreans, the United States and Soviet occupational authorities implemented the Moscow Agreement and formed an American-Soviet Joint Commission on Korea at Seoul in January, 1946. The immediate response of all Koreans was a loud, clamorous, "no!" Even the Communists and the GCKTU (Ch'ŏn P'yŏng) originally opposed the Moscow decision and called for a popular demonstration against it. The demonstration was called for in Seoul Stadium on January 3, 1946, but in the days intervening between the calling of the meeting and January 3, orders had apparently come from higher Korean Communist Party officials that the trusteeship was not to be

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78 Kim, Yun-hwan and Kim, Nak-jung, op. cit., p. 117; also see, Dong-A Ilbo, December 2, 1948 and Sinmin Po (Sinmin Weekly), Seoul, Korea, February 12, 1948.

79 The commission was charged with making necessary preparations for a provisional government in consultation with the political parties and social organizations in Korea. However, the commission failed to agree which political parties should be consulted before establishment of a Korean provisional government. Consequently, the two occupation forces failed to integrate the two zones for the unification of Korea. Chung, op. cit., p. 23.
opposed. Consequently what began as an anti-trusteeship demonstration ended up as a pro-trusteeship demonstration.

Under these circumstances, in order to eliminate the Communist domination of the Korean labor movement, the right wing politicians and the employers encouraged the workers to set up anti-Communist unions on a company basis with the FKTU (Taehan Noch'ong) which was formed in March, 1946 under the leadership of Hong Yun-ok. It was widely recognized that the FKTU (Taehan Noch'ong) had two main purposes: a) to support the conservative polices of the government, and b) to eliminate the Communists from the labor union movement in South Korea.

The first task of the newly formed FKTU (Taehan Noch'ong) turned out to be a political battle over the Korean trusteeship issue. Both the FKTU (Taehan Noch'ong) and GCKTU (Chŏn P'yŏng) scheduled May Day meetings in Seoul Stadium on May 1, 1946 when trusteeship issue was a paramount one. A riot broke out, and dozens of men on both sides were beaten and injured.

In addition to the political explosiveness of the trusteeship issue, there was also a deepening economic crisis in 1946. On August 29, the American Military Government estimated that food costs were one hundred times higher than in pre-war days. Rice

81 Kim, Chung-yŏl, loc. cit., p. 222.
82 Dong-A Ilbo, Seoul, Korea, May 4, 1946.
was becoming scarce and wages were at a standstill. Two demands were thus sent by the GCKTU (Ch'ŏn P'yo'ng) to the American authorities, asking for higher wages and rice allotments. American Military authorities, in their summation report for September, 1946, did note that some petitions had been received from the railroad workers under the GCKTU (Ch'ŏn P'yo'ng), but they were not signed.

During the week of September 22, more than 30,000 railroad workers struck in South Korea without prior attempts at mediation or other settlement of their grievances. On September 23, the railroad workers of Pusan staged a walkout, which was followed by a strike of the engine repair shop workers at Seoul. The grievances causing this action were allegedly the food situation and the cost of living. The GCKTU (Ch'ŏn P'yo'ng), whose prestige had been enhanced by its acceptance into the World Federation of Trade Unions (WFTU), now called for a nationwide strike. Through

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85 Earl, op. cit., 4. World Federation of Trade Unions formed at the end of World War II through the entire world. As a result of the increasingly obvious domination of the WFTU by the unions of Russia and the satellite nations, however, the unions of the democratic nations withdrew and formed the International
mass action it had hoped to expand its image as defender of the workers' rights and at the same time block the forthcoming elections for the South Korean interim government. Chemical workers, textile workers, communication workers, along with thousands of students, civilians, and farmers joined the railroad union in its protest. At its height some 251,000 workers throughout the country were involved.

However, the FKTU (Taehan Noh'ong) charged that the strikes called by the GCKTU (Chon P'yong) were not in the interests of the workers, but rather were called to gain more power for the Communist movement. With the assistance of right wing social and political groups, the FKTU (Taehan Noh'ong) strongly opposed the nationwide strikes under the GCKTU (Chon P'yong). Police also smashed the picket lines, and in the ensuing riots, three persons were killed and many wounded by police gunfire. Martial law was declared by the American Military Government, and United States troops were sent in to restore order. Over a thousand people were arrested. Many were convicted of crimes against the government, and sixteen were sentenced to death for their role in the insurrection. The strike was crushed and order was restored.

Confederation of Free Trade Unions. The AFL in the United States refused to join the WFTU. *The Encyclopedia Americana*, 1968, XVI, p. 590.

86 Earl, op. cit., p. 5.
87 Dong-A Ilbo, Seoul, Korea, September 24, 1946.
88 Lauterbach, op. cit., p. 239.
The GCKTU (Chŏn P'yŏng) had suffered a severe defeat, and the FKTU (Taehan Noch'ong) emerged victorious. It had fought the Communists, especially among the railroad workers, and had been a significant force in bringing about the collapse of the strike. Many of the leaders and organizers of the GCKTU (Chŏn P'yŏng) were imprisoned, and the FKTU (Taehan Noch'ong) moved in to fill the gap.

After the general strike of 1946, the GCKTU (Chŏn P'yŏng) steadily lost strength, and much of its program had swung to a static obedience of Communist directives from the north. Many of their leaders were jailed or fled north, including Pak Hŏn-yŏng, the head of the Korean Communist Party and acknowledged leader of the GCKTU (Chŏn P'yŏng), and Hŏ Hŏn, the number two man of the GCKTU (Chŏn P'yŏng) was arrested.

In March, 1947, the GCKTU (Chŏn P'yŏng) was finally outlawed by the U.S. military government ordinance and went underground. Until the establishment of the Republic of Korea, therefore, there had scarcely been any development of a labor movement in South Korea. The union movement during the American Military occupation had the character of an anti-Communist crusade rather than that of genuine labor movements.

Labor Control under Liberal Party

With the establishment of the Republic of Korea in August, 1948, the FKTU (*Taehan Noch'ong*) became the sole national labor federation in South Korea. The affiliates of the FKTU (*Taehan Noch'ong*) were primarily organized along the lines of trades and enterprises. In December, 1949, the FKTU (*Taehan Noch'ong*) was represented at the inaugural congress of the International Confederation of Free Trade Unions (ICFTU). For the first time the FKTU (*Taehan Noch'ong*) had taken its place in the international trade union movement.

With its usefulness as a militant anti-Communist organization gone, however, the FKTU (*Taehan Noch'ong*) was confronted with various difficulties in transforming itself into a body truly representative of the workers because of government interference in union administration. The government's labor bureau and the organs of provincial governments had the self-appointed task of giving "guidance" to the labor unions.

Early in 1949, certain labor leaders attempted to take the labor unions out of government and party politics. These efforts had the support of many rank and file members. However, nothing

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91 *Kyŏngyang Sinmun (Kyŏngyang Daily)*, Seoul, Korea, May 29, 1960. The ICFTU was an association of the national trade union federations of the democratic, non-Communist nations. The AFL and CIO in the United States were among the founding groups. *The Encyclopedia Americana*, 1968, XVI, p. 587.
resulted due to the outbreak of the Korean War in 1950.

The effects of the war on the economy of South Korea were increasing inflation and the destruction of industry. The constant increase of currency in circulation, caused by military expenditures estimated to be as much as twice the pre-war budget, wrecked the whole economy. During the three years of the Korean War from 1950 to 1953, thus, no labor movement was allowed, for all activities had to be concentrated on the war effort.

After the Korean War, the FKTU (Taehan Noch'ong) concentrated its forces in a genuine labor movement in South Korea. However, political leaders believed that the country would be safe from Communist agitation and takeover if labor became an integrated part of the patriotic front under the Liberal Party. To meet this objective, President Syngman Rhee and his followers seized control of the FKTU (Taehan Noch'ong).

In 1952 when the Liberal Party was reorganized, the FKTU (Taehan Noch'ong) was incorporated in the Party as one of five social organizations. President Syngman Rhee sent a message to the FKTU (Taehan Noch'ong) national convention on November 9, 1952:

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94 The other four organizations were the Korean Farmer's Association (Taehan Nongmin Hoe), the Korean Fishermen's Association (Taehan Omim Hoe), the Korean Youngmen's Association (Taehan Ch'ongnyon Tan), and the Korean Women's Association (Taehan Puin Hoe). See Kim, Jung-yol, *op. cit.*, p. 233.
For the purpose of political consideration which I have intended to set up, the Liberal Party is building strong power with labor in this country. All of the people who want work in any place stake their destinies on the inherent capacity of the individual to play his part in the system and to carry his share of the public responsibility in groups. Thus, I would recommend that the union should select three people who would serve as members of the Central Committee of the Party. 95

It was clear that President Rhee wanted labor unions to be part of the patriotic front of the Liberal Party. Three of the top executive members of the FKTU (Taehan Noch’ong) were included on the Central Committee of the Party, which was closely linked with the most conservative economic and political forces. The President of the FKTU (Taehan Noch’ong), Chŏn Chin-han, constituted the main bridge between the Party and the Federation when the latter was incorporated into the Party.

The leaders of labor unions demanded legislation favorable to labor, but political exigencies produced a complex of interlocking controls over the labor movement. A report by the United Nations Civil Assistance in Korea made the following observation:

The present Korean government is not interested in a progressive labor policy...

96 Three of the top members were Cho Kyŏng-kyu, Song Wŏn-do, and Lee Chin-su.
the police play a more important part than the labor administrators, both in labor recruitment and labor relations...

In 1953, the Labor Standards Act, the Labor Union Act, and the Labor Dispute Adjustment Act were promulgated for the first time. These laws could have become the backbones of the labor movement, and they could have given a new impetus to the Korean labor unions. However, the FKTU (Taehan Nooh'ong) failed to promote the basic characteristics of trade unionism known in the United States. Since the labor unions were obliged to function under political control, no genuine labor movement could be expected to emerge in South Korea.

Reorganization of the FKTU

The Korean labor union movement since the establishment of the Republic of Korea has been far from being a normal labor union movement. Following the April Student revolution in 1960, there were some indications that the labor union movement could promote the economic and social interests of the workers rather than following the dictates of political leaders.

In April, 1960 when a student revolt ousted Dr. Syngman Rhee, from political power, the FKTU (Taehan Nooh'ong) held an extraordinary meeting of its executive board and issued a statement

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supporting the student movement against the regime and severing its ties with the Liberal Party. All the members of the executive board, including the president of the Federation, resigned their positions and laid the foundation for a fresh start.

In November, 1960, after six months of negotiations between the new and the old union leaders on the functions of the future national federation, it was agreed to form a new national organization under the leadership of Kim Mal-yong to be known as the Federation of the Korean Trade Unions (FKTU—Hanguk Nodong Chohap Ch'ong Yŏnmaeng).

In early 1961, it became clear that the administration of Dr. Chang Myon and his Democratic Party, which replaced that of Dr. Rhee, was unable to cope with the problems of deep-rooted corruption and disorder in South Korea. The economic condition of the country was critical. Inflation had taken a new and alarming trend, unemployment was on the increase, and production was stagnating. In this situation labor unions were the only bodies which could have protected the rights of the workers. Within the first year of operation, the FKTU (Hanguk Nodong) had registered over a thousand local and national unions with a total membership of

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98 Park, "Unionism and Labor Legislation in Korea." op. cit., p. 95
99 Kim, Yun-hwan, Hanguk Nodong Chohap Undong Sa Yŏngu [A Study on the History of Labor Union Movement in Korea], op. cit., p. 454. The Federation of the Korean Trade Unions is again being retained as the same title of the former federation, FKTU.
As the only way of protecting labor unions from the power of the party and government, the leaders of the FKTU (Hanguk Nooh'ong) decided to set up an independent fund for advancing labor union movements. However, the FKTU (Hanguk Nooh'ong) was unable to conduct normal union activities, since less than 5 per cent of union members paid dues to their organizations.

New Labor Unionism

When the military coup leaders took charge of the country in May of 1961, they immediately put tight restrictions on all sectors of the society. Labor unions were temporarily suspended along with all other political and social institutions with the imposition of martial law, and strikes were outlawed. The ban on labor union activities was soon lifted, and the Federation of the Korean Trade Unions (FKTU—Hanauk Noryŏn—Haguk Nodong Chohap Yŏrnaeng) under the leadership of Yi Kyu-Ch'ol were organized into a national federation, with fifteen instead of sixteen affiliates,
The only national labor organization in South Korea today is the FKTU (Hanguk Noryŏn). The objectives of the Federation were declared in its manifesto: a) to build a strong democratic labor movement, b) to safeguard the union from political influence, and, c) to improve working conditions. It annually held a convention of delegates from the component unions, at which its officers were elected and basic policies were determined. The officers included a chairman, six vice chairmen, a secretary general, and an assistant secretary general. A Central Committee of representatives from each of the component groups headed by Chairman of the FKTU (Hanguk Noryŏn), and a standing Executive Committee of officers are responsible for the organization's day-to-day activities. Nine secretaries, headed by directors responsible to the FKTU (Hanguk Noryŏn) Secretary General, and ten city and provincial councils coordinate activities in Seoul, Pusan, and each of the provinces.

The newly organized national federation declared its strict political neutrality and financial independence from government or

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103 FKTU, Declaration of the Federation of Korean Trade Unions.
104 Sin, Tu-bŏm, op. cit., p. 30.
105 For more detailed structure of labor organizations, loc. cit., p. 31.

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political party. After having been emancipated from party control at the time of the student revolt, unions have apparently set their course along the following lines: independence of action, improvement of the workers' conditions and increases in wages. In 1962, while the government was still in control of the military, the unions claimed that with the lifting of martial law their right to strike had been restored. They pushed several disputes in early February 1963, and the pressure was intensified in the latter part of that year when the government was returned to "civilian control."

Disputes arose in all sixteen of the unions, involving over 100,000 workers.

The FKTU (Hanguk Noryŏn) today constitutes the main stream of the Korean labor movement, and its activities are instrumental power in the development of labor movement in South Korea. Union membership has increased since 1963. A recent figure as of August 31, 1970, shows that 496,003 workers (353,636 men and the rest women) are organized. This figure, however, represented only 23.9 per cent of the 1,962,000 workers eligible for membership under the provisions of the Korean Labor Union Act which prohibits only the government officials from taking part in union activities. The membership of the FKTU (Hanguk Noryŏn) includes workers from

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sixteen major industrial trade unions: railroad, textile, mining, electricity, foreign organizations employees, communications, transportation, marine transport, banking employees, tobacco monopoly, chemical, iron workers, longshoremen, publication, automobile and other associated groups—consisting of national congress, provincial and municipal consultative committees, specialized agencies, and central secretariat.

Therefore, the FKTU (Hanguk Noryŏn) entered a new phase of labor union movement when Ch'io Yong-su, President of the FKTU (Hanguk Noryŏn), made the following declaration in April, 1971:

In the past, it had developed a dependence upon a relationship with the political party in power which coupled with financial support. However, the FKTU believes that every member of the union has the right to take part in the political affairs of the national election which involved providing support for a political leader in return for a certain support of labor's aims whose goals are better laws and a better life for all Korean workers. For this reason it has established the Committee on Political Education (COPE-Ch'ŏngch'ŏl Kyoyuk Uiwonhoe) for the first time in South Korea.

The primary function of the COPE (Ch'ŏng Kyoui) is to provide political education for union members and to conduct campaigns for political leaders who would be able to support their aims in the labor movement. However, since March 3, 1972, union activities

109 Dong-A Ilbo, Seoul, Korea, April 2, and April 10, 1971.
are directly controlled by the government in accordance with "the Regulation of Collective Bargaining under the National Emergency (Piсангэй Таэнхэ Иёыъяк Къыыхёнг)" declared by the government. In the case of disobeying the governmental controls on collective bargaining and labor disputes established by the decree, a labor union can not appeal its decision to the Labor Committee (Нодонг Уйённоэ) even though the award is in violation of the law by the courts under the Administrative Litigation Act (Haeng Чョン Сосон Пэк) when unions charge that the government has exceeded its authority. The right to union activities is legally guaranteed, but the government has a significant role in the industrial area through its power over labor regulations, as given in laws concerning collective bargaining, labor disputes, and their settlement.

Labor unions in South Korea could not escape the power of the government for the sake of national security that is the so-called "Park Chung-hee Doctrine" explained by Prime Minister Kim Jong-pil on the New York Times, December 7, 1971. The government informed the people that "their constitutional freedom may be restricted" and "every citizen must be prepared with a determination to concede some of the freedoms" in the Constitution. The opposition party plainly worried that they fear suspension of the constitution and closure of the National Assembly--as has already happened in Cambodia and Thailand--may come soon. These events have been reported in an editorial of the Christian Science Monitor, December 8, 1971; Kalamazoo Gazette, December 6, 1971, p. 1; and Korea Week, Washington D.C., December 15, 1971.

For more details, see the "Regulation of Collective Bargaining under the National Emergency," designed by the Office of Labor with Regulation No. 103 on March 3, 1972; Dong-A Ilbo, Seoul,
government in the development of the labor movement. Politics and government have been the prime factors in the labor movement, at times either contributing to union growth or restricting union activities. It can be said that the Korean labor union movement has always been politically controlled by the government throughout its history, and such governmental control has handicapped the development and growth of Korean labor movements.

However, the labor movements today are faced with serious legislative challenges in South Korea as well as in the United States. The relationship between the labor movement and legislation in both countries had a considerable effect not only on the history of labor unionism, but also on other social, political, and economical institutions in both countries.

Therefore, Part II is concerned with labor union influence on labor legislation under which they operate. Emphasis will be placed on the analysis of power relationships among labor, management, and government in establishing labor policies. It will investigate how labor legislation was developed in the United States and South Korea, and what were the major factors in the power relationships between labor and management in these two countries.

Korea, March 9, 1972; See also an editorial on Dong-A Ilbo, March 11, 1972. Also, a discussion of the Administrative Litigation Act is found on page 181.
PART TWO LABOR LEGISLATION
CHAPTER IV

AMERICAN LABOR LAW

The law may be viewed as a body of rules for guiding our conduct or as an instrument for social control which provides a framework for group relations. Within this context, labor policy towards political and economic issues, including the relationship between labor and management, is a function of two sources of regulatory rules: common law on the one hand and statutory law on the other.

Common law consists of judiciary statements and crystalizations of prevailing social and economic attitudes, while statutory law is society's means, through legislation, to add new dimensions to social regulation as well as to modify or redirect court structured relationships. Thus common law derives its authority from usage and customs, but statutory law is subject to interpretations or modifications in the form of administrative law which stems from the rulings of agencies charged with enforcing particular statues.

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The common law, which is generally the foundation of American legal system, originated in England from court decisions shaped according to prevailing custom. The court decisions were reapplied to similar situations, and thus legal doctrine was developed and given its place in the growing body of law which was recognized and accepted as the common law. However, there is no federal common law, since the national government is one of delegated powers. Sufrin, Sidney C., Labor Law: Development-Administration-Cases. New York: Thomas Y. Crowell Co., 1954. p. 17; Plano, Jack C. and Greenberg, Milton, The American Political Dictionary. New York:
American constitutional form of government divides the responsibility for the law and its evolutionary change. The division of authority between the federal government and the state governments is delineated in the federal constitution. Jurisdictional lines are themselves subject to interpretation and modification by both judicial and legislative action. The substance of the law relating to labor-management has evolved through legislation, judicial decisions, administrative rulings, and executive enforcement as a joint product of the three branches of government. These all interact upon one another, and from this interaction labor law has evolved. Major sources of American labor law are thus found from their common law and statutory enactments.

Conspiracy and Labor Injunction

Criminal Conspiracy

The United States has largely inherited the legal system of common law from Great Britain. One of the most important legal devices, the doctrine of conspiracy, employed in the United States for many decades was developed out of English common law. It is known as criminal conspiracy that is an unlawful concerted action by workers in making demands upon merchant or manufacturer. The case of the King against the Journeymen-Taylors of Cambridge, decided in England in 1721, illustrated the criminal conspiracy


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idea applied to labor under statute and common law.

It is true that American judicial thinking was conditioned by the economic doctrines associated with the system of free enterprise. This interrelation between the conspiracy doctrine and laissez-faire ideas is well described by Gregory:

Conspiracy doctrine was an arbitrary statement of a result, and depended for its existence on the economic views of the judges using it. Indeed, it is clear that these economic views were really the law, while the doctrine of criminal conspiracy was merely the form in which it was presented for public consumption.4

The prevailing common law attitude toward trade unionism in the first half of the nineteenth century was, therefore, that practically any activity by labor organizations was an unlawful conspiracy in restraint of trade.

The first criminal conspiracy case in the United States was that of the Philadelphia Cordwainers in 1806. Eight cordwainers

3 Kings Bench, 1721. 8 Mod. 10, 88 Eng. Reports 9. One Wise, and several other journeymen tailors, in the town of Cambridge, were indicated for a conspiracy among themselves to raise their wages, and were found guilty. See also, Myers, Howard, Labor Law and Legislation. (4th ed.); New York: South-Western Publishing Co., 1968. Pp. 10-2.


were charged by the Commonwealth of Pennsylvania with conspiracy to raise their wages. They were found guilty and fined. This decision remained in force as a precedent until 1842, when the Commonwealth (Mass.) V. Hunt case was decided. This case became the first authority to support the right of workers to combine into associations, now called trade unions; to engage in peaceful strikes, and to press for the closed shop.

Thus during the last half of the century strikes and other union activities were not illegal per se, but they were usually analyzed by the courts in terms of their intent or motive and whether their means were unlawful. In the case of the Commonwealth V. Hunt, however, Chief Justice Shaw's decision partially removed the taint of crime from activities of the workers for the improvement of their working conditions. The decision made the legality of a strike dependent upon the end sought. Of course, the courts continued to make a limited use of the conspiracy doctrine.

7 45 Mass. (4 Met.), 111 (1842). There are many examples. In 1820, in New York City, in People v. Melvin; in 1815, in Pittsburgh in Commonwealth v. Morrow; in 1821, in Commonwealth (PA) v. Carlisle, and in 1824, the Buffalo Tailors who struck for higher wages were again convicted for conspiracy. However, a landmark court case in 1842 was the Commonwealth of Massachusetts v. Hunt in which it was held that a strike to obtain a closed shop was not illegal per se. From then on the conspiracy doctrine was not automatically applied to unions by most courts but rather it depended on their objects in the eyes of the courts. See Falcone, Nicholas S., Labor Law. New York: John Wiley & Sons, Inc., 1962. Pp. 39-43; and Mayers, op. cit., Pp. 17-20; Summers, Clyde W. and Wellington, Harry H., Labor Law: Case and Materials. New York: The Foundation Press, Inc., 1968. p. 7.

8 At this period, the Massachusetts Supreme court was regarded by legal scholars and judges in all the existing states as a leader.
to curb a number of union activities.

Basically the attitude was, however, that union organizations and activities were acceptable if they did not harm anyone or create any problems. This was tantamount to saying that ineffective unionism was legal but effective union activity was against the law.

It can be said, therefore, that there were more labor cases in the second half of the nineteenth century in which the conspiracy doctrine was successfully invoked than in the first half, but without Justice Shaw's decision, as Nelles has convincingly pointed out, "there would have been more cases otherwise."

Labor Injunctions

The injunction, another English legal device appropriated by American courts, broke the back of labor movement in the United States when workers were enjoined strikes. It was originally designed for the English King who alone had the right to forbid the commission of an act rather than wait for damage to be done and later sue at law for money damages. This injunction was issued by an equity court commanding one or more persons to refrain from


committing an act or, in affirmative, requiring them to perform a specific act. The injunction relief may be sought only when no adequate law remedy is available in the United States.

Concomitant with the legal indemnity of business with property was the sue of injunctions in labor disputes. Injunctions were sought by employers primarily to prevent obstruction to the manufacturer, and to protect the sale of their goods and of their access to the labor market. Criminal laws provided protection against physical property damage and violence in labor disputes, but employers sought injunctions to restrain workers from engaging in strikes, boycotts, picketing, and other acts which interfered with business operation, even though such acts were unattended by violence or physical damage to property.

The first case of the use of an injunction was the Railway Union strikes of 1877, and its remarkable effectiveness came to be officially recognized by the employer's associations in June 1879. Injunctions were frequently used to the detriment of workers—in 1883, against the Baltimore glass workers; in 1884, against the Iowa coal miners; in 1886, against the railway workers

11 King v. Ohio and Miss. R.R., 14 Fed. Cas. 539 (1877).

in Chicago, Missouri, Kansas, Arkansas, and Texas. In 1888, the Supreme Court of Massachusetts expressly approved the use of an injunction to restrain picketing in Sherry v. Perkins case. Also, in the Pullman strike of 1894, Eugene Debs, leader of the American Railway Union, and his followers were restrained from continuing the strike. When he refused to obey the mandate of the court Debs was sentenced to jail for contempt; the decision was substantiated by the U.S. Supreme Court.

The reasoning of the courts was that a recourse to the device of an injunction was inherent in equity to prevent an actual or threatened tortious invasion of property. This cumbersome doctrine has been proved to be extremely damaging to the American labor movement.

**Early Anti-Trust Acts**

**Sherman Anti-Trust Act**

By the turn of the century organized labor began to receive some relief through statutory law. The passage of the Sherman Anti-Trust Act of 1890, aimed at eliminating the evils of trust and monopolies, considered by some to be a turning point, but it

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13 Landis, op. cit., p. 36.
15 In Debs, 158 U.S. 564 (1895).
16 26 Stat. 209 (1890).
has never been agreed upon by scholars whether it was actually Congressional intent that the Sherman Act was to discontinue the common law doctrine that restraint of trade was a proper designation for union activities.

Mason claims that Congress did intend such coverage, while Berman contends that it was not Congress but the Supreme Court which brought the activities of the workers under the purview of the Act's jurisdiction through "judicial legislation." The Act was applied against the Workmen's Amalgamated Council of New Orleans in 1893. In 1894, an Illinois Circuit Court held that the Pullman Strike also was a conspiracy in restraint of trade, and hence in violation of the Sherman Act.

Moreover, the Supreme Court solved this interpretive dilemma in 1908 when it established in the well-known Danbury Hatters case that unions were indeed subject to the Act and could be guilty of restraint of trade in a nation-wide strike. This judgement came as a rude shock to the American labor movement and sparked a national campaign to amend or end the Act.

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18 Berman, op. cit., p. 124.
20 United States v. Debs, 64 Fed. 724 (1894).
21 Mason, op. cit., p. 162; Lieberman, op. cit., p. 70.
Clayton Anti-Trust Act

The passage of the Clayton Anti-Trust Act of 1914 followed the political efforts of labor in order to secure relief from the restrictions of the Sherman Act. Congress spoke more positively in the passage of the Clayton Act. It included legal sections on labor activities which may be more clearly identified as the beginning of statutory law with a federal attempt to reshape common law and judicial interpretations. Labor won a footing in section 6 of the Clayton Act which stated that "the labor of a human being is not a commodity or article of Commerce." However, the Supreme Court again, and with less reason than earlier, shoced not to interpret the law in an exemptive manner, and Congress consequently failed in its first explicit attempt to modify judicial attitudes toward labor unions.

In the case of Duplex Printing Press Co. v. Deering, the Supreme Court, using old agruments, held a machinists' boycott to be in violation of the Sherman Act as amended by the Clayton Act. The Coronado case and the Bedford Stone case completed the

22 38 Stat. 730 (1914).
23 Falcone, op. cit. Pp. 55-83. In a series of cases the Supreme Court held the Clayton Act to be virtually in support of the Sherman Act.
24 254 U.S. 443 (1921); Justices Brandies, Holmes and Clark dissented. Speaking through Justice Brandies they held that the Clayton Act was intended to improve the legal status of unions.
emasculating the presumed benefits to the workers in the Clayton Act. The Bedford Stone case arose after a strike had proved futile and the company's products were labelled by the union as "unfair."

Although two lower courts, the District Court and the Court of Appeals of the Seventh Circuit, declined to grant an injunction against the workers, the Supreme Court held for the appellants and found the union guilty of violation of the Sherman Anti-Trust Act.

The Bedford decision amounted to depriving a union of the co-operation of its members in its fight against an employer, who could organize a substitute employer-dominated union. Thus, laws intended by Congress to curb business monopolies came to be utilized by the courts to curb labor activities as well.

Modern Labor Laws

**Railway Labor Act**

The 1920's witnessed a change in the judicial attitude towards the workers; this is visible in the 1930 decision of the court on the Railway Labor Act of 1926. In the case of Texas and New Orleans Railroad Co. v. Brotherhood of Railway and Steamship Clerks, the district court granted a temporary injunction. In

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Berman, op. cit., 170; Lieberman, op. cit., p. 106.

27 Berman, loc. cit., p. 171.

28 44 Stat. 577 (1926).

brief, the Brotherhood of Railway Clerks brought suit against the railway company in the District Court for an injunction to restrain the carrier from interfering with collective action by its workers.

Congress sought to provide safeguards for the right of railway workers to engage in collective bargaining. The Act declared that each party should be free to designate its bargaining representative and to organize "without interference, influence, or coercion" from the opposite party.

The major purpose of the Act was to provide for mediation and voluntary arbitration and for an emergency board to deal with disputes unresolved by the mediation and arbitration methods. Grievance disputes that could not be solved by the bargaining parties could be submitted to adjustment boards "created by agreement" between labor and management. These boards were to consist of an equal number of employee and management representatives, and their decisions were to be "final and conclusive." A Board of Mediation was established to handle disputes arising from intended changes affecting rates of pay, rules, and working conditions, as well as grievance disputes submitted to it by the adjustment boards.

The law thus attempted to minimize strikes in the railroad industry by providing a rather elaborate set of alternatives to a work stoppage. Both parties remained free to disagree, and a strike or lockout could occur after the exhaustion of the various mediatory efforts.

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30 Cohen, op. cit., p. 140.
Norris-LaGuardia Act

The era of labor union promotion began with the passage of the Norris-LaGuardia Act of 1932, frequently called the anti-injunction law. It was based on the power granted Congress by Article III of the United States Constitution to regulate the jurisdiction of federal courts. Organized labor finally achieved relief from court injunctions when large majorities in both houses of Congress passed and President Hoover signed the Norris-LaGuardia Anti-Injunction Act. Congress intended that the power of the federal courts to issue injunctions in labor dispute cases be sharply curtailed, and the law was skillfully designed to accomplish this objective.

Thus federal judges are prohibited from issuing restraining orders or injunctions against strikes, payment of strike benefits, lawful assistance to participants in a labor dispute who are involved in a court action, becoming or remaining a member of any labor or employer organization, giving publicity to the facts of a labor dispute, peaceful assembly by those involved in a labor dispute, and advising, inducing, or otherwise causing the above acts.

Statutory law in the form of the Norris-LaGuardia Act was an unmistakable and incontrovertible directive to the judiciary that

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31
47 Stat. 70. (1932).

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at once rendered injunctions and yellow dog contracts unavailable as a means to prevent organization, strikes, picketing, and boycotts. This act gave the worker important freedoms of economic action necessary to foster the growth of unionism.

In the case of Senn v. Tile Layers Protective Union (1937) the Supreme Court upheld the validity of the Wisconsin Labor Code, an anti-injunction statute, paving the way for the constitutionality of the Norris-LaGuardia Act, which was affirmed in the Lauf v. E.G. Shinner and Co. case. The Supreme Court boldly declared that "there can be no question of the powers of Congress...to define and limit the jurisdiction of the inferior courts of the United States." So it was after a century of struggle that the workers were finally able to cast away the yoke of the conspiracy doctrine and the injunction device.

**National Industrial Recovery Act**

The first legislation under the New Deal government which directly affected organized labor was the National Industrial Recovery Act, enacted in June, 1933. In addition to an extensive public works program, the Act provided that each industry establish

33 301 U.S. 468 (1937).
34 303 U.S. 323-30 (1938).
codes of fair competition which were to include minimum working standards. Labor was given only an advisory status in the preparation of the codes, although in a few instances, such as clothing and mining, the union representatives were active in determining the labor terms and in seeing that they were enforced.

It guaranteed employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

However, passage of a law does not always insure immediate observance, and for almost two years the operation of this Act was seriously impeded by the resistance of many employers who were firmly convinced that the Act would be invalidated in the courts. In 1935, this Act was declared unconstitutional by the Supreme Court in the Schechter case. The Supreme Court held that the Act was an improper delegation of legislative powers and an improper extension of federal power over intrastate business. Therefore, any attempt by the federal government to control the wages and hours of employees of the Schechter Poultry Company, a firm doing business in New York, was an invalid exercise of such federal

36 Peterson, op. cit., p. 29.
power. The National Industrial Recovery Act ceased to exist after this court ruling, and the Schechter case represented the end of one era and the beginning of a new one.

Wagner Act

The Wagner Act of 1935 brought about a fundamental and most significant change in labor's social and economic position. It was designed to be an equalizer in the labor relations power structure, giving employees the right to organize and designate bargaining representatives of their own choosing. The equalizer was for the federal government to provide a type of Bill of Rights for labor unions and at the same time to put restrictions on the power of the employers. Senator Robert F. Wagner (D.-New York) introduced in Congress a new National Labor Relations Act on the grounds that national prosperity depended upon collective bargaining on the basis of equality between the employers and the workers.

The point was further emphasized by Congress in a statement on "findings and policy" prefixed to the Act, which declared that refusal by the employers to bargain collectively with the workers

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38 Sufrin, op. cit., p. 172. Inspite of having been declared unconstitutional, the NRA represented the beginning of a new social philosophy in the field of general wage and hour regulation. The NRA was, in fact, a basis for the Fair Labor Standards Act which sets minimum wages in the United States for men, women, and children in most industries.


40 U.S. Congress. Congressional Record. 73rd Cong. 2nd Sess. LXXVIII, Part 4 (March 1, 1934), 3525-526.
was the cause of major impediments to the flow of commerce, and hence it was to be the "declared" policy of the United States to encourage such collective bargaining. Not only the legislators but New Deal economists were convinced that the prosperity of the United States depended upon the purchasing power of its workers, which in turn depended upon high wages obtainable through collective bargaining alone. President Franklin D. Roosevelt likewise declared that the right of collective bargaining fosters the development of the employment contract on a sound and equitable basis.

The Act thus required employers to bargain collectively with employee selected unions, and it created a National Labor Relations Board (NLRB) to prevent unfair labor practices by employers and to determine whether a union properly represented employees for purposes of collective bargaining. Moreover, the NLRB and the court interpreted the Act such that employer views usually could not be legally voiced to employees confronted with selecting union representation. Therefore, the Wagner Act pledged

43 Statement by President Roosevelt on July 5, 1935 quoted in NLRB Annual Report, 1936.
44 Falcone, op. cit., Pp. 272-73
45 National Labor Relations Act, Sections, 3, 4, 5, 6 and 11.
governmental aid to the unions seeking recognition and the right of collective bargaining.

**Taft-Hartley Act**

The Taft-Hartley Act of 1947, amending the Wagner Act, was enacted over President Truman's veto. By 1947, the general Congressional feeling was that the Wagner Act had shifted the balance of power too much in favor of unions, leaving management with a decided disadvantage. This situation and certain union practices were thought to be injurious to the general public.

The public was resentful towards strikes and spiraling prices, and increased union power served as a convenient explanation of an extraordinarily complex problem. Consequently in the eyes of the public, labor was no longer considered underprivileged. It was now a popular belief that the Wagner Act had tipped the scales too far, and that a correction was needed to remedy the problems of economic adjustment.

The major Congressional objective of the Taft-Hartley Act was to control the power structure to bring about a more equitable distribution of power between unions and management, so that

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48. This contended from the public and from the Congress because of post-war strikes by the labor unions interested in a new law to curb nationwide strikes. A discussion of this aspect is found on page 35. See also, p. 116.
collective bargaining would not adversely affect the general welfare of the country. In order to achieve this, the majority of the Wagner Act provisions were continued and certain union activities were made illegal. The conduct of collective bargaining was also restricted by specifying certain steps which must be taken, by listing some items which could not be included in a collective bargaining agreement, and by establishing a procedure to handle strikes which threaten the national health and safety.

The Taft-Hartley Act represented a severe reversal for labor. A sixty-day strike notice and an eighty-day injunction at the request of the Attorney General when a strike "imperiled national health or safety" were instigated as a deterrent to the power of the strike. Unfair labor practices were also defined in terms of union activities as well as employer activities, and the closed shop was prohibited, thus guaranteeing workers the right not to join unions.

It was for the purpose of restoring the equality of bargaining rights between employer and employees, rectifying the one-sided protection given unions by the previous legislation. The Act thus represented the first successful Congressional attempt to reverse what was now considered to be statutory favoritism and excess which not only overly protected unionism but led toward a too favorable judicial climate in which unions could operate.

51 Millis, H.A. and Montgamer, R.E., Organized Labor, New York:
This marked the beginning of public action in the internal affairs of labor and reflected a growing attitude that unions affected the public interest and hence were properly subject to governmental controls.

The following section is concerned with the power relationships among labor, management, and government in the development of labor legislation in the United States. Attention is focused on the Taft-Hartley Act, which may be considered representative of American labor legislation.

Congressional Action

Regardless of the party in power, the balance in Congress has been so close on labor issues over the past two decades that action on major legislation has come about only when public interest in a new law has reached a high pitch. Thus pressure to amend or repeal the Wagner Act began building from the time of its passage.

One of the most important groups which opposed the Wagner Act was business, particularly the National Association of Manufacturers (NAM). It argued that the majority principle was unconstitutional and that the Act could not be applied to the manufacturing industries. In December, 1935, thus, it recommended repeal of the Wagner Act. Concern was expressed for the right of

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those who did not want to join a union. These individuals, it was felt, should be protected from coercion to join.

The Chamber of Commerce in April, 1937, began a campaign for amendment of the Act by suggesting regulation of certain "unfair labor practices" of employees. By 1939 both the Chamber of Commerce and the NAM had approved detailed programs for amendment of the Wagner Act. Both groups argued that the Act had increased strife and created new inequalities in industry.

The NAM started a long-range program to influence public opinion. It attempted by various types of publicity and by working with various community groups to promote understanding of industry and of the free enterprise system as the sponsors understood it. This propaganda campaign in its earlier years was described in some detail in the reports of the La Follette Committee. Using radio, news, cartoons, editorials, advertising, leaflets, and other devices, the educational program reached every industrial community in the nation.

**Strikes during the War**

Labor was faced by a situation that it had long anticipated

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55 La Follette Committee Reports, National Association of
with dread. Its fear that the number of jobs available would be inadequate for the demand was in danger of being realized. With twelve million men and women in the armed forces and another eight million engaged directly in the production of war goods, the task of relocating manpower after the war seemed almost impossible to solve. Ultimately labor organizations concluded that postwar prosperity depended fundamentally upon the purchasing power of the labor income groups.

During 1945, labor had a small taste of what might be expected as the government began to reduce war production. When a factory at Willow Run, Michigan, was closed in the spring of 1945, only forty-one per cent of the men and three per cent of the women employed were able to get other jobs.

Meanwhile, a wave of strikes provided the newspapers with headlines and the opponents of labor ammunition to use against unions. The strikes were based on labor's contention that employers could afford substantial wage increases without increasing prices, and that increases were necessary to sustain purchasing power in order to avoid large-scale unemployment. This position was supported by the Office of War Mobilization, which estimated that industry could maintain its pre-war profit level and raise

Manufacturers, Pp. 135-37, 140-42.


wages twenty-four per cent without raising prices.

In February, 1946, the first postwar strike wave began to come to an end, when the Wage Stabilization Board approved a five dollar per ton increase in steel prices for United States Steel. When the company received approval for this price hike, agreement on an eighteen and one half cent per hour increase in wages followed quickly. Almost simultaneously, President Truman issued an executive order permitting price increases to compensate industry for wage accretions. In March, 1946, General Motors and the United Automobile Workers (U.A.W.) settled their dispute along the pattern set by the steel agreement and the eighteen and one half cent model was adopted by most of the nation's industries. During this period of unrest between labor and management important efforts were being made to solve the problems of labor-management discord through legislation. The number of strikes after the war did not increase when compared with the number called before the end of the war.

**Labor-Management Conference**

In November, 1945, President Truman's National Labor-Management Conference met in Washington, D.C. to try to find a way to resolve the differences between management and labor

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60  Millis, op. cit., p. 313.
without resort to work stoppages. President Truman believed that unless labor and management could reconcile their differences the passage of remedial legislation by Congress would be necessary. The membership of the Conference included eighteen representatives from labor and a like number from management. The American Federation of Labor, the Congress of Industrial Organizations and, the United Mine Workers contributed to labor's contingent at the Conference. Management's representation was selected by the Chamber of Commerce and the NAM. In order that the public have some representation at the meetings, the President appointed three additional conferees. The basic purpose of the Conference was to try to create machinery for adjusting labor-management conflicts more expeditiously.

At the opening session of the Conference, President Truman addressed the group and indicated that if they failed to find a solution to the industrial strife rampant in the nation, Congressional action could be anticipated. In addition, Truman gave the Conference an outline of what he believed to be necessary to improve the nation's record in settling labor-management differences. He contended that: a) genuine collective bargaining was necessary; b) voluntary arbitration or the use of fact-finding

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62 ibid.
boards might be helpful in adjudicating disputes; and c) peaceful negotiation had to be substituted for inter-union jurisdictional strikes.

However, many labor leaders were not satisfied with the proposed agenda of the Conference. They believed that labor-management relations difficulties were only a part of the larger problem with which they should deal. Indeed, they believed that to consider the problem from the standpoint of the agenda would be to discuss the symptoms of the disease without considering the basic cause of the illness. Dissatisfaction with the agenda undermined the Conference from its inception.

Phillip Murray, President of the CIO, stated that the subject of wages and wage guidelines should be included in the deliberations of the Conference. The basic assumption of the followers of Murray was that the working people of America had lost a considerable portion of their purchasing power because of inflation. Therefore, it seemed to many labor representatives that wages were a legitimate subject for the Labor-Management Conference to consider. Moreover, labor believed that wages were the most significant factor in the labor disputes of the postwar period.

However, the representatives of management opposed the efforts

63 ibid.
65 ibid.
of labor spokesmen to expand the agenda to include such a
discussion. They maintained that the subject of wages was outside
the scope of the Conference. The controversy over the agenda
helped to bring the Conference to its eventual unsuccessful
conclusion. The Conference failed to provide any machinery to
minimize strikes during the reconversion period and it also failed
to come to any agreement concerning the important problem of how
to raise wages without affecting prices.

Truman's Recommendation

President Truman early in December, 1945, sensed the mood of
the country and Congress when he asked Congress to pass legislation
which would contribute to a reduction in the loss of production
time because of strikes. The President's recommended legislation
would give him the power to: a) appoint a fact-finding board within
give him the power to: a) appoint a fact-finding board within
five days of the certification of the Secretary of Labor that a
strike would endanger the public health and safety; b) prevent a
walkout during the five day period he had to act; c) require the
fact-finding board to make its report within twenty days; and d)
prevent a strike during the twenty days of the operation of the
fact-finding board and five days after the issuance of its report.

68 Truman, Harry S., Message to Congress, December 3, 1945, as
The proposed legislation incorporated two approaches to the settlement of labor-management disputes. One was the use of the fact-finding board technique. The assumption was that the fact-finding board would be able to determine what a fair settlement of a dispute would entail and would therefore make a recommendation. Second, the use of the so-called cooling-off period was to be a part of the legislation.

American labor strongly opposed the Truman proposal. Indeed, Phillip Murray lashed out at Truman on a network radio program. Labor publications were used as vehicles to criticize and hopefully to arouse enough support from the rank and file to secure the defeat of Truman's proposed legislation. Despite labor's objections, the Truman proposal was introduced by Representative Mary T. Norton (D.-New Jersey). A similar measure was also introduced in the Senate by Allen Ellender (D.-Louisiana).

However, labor leaders believed that the problems of labor-management relations could not be solved by the kind of legislation Congress was considering. In order to effectively deal with the conflicts between labor and management, they felt that Congress should pass laws that dealt with the problems of wages, health,

70 ibid.
housing, and working conditions. Social legislation, labor
reasoned, would solve the labor-management struggles that were
plaguing the nation, not the use of coercive power by government
to prevent strikes.

The Case Bill

One of the most important bills in Congress was introduced
by Representative Francis H. Case (R.-S.D.) and Backed by
Representatives Howard W. Smith (D.-Va.) and Edward E. Cox (D.-
Ga.). This so-called Case bill became the focus of a
Congressional battle over an attempted revision of the Wagner Act.
Some of the most important elements of the bill included: a)
enforcement of the cooling-off period by administrative remedies
against employers and deprivation of Wagner Act rights for
employees; b) fact-finding commissions in major labor disputes
involving public utilities to make recommendations and an
extension of the cooling-off period until five days after the
report of the commission; c) the imposition of stringent
penalties against whoever interferes by violence, extortion, or
conspiracy with the movement of goods in interstate commerce; d)
provision for damage suits against unions for violations of
collective bargaining contracts by deprivation of Wagner Act

72
"Union Busting on Capitol Hill," CIO News, VIII (December
17, 1945), 11-2.
73
XCII, Pt. 2, 661-69.
rights for the employees involved; e) outlawing of secondary boycotts by making them unlawful under the anti-trust laws, and removing the limitations of the Norris-LaGuardia Act on the use of injunctions in labor disputes in such cases.

Congressional consideration of the bill triggered spirited debate. Many Congressmen objected not only to the bill, but also to the method by which it came to the floor for consideration. The House Committee for Education and Public Welfare had never considered the Case bill. The Rules Committee had allowed it to be considered on the floor of the House by special rule. Indeed, this procedure was almost never used in the House of Representatives. However, despite ardent objections from several members of the chamber the rule bringing the Case bill (H.R. 4908) to the floor for debate was accepted 258-114.

The opponents of the Case bill maintained that the provisions of the bill were so restrictive as to seriously upset the American system of collective bargaining. Indeed, some feared that the bill was reactionary to the point of taking the nation back to the days of strikebreaking by injunction. On the contrary, supporters of the measure suggested that organized labor had grown too powerful and that some legislation was needed to protect the public health and

76 ibid.
safety from irresponsible labor leaders. The Case bill seemed to these people an appropriate vehicle for accomplishing their goal. Despite what seemed to be serious reservations about the bill on the part of the Administration, it was passed after a lengthy debate 258-155.  

**Senate Action**

The Senate Committee on Labor and Public Welfare opened hearings on the Case bill late in February, 1946. William Green, President of the American Federation of Labor, was among the first witnesses to testify against the bill. He maintained that the enactment of the Case bill would bring slavery back to the country. The majority of the Committee opposed the Case bill as did their chairman, Senator James E. Murray (D.-Montana). They favored the type of legislation recommended by the President. Therefore, the Committee made far-reaching changes in the bill. Indeed, as one member of the Committee put it, "the only thing left of the Case bill is its title and number. The new bill the Committee sent to the floor for consideration would have established a three step plan for preventing strikes. The first step in this plan was the encouragement of real collective bargaining with contractual procedures for settling strikes; second, conciliation and mediation by a new board which would be semi-independent of the government;  

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77 loc. cit., 662.
and third, a system for voluntary arbitration would be created.

Though the Committee was disposed to rewrite the Case bill, the Senate as a whole apparently liked the original version of the bill better than the Committee's version. In any event, when the bill was submitted for Senate consideration, the amendment process restored most of the provisions of the original bill and indeed there was little difference between the final form of the bill and that sent to the Senate by the House. On May 26, 1946, the measure was passed by the Senate 49-29 and sent on to a conference committee.

The most serious attempt at labor legislation in the seventy-ninth Congress was the Case bill. The leaders of labor were concerned with whether the President would veto the measure and if that potential veto could be sustained in the Congress. The President's Emergency Strike Control bill was doomed but the fact that it had been introduced at all encouraged some to think that the President would accept the Case bill. However, this was not to be the case. Truman vetoed the bill and his message outlining his objections to the bill was delivered to the House on June 2.

Essentially, the President argued that the Case bill would not solve

the problem of industrial strife. Indeed, Truman maintained that the bill would very likely increase labor unrest; therefore, he could not sign it. The veto of the President was sustained in the House by a slim margin of five votes.

The Taft Hartley Bill

While the Truman proposal mentioned previously indicated the widespread feeling that labor legislation was required, House and Senate committees charged with the responsibility for labor legislation were apparently not interested in enacting the Truman suggestions into law. Instead, they were planning to write their own labor legislation. Very quickly after the organization of the eightyeth Congress, the House Committee on Education and Welfare under the chairmanship or Representative Fred A. Hartley (R.-New Jersey) and the Senate Committee on Labor and Public Welfare under the chairmanship of Senator Robert A. Taft (R.-Ohio) began to draft omnibus labor proposals. The most important ideas included the following:

a) Certain unfair labor practices of unions, including union coercion of workers, were prohibited.

b) Employer "free speech" rights were extended.

c) The closed shop was outlawed, but the union shop under which regulation would ensue was permitted.

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d) Involuntary check-offs were prohibited.

e) Supervisors were removed from coverage of the law.

f) Bargaining rights were denied to unions with Communist officers.

g) Government injunctions were made legal in national emergency strikes.

h) An independent agency for mediation and conciliation was set up outside of the Department of Labor.

i) Federal district courts were opened to damage suits for unlawful concerted activities and violation of collective bargaining agreements.84

In the view of the authors of the new bills, their purpose was simply to restore the balance of power between organized labor and management. However, labor believed that the proposals, whose essential features were fact-finding boards, cooling-off periods, and limits on union security, were designed to destroy the gains made by labor since the enactment of the Wagner Act in 1935.

**Labor's Role in the Bill**

Congressional consideration of the so-called Taft proposals began in late January. While the paramount goal of the early campaign was informational, the AFL and CIO writers always painted the Taft proposal as one designed to shackle labor rather than one to restore the balance of power between labor and management, as the proponents of the measure maintained was their purpose.

84 Millis, op. cit., p. 383.
Union publications alleged that the direction of the Taft and Hartley bills was wrong. The need was not for punitive measures but for positive legislation. Labor's positive program was in the realm of economics and not of vituperation, as labor put it. Their answer was a preservation and an upgrading of the nation's living standards. Their program called for a sound national wage policy which would preserve the purchasing power needed by the American people. Another labor proposal was expanding social security and health programs. It felt that programs were needed which did not destroy labor but rather which met the basic economic and social needs of the American people. The contention was often made by the supporters of the Taft and Hartley bills that labor had not alternative program. Indeed, it was believed by some that labor should cooperate with Congress.

However, it was for compromise around a principle that labor could not accept. Labor's program did not involve an approach that was similar to the Taft or Hartley proposals. Instead, their program was directed at the economic problems of unemployment, inflation, social security, and other types of social needs. Their answer to the problems of labor-management relations was couched in


86 The CIO News, X, 10.
a demand for more remedial legislation.

By early February, the labor press began to expand its purpose beyond simply informing the membership about the Congressional proposals. Gradually as the heat of the battle increased, the labor press became increasingly emotional. It became dedicated to the task of activating the rank and file. "Make no mistake," said William Green, "the bills under consideration would strip labor of every protection obtained in recent years." The monumental efforts of labor's enemies to crucify it had to be stopped. Articles appeared with the thrust that labor should not be crucified by the erroneous theory which had been created that recent labor-management disputes were caused by the unjustified demands of labor.

The AFL and CIO alleged that the real purpose of the proposed legislation was not to improve the climate for labor-management relations but rather to seize an opportunity to punish labor. Green claimed that the proposals were not directed at strikes but rather against the process of collective bargaining. He claimed that the bills do nothing about the causes of the unrest, and the

87 ibid.
90 ibid.
91 "Murray Challenges the Basis of Anti-Union Bills." United Automobile Worker, XI (March 1947), 2.
record illustrates one basic cause--inflation. Labor objected to the imposition of the so-called cooling-off periods because this would be an invasion of personal liberty. Moreover, they suggest that unions call strikes at the slightest provocation. The proposals would have the effect of making many strikes ineffective. Indeed, the proposals would hamstring the very practice of free trade unionism.

The Executive Councils of both major organizations held steadfastly to the position that the cooling-off provisions would not reduce the number of strikes. Instead it would have the opposite effect. The proposals would usher in a new system of controls that would be oppressive. They also claimed that the new bills would jeopardize the efforts of the nation to achieve full production, and further that either the authors of the legislation were stupid or that they were out to destroy the labor movement. This latter point was stressed in labor's campaign to defeat the proposed House and Senate legislation. The spirit of the articles in the union press and indeed the whole direction of the campaign was to sell to the membership and the public idea that the proponents of

92 ibid.
94 ibid.
95 ibid.
96 ibid.

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the Taft and Hartley proposals intended to destroy the trade union movement. The press hammered at the idea that the supporters of the new labor legislation did not want to restore a balance of power between labor and management but rather to destroy free collective bargaining.

The genuine fear of the Taft and Hartley bills within the leadership of the AFL and CIO was sufficient to help launch an abortive attempt at unification. Green wrote to Murray suggesting that a discussion of unity ought to begin so that the anti-union drive could be more effectively thwarted. While the unity conference and the Green letter did not bear fruit, they are indicative of the feeling that the unity of labor was necessary to build a cohesive and effective labor lobby. They also lend credence to the contention that the leaders of labor were genuinely apprehensive about the course Congress might take.

The AFL Executive Council authorized the officers of the Federation to utilize all of its facilities and resources in order to enlist the cooperation of all affiliated unions and their memberships in the fight against the bills. By March, 1947, it was obvious to the labor movement that even greater efforts would have to be made if the Taft and Hartley bills were to be defeated in

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97 ibid.
98 Green, American Federationist, LIV, 6.
99 ibid.
Congress. The Executive Council of the AFL, therefore, organized a committee to coordinate the efforts of the Federation. William Green, George Meany, and William Hutcheson were given the task of supervising union activity aimed at stemming the legislative drive against organized labor.

The CIO Executive Council also made new preparations to fight the Taft and Hartley proposals. In early April a meeting of CIO leaders was held in Washington. The leadership of the CIO wished to organize more effective machinery with which to lobby against the punitive legislation pending in Congress. The report from that meeting of two hundred and fifty CIO leaders indicated the emotional level which the campaign had reached:

"Professional Senator Taft has brought out a bill that is a masterpiece of skullduggery. The Hartley bill is cruder and seemingly more violent in its assault on labor's rights, though most of its purposes would be equally well served by Taft's more subtle approach. This bill is part of the GOP tactic to make the Taft bill appear more "moderate" by comparison--if being made to walk the plank by that pious pirate, Senator Taft, is more "moderate" than having your head cut off by Freebooter Fred Hartley. But labor is in no mood to be kidded by any Captin Kidd. It will fight with all of its might to defend its liberties, its unions, its living standards against any and all murderous assaults."

This emotional communique from the meeting exposed a new

100 ibid.
101 ibid.

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problem confronting the unions. The public press had indicated forcefully that the Taft proposal was considerably milder than Representative Hartley's. Seemingly, the proponents of the legislation were trying to sell the Taft proposal as a compromise measure. Obviously, neither the AFL nor the CIO accepted this position. The CIO Legislative Committee called through its publications for support from all of the membership.

In early May, 1947, William Green wrote to all union leaders asking that two steps be taken. First, he asked that all officers of all affiliated and cooperating organizations be immediately assigned and directed to get each individual member to write a letter to his Senator, Representative, and to the President, stating in his own words his views regarding the defeat of the bills, and the encouragement of a veto from the President if either bill were passed despite the opposition. Green also asked that resolutions, petitions, and telegrams be sent by the membership. It was indicated that letters by the officers of the unions would not be sufficient; only if letters were sent by each member in his own words would the campaign have full effect.

On May 14, 1947, Green again encouraged the membership to write to Washington. However, by then both Houses of Congress had passed a labor bill. The House of Representatives had approved the Hartley bill on April 17, and the Senate accepted the Taft bill on May 13.

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104 U.S. National Labor Relations Board, Legislative History of
Only the conference committee stood in the way of sending a bill to the White House. The labor press reported to the membership that the bill would destroy unions and wreck their programs. However, labor still felt that it had a chance of preventing the Taft-Hartley bill from becoming law. The solution to the problem lay with a Presidential veto. The labor press once again called for the member membership to write or wire the President indicating their individual desire for a veto.

The passage of the bill did not change the nature of the AFL and CIO campaign; it simply intensified it. The only hope now was for a veto, and Congress willingness to sustain it. Green provided the rank and file with three basic reasons why he believed that President Truman should veto the measure. First, he maintained that it was against the public interest and it would throw labor-management relations into chaos and result in depressing the American standard of living. Second, the Taft-Hartley bill violated the basic freedoms of American workers and sought to destroy the security and effectiveness of their unions. Third, the measure repudiated the President's own recommendations to Congress.

In addition to providing these three reasons for a Presidential veto, Green proceeded to reiterate the union view of the bill: Green

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maintained that the Taft-Hartley bill was bad legislation on five counts. First, it would promote industrial chaos by changing the rules in collective bargaining and weighing them all in favor of one side—the employer who doesn't want to deal with unions. Second, it would damage the public interest and injure the nation's economy by cutting the supports out from under the American standard of living. Third, it would imperil the freedom of American workers by subjecting them to injunction decrees under which they would be forced to work against their will for private employers or face jail sentences. Fourth, it would outlaw closed shop agreements, the only insurance of union security, and would authorize all sorts of damage suits and antitrust prosecutions intended to harass labor organizations and render them helpless. Finally, it would create an entirely new philosophy in America, a hate philosophy directed against the workers which only give aid and comfort to those who wish to divide America against itself and promote class warfare and revolution.

Labor felt that it had a good chance of having President Truman veto the measure. However, the real problem would be in sustaining the veto in Congress. The labor press published articles which gave the idea that anything that harmed labor was treason to America.

The report of the President's staff indicated that nearly 350,000


108 "All That Harms Labor is Treason to America." CIO News, X (May 19, 1947), 1.
post cards and 100,00 letters were received at the White House asking for a veto. Despite the efforts of labor, the veto of President Truman was not sustained in Congress, and labor could only gnash its teeth and talk about punishing its enemies at the polls in the next election. The House of Representatives had over-ridden Truman's Veto 331-83 and the Senate did so by a margin of 68-25. The Taft-Hartley Act was finally passed and embodied almost all recommendations made by the NAM.

The labor press reflected the views of labor's leadership toward the Taft-Hartley bill. It indicated that labor's real fear was that passage of such a measure would hamstring the American labor movement to such an extent that it would no longer have an effective voice in the fight for the improvement of the economic position of its membership. Indeed, the Eightieth Congress produced the most important legislative battle in the history of the American labor movement.

109 "Here is the Truth," Weekly News Service, XXXVII (June 10, 1947), 1.

CHAPTER V

KOREAN LABOR LAW

South Korea is generally viewed as having a legal system based on the Japanese model. No one questions that the Korean legal theories and practices of public and private law were derived from Japanese statute law and precedents of Japanese courts. The idea that law is an accumulation of collective experience of the society as Homes described, never had any existence in Korea under Japanese rule, and it only functioned to fit the political and economic policies of Japanese colonialism.

As previously described, the early history of trade unionism in Korea is largely one of the nationalistic struggle movement against the Japanese, coupled with meager efforts to promote the welfare of the workers. Unlike most of the industrialized countries of the West, particularly the United States, Korean labor policy has not been long in its history due to the pre-modern character of the labor movement.

Although there were thousands of labor disputes during the 1920's especially the general strike of Wonsan in 1928, which had been an outstanding struggle between capital and labor in Korea,


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there was no labor legislation during the period of Japanese colonial
time except for one law covering relief for the injured in mining
accidents.

The Annual Report of the Government-General of Chosen (Korea)
records:

No factory law was provided, so manufacturing houses
employing labor were supervised by the police or other
administrative authorities, except factories maintained
by Japanese corporations; these of course were
controlled by the companies' regulations.

Thus, no industrial legislation was passed except for the
factories maintained by firms which were controlled by the Japanese
police and other administrative authorities. Therefore, this
period could well be called a period of neglect in the labor
legislation in Korea. However, it is very important to investigate
how the Japanese police handled various labor disputes in the absence
of regulatory legislation at this time.

3 The Decree of the Government-General on Korean Mine Workers
of 1927 was enacted to expedite the pace of industrial output and
the mobilization of Korean workers. However, it provided less
protection to Korean than to Japanese employees. The Government-
General's Decree on Job Placing of Korean Workers and the Decree
of the Mobilization of Korean Workers in 1930 were also enacted to
regulate the labor supply, rather than to protect the workers.
Hong, Yong-p'yo, Nodong Pop Non [Elements of Labor Law]. Seoul,
Korea: Pöpmun Sa, 1962. Pp. 37-8; See also Tak, Hi-jun, "Early
Trade Union in Korea." Korean Affairs, Seoul, Korea, I. (March-
April 1962), p. 76; and Park, "Unionism and Labor Legislation in

The Public Peace Law (Chian Ijihō) was the very significant legal device which had strongly suppressed a labor movement in Korea under the Japanese colonial rule. The law declared that any person who makes an association of groups for the purpose of overthrowing the constitutional government shall be punished by death, life imprisonment, or penal servitude for more than seven years. It also stated that any person participating or supporting such an association of groups shall be punished by death, life imprisonment or penal servitude for more than five years.

However, this law was intended to apply to the Communist movement on one hand, and nationalistic movement on the other hand. It was also used to restrict the labor union movement in Korea, particularly the Federation of Labor Unions of Wonsan (Wonsan Nodong Chohap Hoe) in 1928, the Hamhung Trade Union (Hamhung Nodong Chohap) in 1934, and the Chongpyeong Trade Union (Chong P'yeong Nodong Chohap) in 1936. Many rank and file members of these unions were found guilty and sentenced with cruel criminal penalties by the Japanese police. The crimes for which they were brought to the Japanese police were violence and breach of the public peace. These were so extreme that the labor movement represented mainly a political struggle between Koreans and Japanese, rather than an economic struggle in the labor-management relations.

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5 The Public Peace Law was enacted by the Japanese Government with Law No. 46 of April 22, 1925, and amended by Laws No. 129 of 1928 and No. 54 of 1941.
6 loc. cit., Section 1 and 2.
7 For more detailed information, see microfilmed documents for
One of the most important labor cases was the Wŏnsan strike, the Munp'yŏngni Petroleum Company (Munp'yŏngni Sŏkyu Hoesa) v. the Federation of Labor Unions of Wŏnsan. The Federation was organized principally by the transportation workers of the region and demonstrated their power in the Wŏnsan strike of 1928. The Japanese authorities, in order to maintain public peace, immediately promised to take the worker's demands under consideration. However, intimidation and violence by the strikers were charged by the Japanese police, and arrests were made. The Federation of Labor Unions of Wŏnsan was ordered by the police to close its doors, and the strike ended.

This case involved the use of the Public Peace Law as a legal weapon to curb labor activity. The Law, the main legal device appropriated by Japanese police, broke the back of the strike when the workers were enjoined from striking against Munp'yŏngni Petroleum Company. The defiant workers were punished by the police for their contempt, and labor leaders were jailed and their followers were restrained from continuing the strike.

The judicial records against the Communist and labor movements by the Japanese during the 1930's: Chŏngp'yŏng Nongmin Chohap Sagŏn (Case of Chŏng P'ŭng Labor Union) in February 1936, Interim ex-convict No. 68, and Hamhung Kukje Chŏksaek Nongmin Chohap Sagŏn (Case of International Red Labor Union of Hamhung) in October 1934, Interim ex-convict No. 82.

Chen, op. cit., 33. However, when and where the first labor case was issued in Korea has not been known so far.

Dong-A Ilbo, Seoul, Korea, January 24, 1929 and Chŏson Ilbo (Chosŏn Daily), Seoul, Korea, January 25, 1929.


loc. cit., p. 204; and also see Chosŏn Ilbo, Seoul, Korea April 5, 1929.
The Public Peace Law was a decree issued by the police commanding one or more persons to refrain from committing any kind of nationalistic action. It was designed purposely for the Japanese government which alone had the right to forbid any types of organization or groups for overthrowing the national constitution rather than independent or labor movement per se. This has been, however, extremely injurious to the growth of the Korean labor movement under Japanese colonial rule. Numerous other cases, such as the strikes of Hamhŭng Ohoya Printing Co. ((Hamhŭng Ohoya Ch'ulp'\(\text{an Hoesa}\)) in 1926, Teadong Printing Co.(Taedong Ch'ulp'\(\text{an Hoesa}\)) in 1927, Hamnam Yŏnghung Mine Co. (Hamnam Yŏnghung Ch'ŏlsŏng Hoesa) in 1928, Sinhung Mine Co. (Sinhung Ch'ŏlsŏng Hoesa) in 1930, and Pusan Textile Co. (Pusan Pangjik Hoesa) in 1930, have been arbitrarily prohibited by the Japanese police.

There was no labor legislation except for the Public Peace Law during the Japanese period, but the Public Peace Law was so broad that its application permitted the settlement of most labor matters. This law persisted until 1945 when it was repudiated by the American

\[12\] Dong-A Ilbo, Seoul, Korea, July 16, 1926.
\[13\] Kim, Nak-jung and Kim, Yun-hwan, op. cit., p. 26; Dong-A Ilbo, August 4, 1927.
\[14\] Kim, Nak-jung and Kim, Yun-hwan, op. cit., p. 27; and Dong-A Ilbo, December 2, 3, 4, 5 and 6 in 1928.
\[15\] Dong-A Ilbo, May 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 in 1930; Choson Ilbo, May 5, 6, 8, 12, 14, 16 and June 24 and 27 in 1930.
Military Government, and the first labor legislation appeared in South Korea during the American occupation.

Labor Policy under the Americans

From the very beginning of the American military occupation in September, 1945, the Americans had insufficient personnel to govern the country. Faced with the impossible task of governing the country with his small staff, Lieutenant General John R. Hodge, Military Governor, declared that "the existing Japanese administration would continue in office temporarily to facilitate the occupation." 17

The American Military Government, however, stated its labor policy in the Declaration of National Emergency (Kukkaehōk Pisangigi ūi P'ogo) that was "to relieve labor from the conditions of absolute servitude under which it had existed for the last forty years." 18 The basic idea of labor legislation in South Korea was derived from the result of the public policy of the American Military Government. In addition to such an objective, the Military Government declared that "the right of any individual or group of individuals to accept employment and to work unmolested should be respected and protected." 19 The first labor policy as stated by

19 Protection of Labor (Nomu ūi Poh) was enacted with Ordinance No. 19 of the American Military Government on October 30, 1945. See
the Military Government was designed:

(a) to encourage democratic labor organizations, which include the right to designate representatives of their own choosing without interference from employers or their agents, and (b) to promote negotiations between employers and labor organizations to effect employment contracts which specify agreed wages, hours of work and other factors relating to conditions of employment.20

Workers in each industry were then encouraged to form their own unions and choose their representatives who would bargain for wages and other working conditions with the employer. This became law by the American military ordinance, and Korean laborers, who had been close to slavery for many decades, were now told to carry on under the strange democratic patterns of American labor law.

In fact, the Americans had neither the imagination to experiment, nor the time to devise an appropriate labor policy for South Korea. In order to effectuate the labor policy and assist in the efficient functioning of the Korean economy, however, the Department of Labor was created, and collective bargaining was encouraged by the Military Government in July. The following

USAMGIK, Ordinance No. 19, October 30, 1945.


21 The Public Policy in Labor Matters Declared and Department of Labor Established (Nodong Munjeaes Hoezhan Kongkong Ch'ongsh'ek Kongpo mit Nodongbu S'ilah'i) was enacted with Ordinance No. 97 of the American Military Government on October 10, 1945. See USAMGIK, Ordinance No. 97, October 10, 1945.

22 USAMGIK, Ordinance No. 97, July 23, 1946.
October, labor bureaus were established as part of the provincial government. Freedom of contract and the right to work had been guaranteed early in the occupation, and to ensure it labor mediation boards were organized in each province.

The Department of Labor of the Military Government declared its program which was described as follows:

...the Department has attempted to gain its objective by means of education rather than by proclamation; by the constant preaching of common sense, democratic, non-political, non-theoretical methods of labor-management relations...

To give substance to this policy the American Military Government quickly moved by passing appropriate laws. A whole series of labor laws was enacted between 1945 and 1947. The wages for Civilian Labor (Ipan Nodong Inkam), the Regulation of Child Labor (Adong Nodong Popkyu), and the Maximum Working Hours

23 USAMGIK, Ordinance No. 114, October 23, 1945.
24 USAMGIK, Ordinance No. 19, October 30, 1945.
27 The Wages for Civilian Labor, hereinafter cited as the WCL, was enacted with Ordinance No. 14 of the American Military Government on October 10, 1945. See USAMGIK, Ordinance No. 14, October 10, 1945.
28 The Regulation of Child Labor, hereinafter cited as the RCL, was enacted with Ordinance No. 112 of the American Military Government on September 18, 1946. See USAMGIK, Ordinance No. 112, September 18, 1946.
An ordinance regulating the wages for civilian labor in 1945, which was the first labor law, established the legal basis of wages for workers who were employed by corporations, businesses, trusts, societies, or other organizations owned or controlled in whole or in part by the Government of Korea, civil or military, except Civil Service labor. It declared that a classification of skill would be made by the appropriate agency in order to establish the proper basic wages. This spread in basic wages was to permit the customary oriental economic practice of differentiating between wage payments to male and female workers, young and old, and supervisory workers within the same skill group.

An ordinance on working hours in 1946 regulated maximum working hours in industry, commerce and governmental work, so as to maintain and protect the health, efficiency and general well-being of workers. No employer could, except as otherwise provided in this law, employ any of his employees engaged in industry, commerce

29 The Maximum Working Hours, hereinafter cited as the MWH, was enacted with Ordinance No. 121 of the American Military Government on November 7, 1946. See USAMGIK, Ordinance No. 121, November 7, 1946.
30 WCL, Section 1.
31 loc. cit., Section 2.
32 MWH, Section 1.
or governmental work for more than forty-eight, working hours in any work week.

Child labor regulations issued in 1946 were designed to regulate child labor in accordance with humanitarian and enlightened principles accepted by civilized nations throughout the world, so as to enable the children of Korea to attain maturity and be prepared for the responsibilities of citizenship in modern society. This law prohibited any child fourteen years old or under from working in any business or service during school hours and from working at any time in industrial or mercantile concerns. Those under sixteen were also prohibited from working in any heavy industrial enterprise, and those under eighteen were prohibited from any occupation injurious to physical or mental health.

With such a fundamental legal basis, the Child Labor Law (Misôngnyŏnja Nodong Pohoe P'ap) of 1947 was enacted by the Korean Interim Legislative Assembly, and approved by Major General Archer L. Lerch, United States Army Military Governor in Korea. It was passed to regulate child labor and to prohibit, limit, improve, and set conditions of child labor so as to protect children from

33 loc. cit., Section 2.
34 RCL, Section 1.
35 loc. cit., Section 2.
36 The Child Labor Law, hereinafter cited as the CLL, was enacted with Public Act No. 4 of the South Korean Interim Legislative Assembly on May 16, 1947. See USAMGIK, Public Act No. 4, May 16, 1947, South Korean Interim Government, Seoul, Korea.
37 loc. cit., 14.
harmful or dangerous occupations or heavy labor, guarantee healthy development of life and body. Thus, employment of children under the age of twelve in any occupation or under any labor conditions was prohibited.

Therefore, the basic labor legislation which recognized the right of workers to organize, prohibited certain kinds of employment, limited working hours, and guaranteed collective bargaining had been enacted by 1947. Prior to this time, only ordinances by the Military Government had protected the worker's rights. All these laws performed the function of directives, that is, certain actions of employers were prohibited, restricted, or required for the benefit of workers.

The National and Provincial Labor Mediation Boards (Chǒnguk mit Chibang Chojong Uiwŏnhoe) were established in order to mediate and arbitrate in all union-raised industrial disputes, which began to mushroom during the period of the American occupation. In spite of the powerful ordinances labor legislation under the American Military Government was piecemeal: there was no system in the legislation. Many regulations issued during the American occupation, however, remained in force and became the basis for the

38 CLL, Section 1.
39 loc. cit., Section 3 (a).
Korean labor laws enacted by the National Assembly in 1953.

There is no indication that the authorities who promulgated the laws took into account the past history of Korean society. There was no participation on the part of either Korean labor or management in the establishment of labor legislation during this period. In the post-liberation days of South Korea, however, the American type of labor law not only encouraged the development of the Korean labor movement, but also reflected the efforts of the American Military Government to pave the way for future labor legislation in South Korea.

Constitutional Guarantees under the Koreans

It is a common observation that law shapes and molds society, and that society, in turn, shapes and molds law. In other words, society today has certain rules or norms for operating and ordering human life. These constitutive principles are reflected as fundamental laws in social and political life. It establishes the framework of government and provides for the relationship of the people to the government. This constitution thus appears as the sun of the political system, around which all legislative, executive, and judicial bodies must revolve. Therefore,

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41 McDougal, op. cit., p. 12. See also, Kim, Ki Yop, "Munhwa Popyon [Culture and Legal Theory]," op. cit., 69.
the Constitution provides the operational framework for a political system.

This is particularly illuminating in the case of South Korea, which in a short span of twenty years has experienced three republics and three constitutions. The First Republic, led by Syngman Rhee, had the first constitution and the Second Republic, headed by Chang Myon, had another. The military junta in power since its successful coup of May 16, 1961, also has a constitution that was adopted by a referendum on December 17, 1962. The preamble to the Korean constitution of 1962 declared that:

We, the people of Korea, possessing a glorious tradition and history from time immemorial, imbued with the sublime spirit of independence as manifested in the March 1st Movement, now engaging in the establishment of a new democratic Republic on the basis of ideals manifested in the April 19th Righteous Uprising and the May 16th Revolution, and determined to consolidate national unity through justice, humanity, and fraternity; eliminate outmoded social customs of all kinds; establish democratic institutions; afford equal opportunities to every person; provide for the fullest development of the capacity of each individual in all fields of political, economic, social, and cultural life...44


In order to accomplish these purposes, a government was instituted that in spirit reflected the principles of Western democratic republics—popular sovereignty, the guarantee of individual rights, the rule of law, a limited government, the separation of powers with checks and balances, the system of judicial review, etc. Thus the Korean Constitution embodies a comprehensive list of the rights and responsibilities of the individual, establishes a framework for the government, and sets a limit on governmental activities. All citizens are basically equal before the law, regardless of sex, religion, or social status. It includes guarantees of privacy, of correspondence, of election, and of habeas corpus.

November 29, 1960, and December 29, 1962. Also, on September 14, 1969, the National Assembly passed a constitutional amendment to exempt incumbent President Park Chung-hee from the limitation of two consecutive four-year terms. The Constitution thus permitted President Park to run for his third consecutive four-year term, but it forbade a fourth term. This Constitution is now being suspended by martial law as of October 17, 1972. President Park's sweeping action included the dissolution of the National Assembly and suspension of all political activities for the purpose of revising the Constitution. On October 27, President Park formally proposed a new constitutional amendment that would pave the way for him to remain in power for life. The proposed new Constitution provides no limitations on the number of terms for the president. Under the new charter, he would have the power to dissolve the National Assembly at any time and take "emergency measures" to restrict civil rights and liberties, authority of the administration, and the courts when he deemed such actions necessary to deal with a grave threat to national security or an economic crisis. For more details, The Washington Post, October 18, 1972, p.1; Kalamazoo Gazette, October 18, 1972, p. 3; Dong-A Ilbo, October 18 and 27, 1972, p. 1; Chicago Tribune, October 19, 1972, p. 3; New York Times, October 18, 1972, p. 1, October 19, 1972, p. 3, October 20, 1972, p. 3, October 27, 1972, p. 2, October 31, 1972, p. 13; Newsweek, October 30, 1972, 55-6; Time, October 30, 1972, 44-7; and Korea Week, October 31, 1972, p. 1.

Kim, C.I. Eugene, op. cit., p. 3.

Constitution of 1962, Article 9 (a).
and the freedoms of religion, assembly, association, speech, and
the press.

However, guarantees accorded freedom of speech and the press are circumscribed by the government's right to set standards for the press and to censor motion pictures and stage productions. Laws imposing restrictions upon the freedoms and rights of free citizens shall be enacted whenever it is necessary to maintain public order and welfare, although such restrictions shall not infringe upon the essential substances of freedoms and rights, and nothing may be provided by law with regard to license or censorship on speech and press, nor for the permission for assembly and association.

Guarantees affecting the rights of labor are specifically stated in Chapter II of the Constitution:

All citizens shall have the right to work. Workers shall have the right of independent association, collective bargaining and collective action for the purpose of improving their working conditions. The right of association, collective bargaining, and collective action shall not be accorded to workers who are public officials, except to those authorized by the law.

The Constitution of the Republic of Korea thus guarantees the freedom of association, collective bargaining, and collective action by workers within the limits of the law. On the basis of

47 loc. cit., Articles 15 and 18.
48 loc. cit., Article 32 (2).
49 loc. cit., Article 28 (1), (2), and 29 (1).
this constitutional right, the Government prepared the necessary laws and regulations.

In 1953, following the amendment of the Constitution changing the indirect election of the president by the National Assembly to direct voting by the people, the ruling Liberal Party proposed, and the National Assembly passed a series of labor legislative acts. The following are considered the most important labor legislation: the Labor Union Bill (*Nodong Chohap Pōban*), the Labor Committee Bill (*Nodong Chaengūi Chojong Pōban*), and the Labor Standards Bill (*Kūnlo Kijun Pōpan*). These became the basic labor laws of South Korea, the first in the nation's history.

**Legislative Process**

The United States Congress faces powerful forces in its consideration of all controversial legislation. Interest groups are influential to the extent that they enjoy effective access to the decision centers in the government. However, South Korea by contrast has never developed a legislative system subject to influence from private groups. The majority party of the government dominates the legislative activities of the National Assembly.

In early 1949, the Bureau of Labor (*Nodong Kūk*) set up a formal draft to bring about labor legislation, such as the Labor...
Standards Bill, the Labor Union Bill, the Labor Disputes Adjustment Bill, and the Labor Committee Bill, by first discussing the bills in the Bureau of Legislative Affairs (Pọpahe Ch'ŏ) and presenting to the Cabinet Council (Nae Kak), and then submitting a proposal to the National Assembly. However, the National Assembly unfortunately failed to enact any labor legislation due to the Korean War. During the three years from 1950 through 1953, there was increasing inflation in the economy and political chaos. Therefore, no labor movement nor any labor legislation was allowed in South Korea.

However, it can be seen that the efforts of the government and the National Assembly to enact labor laws had been recognized in the brief discussion of the legislative process. The consideration of several bills turned out to be a full dress rehearsal for labor legislation.

In 1952, Assemblyman Chŏn Chin-han strongly recommended labor legislation to the National Assembly, including the Labor Union Bill, the Labor Committee Bill, and the Labor Disputes Adjustment Bill. It was given an urgent priority by the National Assembly and it passed by 73-0 vote in the fourteenth session of the Second National Assembly.


Assemblyman Chŏn's main purpose was to provide guidelines for the labor movement as a whole. He stated that:

We believe that the lives of working people have been oppressed under colonialism for a long time. Even though the working class does not have full stomachs, they at least have to be able to breathe as a human being. Thus, if the Assembly shall not enact any labor legislation for the labor movement, we will be faced with a serious danger to the national security in the future, because they would break away from our government and state...I hope that at this point, the enactment of legislation shall be considered in the Assembly as soon as possible.53

The Committee of Social and Health Affairs (Pokŏnsadŏge Uivŏnhoe) of the National Assembly carried out two years of discussions about the handling of the labor movement on such topics as collective bargaining, unfair labor practices, the settlement of labor disputes, minimum labor standards, and safeguards for the rank and file union membership. The four pieces of labor legislation were discussed by the National Assembly from 1951 to 1953, and they were eventually passed in the fifteenth session of the Second National Assembly in 1953.

Labor Union Bill

The first piece of labor legislation introduced during the Rhee administration was known as the Labor Union Bill. Introduced in 1951 this bill provided for the internal administration of labor

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unions and limiting their political activities. There were two major parts in this legislation which were not closely related to each other. One, commonly known as the proposal of the government, was "to provide administration of the labor movement," and the other, which had been proposed by Assemblymen Lim Ki-bong and Cho Kwang-sŏp, was "to provide for freedom of the labor movement." The former was reported on June 8, 1951, and the latter was introduced by Assemblyman Lim on April 29, 1951, in the Committee of Social Health Affairs. A series of modifications, commonly referred to as the "compromise version," was also designed and favorably reported by the Committee under the chairmanship of Kim Yong-u on December 22, 1952. The stated purpose of the proposed bill was to carry out the recommendations of the Committee on the organization of labor unions and the enactment of collective bargaining.

Assemblyman Yuk Hong-kyun immediately proposed his recommendation, which emphasized the basic rights of labor in the labor movement.

I am sure that the labor movement shall not be guaranteed enough the right of labor to organize associations except through collective actions. In addition to the right of organization as provided by the legal guarantees, the right of collective actions

55 loc. cit., p. 9.
56 loc. cit., p. 12.
is also important. Thus, it should be paralleled with collective bargaining in the legal framework.57

Assemblyman Sin Kwang-kyun also indicated that the right to strike and to sabotage is more important than anything else in the development of the labor movement. Eventually the proposed bill which had been drafted by the Committee of Social and Health Affairs passed in the fifteenth session of the Second National Assembly without a dissenting vote on January 23, 1953.

**Labor Committee Bill**

This bill was proposed by the government on June 8, 1951, and was introduced in the Committee of Social and Health Affairs under the vice-chairmanship of Kim Ik-ki on January 24, 1953. The objective of the bill was to solve labor disputes, and the Committee proposed that the labor committee consist of three members one from each group: one representing the workers, one representing the employer, and one representing the public. The representative of the workers as well as the employer would be appointed upon the recommendations of the respective labor unions and employers' groups, and the representatives of the public would be appointed by the President.

One of the most important proposals suggested by the Committee was made by Assemblyman Sin Kwang-kyun:

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57 loc. cit., p. 13.
...It cannot be denied that the role of the public representative would be powerful in influencing the decision of the meeting in the case of conflict between representatives of labor and management. Thus the public representative should be appointed by agreement of labor and management, rather than appointment solely by the President. 60

Also Assemblyman Chang Kōn-sang recommended that:

The organization of the labor committee, which has been proposed by the committee, is not favorable to labor but to the government, since the organization of the committee is appointed by the President. Thus it is necessary to get the recommendations from a public group in appointing the representative of the public. 61

However, these two modifications were defeated in the Committee and passed with the original proposal in the fifteenth session of the Second National Assembly on January 27, 1953.

**Labor Disputes Adjustment Bill**

This bill was sent to the National Assembly by the government on June 8, 1951, and introduced in the Committee of Social and Health Affairs on November 4, 1952. The Committee discussed it under the chairmanship of Kim Ik-ki on January 24, 1953. The purposes of the bill were to secure the workers' right to collective action, and to seek fair mediation of labor disputes.

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60 loc. cit., p. 28.
61 ibid.
62 loc. cit., p. 32.

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In the case of labor disputes, however, the parties concerned cannot engage in dispute action unless the conciliation of the administrative authority or the mediation of the labor committee fails. If the disputes are not settled within three weeks for non-public utilities and six weeks for public utilities, after having been reported to the administrative authority or the labor committee, the parties concerned can engage in labor disputes. Assemblyman Chon Chin-han wanted to modify the proposal in the following manner:

As far as the Constitution and the Labor Union Act protected the right to organize labor unions, the right of collective action shall not be restricted for any reason. Thus, the parties concerned can engage in labor disputes in any time they desire, but it would be understood that labor unions cannot be engaged in labor disputes in the case of public utilities.63

Assemblyman Lee Chin-su also suggested his modification to the administrative proposal in this way:

Obviously, the mediation of administrative authority is not necessary to solve labor disputes. But it might be useful to set up one week for private enterprise and two weeks for public utilities.64

All of these modifications to the bill were defeated in the Committee and the National Assembly passed the Committee's bill in the fifteenth session of the Second National Assembly on January 30,

63 loc. cit., p. 36.
64 loc. cit., p. 36.
Labor Standards Bill

Three bills were introduced, one by Assemblyman Kim Yong-u on February 25, 1952, one by Assemblyman Lim Ki-bong on March 3, 1952, and one by the government on July 29, 1952. The bills were discussed in the Committee of Social Health Affairs under the chairmanship of Kim Yong-u on February 2, 1953. Early in the year a legislative subcommittee drafted the language of the bills, arranged for their introduction, and informed the members of National Assembly about their provisions, as well as the problems that they were designed to meet. The purposes of the bills were to set the standards of working conditions, such as wages, hours of work and other conditions in conformity with the Constitution. No employer shall discriminate in terms of labor or sex, nor may he discriminate in terms of labor conditions because of nationality, religion, or social status.

Assemblyman Cho Kwang-sŏp stated his recommendation to the Committee:

It is natural that working conditions shall be set on the basis of the free will of the employer and labor on an equal level. But it is emphasized that the establishment of a committee of wages is needed, rather than the labor committee controlling wages when labor and management are in need of arbitration.

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65 loc. cit., p. 44.
66 loc. cit., p. 49.
The Committee's bill finally passed without any dissenting vote in the fifteenth session of the Second National Assembly on April 15, 1953. The hearings of the Committee received brief coverage by several members of the Assembly in the discussion of these legislative bills, but at least they did have some beneficial results to the development of the Korean labor movement.

It is not surprising that the Committee became the center of labor legislation. Many Assemblymen have seriously indicated that the activities of the labor unions and the labor movement were promoted by this legislation, which was the backbone of the modern Korean labor movement. However, the Committee itself began to propose the compromise versions of the labor bills of the government, and the four pieces of labor legislation was passed without any dissenting opinion in the fifteenth session of the Second National Assembly. At this point, it should be indicated that there were never any power relationships between labor and management in the enactment of this labor legislation in South Korea. Although the objective of enactment was achieved, the results were far from satisfactory given the social conditions and the economic and political environment of the country.

However, organized labor received its first substantial protection and encouragement from the government with the passage of these bills, commonly referred to as four pieces of labor legislation (*Nodong Saböp*). These laws, most of which are less than twenty years old, create a legal framework for a) a trade union movement, b) collective bargaining, c) unfair labor practices,
d) the settlement of labor disputes, e) minimum labor standards, and f) safeguards for the rank and file union membership. In short, the purposes and principles of the Korean labor policy are clearly spelled out in the following four pieces of labor laws.

Labor Laws and Practices

**Labor Standards Act**

The Labor Standards Act of 1953, as amended, brought about a fundamental and most important legal framework in order to establish the standards of labor conditions such as hours of work, wages, and safety and health. The purpose of the Act is to stipulate the standards of labor conditions in conformity with Article 29 of the Constitution, whereby the minimum level of labor's living may be secured and advanced, and the balanced development of the national economy may be achieved.

The Act thus sets minimum standards for employees of all establishments except those few specifically exempt by presidential decree, employers of domestic servants, and small establishments employing only relatives of the employer. It prohibits a)

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discrimination in treatment of workers because of sex, religion, nationality, or social status, b) forced labor, and c) acts of violence by an employer against an employee.

Under Chapter four of the Act, the eight-hour day or forty-eight hour week is established as the basic working period, excluding the hours of rest. Working hours may be extended to ten hours a day or sixty hours a week by "mutual agreement" between labor and management on approval by the Minister of Health and Social Affairs. In underground or dangerous work, however, the hours are limited to six daily and thirty-six weekly.

In an emergency, approval must be obtained as soon as possible after the hours have been worked. In the case of minors between 13 and 16 years of age, the hours of work are limited to seven hours a day or forty-two hours a week; an extension of two hours a day is permitted if authorized by the Ministry of Health and Social Affairs. Neither the Labor Standards Act nor its implementing decree establishes the standards upon which this approval may be based.

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70 LSA. Sec. 43; also Sim, T'aesik, op. cit., Pp. 359-79; and Kim, Ch'i-sŏn, op. cit., Pp. 30-4.

71 LSA. Sec. 42.

72 loc. cit., Sec. 55.
Authorization of the Ministry also is required for employment of all minors under 18 years between the hours of 10 p.m. and 6 a.m. and on holidays. Women over 18 years old, however, can work overtime up to two hours a day, or a maximum of six hours a week. This overtime cannot exceed 150 hours in any one year. An employer must allow at least thirty minutes rest for every four hours of work, or one hour of rest for every eight hours of work. The rest periods may be divided into two breaks or more. A lunch period may be included as one of the rest periods.

Official statistics indicated that nonagricultural workers in Korea worked in excess of fifty-seven hours a week in 1966 as compared with fifty-five hours in 1963. According to a September, 1968 labor force survey, almost 90 per cent of all nonfarm workers worked over forty hours in the survey week; over two-thirds worked fifty hours or longer; and in manufacturing, almost three-fourths worked fifty hours or longer. The law does not include provisions for the establishment of night shifts, and data on the actual practice with respect to night shift hours and premiums are not available.

However, variations in working hours, including night work,

73 loc. cit., Sec. 56.
74 loc. cit., Sec. 57. Sim, T'ae-sik, op. cit., pp. 359-79; also Kim, Ch'i-sön, op. cit., pp. 30-9.
are permitted under the Labor Standards Act with the approval of the Minister of Health and Social Affairs in the following industries and activities; transportation, storage, insurance, educational research, medical treatment, sanitation, hairdressing, entertainment and communications media. This occurs where such variations are required for the public interest and national defense.

Of 2,319 firms surveyed in 1967, 1,535 had only one shift; of these 849 and only one shift of six to eight working hours, while the rest had only one shift of eight to ten working hours. Under the law, minimum premium pay of time-and-a-half must be paid for extended work hours beyond the standard eight-hour day, night work and holiday work.

In actual practice, overtime premiums often are not paid, even when workers work longer than the standard eight-hour day, forty eight hour week. Of 103 firms surveyed in 1967, only three provided an overtime allowance.

The Act authorizes the Minister of Health and Social Affairs, with the approval of the appropriate labor committee, to set minimum wages, but no minimum wages have been established in Korea so far.

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76 Office of Labor, Ministry of Health and Social Affairs, Annual Special Report, (April 1968), 69; also BLS Report, p. 32.
77 BLS Report, p. 32.
78 LSA. Sec. 34. Its origin may be found in the minimum wage system adopted by New Zealand and Australia. In the 19th century government stood aloof over the matters involved in wages. Wage was then generally believed to be determined by free contracts between labor and management. In many countries, governments have adopted the minimum wage system and enacted the law to fix the minimum wage for lower-wage-laborers. Royal Meeker, "Government Services for Labor." Encyclopedia of the Social Science, VII (16th ed); New York: The Macmillan Co., 1967, Pp. 647-8; also Kim, Ch'i-sŏn op. cit., p. 26; and Sim, T'ae-sik, op. cit., Pp. 348-51.
The law requires that wages for workers under contract be "reasonable" and "in proportion to the hours of work." Basic wage payments must be made at least once a month, and it must be paid in cash, but wage deductions or payments are allowed only when stipulated by law and/or collective bargaining.

Despite legal provisions requiring equal pay for equal work, wide discrepancies exist between male and female workers. Undoubtedly this reflects customary discrimination, because seniority, age, and education are important determinants of earnings in Korea. Female workers tend to receive less because they usually have less education and seniority than male workers do.

Therefore, the characteristic of the Korean wage structure is a low level for wages, and it remains based on the seniority system. Low wages have been one of the main factors in labor disputes, and its influence of bargaining is greatest in the larger firms of the modern sector. Thus the threat of a strike over wages is a weapon that a labor unions can employ very effectively because unions realize that their workers would be behind them.

Although the law may fix the minimum wage for a worker engaged in a job or an occupation, this is far from being a satisfactory

79  LSA. Sec. 36; Sim, T'ae-sik, loc cit., Pp. 348-58; Kim, Ch'i-sŏn, loc cit., Pp. 25-9.
situation. In this area, collective bargaining between labor and management is the only way to fix the wage standards. Therefore, it is necessary that the government enact minimum wage laws in order to help overcome the wage system in Korea.

The Act requires the employer to implement the necessary measures for the prevention of accidents and the "maintenance of health, morality, and protection of life," particularly in installations which are hazardous to work in or harmful to the workers' health. However, other sections which limit the employment of women and minors list activities such as the operation of various types of heavy equipment, the use of large saws in logging and timber operations, and railway yard operations. The employer must not employ a worker when he suffers from a mental disorder, an infectious disease, or any other disease which, by virtue of continued employment, could become worse or endanger his fellow workers.

The Act requires workers to submit to physical examinations at the time of hiring, and regularly thereafter. The law makes the employer responsible for taking appropriate steps based on the results of these examinations; customarily, the employer assumes responsibility for the health and safety of his workers. Workers also must be trained to observe health and safety

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81 LSA. Sec. 66.
82 loc. cit., Sec. 68.
83 loc. cit., Sec. 70.
precautions.

A recent collective agreement in the metals industry requires the establishment of "facilities relating to sanitation and health," and further requires the company to establish within the plant a medical clinic to provide medical services at the "cheapest fees compared with other civilian hospitals." Not many firms maintain such clinics.

Women and workers under 18 years of age cannot be employed in a wide range of activities involving safety or health hazards. These include, among others, welding boilers, operating cranes, operating acetylene welding equipment, operating air compressors and freight elevators, rolling viscous materials, railway yard operations, and the manufacture of combustible materials.

Regulations regarding dormitories require that not more than eighteen persons sleep in a bedroom, and that there be 2.5 square meters of space for each person. Proper heating is required. There must be two or more exits in case of an emergency. A "proper size dining room" must be provided, as well as toilet and sanitary facilities. These provisions apply only to establishments employing more than fifteen workers.

Most Korean firms are very small and therefore do not qualify.

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84 loc. cit., Sec. 71; Sim, T'ae-sik, op. cit., Pp. 380-87;
Kim, Ch'i-sŏn, op. cit., Pp. 48-61.

85 Office of Labor, op. cit., p. 82.

86 LSA. Sec. 50.

Thus, improvements in health facilities and health and sanitation standards, if any, have been limited chiefly to larger firms. Many workers are still working under conditions where such facilities and standards remain inadequate. In older plants particularly, ventilation and lighting conditions are poor, and the simplest sanitary precautions may be lacking. In many work areas, the washing and toilet facilities fail to meet even minimal standards of health and sanitation.

The law also provides the basis for the improvement and enforcement of safety standards for workers in industry. The Minister of Health and Social Affairs must approve factory construction plans and plans for the installation of machinery considered especially hazardous. The Ministry has had to use most of the time of its small staff of safety technicians in reviewing blueprints, with the result that little time is left for the inspection of existing establishments. Special provisions relate to safety and health in the construction of dormitories for workers and their families. The law includes prohibitions on the production and use of certain poisonous materials, and on the employment of workers who might cause a hazard to themselves or to their fellow workers. Under the law, each employer must assign a safety and health officer in the plant. There were 2,300 establishments employing fifty workers or more in 1967; of this number, 1,359 employed safety control officers. About one-half of all the

88 Office of Labor, op. cit., p. 95.
establishments surveyed, including those employing safety controllers, also employed one or more health officers. Official statistics indicate that there were 31,467 cases of industrial accidents and diseases, including 11,035 in mining, 13,968 in manufacturing and 6,238 in transportation. The main reason for the accidents is the carelessness of workers, accounting for all 47 percent of all accidents. Therefore, industrial accident and disease rates in Korea increased due to the lack of facilities and proper safety education.

**Labor Union Act.**

The Labor Union Act of 1953, as amended, established the legal basis for the activities of trade unions in order to guarantee the right of laborers to enjoy freedom of association, collective bargaining, and collective action. The Act defines a labor union

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89 loc. cit., 87; **BLS Report.** p. 41.


91 Law No. 280, passed on March 8, 1953, as amended by laws No. 1329 and 1481 of April 17 and December 7, 1963. A separate decree, Cabinet Decree No. 1423 enacted on August 26, 1963, and amended by Presidential Decree No. 2325 of December 16, 1965, provides for the implementation of the Labor Union Act. The purpose of this Act is to guarantee, on the basis of the Constitution, the autonomous right of laborers to enjoy freedom of association, collective bargaining, and collective action, and to maintain the improved working conditions of the laborers, thereby making contributions to the enhancement of the economic and social status of the laborers and to the development of the national economy.

92 The Labor Union Act, Sec. 1. Hereinafter cited as the **LUA.**
as a voluntary organization, or a federation of organizations, for the purpose of maintaining and improving labor conditions and seeking the enhancement of the economic and social status.

Therefore, labor unions are prohibited from directly engaging in political action. They cannot support political parties or candidates for public office, levy compulsory political contributions on their members, or divert union funds to political purposes. Union activities under the Act are confined primarily to economic goals.

The Act specifies that their chief function would be collective bargaining, and that any agreement reached must be in writing and reported "to the pertinent administrative office" within fifteen days from the date of its conclusion. The appropriate unit for collective bargaining is the plant, office, or workshop. Normally, if the majority of the permanent workers in such a unit are covered by a collective agreement, its provisions


94 Section 12 of the Labor Union Act defines as follows: 1) a labor union shall not be allowed any act, in the election of any public officers in order to support a specific political party or have a specific person elected, 2) a labor union shall not be able to collect political funds from its members, 3) funds of a labor union shall not be misappropriated for political purposes.

95 LUA. Sec. 34 (a) and (b).
are extended to workers "of the same kind" employed in the unit. When two-thirds or more of the workers in an area are covered, the agreement, by decision of the Labor Committee or by the appropriate administrative authority, may be extended to "other laborers and employers of the same kind" in the area. In actual practice, such extensions have not occurred. Collective agreements generally define management and union rights, establish rules governing labor-management relations in the workplace, and outline conditions of employment.

Agreements concerning wages are often concluded separately and provide for percentage increases of existing wage rates rather than a separate determination of rates for each occupational group in the bargaining unit. Procedures for settling grievances are often included, but provisions for the arbitration of disputes over the interpretation or application of the terms of an agreement are rarely included. Thus, an employer or an organization of employers cannot refuse, without justifiable reason, to bargain with labor union representatives in each industry as a local organization of the national unions. However, collective bargaining affects only the larger firms in the country.

In pursuit of improved working conditions, labor unions have

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96 loc. cit., Sec. 37.
97 loc. cit., Sec. 33 (e); Sim, T'ea-sik, op. cit., pp. 167-207; Kim, Ch'i-son, op. cit., pp. 113-33.
forcefully launched a drive for collective bargaining between labor and management since 1967. In 1967, about 300,000 workers in over 700 firms were covered by collective contracts, and a total of 342,377 organized workers were covered with favorable collective contracts in 1,757 industrial firms as of August, 1968. But the reality of collective contracts in Korea does not fit the definition of its original nature, not only because its contents are hardly advanced over what the general provision of the Labor Standards Act dictates, but also many a government-controlled industry, comprising a great bulk of the major fundamental industry in Korea, tended to unsuitably interfere in the dispute between labor and management.

The proportion of industrial trade unions covered by collective contracts as of August, 1968, showed 100 per cent in railroad, foreign organization employees and communications, 74.1 per cent in the textile industry, 70.8 per cent in mining, 59 per cent in transportation, 50 per cent in the electrical industry, 79.5 per cent in marine industries, 75.4 per cent in automobile, and 99.3 per cent in longshoremen. Sharply contrasted with these figures was the meager rate of only 0.6 per cent in the publishing unions.

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99 loc. cit., p. 33
100 Korea Annual, op. cit., 1969, p. 257.
Although the laws cover in detail the requirements for collective bargaining and agreements, collective agreements are informal in Korea.

Moreover, under Article 39, labor unions and their members are accorded a degree of protection from employer unfair labor practices. Employers may not a) dismiss employees because they form, join, or are active in unions, b) require that an employee either not join a union or join one specifically preferred by the employer, c) reject collective agreements negotiated with a union, d) subsidize labor unions, or e) dismiss an employee who has complained of unfair labor practices. Investigation and processing of unfair labor practice complaints are left to the labor committees. Decisions are subject to review by the Central Labor Committee and, ultimately, the courts. Nonetheless, during the years 1967 and 1968, there were seventy-four cases of unfair labor practices: twenty-nine cases concerning dismissals, twenty-nine cases in violation of collective bargaining, eleven cases in interfering with the right to organize, and five cases in other areas. It can be said, therefore, that unfair labor practices have continued to increase in number, and most were mainly involved


102 FKTU, op. cit. p. 107.
in dismissals and interference, and the violation of collective agreements in Korea.

**Labor Disputes Adjustment Act**

The Labor Disputes Adjustment Act of 1953, as amended, authorizes that a labor organization can have collective action when labor disputes occur which refer to a controversy over claims concerning working conditions, wages, working hours, welfare, and dismissal between the parties of labor relations.

The Act defines "acts of labor dispute" as strikes, lockouts, sabotage, and "acts which hamper the normal operation of business." Therefore, during disputes with management, labor unions are free to engage in various types of dispute action, provided that the disputes are for the purpose of gaining economic ends. An employer cannot replace workers who are out on strike or involved in a dispute, nor can he claim damages arising out of a dispute.

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103 Law No. 279, passed on March 8, 1958, as amended by laws No. 1327 of April 17, 1963, No. 1484 of December 7, 1963, and No. 1606 of December 16, 1963. An implementing decree, Cabinet Decree No. 1424 of August 26, 1963, as amended by Presidential Decree No. 2325 of December 16, 1963, provides for the appointment of Commissioners to adjust labor disputes. The purpose of this Act is to effect fair adjustment of labor relations and to prevent and settle labor disputes, so that peace in the industry may be maintained and contributions may be made to the development of the national economy.

104 The Labor Disputes Adjustment Act. Sec. 2. Hereinafter cited as the LDAA.

with a trade union or a worker.

However, the declaration of a dispute generally is not preceded by any protracted period of collective bargaining, due to the inexperience of the participants and the legal requirement that both of the parties shall notify the Government of the existence of a "dispute" before the Government disputes settlement machinery may be used. It can be said, therefore, that no labor dispute actions shall be conducted without legal authorizations from a labor committee, and a cooling-off period is required before starting labor disputes.

The law provides that a cooling-off period of twenty days for private enterprises and thirty days for public utilities is required after the appropriate labor committee takes legal notice of the case or the Minister of Health and Social Affairs declares that a dispute is of such scale or importance that it may impair the national economy or "endanger the daily life of the public." If the cooling-off provisions are violated, the offending parties are

106 LDAA. Sec. 8, and Sec. 9.

107 Sec. 16 of the Act states as follows; 1) if a labor dispute has occurred, the parties concerned shall give notice of it thereof without delay to the administrative agency and the labor committee concerned; 2) the committee shall, upon receipt of a notice of a labor dispute under the foregoing paragraph, without delay examine whether the labor dispute is lawful or not; 3) the committee shall, if it adjudicates that the dispute is not lawful after examination mentioned in the foregoing paragraph, dismiss the dispute.

108 LDAA. Sec. 14. The cooling-off period may be extended twenty extra days to appeal an arbitration decision.
subject to fine or imprisonment.

Therefore, a union cannot legally call any strike without government approval even though a majority of its members voted to go on strike. This is clearly unconstitutional as far as the Constitution guarantees the right of association and its collective action for the purpose of improving working conditions.

Most of labor dispute cases were complaints against underpayment short of subsistence level, accounting for 130 of the 365 cases of labor disputes occurring during the period from September, 1967, through August, 1968. This main cause was followed by another major cause: demand for collective contracts, occurring in 51 disputes during the same period. A total of 228,198 labor workers were involved in the disputes, entailing a twenty-eight consecutive day strike by textile unionists, twenty-seven days by iron workers and twenty-one days by stevedores.

Another factor affecting the Korean labor movement has been illegal and unjustified dismissals by employers on biased reasons in violation of labor laws. Illegal dismissals of employees largely took place in the sector of medium industrial firms, with

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109 loc. cit., Sec. 47.


its management far short of a modern conception of business. Thus, more than forty cases of illegal dismissal, involving 425 employees, were registered during the period from September, 1967, to August, 1968, doubling its cases from the preceding year. Of the number of cases mentioned above seventeen dismissals were revoked after successful negotiations between labor and management, and twenty cases were brought to court, with the remaining two cases finally setting off collective disputes. Among other unlawful actions on the part of business owners were fortyone open violations of labor law in attempting to avoid immediate execution of the binding laws. Therefore, the chief issues over which labor disputes arose involved unfair labor practices, and their number increased in recent years.

Labor Committee Act

The Labor Committee Act of 1953, as amended, acknowledges that a labor committee could be useful in adjusting labor disputes

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113 Sin, Tu-bŏm. op. cit., Pp. 91-2.
114 Law No. 281 of March 8, 1953, amended by Law No. 1328 of 1963; Law No. 1605 of December 16, 1963, establishes the tripartite labor committees. The Decree implementing the Labor Committee was promulgated on September 16, 1959, and amended by Cabinet Decree No. 1452 on August 26, 1963, and Presidential Decrees Nos. 2327 of December 16, 1965, and 2563 of June 9, 1966. The purpose of the Act is to establish a Labor Committee, with the intention of developing the national economy and placing labor administration on democratic principles.
between labor and management for maintaining industrial peace. Under the Act, the government has established machinery to achieve settlement through mediation, conciliation, or arbitration where labor disputes cannot be settled by the parties themselves. This machinery includes the tripartite committees which are set up on a national, provincial, or local level.

These committees have three members each from management and labor and five members representing the public interest. Members of the Central Labor Committee are appointed by the President, local committees by the Provincial Governors, and in the cities of Seoul and Pusan by the mayors. All committees have the power to compel the appearance of persons concerned in a dispute, the submission of necessary reports or papers, and the opening of the work premises to committee investigators. However, the Central Labor Committee has more power to interpret basic policies, laws, and decrees to local and special labor committees, and to overturn their decisions.

The public members serve for two years and employer and labor

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115 loc. cit., Sec. 4 and 5; Sim, T'ae-sik, op. cit., Pp. 244-56; Kim, Ch'i-sŏn, op. cit., Pp. 148-57; 0, Ch'ŏng-gŭn, op. cit., Pp. 231-60
116 The Labor Committee Act, Sec. 3. Hereinafter cited as the LCA; Sim, T'ae-sik, op. cit., Pp. 296-304; 0, Ch'ŏng-gŭn, op. cit., p. 265.
117 loc. cit., Sec. 4 (a).
118 LCA, Sec. 6 (c); Kim, Ch'i-sŏn, op. cit., p. 177.
119 LCA, Sec. 16 and 0, Ch'ŏng-gŭn, op. cit., p. 265.
representatives for one year. Two of the public representatives on the Central Labor Committee have permanent status; in the local committees, one or two are permanent members, depending on the circumstances. Permanent members are appointed from the upper ranks of the Civil Service, from the legal or related professions, or from among labor relations experts whose qualifications have been approved by the Minister of Health and Social Affairs.

At the request of one or both parties to a dispute, when the labor committee has received a report on the occurrence of a labor dispute, the chairman of the committee may appoint a mediation commissioner from among the members of the committee, or he may select a labor adjustment commissioner from the list approved by the Minister of Health and Social Affairs. This can be done only for those enterprises which are not in the public utility field. The mediation commissioner shall make every attempt to settle the quarrel by mediating between the parties "for the settlement of the dispute" and confirming the point of issue of the claims of both parties. Where the labor committee feels that mediation may bring about a solution to a given dispute, it

120  loc. cit., Sec. 7.
121  loc. cit., Sec. 7 (c). —
122  loc. cit., Sec. 7 (c).
123  loc. cit., Sec. 19.
124  loc. cit., Sec. 20 (a).
appoints a mediation committee whose chairman represents the public interest. After the two sides have been heard, the committee prepares a draft of its decision on which the parties may comment. The decision is legally enforceable as that of one obtained through collective bargaining. However, the mediation commissioner shall, if he is unable to obtain a settlement by agreement, suspend his mediation and shall make a report on the point of issue of the case to the labor committee for further action.

A labor committee also undertakes an attempt to conciliate a labor dispute upon the request of one or both parties concerned with labor relations or ex officio. The conciliation committee shall be composed of three conciliation commissioners and each of the persons representing the employer, the workers and the public utilities. From among these members of the labor committee it shall be appointed by the chairman of the labor committee. A conciliation committee shall hear the opinions of the parties by fixing a date and requiring the parties to present themselves before the

\[125\] loc. cit., Sec. 21 (a).
\[127\] LCA, Sec. 20 (b).
\[129\] LDAA, Sec. 23 (b).
\[130\] loc. cit., 23 (c).
conciliation committee. When a draft conciliation has been accepted by the parties concerned, the conciliation committee will prepare a text of the conciliation, and it shall be signed by them together with the parties concerned. This shall have the same effect as that of a collective agreement.

Arbitration is required whenever public utilities are involved in a labor dispute, or when one or both parties apply to the labor committee. In the case of a public utility, the labor committee or an appropriate authority may request arbitration. Public utilities, as defined in the Labor Disputes Adjustment Act, include transportation, communications, government monopolies, power, public health, and medical treatment services, and banking. Other industries may be declared public utilities by the Government with consent of the National Assembly. A three member arbitration committee is formed from among the committee's public members.

An arbitration award is subject to review by the local, provincial, or Special City Labor Committee, but the decisions of these labor committees may be appealed to the Central Labor Committee.

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131 loc. cit., Sec. 29 (a).
132 loc. cit., Sec 29 (b).
134 LCA. Sec. 4 (a).
135 loc. cit., Sec. 4 (b).
136 loc. cit., Sec. 32.
Committee if one of the parties charges that the award is a violation of existing law or that the arbitrators have exceeded their authority. Also, an arbitration award or decision rendered by the Central Labor Committee may be appealed to the courts under the Administrative Litigation Act (Haeng Chong Sosong Po) within fifteen days when one of the parties charges that the decision is in violation of the law or is an act going beyond its authority. The award or decision for review which has become final shall have the same effect as that of a collective agreement.

Most of the labor disputes considered by the committees concern wages and working conditions, including hours of work, dismissals, and welfare. However, the Labor Committee Law specified that only public members may decide certain cases, even though all members may participate in the examination preceding the decision. These disputes involve a) the arbitration of accident compensation disputes, b) the revocation or amendment of a union constitution, c) the cancellation or change of a labor union decision which "violates a law or an order concerning labor or is considered likely to harm public benefits," d) the issuance of an order concerning the dissolution of a union, e) a decision as to

137 loc. cit., Sec. 38 (a).
138 Law No. 213, promulgated on August 24, 1951, as amended by Law No. 363, July 5, 1955, and Law No. 1339, May 2, 1963. Procedures for the litigation concerning cancellation or alteration of illegal action committed by an administrative agency or its subordinate agency or the litigation concerning rights under public law shall be governed by this law.
whether an employer has committed an unfair labor practice, f) a judgment as to whether a labor dispute is lawful, and g) questions relating to a lockout.

Under the existing legal framework, therefore, the Korean labor law provides for a powerful government-controlled system of arbitration. This is to say that the government plays the most important role in labor matters through its power which is exercised in the tripartite labor settlement machinery.

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LCA. Sec. 20; LSA. Sec. 89(2); LUA. Sec. 16, 21, 32 and 42; O' Ch'ong-gun, op. cit., Pp. 268-74; Kim, Ch'i-søn, op. cit., Pp. 180-84.
CONCLUSIONS
CHAPTER VI

CONCLUSIONS

This paper has explored a number of different factors, such as social, economic, and political phenomena in the United States and South Korea, which have played important roles in shaping the origins, characteristics, philosophies, and power relationships in the development of the respective labor movements and labor legislation. The relationships between the labor movement and labor legislation in these two societies have considerably affected not only the history of each labor movement, but also the development of the labor legislation itself in both countries. It can be said that these two labor movements have evolved under fundamentally different environments in their history.

In the United States, the democratic ideal is a powerful influence in society, and has permitted Americans to enjoy the freedoms of speech and assembly in social, economic, and political activities. This concept of democracy is a fundamental philosophy of the American social and political system. The most significant tradition of American democracy is based on an individualism in which all human values are broadly shared for the individual. There has been no permanent ruling class like in a hierarchical society such as Korea. The rule of law is an essential principle of American democracy.
The American Constitution provides the foundation for a democratic constitutionalism in which particular civil rights are specified as being essential elements in the American political system, and also in which is created the ideal of a democratic society acting as a buffer that protects individual rights from the arbitrary interference of political power. It spells out the separation of powers and the checks and balances, which help create a series of civil rights for the individual and provide a framework for political activities. Thus opposition will always exist because of different political interests with pressure groups particularly being powerful agencies which can influence the government. Organized labor has significantly affected government and public policy in the United States, and today it has become a powerful factor in all phases of social, economic, and political life.

Therefore, the American labor unions have devoted most of their attention to improving working conditions and have also affected American politics. As a result of the social and political structure in the United States, the American labor movement has exerted its influence on political affairs as a sort of a pressure group rather than by means of direct involvement. Thus labor activities have assumed the pattern of pressure politics rather than party politics in the United States.

In contrast, in South Korea, Confucianism is a potent emotional symbol of social, economic, and political life, and it constituted the foundation of a political philosophy as well as setting the social and economic pattern of the nation.
The ideal of Confucianism provided not only the guidance for the conduct of the government, but also the principles for social, economic, and political life. The influence of traditional Confucianism today is by no means gone from Korea. The heritage of its ethic and political philosophies remains fundamental to Korean society. The political system in traditional Korean society was based on the idea that absolute obedience to the government was the fundamental principle, and always emphasized the concept of the duties rather than the rights of the individual. To sum up, the Korean people have failed to develop the idea of individual rights and the concept of dignity of labor, unlike the case in American society. Opposing policies could not be accepted as the results of differing opinions in political decision-making, and the democratic system of partisan politics has never been fully developed.

Therefore, the concept of Confucianism led to the formation of an autocratic political system, in which the ethical ideal was "rule of men" rather than "rule of law." There have been many difficulties to develop, either a system of checks and balances or a system of separation of powers, which are major principles in the American political system. Under such a political culture, Korean government and political leaders have had extremely strong influence in the development of the labor union movement. Although a democratic constitution has been adopted and national elections have been held several times since 1948, many Korean political leaders are still "living with the mental heritage of Confucian political philosophy," which had been based on strict hierarchical
human relationships and traditional authoritarianism. This is an essential reason for the failure of the labor union movement in terms of political development in Korea, unlike the labor unions in the United States, which are a powerful force in all phases of social, economic, and political life.

Under such a traditional social structure, the labor union movement could not be developed in Korea, and it has been politically controlled by the government throughout its history. Therefore, the weakness of the labor movement in Korea has resulted, to a large extent, from the fact that in Korean society there has not emerged a real democratic system, even though the superstructure of the reborn state is that of a democratic republic. This is the great issue in Korean society today: the conflict between the concepts of traditionalism and modern democracy.

Contrast of the Labor Movements

As seen already, an effective labor movement in the United States arose in the second half of the nineteenth century under industrial capitalism, but some of the industrial plants in Korea were not established until the first half of the twentieth century. Compared to the entire national economy, the rate of industrialization was painfully slow in Korea. Consequently, while modern American society was increasingly more industrial, the Korean society remained agrarian, in which little ideological and practical progress was made from a feudal society towards an industrial one.

In addition to the lack of industrial plants, one of the most important factors in the Korean labor movement has been the political struggle for national liberation from Japanese colonialism, while the
American labor movement has been devoted to an economic struggle between labor and management for improving working conditions. Therefore, the development of the two labor movements, governed by different economic and political environments in both the United States and South Korea, can be summarized in the following conclusions.

First, the transition to industrial capitalism has been one of the most important factors that has characterized the development of the American labor movement. Wages, hours, and other working conditions have been the main points in the program of the labor union movement. Thus, as labor organizations have become stronger, higher wages, shorter hours, and better working conditions have been matters of contention between labor and management, in accordance with the growth of industries and factory systems.

Second, the activities of the American labor union movement have been devoted to improving its status by political action in the United States. These activities have assumed the pattern of pressure politics rather than party politics itself. In order to achieve their goals and philosophy, which are concentrated on raising wages, establishing shorter hours and securing better working conditions, labor used the method of nonpartisan politics to formulate legislative programs and attempted to deliver the labor vote to the party and candidates. Thus, labor has acted as a pressure group to try to influence the various structural elements within the American political system.

On the other hand, the development of the Korean labor movement can be characterized in the following ways.
First, the history of the Korean labor movement has been derived from the political activities of the nationalistic struggle against Japanese colonialism. It was not the economic interests of labor, but rather the goal of political independence from Japanese colonialism that promoted the development of the labor movement in Korea, which was led by nationalists as well as by Communists. Consequently, the labor-management relationship evolved into a political struggle between Koreans and Japanese, rather than an economic struggle between labor and management.

Second, the activities of the Korea labor union movement have tended to be more political under the various regimes in Korea. Labor concentrated its efforts on an anti-Communist crusade under the American military occupation, and it also became an integrated part of the patriotic front of the dominant political party under the Korean government. Therefore, it may not be referred to as a labor movement in the true sense of the term, because it was not an economic struggle for improving working conditions but was politically motivated in its origins. It is true that the labor movement led to the organization of modern labor unions, but only in certain formal aspects. The labor unions became agencies of the various political organizations, and their activities were directed at drives toward political objectives, rather than toward the essential economic functions of labor unions.

As already mentioned, although the Korean labor movement has been politically oriented under various circumstances, their goals today greatly emphasize economic activities referring to improved working conditions. The union organizations are granted certain
protections and made to adhere to certain requirements according to the statute law. The right to bargain collectively with the employer is legally guaranteed, and the workers and unions are protected from interference or intimidation by the employer. It is only unfair labor practices on the part of employers that have become subject to government authority.

However, this study suggests that the slow growth of the labor movement may be traced to the nature of the economic system. Because of the small size of most Korean business enterprises and the predominantly agricultural character of the economy, the labor union could not be developed within the normal growth of the labor movement in Korea. Thus, labor policies gained less attention in society and labor movement has been merely political-oriented in their history rather than economic-oriented toward labor-management relations.

It can be said, therefore, that the development of the Korean labor movement has been one of a "political orientation," whereas the American labor movement has been devoted to both "economic and political unionism." Expressed at its simplest, in one word, American labor unions have "influenced" the activities of politicians and the political parties for achieving their goals and philosophy in the labor movement, while Korean labor unions have been "controlled" by politicians and the political parties themselves in their particular environment. This is the fundamental difference in the characteristics and development of the labor union movements in the United States and South Korea. The vital difference between these
two labor movements is that in the United States labor has achieved many successes, while in Korea labor is a very weak and ineffective force in society and its politics.

Comparison of the Labor Legislation

It is a fact that labor legislation depends on the degree of industrialization of a country and the drive of its workers within the labor movement. The development of labor legislation thus has been largely governed by economic and political ideology in both the United States and South Korea, and the vast differences between the two societies are reflected in many ways in the development of labor legislation.

First, an analogy can be drawn as to the criminal doctrines in both countries, conspiracy on common law in America and the Public Peace Law in Korea, that were directed at the outlawing of labor union formation and activities. The concept of a free and open market in the United States, however, was gradually modified in the nineteenth century as it applied to both capital and labor. But the right of Korean workers to organize had not been seriously questioned by either the courts or the legislature until the first labor legislation was enacted by the American Military Government in Korea. This study discusses in some detail the achievement of the legal right to organize in these two countries: in the United States fundamental rights for labor were secured after a century-long struggle as a "trophy", but in South Korea those rights came as a "gift" following the establishment of the American Military Government in 1945.
Second, the presence of the Bill of Rights in the American Constitution has been an important cause for the development of industrial jurisprudence, since it provides for the freedoms of speech and assembly. However, although during the 1920's great industrial disputes occurred in Korea, the workers did not seek legal protection to encourage strikes because no labor legislation had been passed under Japanese rule. Moreover, the Japanese police were enthusiastically employed to suppress the concerted efforts of the workers, who were treated by the Japanese police as being part of the independence movement. Therefore, cases of industrial disputes in the United States came before the courts as early as 1806, but the problems of labor disputes in Korea were left to the police in 1925.

Third, in the United States industrial jurisprudence before the New Deal reflected the conservative nature of the judiciary. Anti-trust laws, for example, were converted into anti-labor weapons. Labor was not so much a victim of laws as it was of the socio-economic views of the judges. In Korea, however, there was no similar impact of philosophies on industrial jurisprudence. The government hardly expressed economic philosophies, and the police merely followed political views with the black letters of the Public Peace Law. This was so extreme that the labor movement became an agent in a political struggle rather than a powerful participant in the economic struggle between labor and management.

Fourth, in the United States the development of labor policies reflects the power relationships among labor, management, and
government. But there has scarcely been any reflection of the power relationships among labor, management, and government at all in the development of Korean labor legislation. Politics and the government have been the prime factors in the Korean labor movement, at times either contributing to union growth or restricting union activities. The lack of experience and financial resources has forced Korean unions to be dependent upon the political parties. Thus, the labor unions have often had to subordi nate their economic interests to those of the party and the government. The close party-union ties in the past were very much detrimental to the development of the labor movement. Therefore, there has never been any real power relationship among labor, management, and the government in the development of labor legislation.

Fifth, the Wagner and Taft-Hartley Acts in the United States, and the Labor Standard, the Labor Union, and Labor Disputes Adjustment Acts in South Korea are the major labor laws which control substantially the whole scene of industrial relations between labor and management in the two respective countries. American labor legislation reflects the balance of power between labor and management through collective bargaining and expects its solution in the legal device of collective actions. It is founded upon the proposition that the American economy could prosper only if there was an adequate distribution of goods through the increased purchasing power of the workers. However, these propositions are not reflected in Korean labor legislation, largely because, unlike in the United States, there is still
underproduction in Korea, and the question of the proper distribution of the nation's goods is rather premature. Although Korean labor legislation shares the aims of the Wagner and Taft-Hartley Acts to reduce labor disputes and encourage economic growth, the situation is quite different. Korean labor law provides for a government-controlled system of arbitration consistent with the peculiar economic conditions in Korea, because of the scarcity of qualified personnel and the small size of the business establishment and the industrial sector of the economy. Under the existing legal framework, therefore, the government plays the most important role in labor affairs through its power over the formation, recognition, and dissolution of trade unions, and the powers which its representatives exercise in the tripartite labor disputes settlement machinery.

In spite of the fact that this legislation was placed under different philosophies of political and economic phenomenon, it is largely similar in pattern to American labor legislation in its legal framework. However, the legal situation facing the Korean labor movement is far from being a comprehensible body of law which could readily be applied in all given circumstances.

Evaluation and Conclusions of the Propositions

A series of propositions was presented in Chapter I, and the evidence with which to test these propositions has been examined in Chapters II through V. The results of the study have been made available to those who may not be familiar with comparative
study of labor movements and labor legislation in the developed and underdeveloped countries. A major portion of the conclusions in this study is thus devoted to answering how the labor movements differ in the United States and South Korea, and also how labor legislation developed in these two countries. Propositions one and two represent modifications in the context in which they have been tested.

First, proposition one is strongly supported in the United States in that:

A labor movement is primarily caused by an economic consideration. It normally occurs as an economic struggle between labor and management for improving working conditions.

The American labor movement represented a good illustration of a movement used as a force to promote primarily improved working conditions and also devoted to improving its status through political action. It has been shown in this study that a large amount of evidence exists which indicates that American labor unions can be classified as being both "economic and political unionism."

It should be noted, however, that even though tremendous power was demonstrated by the working class in Korea, the development of the Korean labor movement has tended to be more of a "political struggle" rather than an "economic struggle" between labor and management, because Korea has been subjected to various political changes under particular circumstances. This is a good example of a labor movement in an underdeveloped country, where most
of the time the labor unions are more "politically oriented" than "economically oriented."

Second, proposition two is also supported in the United States in that:

The outcome of the struggle between labor and management reflects the power relationships among labor, management, and government in the development of labor legislation.

There is some evidence that interest groups in the American political system are influential to a large extent in shaping labor legislation. However, the evidence in the case of the Korean political tradition is not as well known.

It can be said that American labor unions have been faced with many serious legislative challenges in seeking to improve working conditions. There were various power relationships among labor, management, the courts, and the government in the struggles over controversial labor legislation in the United States. However, the Korean labor unions have never had any effective voice at all concerning either the improvement of the economic position of their members or the development of labor legislation. Unlike the United States, there have never been any interest groups in Korea to help influence the enactment of labor legislation. This has been the case because the Korean labor unions have always subordinated their economic interests to the aims of the political parties and the government. Thus, the close party-union ties have very much stymied the development of the Korean labor movement.
Therefore, the modifications of the propositions can be drawn in the following suggestions. The first suggests that the labor movement in the United States was derived from the economic struggle under industrial capitalism, and the labor movement in South Korea was derived from the political struggle under imperial colonialism. The second suggests that the outcome of the struggle between labor and management in the United States has reflected the power relationships in the development of labor legislation, but only the government has played an important role in the development of labor legislation in South Korea.

On the basis of the evidence in this study, which has been tested in the context of the labor movements and labor legislation in the United States and South Korea, therefore, the propositions are restated in their final conclusions.

The first conclusion drawn, which has been tested from the development of the labor movements, is that the history of the American labor movement derived from the economic struggle between labor and management for improving working conditions under industrial capitalism, and that the labor unions have improved their status by political action in the United States. However, the history of the Korean labor movement was derived from the political struggle for national independence from Japanese colonialism, and its development of labor unionism has tended to be more of a political, rather than an economic, struggle between labor and management.

The second conclusion drawn, which has been explored from the
development of labor legislation, is that the outcome of the struggle between labor and management in the United States has reflected the power relationships between them, the courts and the government, and that the rights of labor disputes, collective bargaining, and unfair labor practices have been the main themes in the development of American labor legislation. However, there has been scarcely any power relationship at all between labor and management in the development of Korean labor legislation. The government has played the only significant role in the making of labor legislation in South Korea.

This study indicates that the pattern of the Korean labor movement has evolved from the traditional social and political system that has existed from the beginning of her history. The Korean labor movement has achieved very little political development, because of the absolute domination of traditionalism within the social and political culture. Therefore, of special interest here is determining what is necessary to establish a viable labor movement. What are the requirements for a genuine labor movement in terms of political development? Why is it so difficult to develop a normal labor union movement in a society caught up in the transition from a traditional to a modern form of government? The successful development of a viable labor movement requires the following preconditions.

First, the modernization of the social and cultural value systems from traditionalism appears to be an important precondition to create a viable labor union movement, especially in terms of
modern occupational orientation. The labor class must be aware of its status in the social stratification. Unlike the case in the United States, in Korea there has been no development of a stratum composed of laborers, nor have the laborers been conscious of their position in the social stratification.

Second, the industrialization of the economic structure is an important factor as a motivating force for the growth of a labor union movement. Unlike the United States, there is still an underproduction of industrial goods in Korea, and most factories are either owned by government agencies or are enterprises in which the government has a controlling interest. Particularly, the units of economic production in Korea are small, and within these small-scale enterprises, the direct personal relations between employee and employer eliminate the need for go-betweens. Because of the small size of most business enterprises, industrial relations remain largely a paternal affair.

Third, the successful labor movement requires a high degree of independence from government control or political interest. It is an indication that success will have been attained when labor unions function independent of political direction.

Fourth, labor unions must achieve an independent financial status or risk losing influence among their own members. Labor unions should be financially independent rather than be subject to either government or political party control. The path to this independence is likely to be a very difficult one in Korea. Although it can not be expected to parallel the growth of the labor union
movement in the United States, a genuine labor union movement may be possible in South Korea. However, it might be virtually impossible to develop a viable labor movement until traditional social and political culture have been greatly modified in Korea.

Finally, this writer would like to consider still another key precondition for a viable labor movement in Korea. The American experience seems to suggest that the essence of a lasting, successful union movement lies in building effective representative bodies for workers in industrial life. It is true that additional political aims are also created by the development of a labor movement. However, the problem of independence from political parties may be the most crucial issue confronting labor unions in most of the developing countries. The notion of the separation between unions and parties, or unions and government, seems inconceivable to the political leaders in Korea.

Therefore, this study of the labor movements and labor legislation in the United States and South Korea has proven most helpful in understanding their respective social, economic, and political environments. The study adds further substantiation to the validity of the comparative approach in studying the societies of two entirely different countries.
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