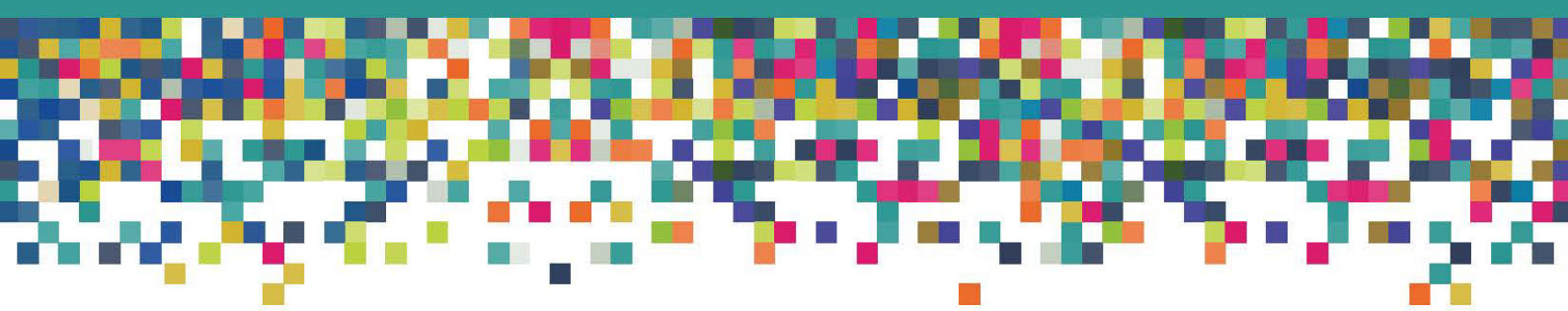




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THE VOICES THAT BUILT AMERICA

Theorizing the Labor Union as a Media Technology

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ABSTRACT

This dissertation proposes and applies a new theoretical framework for defining the speech and expressive actions of American labor unions. Since the mid 20th century, the speech of labor unions has been held apart from that of other associational speech actors and afforded fewer protections under the First Amendment. This jurisprudence, in addition to disadvantaging unions as speakers in the public sphere, is notable for its internal contradictions and inconsistencies. In order to support a coherent doctrine of union speech under American law, I draw on critical theories of technology to offer the frame of unions as media technologies. This study identifies the critical juncture of union speech jurisprudence from 1937-1957 and analyzes union constitutions from this period through thematic analysis. Unions were found to exhibit particular technological designs, affordances, and purposes for use that were reflective of the recursive structures and replicable development characteristics of technologies. In tracing the speech of unions from their designated infrastructures and democratic governance through their assigned purposes, this analysis unpacks the balance of empowerment allowed by the collective use of the union technology against the oppression of the expressive rights of rank-and-file membership. This study also identifies numerous communicative functions and features of unions beyond that of picketing and striking which were most commonly at issue before the Supreme Court. Summarily, this dissertation seeks to ground legal precedent in a comprehensive and contextualized theory of unions as communicators while contributing a method of analysis capable of supporting more coherent legal decision-making about various classes of associational speech actors.

THE VOICES THAT BUILT AMERICA

INTRODUCTION

From the First Continental Congress meeting held in a craftsmen's guild hall to the violent flares of Industrial Revolution catching across Pennsylvania coal fields, labor unions have long found themselves at the center of a struggle to guarantee the civil liberties and rights of Americans (Lens, 2008; Peterson, 1976). The American labor union has been uniquely central to the social movements and progressive changes that have made the United States a recognizable democracy. While never uncomplicated, organized labor's role in the winds of social change spans from racial equality to women's suffrage (Goldfield, 1993; Kort, 2011). Perhaps the most crucial contribution unions have made to American democracy, though, is through their winding and often bristling relationship to a most fundamental freedom: the freedom of expression.

Within a characteristically complex system of First Amendment law, labor unions have been repeatedly challenged in their capabilities as speech actors and occasionally political organizations. Under an internationally unique negative rights approach to expression, the Supreme Court of the United States has repeatedly asked and answered what is speech and who is capable of speaking (Eberle, 2011; Stein, 2004). Through generations of justices and trends of political favor, these definitions and the protections they bestow have ebbed and flowed (Healy, 2013). There is perhaps no better example of such evolution than the jurisprudence related to the speech activities of labor unions.

As unions broadly represent a bargain between government, worker, and employer to secure the perseverance of industrial democracy, so too are the rights and privileges of unions reflective of compromise. Labor unions in America are empowered to act in regulatory functions, like representing their membership at the bargaining table, while undermined in their pursuits as voluntary associations, like in limits on exercising their speech rights (Estlund, 2015). In a departure from their preference for a universal over a contextualized answer, the Court has legally molded the labor union into a unique class of speech actor, subject to unprecedented restrictions that have tended to contradict internally and challenge the most respected doctrine of stare decisis (Getman, 1984). Not necessarily unique to a common law system, the jurisprudence of union speech has lapsed into a self-deferential loop of positivist

THE VOICES THAT BUILT AMERICA

policymaking. As the law lost a grasp on how and why unions speak, so did we lose a coherent sense of how unions fit into the deliberative public sphere of American democracy.

Recognizing the critical juncture in union speech jurisprudence which occurred during the early to mid-20th century, this study seeks to clarify and stabilize a theory of how unions become and behave as speech actors. By proposing a theoretical framework which defines the union as a media technology, this research offers an analytical structure which can account for both the powers and the purposes of union communication. Through mobilizing this framework to study organized labor during a most tumultuous but impactful period of legal evolution on the speech rights of unions, the empirical work of this study engages this analytical structure to identify the designs, affordance, and purposes of union speech at a time of changing legal status. These findings were produced from a thematic analysis conducted on union constitutions adopted between 1937-1957 and offer the basis to challenge and ground the legal treatment of union speech. In centering both the rights of the rank-and-file members who speak through unions and the alternative outcomes of the technological designs of unions, this study attempts to develop a coherent democratic justification for the privileges enjoyed by unions while contending for consistency in their treatment in comparison to other associational speech actors. Summarily, this work seeks to represent the union before and for the law as a speech actor liberated from the faulty settlement determined during this constitutive moment. This research is one of many steps towards supporting the creation of precedent fit for the organized labor institutions that have been and continue to be central to the social and economic progress of the United States.

REVIEW OF LITERATURE

Literature relevant to this study can broadly be split between the legal treatment of unions in the United States and the varied understandings of unions as communicative actors. Given this study's intention to theoretically ground the legal treatment of unions in their communicative nature, both discourses are briefly reviewed here.

THE VOICES THAT BUILT AMERICA

Unions as Communicators

In the field of communications and media studies and in related social science domains, unions and the broader labor movement have been studied as objects of media attention and as agents in media landscapes extensively. Media and communications scholars have also attended to the economic impacts of information and communications technologies on unionized professions as well as labor organizing movements occurring within media professions. Neither of these fields of study prove particularly relevant to this research and thus will not be further addressed here. A broad summation of the lines of inquiry reviewed here includes news media portrayals of unions, media practices of unions, and the political and public influence of unions. Social scientists have also spent centuries attempting to typify unions in their core functions, identities, and methodologies, which is a pursuit mostly closely related to this study and thus detailed here as well.

Beginning with work that takes unions not as actors but as objects of media attention, scholars have long asserted an anti-union or anti-worker bias exhibited by legacy media institutions (Walsh, 1988). Puette (1992), writing at the cusp of the technological innovations of the 21st century, argues this bias has existed since the beginnings of organized labor movements but has reached a crescendo in the times of a more heavily mediated social order. The particular manifestations of these perceived biases vary across authors and time periods however. In the immediate aftermath of the passage of the Labor Management Relations Act of 1947, better known as Taft-Hartley, the overstatement of union power was perceived as unfair framing of the labor movement that could lead to additional regulation of unions (Cole, 1951). Martin (2004) sources anti-union bias to the adoption of a consumer frame in labor disputes, contending that a class-free public is primed to seek advantages as buyers and loses the inclination to embrace solidarity with striking workers. Most famously, Freeman and Medoff (1989) define union framing as two contradictory faces, one positive that expresses a collective voice and one negative that leverages monopolistic power. These canonical faces have since been mobilized explicitly as a methodology for analyzing media coverage of unions (Brimeyer et al., 2016). Consistent throughout this discourse, however, is the contention that media narratives on unions exhibit some degree of erasure that creates this antiunion bias, be it

THE VOICES THAT BUILT AMERICA

through the failure to engage the perspective of rank-and-file union members in existing coverage or through the failure to produce any coverage of union activities beyond large-scale strike actions (Carriero, 2005; Hedges, 1951; Manning, 1998; Martin, 2004; Schmidt, 1993).

Scholars have linked this anti-union media bias to the public perception of unions and thus the ability of unions to influence American political discourse (Schmidt, 1993; Walsh, 1988). Researchers have defined and searched for evidence of political influence by unions in the electoral habits of membership, the fate of union relevant legislation, the mobilization of union resources in electoral contests, and the establishment of labor centric political parties. Bok and Dunlap (1970) seek to characterize the political behaviors of unions by interrogating their objectives, methods, and associations with political parties while outlining both the internal and external contexts that help predict the success of a given behavior. Greenstone (1969) similarly contends that both conditions internal to the union and external within the electoral landscape impact the success of union mobilization in party politics. Summarily, scholars have awarded a mixed record to unions in their explicit efforts to influence American politics. Organized labor appears to succeed in motivating particular policy preferences of membership but has largely failed in its aspirations to establish labor-centric political bodies throughout American history (David, 1951; Kim & Margalit, 2017). Legislatively, unions often fail to achieve policy adoption on matters of their own institutional benefit but are successful coalition members in supporting more broadly focused social legislation (Freeman & Medoff, 1984). Even with some claimed success, some scholars contend that the political behaviors of unions will ultimately harm the institution of organized labor, be it through passing legislation that creates a more hospitable work environment in which workers are less motivated to organize or by wasting resources on political efforts that do not build membership and thus institutional strength (Masters & Delaney, 2005; Troy, 2001).

Regardless of the hypothesized benefits of political participation, unions have engaged in specific media practices throughout their history, investing to change or improve their public perception as a path to political influence. These efforts can be broadly understood as a strategy to “make friends and to influence people” (Hardman, 1951, p.172). Unions are also well-documented claimers of the broad and nebulous public interest through their

THE VOICES THAT BUILT AMERICA

communicative work (Valentini et al., 2020). Some early public relations methods of unions include the printing of bespoke labor press newspapers and letters, the coordination of community service projects, and the designation of union officers as liaisons to media institutions (Cole, 1951; Hedges, 1951; Puette, 1992). This study also observed many of these same practices in the union documentation of the time. Much of the modern study of media practices of unions, though, focuses on “digital unionism” or institutional trade labor engagement with online participatory media (Carneiro & Costa, 2022, p.29). Scholars have expressed optimism in the ability of social media to strengthen labor unions as they weather strikes and workplace conflicts, embark on campaign organizing efforts, and seek to expand the reach of the broader labor movement (Pasquier & Wood, 2018; Upchurch & Grassman, 2016). Effective digital communications work can be understood as a path to bulwarking union’s social strength when they otherwise lack economic or institutional leverage (Ioannou, 2020). However, any potential boon of digitized media is blunted by the continued tendency of unions to employ communicative tools with outdated and underdeveloped strategies, particularly their tendency to ignore horizontal engagement and refuse robust investments in communications as an integral piece of organizational composition (Botan & Frey, 1983; Carneiro & Costa, 2022).

Abstracting out from the explicitly communicative interactions of organized labor with the news media, the body politic, and the public discourse, unions have also been studied repeatedly in efforts to essentialize their forms, methods, and social functions. Webb and Webb (1901) famously offer a lasting definition of unions to begin these efforts: “A trade union, as we understand the term, is a continuous association of wage-earners for the purpose of maintaining or improving the conditions of their employment” (1). Additionally, they define three similarly enduring methods of unions in achieving their varied goals: the method of mutual insurance, the method of collective bargaining, and the method of legal enactment (Webb & Webb, 1897). These methods are adopted by Hoxie (1920) to offer a functional typology of American labor unions, citing business unionism, friendly or uplift unionism, revolutionary unionism, and predatory unionism as the four typified labor organizations. These stereotypes are each defined by their engagement with the Webbs’ methods. Hyman (2001) finally situates these functions within broader social and economic contexts to offer anti-

THE VOICES THAT BUILT AMERICA

capitalism, social integration, and business unionism as the core social identities of trade unions. These identities are formed by but also reflexively alter the interplay of union interests, union agenda, union power, and union democratic practices (Hyman, 1994). This contextualization of union identity has continued as contemporary scholars juxtapose labor unions with social movement organizations in their social functions, proposing models like community unionism to bridge the Webbs' definition of a trade union into more explicitly politicized worlds (Diani, 2019; Fine, 2005).

Conceptualizing unions as communicators remains contentious. Beyond a wealth of research recognizing the link between labor unions and communication, the intent, effectiveness and reception of union communication has been and remains unsettled. Even with the criticism offered by Botan and Frey (1983) of unions' failures to recognize communication as integral to their organizational make-up, this literature remains otherwise undeveloped in offering a comprehensive theory of unions as communicators. Much of this work also remains unconnected to the legal regimes which govern the communication of unions. In the American context particularly, this jurisprudence is vitally important to understanding the limits and allowances the labor movement confronts in communicating.

Unions as Legal Objects

To study labor unions in the context of their legal identities, most relevant literature can be found in studies of First Amendment jurisprudence and the status of labor speech activities under the American freedom of speech regime. Labor unions and the radical labor movement were central characters in the early to mid-20th century revolutions of First Amendment jurisprudence (Weinrib, 2016). This study locates itself between 1937-1957 given the extensive development of jurisprudence on labor speech during this period as well as the rapid changes in the legal status afforded to labor speech occurring during this time. These precedents are the basis of plentiful legal scholarship on the speech rights of labor unions and the broader legal bargain that labor unions represent.

While labor unions, labor movement radicals, and labor organizing ideals were implicated in many of the earlier and iconic speech decisions of the 20th century, like *Abrams v. United States*

THE VOICES THAT BUILT AMERICA

(1919) and *Debs v. United States* (1919), the law pertaining specifically to the legal status of the organizational communications of labor unions gained intrigue with *Senn v. Tile Layers* (1937) (Fisk, 2018; Healy, 2013). Prior to *Senn*, picketing, the primary form of organizational speech identified with unions by the Court, was recognized broadly as a crime or tort against employers unless it was specifically and explicitly protected by a state or local statute (Fisk, 2018). With Justice Brandeis' opinion in *Senn* as well as the impactful decision in *Thornhill v. Alabama* (1940), claims of deprivation of the rights of picketed parties were denied, and labor picketing was elevated to a protected status akin to political speech. Justice Murphy in *Thornhill* links this protection to the importance of labor speech to the functioning of the public sphere in an industrial society: "Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial supply" (*Thornhill v. Alabama*, 1940). Decisions in *Carlson v. California* (1940) and *American Federation of Labor v. Swing* (1941) further cemented this protected status of union picketing while the decision in *Hague v. Committee for Industrial Organization* (1939) extended protections to other communicative actions like union meetings and the distribution of union organizing literature.

These sweeping pronouncements in protection of union speech activity unraveled rapidly, however. Justice Frankfurter's decision in *Teamsters Union v. Vogt, Inc.* (1957) is understood to be the final undoing of this elevated status for organized labor (Fisk, 2018; Garden 2011b). 16 years after asserting the impropriety of strangling labor speech with the "circle of economic competition between employers and workers" in his *Swing* decision, Justice Frankfurter completed the reversal of the Court's stance on picketing by reviving the classification of picket activities in *Vogt* as economic conduct. While argued to be consistent in his more nebulous respect for legislative supremacy by some, *Vogt* is otherwise understood as a stark departure from Frankfurter's progressive and labor-oriented ideals (Fisk, 2018; Summers, 1957). This logic of treating picketing and other union speech activity like boycotts as economic activity and thus ineligible for the more strident protections of the First Amendment has persisted since 1957 through contemporary labor jurisprudence (Fisk, 2018).

THE VOICES THAT BUILT AMERICA

Much legal scholarship engages the unique status of union speech and asserts the (in)fallibility of the Court's varying logic across the 1937-1957 era. Relatively recent decisions in *Citizens United v. FEC* (2010), *Janus v. AFSCME* (2018), and *Glacier Northwest, Inc. v. International Brotherhood of Teamsters* (2023) have all inspired new lines of questioning into the legal treatment of union speech conduct. Numerous scholars have specifically taken issue with the comparative treatment of corporate speech, like the political spending at issue in *Citizens United*, as more highly protected than the same forms of labor speech (Fisk, 2018; Fisk, 2014; Garden, 2011a; Getman, 1984; Purdy, 2018). These authors also note the disadvantage unions face when communicating in the same sphere as corporations without the same protections, including when they face limits on political spending, coalition building, and eligible agendas for collective bargaining (Fisk, 2018; Garden, 2011a; Getman, 1984; Purdy, 2018). Garden (2011b) also offers a comparative history of labor speech protections to those afforded to the speech of civil rights organizations, citing much of the same history offered by Weinrib (2016) to contend for the compatibility of these labor speakers as similarly political. Estlund (2015) goes furthest in unpacking the unorthodox approach to union speech offered by the Court by detailing the exceptional balance of unions as private bodies with public regulatory functions.

This legal literature gestures obtusely to the theoretical justifications for the protections of political speech, making even more limited reference to the particularities of grounding union speech in theory. Estlund (1990) describes the personal grievances communicated through labor disputes as ground-level points of entry into the public sphere individual workers seeking political empowerment. Purdy (2018) takes the opposite approach, arguing that the organizational might of union speech is the only proper counterbalance to unfettered corporate speech in a helplessly colonized public sphere. These accounts are joined by less coherent theories of the importance of the speech of organized labor to democratic functioning, like those offered by Garden (2011b) and the *Thornhill* Court, as well as pleas for the preservation of industrial democracy through an empowered working public like those made by Justice Brandeis (1935). While such a decoupling of jurisprudence from theoretical grounding is familiar if not common to American courts, instances of doctrinal instability like in the case of union speech demonstrate the need for a consistent and comprehensive theoretical basis to underpin the law. In this case, that is a theory of unions as speech actors.

THE VOICES THAT BUILT AMERICA

As evidenced by the offered review of literature engaging labor unions in their communicative capacity, there has been no coherent effort made to theorize the union as a communicative actor. Yet, the legal literature pertaining to the speech of unions seems to demand such a systematic account of these practices amidst the contradictions and contentions of relevant First Amendment jurisprudence. This study, therefore, sets out to solidify a theory of the union as a communicator based in the empirical context that both exhibited the greatest turmoil in the legal status of union speech and set the persistent albeit challenged precedent that remains in effect today.

To achieve this dual purpose of an empirical account of unions as communicators and a theoretical perspective on this identity, this study thus aims to answer the following questions:

RQ1: What are the elements of the communicative practices employed by American organized labor unions in the early to mid-20th century?

RQ2: How can these observed communicative practices inform the treatment of union speech acts under First Amendment jurisprudence?

THEORETICAL FRAMEWORK

Critical theory of technology

While this study originated through an inductive approach to archival exploration which will be discussed in the methodological chapter, the aim throughout this research remained identifying and deploying a comprehensive understanding of unions as communicators. This work is thus found such a coherent theory in the framing of science and technology studies to assert that American labor unions are best understood as media technologies. Throughout the critical juncture identified, unions were constructed around the direction of a given phenomenon: communication. Organized labor operated through an observable set of design features that produced a given affordance in service to predetermined purposes. Though the logic of the critical theory of technology originates in analyses of the material world, the tradition nonetheless offers a coherent rendition of a socially constructed and replicable institutional design through which labor speech jurisprudence can be better unified.

THE VOICES THAT BUILT AMERICA

In applying the term media technology to unions, the discord between the materiality often presumed of technology within critical theory and the intangibility of a union appears, at the outset, a barrier to meaningful match. Scholars like Lievrouw (2014) assert that materiality or physicality is one of three necessary components in defining a communications technology. To contend with this supposed requirement, I engage Arthur (2009) as my preliminary entry point into critical theory. Writing a Heideggerian inquiry into the essence of technology, he arrives at the definition of technology being not a physical object, but a logic: “A technology is a programming of phenomenon to our purposes” (Arthur, 2009, 51). Arthur notes the compatibility of this definition with other entities, like economies and legal systems, that are not often identified as technologies, or are so-called non-technological technologies. He goes so far as to offer an alternative terminology of “purposed systems” for the skeptical before asserting the ability to if not the utility of applying the logic of technology to these immaterial articles. Unions, per Arthur’s theory, embody a technological structure in their replicable and recursive architectures. As I will contend through my empirical analysis, they are also oriented around the “programming” of a given phenomenon, communication, for at least two defined purposes.

While meaningful in their explicit and accessible theory of technology offered amid the turn of another technological era in the 21st century, Arthur also reflects a rejection of essentialist approaches to the study of technology that discounted the influence of human agency and thus the democratic potential of these entities. As Feenberg (1999) offers in his brief history of the intellectual schools engaging with technology, both the determinists and the substantivists began by attributing an essential autonomy to the processes of technological development. As the most prominent substantivist, Heidegger (1977) finds the essence of technology in its irresistible power to reveal and therefore also conceal. Per his rendition, humanity is beholden to the paradoxical forces of technological development in that technology is, in its essence, a manner of revealing truth. As an entity separate though derived from its human designers and users, technology can only reveal one version of any truth, meaning there will always be some reality concealed or refused by technological adoption (Heidegger, 1977). In Heidegger’s estimation, a communications or media technology is almost redundant. Technology is, by his definition, a mediation subject to the same sort of chasm of shared knowledge or experience

THE VOICES THAT BUILT AMERICA

that Peters (1999) assigns to the solipsism of communication. Technology, like communication, therefore threatens humanity through the limitations on reality it imposes.

In contrast, the development of a critical theory of technology denied essentialist fears of domination by technological development. By asserting that technology is inherently humanly controlled and value laden, the critical theorists open up the black boxes of these artifacts to alternative histories and futures (Feenberg, 1999). This school was split in understandings of the triadic relationship of humanity, nature, and technology though. Arthur's programming of phenomenon aligns most closely with the inherently controlling relationship that humans structure with the natural world via technological adoption asserted by Habermas (1971). Conversely, Marcuse theorized a more agnostic and harmonious relationship with the environment and its resources made possible through, not antagonized by, technology (Feenberg, 1999). This split could challenge the ability to conceive of truly just technologies when considering how the inherent control of natural phenomenon suggested by Arthur and Habermas could be applied to human phenomenon like communication in technologies such as unions. The adoption of such a technology which harnesses a human behavior could imply the necessary subjugation of some people in order to operate the technology.

While the power dynamics between technological design and their harnessed phenomenon are unsettled within this school, critical theorists from the Frankfurt School to Foucault crucially assume entirely human control over the processes of technological development. Even though there may lack a pure justice in the ability of technology to avoid subjugating the phenomenon it engages, that technology, from design to operation, can be subject to identifiable and accountable human management. Feenberg (1999) contends this insertion of humanity by the critical theorists opens up the possibility if not the expectation of democratic accountability for technology. In a stark departure from the fatalist views of the essentialists, technology under the critical theorists is a site of discourse, shaped and deployed by social and political forces of the democratic public sphere. Understanding social entities like organized labor unions as technologies thus does not change their relationship to democratic institutions, ensuring their proximity to the public sphere and thus their accountability to a legitimating public (Habermas, 2006).

THE VOICES THAT BUILT AMERICA

Unions as technologies

The logic of technology, as established through the critical theory of technology, offers legal analysis a comprehensive theory applicable to entire classes of actors while focusing on the intent of the action in question and maintaining human designers and users as the center of technological adoption. In this framework, the law is also understood as a reflexive agent of affordance in predetermining design conditions of some technologies and judging the legitimacy of the outcomes of others. Within this study and the case of unions as media technologies, this theoretical frame grounds the democratic justifications of free speech engaged in union speech debates first within the jurisprudence of speech itself and then through the lens of the determined purpose of that speech. Understanding unions as technologies also requires institutions like the Court to take a consistent and careful consideration of their own influence over the design of technologies. The Court would be required to reckon with their historically active role in defining the affordances of union speech rights. The implication of a framing of technology, most fundamentally, asserts the necessary humanity behind the controls of the given technology. Therefore, democratic institutions would be required to recognize further that their interference with the process of technological development is directly linked to an interference with the rights-endowed people who guide such development and adoption.

As discussed in the review of legal literature on unions as speech actors, jurisprudence on union speech is both unsettled on whether their activities even qualify as speech as well as on the particularities of organized labor's relationship to democratic justifications of free speech regimes. When unions are recognized as technologies, and thus a combination of component parts, it becomes possible to identify numerous functions of the same technological entity (Arthur, 2009). The component parts still operate around the same or similar phenomenon but can achieve different outcomes. Before the Court, it becomes possible that a predominately economically interested actor can be capable of functionally speaking with varied intents in varied contexts. This study embraces that multipotentiality by isolating and investigating such unique functionalities within the sampled unions. The clumsy distinction between economic activity and speech is then no longer needed (*Teamsters Union v. Vogt, Inc.*, 1957). Instead, the

THE VOICES THAT BUILT AMERICA

operative element of the action under examination can be located in the determined purposes for employing the technology. This approach would encourage a jurisprudence familiar to Justice Brandeis in its attention to contextual detail and discouragement of the sort of delineations disconnected from lived realities that trouble doctrines like public issue speech (Estlund, 1990; Healy, 2013).

The view of actors like unions as technologies would also demand public institutions like the Court recognize their role in shaping the design of those technologies. In the context of union speech, the Court would need to acknowledge that their decisions, in conjunction with the self-determination of union members and statutory requirements of American labor law set by other public institutions, limit or expand the realm of possibility for unions in a variety of functions including communications. When adopting the discourse of technological design in this context, the Court becomes a discussant whose influence cannot be denied and thus whose decisions must be grounded with an eye towards reflexivity.

As the corollary to a reflexive role for democratic institutions in technological design, this theoretical framework ultimately affirms the human participation necessary to technological progress and thus originates the rights afforded to any technology before the law in the rights-endowed people leading that progress. As Estlund (1990) alludes to, the otherwise ill-defined democratic value of labor speech can be found within the mobilization of individuals through the technology of a union. The consideration of rights and protections for union speech are thus necessarily sourced from those of the individuals speaking through the technology. Simply, the union and its speech would not exist without its working members. This linkage to the rights of the individual behind the technology may admittedly provide a cursory equivalence between the various types of associational speech actors who could also be considered technologies, including political associations as well as corporations. However, the aforementioned separation of action from purpose afforded by this approach would force jurisprudence to again take a contextualized approach wherein which the origination of rights with individual members is considered in tandem with the intent of those members of the organization as well as the affordances of the technological design at hand. The legal precedent on labor speech would thus find a consistency with other associational speech jurisprudence

THE VOICES THAT BUILT AMERICA

while directing the necessary scrutiny to elements of legitimate differentiation like the purpose of the speech.

In applying a critical theory of technology to the case of the speech of organized labor, American jurisprudence would be offered a consistency and a clarity lacked and bemoaned for decades by legal scholarship, as reviewed in prior sections. This study now sets out to apply this theoretical frame in empirically investigating the nature of a given phenomenon, communication, harnessed by unions during a critical juncture in the development of labor jurisprudence in the early to mid-20th century.

METHODOLOGY

This chapter will discuss and defend the methodological choices made in conducting a thematic analysis of archival union constitutions as a mode of understanding the communicative practices of American labor unions during an identified critical juncture. I will reference the rationale for the selected historical period, the chosen data set, the analytic mode, and the employed sampling procedure as well as offer a reflexive statement on my positionality as a researcher engaging in methodology often decried as impressionistic to conduct research adjacent to an ongoing political debate (Mackieson et al., 2019).

Rationale

As explained through the review of literature on unions as legal objects, the period from 1937-1957 is commonly identified as a critical juncture in American history pertaining to the communicative practices of labor unions. Given that the ultimate goal of this analysis is to contribute to the governance of these practices, this assessment of periodic importance is based not in some intrigue related to the actions of unions. Rather this time frame was informed by the work of McChesney (2007) and Starr (2006) and selected given its nature as a period of public policy debate followed by lasting solidification in the political institutions which govern unions. The range of policy options offered by the Court between the *Senn* and *Vogt* decisions in this 21-year period combined with the aforementioned stability of the relevant jurisprudence through the contemporary era offers a well-delineated critical juncture

THE VOICES THAT BUILT AMERICA

(McChesney, 2007). Summarily this period provides the opportunity to “denaturalize” a long-standing but fraught policy settlement, and working from within this time allows for the productive imagining of alternative settlements in the present (Pickard, 2019).

Given the interest in identifying the nature of communicative acts in labor unions, a qualitative method is more appropriate than a quantitative study to seek a more detailed-oriented reflection of a relatively limited data set. Since this study is also based in the inductive exploration of archival materials, thematic analysis offers the theoretical flexibility necessary to approach historical documents in a mode of discovery and coproduction (Braun & Clarke, 2022; Herzog et al., 2019). This methodology is also capable of balancing the depth of description of the selected topic, communicative practices of unions, with creating a breadth of sampling capable of informing credible policy development (Braun & Clarke, 2006). This balance would be less effectively achieved both in the more deductively driven practices of qualitative content analysis and the ideological presuppositions necessary for critical discourse analysis (Braun & Clarke, 2022). A pilot study using constitutions deemed ineligible for the main study was also employed to gauge the appropriateness of thematic analysis for this research.

While official documentation is often chastised for its tendency to enforce so-called policy silences, the official constitutional documents of labor unions ensured that the observed practices within were conducted under the guise of the organization and not by the whims of individual union leaders (Freedman, 2010; Karppinen & Moe, 2019). This study was interested only in the history as it pertained to the officially sanctioned actions of unions, so the alternative methodologies suggested by Freedman (2010) to study this policy development would’ve been inappropriate. International union constitutions in particular are relevant to entire networks of subordinate local union chapters and were therefore selected as more representational of union activity across the United States during this time than local chapter documents. The commercial archive, *American labor unions’ constitutions and proceedings Part I and Part II*, was identified as the most comprehensive and accessible collection of source documentation on international union constitutions. Even though this archive was compiled for commercial sale and profit by the Microfilming Corporation of America, the collection

THE VOICES THAT BUILT AMERICA

represents the collaboration of the AFL-CIO and the Committee of University Industrial Relations Librarians, both of which are national and multistakeholder coalitions (Downey, 1995). The archive represents an explicit effort to support representative academic research of American organized labor (Downey, 1995). The breadth of participating contributors to the archive as well as the observed range of the industries represented in the archive offered a diversity deemed suitable for the purposes of this study. Access to a copy of this archive was gained via visiting privileges at the Library of the John F. Kennedy Institute for North American Studies at the Free University of Berlin.

Sampling and data collection

Within the aforementioned archive, the published finding guide was used to establish an initial data corpus of 1143 international constitutions published between 1937 and 1957. From this set, any partial documents were eliminated, such as documents only containing amendments and not full constitutional text. Partial documents were discounted to ensure the most fulsome representations of practices of the sampled union. The constitutions of the international federations, the AFL, the CIO, and later the AFL-CIO, were also excluded. The international federations were removed since their constituency is of other union organizations and therefore not directly linked to individual union members.

From this corpus, an initial sample of 42 constitutions from 42 unique unions was drawn. The full list of sampled documents is included in Appendix A. A stratified random sample distinguished by the year of publication was employed in an effort to ensure the study was representative across the entire historical period identified and to offer more structure to counterbalance researcher bias or imprecision in declaring theoretical saturation (Fugard & Potts, 2015). The initial sample included two constitutions from each year within the selected period. After a union was selected for sampling in one year, the remainder of their eligible constitutions were removed from the sample in an effort to draw the most industrially diverse group possible. A secondary sample of 21 additional constitutions from 21 additional unique unions was gathered in the event a constitution from the initial sample proved illegible, or the initial sample proved insufficient or inconclusive in totality.

THE VOICES THAT BUILT AMERICA

Analysis

The coding process was guided by a critical realist ontology. In order to work broadly within the confines of the positivist nature of American case law, a broad acceptance of a common reality was necessary, however that reality may have been mediated, perceived, and interpreted by different parties (Braun & Clarke, 2022). While this work does not necessarily engage true legal analysis as a methodology, this research could be applied in support of and expresses a kinship to work in critical legal studies as well (Cate, 2006). Coding was largely conducted at the semantic level as many of the data extracts represented functional, not rhetorical, assertions in the technological design of the union being studied (Braun & Clarke, 2006). However, extracts coded within the metatheme of purpose discussed in the results did engage more intently on the latent level of analysis (Braun & Clarke, 2006).

Braun and Clarke's (2006) approach to thematic analysis as well as the complementary work of Herzog et al. (2019) guided the analytic process. Each document in the sample was read in its entirety, and mentions of communicative action were transcribed and annotated in the initial familiarization process. Upon review of patterns found in the initial inductive approach to the documentation, documents were reviewed again, and extracts related to communicative purpose and communicative affordance were coded as well under the more deductive guidance of the theoretical frame of critical theories of technology. Upon assembling coded subsets, subcodes were developed which reflected variation in subject as well as orientation of communicative actions. After this collation, the theoretical frame of technology was again consulted to draft, revise, and contrast themes within a set of theoretically driven metathemes. It should be noted that this thematic analysis was developed through an active, deductive application of the aforementioned theoretical framework mobilized following an initial inductive coding process and does not claim that themes had a passive residence within or emerged independently from the data (Ely et al., 1997). A summary coding framework is included in Appendix B and a map of metathemes and themes is included in the results and discussion as Figure 1. A complete code book is included in Appendix C.

In a limited pilot study of this methodology, two themes related to the affordance of a unified voice and the design of designated communicative infrastructure were developed in part. A

THE VOICES THAT BUILT AMERICA

number of the codes and subcodes identified in that study persisted through this research as well.

Reflexivity and ethics

This research received ethical approval without comment under the London School of Economics Research Ethics Policy. The nature of this study does not engage vulnerable participants or sensitive subject matter. The documents also do not contain identifying information of individual union members beyond the names of elected, international-level union officers who would have been considered public figures at the time of publication and are already extensively eulogized as significant figures in American labor history (*Key People in Labor History*, 2023). Nonetheless, no extracted data included the names or other identifying information of any individual persons. Additionally, these documents were often published for the general public by the unions themselves, and this archive was collected with the permission and support of the AFL-CIO as the overarching governing body of most of organized labor in America (Downey, 1995). This research therefore presents extremely limited ethical concern for the potential damage to the reputation of these organizations given the long public nature of all of the data involved.

Considering the subjective nature of the research methods employed here, it is necessary to offer insight on researcher reflexivity in this study (Braun & Clarke, 2022; Steedman, 2001). Working with archival material, I was tasked as a researcher in creating my own constructed version of a history from evidence that was selectively preserved over time. The importance bestowed by the archivists before me was layered with my own determinations of importance to create only one rendition of the chosen history, one which notably does not include data like the first-hand accounts of union members which could've helped mitigate policy silences (Freedman, 2010; Steedman, 2001). This history should thus be understood as my unique creation as a researcher and must be held to its specific context and against the incompleteness of history itself as more and more elements of this story are now and will be researched elsewhere (Steedman, 2001).

THE VOICES THAT BUILT AMERICA

Thematic analysis also requires a degree of active work from the researcher that invites bias and preconceptions to influence study findings (Ely et al., 1997). As an American and former professional in American politics and governance with the Democratic Party, I acknowledge my generally positive preconceived opinion of labor unions as well as a broadly negative opinion of the role of the Supreme Court throughout labor history. This bias is particularly salient considering the current policy debate on labor rights in the United States, including the campaign for the PRO Act and the *Glacier Northwest* decision (PRO Act, 2023). To minimize the risk of this bias influencing results, I produced an ongoing record of my thoughts and reactions through all phases of coding which I regularly read back to encourage reflexivity in my work.

RESULTS AND DISCUSSION

This chapter presents the findings from the thematic analysis conducted, including the reporting and discussion of each theme identified as well as the mapping of an integrated structure of metathemes built through the theoretical framework. Each theme presented offers a partial answer to the main research question, and the concluding discussion offers commentary on the secondary research question which relates this empirical work to the legal and theoretical contexts in which this study was conducted.

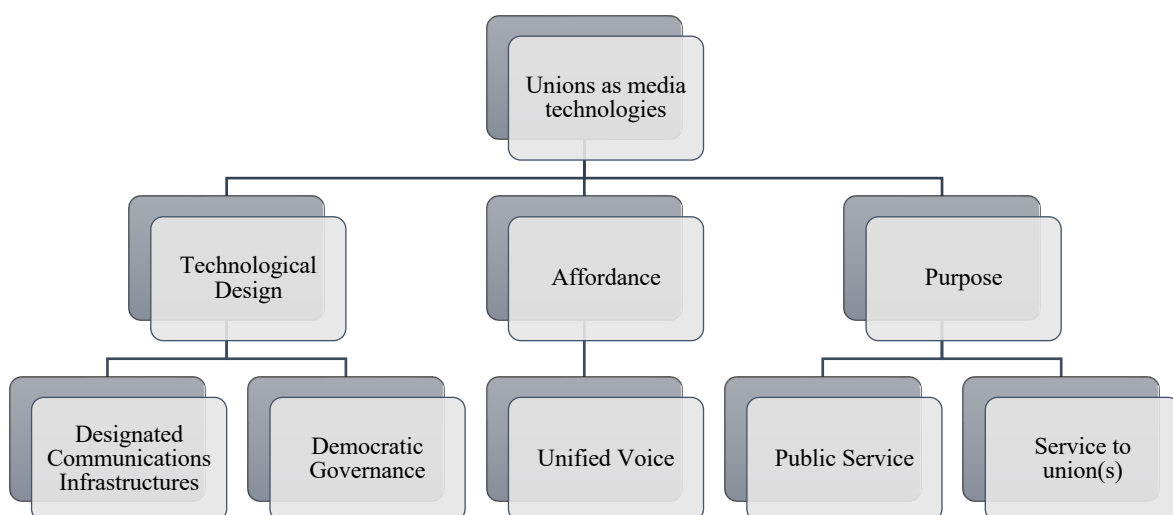


Figure 1 Thematic Map

THE VOICES THAT BUILT AMERICA

The metathemes developed through this research reflect the theoretical framing of labor unions as media technologies. Each metatheme pertains to a component of technology as discussed in the critical theory of technology. The five developed themes are thus presented within the metathemes of technological design elements, affordances, and purposes for use.

Design

Design refers to the structures and systems which constitute the chosen structure of a technology. Technological design reflects a recursive architecture and allows for replicability of the technology (Arthur, 2009). Design stabilizes in moments known as closure or black box moments and, as discussed, is accepted in this theoretical framing as a human driven project that can be reasonably held to standards of democratic accountability (Feenberg, 1999). The closure of design is linked directly to the end of the critical juncture or constitutive moment in a democratically rationalized technology (Starr, 2006). Accepting this definition of technological design as the basis for this metatheme, two themes were identified from the analysis:

Labor unions employ designated communications infrastructures of various kinds.

Labor unions utilize mechanisms of democratic governance in order to communicate.

Among the structures and systems unions establish through their constitutional documents, a variety of designated infrastructures specific to communicative functions were created, including many of the aforementioned public relations methods already detailed by research contemporary to the period (Cole, 1951; Hedges, 1951; Puette, 1992). These infrastructures can support the union in communicating internally, among union members, externally, among the broader public, or simultaneously to both orientations. These infrastructures imply the commitment of unions resources, including money, time, or staff labor, to the act of communication. The most common infrastructures observed across the sample included the production of journals, publications, or other “official organs” and provisions for conventions and meetings. Specific staff roles were also often designated as infrastructural elements, and some unions were observed to institutionalize communicative programs or services, like educational programming, libraries, and research departments. Disciplinary procedures

THE VOICES THAT BUILT AMERICA

specific to policing the communication of rank-and-file members and subordinate organizations like local chapters or regional councils were also often included in a union's infrastructural design. Notably absent from these infrastructures were substantial mentions of procedures and staff roles to coordinate strike or picketing efforts. The lack of infrastructure for the eventuality of picketing and striking was especially surprising given the focus paid in the legal jurisprudence to these activities. Summarily, these infrastructures often appeared in layers, such as staff deployed to draft publications, proving the recursive nature of the technological design, and were observed repeatedly across the entire sample, demonstrating a replicability of this design.

While some of the infrastructures identified here, like newsletters and press secretary roles, are explicitly communicative, some of the internally facing infrastructures, like conventions and meetings, were not immediately identifiable as communicative work and were included in subsequent coding rounds. As exemplified by the presence of a layered infrastructure as well as conditions for democratic governance, these spaces were eventually understood as sites of deliberation akin to deliberative public spheres or communicative democracies (Habermas 2006; Young, 2004). Through local meetings where legislation was drafted to national conventions where officers were elected, union conventions and meetings relied on the connection of members through communication to “change conditions of injustice and promote [justice]” within the organization and through the organization's externally facing communication (Young, 2004, 17). These spaces were additionally designed to facilitate communication, as some unions specified rules of debate and standing agendas. Through conventions and meetings, unions were seen as harnessing communication in order to communicate further.

These communicative infrastructures can be leveraged to empower members to speak with the platform of the union, but they could also be wielded against membership to repress the expressive rights of individuals. This paradox of selective repression in order to collectively empower will be further discussed in reference to the affordance of a unified voice. However, the procedures designed to discipline members who did not comply with the purposes of the union must be acknowledged as an additional infrastructure often employed in the design of

THE VOICES THAT BUILT AMERICA

the union technology. These tribunals, review panels, and other reporting procedures often culminated in fines, suspensions, and expulsions for members found to be communicating against or outside the interests of the organization.

As illustrated in part by the practice of holding conventions, democratic governance of communicative practices was also built into the technological design of unions. These democratic procedures were most often embodied as opportunities for direct representation of rank-and-file members in communicative actions and as the leadership of elected officers in communicating. Few unions were also observed to offer opportunities for appeal to individual members who disagreed with the communicative procedures of the union, which further complicated the paradoxical relationship of individual repression against collective empowerment. Through the continued evidence of democratic governance in unions, the mobilizing force of the rights-endowed workers who developed and adopted union technologies was repeatedly established. Additionally, the plentiful examples of democratic participation in the cyclical development of the union technology, like the procedures of conventions, exemplified the sort of democratic accountability of technological development encouraged by Feenberg (1999).

While the practices of union democracy in the United States are most often associated with the passage of the Landrum–Griffin Act in 1959 and thus shortly after the era sampled here, *Union Democracy*, a groundbreaking study of the International Typographical Union released in 1956, corroborates this study's account of the general democratic practices of unions taking place before that congressional intervention (Landrum-Griffin Act, 1959; Lipset et al., 1977). Particular to the interests of this study on communicative practice, democratic procedures were employed to govern both the internal and external communication of unions. These methods included employing elected officers in the oversight of official publications and requiring convention representation be sourced directly from rank-and-file membership. This study does not suggest the fallibility of the history of corruption and misconduct that lead to the passage of Landrum-Griffin nor does it claim to understand the extent to which the democratic procedures described in these documents were followed in practice. Instead, this

THE VOICES THAT BUILT AMERICA

study claims only that unions during the observed period consistently included democratic governance in the technological designs of the communicative functions of their organizations.

Affordance

Continuing through the theoretical framing of technology, the discussed elements of technological design offered a particular affordance to the unions employing them. An affordance here is understood through the canonical definition offered by Gibson (1987): “Positive and negative affordances are properties of things taken with reference to an observer but not properties of the experiences of the observer. They are not subjective values” (137). Affordance theory, embraced by science and technology studies from its conception in ecological psychology, allows the artifact in question to be understood simultaneously through its physical properties and its socialized reality (Volkoff & Strong, 2018). Under this metatheme of affordance, one theme was developed from the analysis:

The technology of labor unions offers the affordance of communicating with a unified voice.

The affordance of a unified voice is reminiscent of the aforementioned “face” of “collective voice” offered by Freeman and Medoff (1984) as well as the balance of private and public roles described by Estlund (2015). However, this theme unites the empowerment offered by a union platform with the monopolistic subordination of assimilation under a single phenomenon. It’s through a unified voice that this power to both uplift and oppress is afforded to the users of union technologies. In the sampled documents, unified voice was observed as the assertion of conformity to the values of the organization, the policing or affirmation of other affiliations of individual members, and the use of rituals and symbols specific to the organization. Once again, this affordance and the observed instances of the affordance related to both the internally and externally facing communicative practices of the organizations. While surprisingly much less commonly observed, some manifestations of unified voice also explicitly required a singularity in expression, barring subordinate chapters and rank-and-file members from communicating along with or against the larger organization.

The mobilization of the technological design elements described above by users produced this evidence of the affordance of a unified voice. The leveraging of disciplinary procedures

THE VOICES THAT BUILT AMERICA

required individual members to disavow affiliations with political bodies to produce a cohesive associational profile for the organization. That practice of disallowing membership in extremist organizations like Fascist or Nazi groups appeared more expressly repressive of rank-and-file members when the policy was applied to less offensive organizations like the Communist Party or the Industrial Workers of the World. While some of the affiliation rules were imposed on unions by external forces and even questioned as unconstitutional, the affordance of associational unity was nonetheless a defining feature of the union technology (“Constitutionality of the Taft-Hartley Non-Communist Affidavit Provision,” 1948). While this study does not claim to reveal any causes or motivations for these affiliation rules, it is reasonable to hypothesize that some restrictions on member affiliations could’ve reflected an effort to align the organization more effectively with political allies deemed desirable.

Other evidence of a unified voice in unions appeared less closely related to the role of unions or their members in the political public sphere. The use of organizational seals for internal communications materials and union labels for external promotion exhibited the employment of a designated communicative infrastructure to create a unified representation of the union. The limitation in the expression of union members in this instance was less based in their external political actions as it was in their communication of and about their union membership. These insignia are hypothesized to offer a valuable degree of promotion and recognition to the union as numerous unions also developed disciplinary procedures in the event of misuse as well as committees and other staff roles to support their design and expand their usage. Other rituals and symbols, including oaths, pledges, and burial services, were understood as wholly internal communicative displays and meant to reinforce the boundaries of the union in-group. These embodiments of a unified voice were thus least linked to the limits of members’ expressive rights in the public sphere.

While most direct, the requirement of conformity to union values exemplified the vaguest realization of the affordance of a unified voice. Though specific values, like nonpartisan or nonsectarian limitations on expression, were alluded to in the constitutional documents, unions were far more apt to include the condition that expressive acts must align with unnamed principles, policies, resolutions, philosophies, and interests of the union. These

THE VOICES THAT BUILT AMERICA

principles could be read to refer to the purposes listed for communicative acts, to be discussed in the next section, or could be understood as intentionally unclarified. If taken as purposefully broad, the duality of empowerment and oppression can again be found in the ability to leverage the union technology for a more ranging agenda of public uplift beyond the established mandate or to wield charges of nonconformity against members with impunity. When viewed through this juxtaposition, the affordance of a unified voice is highly reliant on the contextualized purposes of the users of the technology. As suggested in the theoretical chapter, the purpose of expressive acts and thus the purpose for engaging the union technology can not only be operationalized as a meaningful point of analysis in jurisprudence but also may be the only such facet of differentiation available when considering the relative protections offered to various forms of associational speakers under the First Amendment.

Purposes for use

The basis for delineating the purpose for use of a technology is sourced again from the definition of technology offered by Arthur (2009): “A technology is a programming of phenomenon to our purposes” (51). Where the technological designs and the resulting affordances of multiple technologies and multiple speech actors align, the purpose for leveraging that technology should be the operational unit of legal analysis. The theoretical approach offered by Arthur (2009) and accepted in part by this study acknowledges that a technology cannot be defined and therefore understood to the extent necessary to adjudicate without first considering the purpose for which it was employed by its users. As alluded to in the discussion of duality in the affordance of a unified voice, the purposes for adoption of union technologies reflected a desire to serve interests that could but did not always conflict. Two themes were developed through this analysis under the metatheme of purpose of use:

Unions seek to serve a public interest through their communicative practices.

Unions utilize communicative acts to serve the interests of the union organization, including those of their members, the individual union, and the broader labor movement.

THE VOICES THAT BUILT AMERICA

When coding an intent to serve a public interest, this study identified advocacy for nonunion policies, rhetorical claims of a duty to the public, and plans for public education as qualifying evidence. While all of these goals may also have served the union in fostering a positive public reputation and delivering policy measures that also benefited union members, those benefits, if realized, would've been secondary to the externalities produced for a broader swath of the public. As such, this study did not concern itself with closely defining the public interest as some other studies of public interest framing in union communications have done (Valentini et al., 2020). Instead, the public interest or service to the public here was understood only as those acts which were not explicitly in the self-interest of the union. Understandably, efforts or intents to meet a public interest were only coded as relevant to externally facing communicative practices.

Most commonly, unions claiming the public interest sought to advocate for various social policies, including public education, unemployment and disability insurance, gender pay parity, and abolishing child labor. Multiple unions also included efforts to promote and maintain the democratic ideals of the United States through protecting civil liberties, supporting electoral participation, and defending critical institutions and processes of democracy. As prior established in the discussion of organized labor's political influence, unions have proven more successful in achieving these broader social legislative changes than in winning the adoption of laws that serve their own self-interest (Freeman & Medoff, 1984). When communicating in this public service mode, unions are hypothesized to succeed by joining coalitions of political actors all advocating in unison for broadly impactful changes (Freeman & Medoff, 1984). Under the jurisprudential limitations of economic conduct classifications though, this success in political advocacy has frequently been restricted due to claims that union advocacy on political issues induces the compelled political speech of individual members and infringes on the 14th Amendment rights of employers who may be implicated (Garden, 2011a). This intent to advocate for nonunion policy was often not associated with any particular communicative infrastructure but did frequently include reference to the necessity of a unified voice to succeed.

THE VOICES THAT BUILT AMERICA

This study understood a rhetorical claim to the public interest as an intent that offered no tangible outcome or marker of success and committed no union resources in support but instead emphasized a service generally to the benefit of the identified nonunion public. These claims often pertained to the social, economic, and political welfare of a unified working class. Occasionally the interests of the working class were claimed to align with those of union members, but more frequently these groups were distinguished in separate objectives of the communicative work of the union. The interests of this unified working class were framed generally by the nebulous pressures and harms of industrial changes, even though no union further explained the forces they referenced.

Though infrequent, some unions also demonstrated an intent to educate members of the general public. As a corollary to the educational efforts linked to service to individual union members which will be discussed next, this public education can be seen as the most self-interested of the public service claims made. The unions who sought to instruct or inform outside the bounds of the union organization often included specific subjects of their campaigns like the conditions of work within the relevant industry or the promotion of the esteem of the given profession. Public education work was associated specifically with the use of official publications like journals and newsletters, especially when those publications were made available to the public for paid subscription.

In addition to claiming the mantle of public service, unions also specified their intent to advocate for and communicate in self-interest on behalf of organized labor collectively. These efforts were observed on behalf of individual members of the union, the organization of the individual union, and the more expansive labor movement. Similar to claims of public service, unions committed to advocate for policies that would benefit the labor movement and to provide educational programming as well as other services for the benefit of rank-and-file members and the improvement of union operations while also offering rhetorical commitments to act in the best interests of the union organization. Many of these imperatives were linked directly to communicative infrastructures like defined staff roles and uses of official publications.

THE VOICES THAT BUILT AMERICA

When professing service to individual workers within the organization, unions expressed concern for the social, economic, moral, and intellectual well-being of their members. Unlike educational efforts aimed at a broader public, which largely focused on conditions of industry, unions claimed to serve members as more well-rounded people as well, focusing particular language on their political empowerment and moral fortitude. These intentions were often written apart from other educational work aimed at improving the skills and industrial knowledge of their workers. These educational efforts therefore distinguished the identity of the targeted union member as a citizen or community member from their identity as a participant in a labor market. Member facing education also referenced instruction on the histories and teachings of the American labor movement, which was coded as dually in service to the labor movement but also in service to the membership when this intent was linked to political consciousness raising. Occasionally, some unions offered solely rhetorical claims of service to their members, inserting clauses regarding combatting undetermined injustices and securing unspecified rights on their behalf.

Unions also leveraged a range of communicative infrastructures in service to their organizational self-interests, including designated staff, disciplinary procedures, and official publications. Manifestations of a unified voice, like restriction of member affiliations, was associated rhetorically with supporting the organization's values. Discipline for expression contrary to union interests was explained as necessary for maintaining the power of the union. Staff were employed to provide research and communications materials for use by the international body as well as by subordinate organizations, and official publications were declared an additional tool to help guarantee the welfare of the union. Some communications work, like policy advocacy for labor organizing rights, was coded dually as service to the labor movement as well as to the individual union, but that only occurred in the event a specific benefit to the specific union was also written within that statement of purpose. While some of these practices, like the use of official publications, were externally facing, much of the observed communicative acts intended to serve the individual union were internally facing to the organization.

THE VOICES THAT BUILT AMERICA

Most abstractly, unions also claimed to utilize their communicative tools on behalf of a broader labor movement. Working in solidarity with organized labor both nationally and internationally presented the least self-interested proposition for individual unions but nonetheless represented an opportunity to secure benefits for their organization and membership as part of an exclusive group. Surprisingly, the large majority of mentions of picketing and strikes, which was the exemplified speech act most hotly debated before the Court during this period, were limited to these broad instances of preambulatory objectives. The right to strike and picket was often grouped with other foundational rights of labor including the right to organize and to collectively bargain. As discussed, very few constitutions included infrastructural designs for picketing actions despite including procedures for related union functions like maintaining an accurate strike roll. These efforts to support the advancement of the labor movement also included policy advocacy reflective of the violence prominent throughout American labor history, including the banning the employment of strike breakers or armed guards by companies engaged in labor disputes (Lens, 2008). Given that policy advocacy was the most common act invoked when this purpose was cited, most of the identified practices under this theme were linked to externally facing communicative activity. However, as referenced earlier, intentions to educate union members on labor history and the organized labor movement were dually coded to also reflect support for the labor movement.

Implications

In tracing the communicative practices of unions through technological design, affordance, and purpose, the framework of technology proved not only feasible but useful in defining labor unions as communicative actors across a variety of points of potential variation. With scrutiny paid to each defining component of the union technology, the union was developed as a deeply contextualized speech actor while the logic of technological development allowed for the constant possibility of alternative arrangements of that technology. Summarily, the union in this empirical context was demonstrated as a consistently replicated media technology through the identified period which brought vast jurisprudential change. The

THE VOICES THAT BUILT AMERICA

theoretical framework employed did still allow for the analysis of any variations that did arise and the conceptualization of different outcomes in the development of the union.

Relating this analysis to the broader legal status of union speech, this study also provides a scheme through which corollary speech actors, like political associations or corporations, could be analyzed. Recognizing the precedent of union speech to be inconsistent not only within its own evolution but also in comparison to the legal treatment of other associational speech actors, this framework would provide common ground for analysis to unify this branch of First Amendment law under a singular theoretical frame. While any number of organizations may employ infrastructures of communication, specific instances of separation of public interest from self-interest evidenced by the purposes of use of a technology could provide the basis for distinction in legal analysis. Similarly, variance in the technological designs observed between media technologies, like the entrenchment of practices of democratic governance in some, could change the aforementioned balance of empowerment and oppression that concerns the precedents of compelled speech especially. Though this analysis cannot answer directly the jurisprudential questions of rights and privileges for speech actors in any realized use of the technologies discussed, this study contends that this analysis contributes one element necessary for achieving a comprehensive and consistent school of legal approach and a tool that has been notably missing from prior legal decisions.

Specifically, and as prior discussed, this study has also demonstrated the ability to place the rights-endowed individuals who develop and utilize these technologies, be they union members or otherwise, at the center of the justifications for certain rights and protections for the technology. The actions as well as the intents of the union originate with those of the officers and rank-and-file members who undertake them and are impacted by them. Be it a press secretary communicating a point of policy advocacy or a democratically elected delegate to a convention offering a design for the union label, the union, as a non-material technology, does not exist without the consent and participation of its membership. Through this necessary recognition of the people who make associations like unions and their resulting associational speech possible, this branch of First Amendment jurisprudence can find a clear theoretical justification and a consistent school of contextualizing analysis.

CONCLUSION

This study has engaged the critical theory of technology to define the American labor union as a media technology in an endeavor to cohere its legal status as a speech actor under the First Amendment. Through thematic analysis of archival materials, this research reconsiders the communicative acts of unions during a critical juncture in legal decision making with the benefit of a consistent theoretical framework. By unpacking the elements of design, affordance, and purpose which construct the union technology, this theoretical work ensures both the rights of individual union members are centered in the debate over the privileges of unions and the opportunity for new or adapted visions of the union is opened. This research summarily seeks to support a reconsideration of the unique legal status afforded to union speech in light of this more contextualized analysis and to suggest the possibility of extending this work to make the jurisprudence of all associational speech actors more coherent. This study joins an extensive discourse not only on the nature of unions as communicators but also as legal objects and contributes a more comprehensive approach to defining the union's role within both contexts.

By first identifying such design elements as communicative infrastructures and democratic governance as common to unions of this period, the affordance of unified voice in union communication was developed. That affordance was then unpacked as a balance of empowerment and oppression deemed characteristic to the union technology. This effort to separate the actions, and the technological designs which make them possible, from the intents, or the purposes which motivate the use of the technology, offers a point of entry for the differentiation of speech actors facing legal scrutiny. This approach simultaneously embraces a universalized theoretical framework with a broader applicability that is commonly attractive to the Court while providing a more contextualized understanding of the union necessary to effectively judge the propriety of the rights and protections extended to it.

This study, and this methodological approach, is not without limitations however. As noted, this analysis does not contribute directly to the development of new precedent within American jurisprudence but rather would ground a new precedent indirectly. Additionally, this research is reliant on the assumption that the procedures and policies outlined within the

THE VOICES THAT BUILT AMERICA

sampled constitutions were in fact followed by the unions who adopted them. Key speech acts, like picketing and striking, were also minimally engaged in this empirical work despite their outsized role in case law, suggesting the need for further study on how that critical speech act was and is conducted by unions in relation to the balancing of rights of members against organizational needs. Lastly, this study was conducted amid an ever-developing jurisprudence of labor law as evidenced by the handing down of the *Glacier Northwest* decision during the research process. While this framework is proposed as a flexible and lasting contribution to the discourse, the balance of rights and restrictions faced by labor unions before the law may well make the potential for a unified approach to their associational speech rights irrelevant before a labor-hostile Court (Estlund, 2015; Mystal, 2023).

As favor for unions in the United States rises, academic attention paid to the role of organized labor in the American public sphere should again rise as well (McCarthy, 2022). While some interest has been paid to the organizing practices of unions in a digital world, more research is needed to update understandings of the political influence of unions beyond that of rank-and-file member predilections (Carneiro & Costa, 2022; Kim & Margalit, 2017). Should workers seek to maintain their stake in an industrial democracy under which their labor is governed by such foundational principles as liberty and justice, an understanding of the ability of unions to again stand guard as sentinels against the encroaching forces of economic despotism, and their success in doing so, is paramount to the cause of perseverance if not liberation.

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THE VOICES THAT BUILT AMERICA

APPENDIX A: LIST OF SAMPLED DOCUMENTS

Union Name	Year	Document Code
Cigar Makers' International Union of America	1937	Cigarmakers.1937
United Cannery, Agricultural, Packing and Allied Workers of America	1937	FoodTobacco.1937
Brotherhood of Painters, Decorators and Paperhangers of America	1938	Painters.1938
Industrial Union of Marine and Shipbuilding Workers of America	1938	MarineShip.1938
International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America	1939	Brewery.1939
Operative Plasterers' and Cement Finishers' International Association of the United States and Canada	1939	Plaster.1939
International Union, United Transport Service Employees of America	1940	TransportService.1940
Laundry Workers' International Union	1940	Laundry.1940
American Federation of Teachers	1941	Teachers.1941
United Furniture Workers of America	1941	Furniture.1941
International Union, Aluminum Workers of America	1942	AluminumAmerica.1942
United Shoe Workers of America of the C.I.O.	1942	Shoeworkers.1942
Hotel and Restaurant Employees' International Alliance and Bartenders' International League of America	1943	Hotel.1943
National Maritime Union of America	1943	Maritime.1943
International Woodworkers of America	1944	Woodworkers.1944
United Mine Workers of America	1944	Mineworkers.1944
Building Service Employees' International Union	1945	SEIU.1945
International Stereotypers' and Electrotypers' Union of North America	1945	Stereotypers.1945
Airline Dispatchers Association	1946	AirLine.1946
United Steelworkers of America	1946	Steelworkers.1946
National Rural Letter Carriers Association	1947	LettersRural.1947
United Automobile, Aircraft and Agricultural Implement of America	1947	AutomobileAerospace.1947

THE VOICES THAT BUILT AMERICA

Playthings, Jewelry and Novelty Workers International Union	1948	Plaything.1948
United Textile Workers of America	1948	TextileUnited.1948
Commercial Telegraphers' Union	1949	Telegraph.1949
Wood, Wire and Metal Lathers' International Union	1949	Lathers.1949
International Brotherhood of Electrical Workers	1950	ElectricalWorkers.1950
United Hatters, Cap and Millinery Workers International Union	1950	Hatters.1950
Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America	1951	ATU.1951
Coopers' International Union of North America	1951	Coopers.1951
Federation of Glass, Ceramic and Silica Sand Workers of America	1952	GlassCeramic.1952
Oil Workers International Union	1952	OilWorkers.1952
Amalgamated Clothing Workers of America	1953	ClothingWorkers.1953
Insurance Workers of America	1953	Insurance.1953
American Federation of State, County, and Municipal Employees	1954	StateCounty.1954
Communications Workers of America	1954	Communications.1954
Brotherhood of Railroad Trainmen	1955	RailroadTrainmen.1955
United Slate, Tile and Composition Roofers, Damp and Waterproof Workers' Association	1955	Roofers.1955
Granite Cutters' International Association of America	1956	GraniteCutters.1956
International Brotherhood of Pulp, Sulphite and Paper Mill Workers	1956	Pulp.1956
American Federation of Hosiery Workers	1957	Hosiery.1957
Seafarers' International Union of North America	1957	Seafarers.1957

Appendix B: Summary of coding framework *(Abridged from publishment)*

Appendix C: Complete code book *(Abridged from publishment)*