



1992

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## Recommended Citation

James E. Pfander, *Federal Jurisdiction over Union Constitutions after Wooddell*, 37 Vill. L. Rev. 443 (1992).

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# VILLANOVA LAW REVIEW

VOLUME 37

1992

NUMBER 3

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## FEDERAL JURISDICTION OVER UNION CONSTITUTIONS AFTER *WOODDELL*

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### I. INTRODUCTION

For the first half of this century, the task of policing the internal affairs of labor organizations fell, essentially by default, to state court judges.<sup>1</sup> State courts based their authority to inter-

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1. The state courts' initial reluctance to hear disputes arising from the internal workings of labor unions stemmed from the fact that unions were typically organized as voluntary associations. At common law, such associations were said to lack any legal personality apart from their members, and thus lacked the capacity to sue and to enter into contracts. See FREDERICK H. BACON, A TREATISE ON THE LAW OF BENEFIT SOCIETIES AND INCIDENTALLY OF LIFE INSURANCE § 27 (1888); EDWARD M. DANGEL & IRENE SHRIBER, THE LAW OF LABOR UNIONS § 286 (1941); EDWIN STACEY OAKES, THE LAW OF ORGANIZED LABOR AND INDUSTRIAL CONFLICTS § 108 (1927). As a consequence, voluntary associations were often frustrated in their attempts to obtain judicial recognition of their internal proceedings. In refusing to order a local body to forfeit its property to the parent in keeping with the parent constitution, for example, the New York Court of Appeals explained that the "courts of justice cannot be called upon to aid in enforcing the decrees of these self-created judicatories." *Austin v. Searing*, 16 N.Y. 112, 125 (1857); see also *Bauer v. Sampson Lodge, No. 32, Knights of Pythias*, 1 N.E. 571 (Ind. 1885) (mutual benefit society could establish internal regulations but could not deprive members of existing rights); *Goodman v. Jedidjah Lodge*, 9 A.13 (Md. 1887) (district grand lodge and minority members could not force forfeiture of local lodge funds).

Similarly, common law courts expressed reluctance to review the merits of decisions to expel a member. See, e.g., *Black & White-Smiths' Soc'y v. Vandyke*, 2 Whart. 309 (Pa. 1837). The rhetoric of nonintervention was suspended, however, in cases where a member's property rights were at stake. In such cases, the court was to "look so far into the case as to satisfy itself that there was not a capricious or arbitrary exercise of the power." BACON, *supra*, § 107. Eventually state courts worked out property and contract theories that enabled them to intervene more frankly in union affairs. For a discussion of these theories, see *infra* notes 3-6.

vene upon the unions' written constitutions,<sup>2</sup> which were said to establish contractual relationships among the unions' constituents.<sup>3</sup> Relying on contract theory and the law's traditional reluctance to countenance a forfeiture of property,<sup>4</sup> state courts

2. On the origins and evolution of union self-government, I have found Theodore Glocker's work quite helpful, both for its discussion of the factors that led to greater centralization within early national unions and for its description of how unions borrowed from a host of sources, including fraternal orders and British trade unions, in structuring early constitutions. See Theodore W. Glocker, *The Government of American Trade Unions*, in *JOHNS HOPKINS UNIVERSITY STUDIES IN HISTORICAL AND POLITICAL SCIENCE* (Series XXXI No. 2, 1913). Lloyd Ulman's classic work extends Glocker's analysis by considering more explicitly the factors that contributed to national union domination and by testing the hypothesis that the locus of product market competition played a decisive role in the tendency towards centralization. See LLOYD ULMAN, *THE RISE OF THE NATIONAL TRADE UNION: THE DEVELOPMENT AND SIGNIFICANCE OF ITS STRUCTURE, GOVERNING INSTITUTIONS, AND ECONOMIC POLICIES* (1955) [hereinafter ULMAN, NATIONAL UNION]. For more general treatments of union structure and government, see HARRY A. MILLIS & ROYAL E. MONTGOMERY, *ORGANIZED LABOR* (1945); JAMES WALLIHAN, *UNION GOVERNMENT AND ORGANIZATION IN THE UNITED STATES* (1985). In addition to these works, the Twentieth Century Fund series on union structure and government teaches the important lesson that, although union constitutions have much in common, they are less the instruments of parental control than the sum of the history, traditions and economic imperatives that shaped each union's growth and development. See MORRIS A. HOROWITZ, *THE STRUCTURE AND GOVERNMENT OF THE CARPENTERS' UNION* (1962); MELVIN ROTHBAUM, *THE GOVERNMENT OF THE OIL, CHEMICAL, AND ATOMIC WORKERS UNION* (1962), LLOYD ULMAN, *THE GOVERNMENT OF THE STEEL WORKERS' UNION* (1962) [hereinafter ULMAN, STEEL WORKERS].

3. The language of an early Pennsylvania decision illustrates the contractual approach of the courts: "[E]ach member pledges himself to obey these laws as a condition of his membership, by an express undertaking in signing the constitution and his promise to support the constitution and by-laws as a brotherly member." *St. Mary's Beneficial Soc'y v. Burford's Adm'r*, 70 Pa. 321, 324 (1872); see also *Polin v. Kaplan*, 177 N.E. 833, 834 (N.Y. 1931) (stating that constitution and by-laws of unincorporated association constitute contract that sets forth privileges and rights of members); BACON, *supra* note 1, § 91 (articles of association set forth rights of members in incorporated or unincorporated societies); OAKES, *supra* note 1, § 9 (stating that "[t]he constitution, rules and by-laws of an unincorporated union . . . constitute a contract between the members themselves and between the association and the individual members"). For a relatively modern restatement of the contract theory, see DANGEL & SHRIBER, *supra* note 1, § 138.

4. As the leading British case explained, judicial review of a member's expulsion depended on the court's finding a "right of property vested in the member of the society, and of which he is unjustly deprived by such unlawful expulsion." *Rigby v. Connol*, 14 L.R.-Ch. D. 482, 487 (1880). The judicial focus on the existence of property rights enabled the courts to distinguish commercial associations from those where the relationship was purely personal or fraternal. Thus, treatise writers distinguished a member's wholly personal interest in a neighborhood bridge group, say, from the mixed interests in a beneficial society, whose members expected both conviviality and life insurance. See BACON, *supra* note 1, §§ 73, 105; Jerre S. Williams, *The Political Liberties of Labor Union Members*, 32 TEX. L. REV. 826, 828-29 (1954).

Recognition of the importance of property interests as a source of judicial

developed common law rules that protected individual union members from unfair discipline.<sup>5</sup> The courts also respected

intervention suggests that those who developed structural reforms associated with the rise of the national labor union in the latter half of the 19th century may have unconsciously supplied the basis for judicial intervention into the union's internal affairs. Labor historians credit Adolph Strasser and Samuel Gompers, early leaders of the Cigar Makers' Union, with having developed the first modern national trade union. See SELIG PERLMAN, *A HISTORY OF TRADE UNIONISM IN THE UNITED STATES* 75, 78-79 (1929). Building on the model of the British trade union system, the Cigar Makers' 1879 convention approved constitutional amendments that provided for centralized national control of local unions, higher dues, and a system of illness and death benefits. See JOSEPH G. RAYBACK, *A HISTORY OF AMERICAN LABOR* 155-56 (1959). Such beneficial provisions encouraged workers to join the union initially, to maintain their membership during lean times and to obey the union's laws for fear of being expelled and losing benefits. Gompers later claimed that with these beneficial programs, national unions displayed a "stability and permanency" in the face of industrial crises that had decimated their predecessors. See MILLIS & MONTGOMERY, *supra* note 2, at 55-74. Such beneficial programs also supplied the property interests that led state courts to adopt a more interventionist posture.

5. The law of internal union affairs owes much to its leading student, Professor Clyde Summers. In a series of important articles that predated the passage of federal legislation, Professor Summers managed both to describe the law of union discipline and to shape its development with a strong call for union democracy. See Clyde Summers, *Disciplinary Powers of Unions*, 3 *INDUS. & LAB. REL. REV.* 483 (1950); Clyde Summers, *Disciplinary Procedures of Unions*, 4 *INDUS. & LAB. REL. REV.* 15 (1950) [hereinafter Summers, *Disciplinary Procedures of Unions*]; Clyde W. Summers, *Union Powers and Workers' Rights*, 49 *MICH. L. REV.* 805 (1951); Clyde W. Summers, *The Usefulness of Law in Achieving Union Democracy*, 48 *AM. ECON. REV.* 44 (1958). Following the passage of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 401-531 (1988) [hereinafter LMRDA], which owed a great deal to his early work, Professor Summers published a series of additional articles that explored the new law and its impact on existing common law protections. See Clyde W. Summers, *The Impact of Landrum-Griffin in State Courts*, in *PROCEEDINGS OF NEW YORK UNIVERSITY THIRTEENTH ANNUAL CONFERENCE ON LABOR* (Emanuel Stein, ed., 1960) [hereinafter Summers, *State Courts*]; Clyde W. Summers, *The Law of Union Discipline: What the Courts Do in Fact*, 70 *YALE L.J.* 175 (1960); Clyde W. Summers, *Pre-Emption and the Labor Reform Act—Dual Rights and Dual Remedies*, 22 *OHIO ST. L.J.* 119 (1961) [hereinafter Summers, *Pre-Emption*]; Clyde W. Summers, *Judicial Regulation of Union Elections*, 70 *YALE L.J.* 1221 (1961); Clyde W. Summers, *American Legislation for Union Democracy*, 25 *MOD. L. REV.* 273 (1962) [hereinafter Summers, *American Legislation*]. While the conclusions I reach here differ from those of Professor Summers, my approach has been deeply influenced by his work.

Among his other works, Professor Summers has carefully explained and thoughtfully criticized the theoretical bases of common law intervention in internal union affairs. See Clyde W. Summers, *Legal Limitations on Union Discipline*, 64 *HARV. L. REV.* 1049, 1051-58 (1951) [hereinafter Summers, *Legal Limitations*] (describing and evaluating state courts' use of property rights and contract theory in resolving union disciplinary disputes); Zechariah Chafee, Jr., *The Internal Affairs of Associations Not for Profit*, 43 *HARV. L. REV.* 993, 999-1010 (1930) (discussing property rights, contract theory and tort theory as frequent bases for resolution of union member claims); *Developments in the Law—Judicial Control of Actions of Private Associations*, 76 *HARV. L. REV.* 983, 998-1004 (1963) (discussing historical use of property, contract and fiduciary theories to resolve disputes involving associations). As Professor Summers points out, state courts based their

union rules that had been framed to protect the union from the actions of members, officers and various factions that would undermine the organization's effectiveness.<sup>6</sup>

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power to intervene either on the claim that members had a property interest in their union membership that deserved judicial protection, or on the claim that their relationship with the union established an enforceable contract. For a discussion of these theories, see *supra* notes 3-4. See generally Summers, *Legal Limitations*, *supra*, at 1051-56. For a summary of state legislative developments, see Benjamin Aaron & Michael I. Komaroff, *Statutory Regulation of Internal Union Affairs—I*, 44 ILL. L. REV. 425, 451-62 (1949).

Neither theory has fared well at the hands of the commentators. The property theory runs afoul of the proposition that a member has only the most circumscribed rights in the association's property, such as the right of joint use of the association's property and the right to share in any surplus in the case of dissolution. As Summers points out, the member cannot transfer his or her interest in the property and his or her claim to a share of the assets upon dissolution may be overridden by the claim of the parent union. Summers, *Legal Limitations*, *supra*, at 1052. Such speculative property interests provide little substantial basis for judicial intervention. *Id.*; see also Chafee, *supra*, at 999-1000. Moreover, in many cases where severe injury results from expulsion, the member cannot establish the existence of any property interest. *Id.* at 1000-01 (criticizing *Rigby v. Connol*, 14 L.R.-Ch. D. 482 (1880), which held that a union member had no property right in union membership); *Developments in the Law*, *supra*, at 1000-01 (describing inconsistency and inadequacy of use of property right theory). In any case, courts do not limit relief to the extent of the member's property interest but will order full reinstatement to rights of membership. Summers, *Legal Limitations*, *supra*, at 1053-54 (fashioning broad relief in cases where little property at stake reveals that courts use property as excuse for intervention to protect membership relationship). For a critique of the courts' use of contract theory, see *infra* note 35 and accompanying text.

6. The willingness of common law courts to hold members or factions responsible for violation of the association's rules dates from early in the 19th century. In *Lloyd v. Loaring*, 31 Eng. Rep. 1302 (1802), Lord Eldon entertained an action on behalf of the Free Masons to recover association property. The court was plainly uncomfortable with agreeing to "sit upon the concerns of an association, which in law has no existence," but nonetheless felt obliged to grant relief. *Id.* at 1305.

In this century, courts have frequently been asked by banks and other stakeholders to resolve the claims of competing factions to the property and assets of the association. See, e.g., *Tile, Marble, Terrazzo Finishers, Int'l Union v. Tile, Marble, Terrazzo Finishers, Local 32*, 896 F.2d 1404, 1416 (3d Cir. 1990) (dispute between trustee of parent union and dissolved local union members over property right to union dues); *General Elec. Co. v. Emspak*, 94 F. Supp. 601 (S.D.N.Y. 1950) (employer seeking to determine title to checked off union dues). Pressure to resolve such disputes pushed courts to recognize and give effect to union constitutions, which often contained provisions to address the disposition of assets in the case of schism. See Clyde W. Summers, *Union Schism in Perspective: Flexible Doctrines, Double Standards, and Projected Answers*, 45 VA. L. REV. 261, 265-66 nn.21-25 (1959); Donald H. Wollett & Robert J. Lampman, *The Law of Union Factionalism—The Case of the Sailors*, 4 STAN. L. REV. 177 (1952). A similar form of implicit legal recognition was accorded labor unions in decisions that upheld the conviction of former officers for embezzling association funds. Chief Justice Taft drew upon such developments in arguing that the law's willingness to protect labor organizations justified holding them liable for claims for damages under the federal antitrust laws. See *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344 (1922); cf. T. Richard Witmer, *Trade Union Liability: The Prob-*

The federal courts began, in the early 1960s, to hear disputes over the meaning of union constitutions,<sup>7</sup> basing jurisdiction on section 301 of the Labor Management Relations (Taft-Hartley) Act of 1947 [hereinafter Taft-Hartley Act].<sup>8</sup> In *United Ass'n of Journeymen & Apprentices of Plumbing & Pipe Fitting Industry v. Local 334*, *United Ass'n of Journeymen & Apprentices of Plumbing and Pipe Fitting Industry* [hereinafter *Local 334*],<sup>9</sup> the Supreme Court approved of the exercise of federal control over the meaning of union constitutions. Borrowing a theory already in use by state courts, the Court held that actions brought by local unions to enforce national constitutions against parent unions were to be considered “[s]uits for violation of contracts . . . between any such labor organizations” within the meaning of section 301(a).<sup>10</sup> The Court also held, in keeping with principles developed in the disposition of “[s]uits for violation of contracts between an employer and a labor organization” under section 301, that federal common law

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*len of the Unincorporated Corporation*, 51 YALE L.J. 40, 42 n.9 (1941) (noting that most state courts adhered to rule of associational nonliability in absence of statute). For a discussion of the general tendency of judges to respect balances struck in institutional documents for want of any current alternative standard, see Summers, *State Courts*, *supra* note 5, at 344-45.

7. For the factors that led the lower courts to assert § 301 jurisdiction over disputes concerning the meaning of union constitutions, see *infra* notes 90-119 and accompanying text.

8. Section 301(a) provides as follows:

*Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.*

Labor Management Relations (Taft-Hartley) Act, ch. 120, § 301(a), 61 Stat. 156 (1947) (codified at 29 U.S.C. § 185(a) (1988)) (emphasis added) [hereinafter Taft-Hartley Act].

Section 301(a) has been the focus of much distinguished commentary, most of it directed at the provision for jurisdiction over contracts between employers and unions. For a summary of this commentary, see James E. Pfander, *Judicial Purpose and the Scholarly Process: The Lincoln Mills Case*, 69 WASH. U. L.Q. 243, 282-84 (1991). The statute's second clause, the italicized reference to contracts “between any such labor organizations,” has attracted little attention in recent years. For early arguments that the statute applied to no-raid agreements between rival unions, see Bernard D. Meltzer, *The Supreme Court, Congress, and State Jurisdiction Over Labor Relations: II*, 59 COLUM. L. REV. 269, 297 (1959); Comment, *Applying the “Contracts Between Labor Organizations” Clause of Taft-Hartley Section 301: A Plea For Restraint*, 69 YALE L.J. 299 (1959). For a more recent attempt to make sense of the enforcement of union constitutions under § 301(a), see MARTIN H. MALIN, *INDIVIDUAL RIGHTS WITHIN THE UNION* 4-14 (1988).

9. 452 U.S. 615 (1981).

10. *Id.* at 627 (emphasis omitted).

governs suits within the scope of the jurisdictional grant.<sup>11</sup>

Although the decision in *Local 334* clearly upheld the assertion of federal power over the constitutional “contract” between parent and local unions, it refrained from defining the scope of section 301’s application to other internal union relationships and thus left in doubt the boundary between state and federal law. Lower federal courts have struggled to define that boundary, at least in part because Congress did not draft section 301 for the purpose of authorizing federal courts to enforce union constitutions.<sup>12</sup> Rather, Congress added the between-labor-organizations provision to section 301 in order to permit federal courts to police a special group of agreements between rival national unions over such matters as representational and jurisdictional disputes.<sup>13</sup>

While the absence of historical support for the result in *Local 334* may explain the confusion, it did not relieve federal courts from the task of defining the breadth of federal power.<sup>14</sup> Unfor-

11. *Id.* (citing *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 456 (1957)). This body of federal common law under § 301 operates to the exclusion of state law. While state courts retain concurrent jurisdiction over disputes arising under § 301, they must apply federal law. See *Local 174, Int’l Bhd. of Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962) (noting that state courts must apply federal law to cases arising under § 301); *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962) (affirming state court jurisdiction over § 301 cases). The displacement of state law extends beyond the power to develop contract rules; recent decisions of the Supreme Court establish that the uniquely potent preemptive force of § 301 also displaces state tort claims that shape or redefine the rights and obligations of contracting parties. See, e.g., *Allis-Chambers Corp. v. Lueck*, 471 U.S. 202 (1985) (displacing state law tort claim for bad faith breach of collective agreement). In addition, state courts lose their power to pass on the preemption question in the first instance. Rather than asserting a preemption defense in state court, § 301 defendants may remove actions to federal court and present preemption defenses to federal judges. See *Avco Corp. v. Aero Lodge No. 735, Int’l Ass’n of Machinists*, 390 U.S. 557 (1968); 13B CHARLES A. WRIGHT ET AL., *FEDERAL PRACTICE AND PROCEDURE* § 3581 (1984).

12. For a summary of lower court disagreements, see *infra* notes 116-19, 143-46 and accompanying text. For the history of § 301, see *infra* notes 57-78 and accompanying text.

13. A review of the historical record reveals that the Taft-Hartley Congress enacted the § 301(a) between-labor-organizations clause to authorize enforcement of such inter-union agreements as those Professor John Dunlop described in his classic article on union structure. See John T. Dunlop, *Structural Changes in the American Labor Movement and Industrial Relations System*, in *LABOR AND TRADE UNIONISM: AN INTERDISCIPLINARY READER* (Walter Galenson & Seymour M. Lipset eds., 1960). The article, however, focuses solely on the statute’s proper application to union constitutions. The article thus discusses inter-union contracts only insofar as they inform the application of the statute to internal union disputes and does not attempt to develop an exhaustive list of the kinds of agreements between unions that might satisfy § 301(a). *Id.*

14. The federal courts have generally extended the rules of § 301 preemp-

tunately, the ambiguity of section 301's open-ended reference to contracts between labor unions complicated the definitional task. Under the contract theory relied upon by the Court in *Local 334*, union constitutions establish contractual relationships between parent and local, between union and member, between union and officer and among the members themselves.<sup>15</sup> Lower courts could choose either to evaluate each such contract on its own terms (and thus limit federal power to suits arising from the parent-local contract) or to treat all of the contracts as byproducts of the jurisdictionally sufficient contract between the parent and locals (and thus extend federal control over all aspects of internal union affairs).

After the lower courts struggled with these questions for ten years,<sup>16</sup> the Supreme Court resolved a split in the circuits on the scope of section 301 in a decision that some observers may read as finally displacing all remaining vestiges of state control with uniform federal law. In *Wooddell v. International Brotherhood of Electrical Workers, Local 71*,<sup>17</sup> the Court squarely held that the federal courts may exercise section 301 jurisdiction over an individual member's claim that his local union violated obligations it had assumed under the national union constitution.<sup>18</sup> The Court took pains to base its assertion of jurisdiction on the fact that Wooddell's claim implicated not only a union constitution, but also a provision in the constitution that specifically regulated the parent-local relationship. Lower courts may overlook the implications of *Wooddell's* carefully circumscribed opinion, however, and cite it in support of a much broader assertion of federal power. Indeed, the recent decision by the Court of Appeals for the Second Circuit in *Shea v. McCarthy*<sup>19</sup> relied on *Wooddell* in asserting

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tion and removal to disputes over the union constitution under the statute's second clause. See, e.g., *DeSantiago v. Laborers Int'l Union, Local No. 1140*, 914 F.2d 125, 128-29 (8th Cir. 1990) (holding that alleged violations of fair treatment and representation guarantees under union constitution was properly a federal question); *Pruitt v. Carpenters' Local Union No. 225*, 893 F.2d 1216, 1219 (11th Cir. 1990) (finding that suits for contract violation, including union constitution violation, are preempted by federal law). Disagreement over the scope of § 301(a) thus entails disagreement about the application of state or federal law to a particular internal union dispute.

15. For a discussion of the use of contract theory in disputes regarding union constitutions, see *infra* notes 34-39 and accompanying text.

16. For a discussion of the division of lower federal court authority, see *infra* notes 116-19, 143-46 and accompanying text.

17. 112 S. Ct. 494, 498 (1991).

18. *Id.* at 498-501.

19. 953 F.2d 29 (2d Cir. 1992).

section 301 jurisdiction over an individual member's action that charged national officers of the Teamsters union with a breach of their duty to the union.

This Article argues that such an expansive view of section 301 makes no historical, doctrinal or practical sense. It suggests instead that section 301 should be read to confer jurisdiction on the federal courts to hear only those claims that implicate the parent-local relationship, a limited view of federal power which certainly remains viable after *Wooddell*. Equally important, the more limited view of section 301 proposed here will enable the federal courts to ensure the vindication of federal interests without requiring federal resolution of internal union disputes that lie within the traditional competence of state courts.

Part II of the Article reviews the history of section 301's between-labor-organizations clause, a history that reveals two salient facts. First, this clause was added to section 301 to authorize federal courts to enforce types of labor contracts that are quite different from union constitutions. Second, the Labor Management Reporting and Disclosure Act of 1959 [hereinafter LMRDA]<sup>20</sup> played a central role in the federal courts' essentially opportunistic decision to interpret section 301(a) as applying to union constitutions. Before 1959, federal judges largely refused the invitation to treat the union constitution as a contract between labor organizations within section 301(a). After the LMRDA transferred litigation over internal union affairs into their bailiwick, federal courts found it convenient to use the earlier statute as a way to hear related claims for breach of the union constitution—claims that federal courts would hear today by invoking their supplemental jurisdiction over pendent claims.<sup>21</sup>

Despite the influence of the subsequently enacted statute, the Supreme Court has steadfastly refused to acknowledge or assess the legitimacy of the LMRDA's role in the evolving interpretation of section 301(a). As Part III of the Article shows, the Court based its decisions in both *Local 334* and *Wooddell* on the historically dubious claim that section 301's second clause unambiguously applies to the union constitution. In both cases, the Court dismissed the LMRDA as irrelevant to its interpretive task,<sup>22</sup> no

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20. Pub. L. No. 86-257, 73 Stat. 519 (1959) (codified at 29 U.S.C. §§ 401-531 (1988)).

21. For a discussion of the judicial use of the LMRDA in the interpretation of § 301(a), see *infra* notes 90-119 and accompanying text.

22. For a discussion of the Court's treatment of the LMRDA in *Local 334* and *Wooddell*, see *infra* notes 126 and 162, respectively, and accompanying text.

doubt because the statute expressly preserves the state courts' traditional control of actions to enforce union constitutions.<sup>23</sup> Unfortunately, the Court's dismissal of the LMRDA deprives the federal courts of an important source of guidance as they attempt to work out the body of federal common law that section 301 obliges them to fashion.

Part IV of the Article seeks to develop a theory of federal power that explicitly acknowledges the LMRDA's influence in section 301(a)'s evolving interpretation. Part IV suggests that the LMRDA's regulatory approach to the relationship between the parent union and its subordinate bodies differs in important respects from the statute's approach to other relationships in the union constitution. Part IV builds on this demonstration by suggesting that the federal courts should interpret section 301(a) to embrace only the constitutional relationship between parent and local.<sup>24</sup> Such an approach would leave to state courts the primary responsibility for the constitutional relationship between the union as an entity and its individual officers and members, in keeping with the evident meaning of the non-preemption provisions in the LMRDA.

Part IV of the Article next considers the practical implications of limiting federal power to the parent-local relationship in the wake of *Wooddell*. It begins by showing that *Wooddell* contains nothing inconsistent with, and much that supports, the limitation on federal power proposed herein. Properly understood, indeed, *Wooddell* stands for the entirely uncontroversial proposition that section 301 jurisdiction depends not on the identity of the claimant but on the nature of the contract at issue in the dispute.<sup>25</sup> It is thus perfectly compatible with an interpretation of section 301 that leaves actions to enforce constitutional relationships other than those between parent and local unions in the hands of state judges.

Finally, Part IV shows that practical considerations argue in favor of the retention of state court authority over such actions as those brought by unions to collect fines and assessments from delinquent members and those that involve the employment relations between unions and officers. Such claims represent a

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23. For a discussion of the LMRDA and union constitutions, see *infra* notes 175-204 and accompanying text.

24. For a discussion of this suggested course of action see *infra* notes 205-19 and accompanying text.

25. For a discussion of the limited nature of the *Wooddell* Court's holding, see *infra* notes 155-60 and accompanying text.

serious threat to the federal docket and lie well beyond any federal interest defined by the LMRDA.<sup>26</sup> They also make up the class of claims that many federal courts have attempted to avoid hearing, on one ground or another.<sup>27</sup> The approach proposed in this Article would enable the federal courts to avoid such marginal claims without requiring them to adopt doctrinally suspect avoidance techniques that cloud jurisdictional lines.

Apart from its practical merits, the proposed approach limits the federal role in the enforcement of the union constitution within the bounds of legitimacy supplied by the LMRDA.<sup>28</sup> To be

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26. In his year-end report on the federal judiciary, Chief Justice William Rehnquist sounded familiar themes in expressing concern about federal judicial resources. See *The Chief on the Judiciary: Less is More*, LEGAL TIMES, Jan. 6, 1992, at 6, 6-7. Opposed to the addition of more judges, the Chief Justice called for some curtailment of federal jurisdiction and for "self-restraint in adding new causes of action." *Id.* New additions to the federal docket, he argued, should not be made unless they apply to disputes that implicate some important national interest that cannot otherwise be addressed by non-judicial solutions or by the state courts. *Id.*

In deciding whether to assert § 301 jurisdiction over internal union disputes, federal courts face a question about the addition of claims to the federal docket to which the Chief Justice's criteria sensibly apply. This Article suggests that the federal interest in the enforcement of union constitutions extends only to those disputes concerning provisions in a national union constitution that regulate the parent-local relationship. Other disputes not only fail to implicate any federal interest, they also fall within the traditional competence of state courts.

27. The history of federal jurisdiction over union constitutions has been punctuated by a series of tactics adopted by courts to avoid hearing disputes regarded as insignificant. Throughout the 1960s and 1970s, federal courts took the position that they had no obligation to hear a constitutional claim unless it arose from an internal dispute that threatened a "significant impact" on industrial relations. For a discussion of the use of the "significant impact" test, see *infra* notes 110-19 and accompanying text. Although the Supreme Court's rejected that limitation in its first decision in this area, the "significant impact" test reappeared in recent decisions of the lower federal courts. For a discussion of the Supreme Court's rejection of the "significant impact" test, see *infra* notes 120-42 and accompanying text. For a discussion of the continued use of the "significant impact" test, see *infra* notes 274-77 and accompanying text. Other recent decisions adopt equally dubious tactics to refrain from hearing constitutional claims. For a discussion of the Ninth Circuit's struggle to avoid "internal squabbles," see *infra* notes 250-53 and accompanying text.

28. Judge Posner recently issued a frank call for the consideration of matters pragmatic or consequentialist in the interpretation of statutes. See RICHARD A. POSNER, *THE PROBLEMS OF JURISPRUDENCE* 269-309 (1990). Along the way, he expresses disagreement with virtually every other approach, from the reliance on originalism of Justice Scalia and Judge Robert Bork, to the deep textual skepticism of the deconstructionists. *Id.* at 287-99, 305-07; see also William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621 (1990) (criticizing Justice Scalia and Judge Easterbrook for excessive reliance on statutory texts); Owen M. Fiss, *Objectivity and Interpretation*, in *INTERPRETING LAW AND LITERATURE: A HERMENEUTIC READER* 229 (Sanford Levinson & Steven Mailloux eds., 1988) (criticizing textual indeterminists).

sure, Congress cannot be said to have approved the judicial role through its passage of section 301(a). But Congress certainly took the relationships between the parent and local bodies closely in hand during its consideration of the LMRDA by establishing general statutory guidelines and authorizing courts to develop a body of federal common law to govern the relationship. It does not require too dynamic a feat of statutory interpretation<sup>29</sup> to conclude, as this Article does, that the LMRDA supplies sufficient federal content to justify a properly limited federal role in the enforcement of union constitutions under section 301(a)'s second clause.

## II. THE JUDICIAL TRANSFORMATION OF SECTION 301(a)

During the 1950s, the federal courts reached a broad consensus that section 301(a) of the Taft-Hartley Act left the state courts in control of actions to enforce union constitutions.<sup>30</sup> The con-

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29. Professor Eskridge expressly argued for the application of a dynamic theory of statutory interpretation that takes into account more than merely the original understanding of the statute as it emerges from a review of text and history. See William N. Eskridge, Jr., *Dynamic Statutory Interpretation*, 135 U. PA. L. REV. 1479 (1987). His understanding of the dynamic interpretive process somewhat resembles Posner's pragmatism in that he takes account of the current legal landscape in deciding what meaning to ascribe to a text that may have been enacted in response to the concerns of a different time. *Id.* at 1554-55. Eskridge's approach also owes something to the purposive interpretive model of the legal process school. *Id.* at 1544-49; see HENRY M. HART, JR. & ALBERT M. SACKS, *THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW* 1201 (tent. ed. 1958).

Although Eskridge does not treat a case similar to that at issue in this Article, his dynamic approach offers support for my conclusion that federal courts simply cannot make sense of the application of § 301(a)'s second clause to union constitutions without taking account of the LMRDA. My approach should present fewer counter-majoritarian concerns than a more vigorously dynamic approach because it argues for an updated version of § 301(a) that ultimately rests on legislative choices embedded in the LMRDA.

30. See, e.g., *Adams v. International Bhd. of Boilermakers*, 262 F.2d 835, 838 (10th Cir. 1958) (stating that § 301 limited to suits between employer and labor union or suits between labor unions—not suits between labor unions and members); *Murphy v. Hotel & Restaurant Employees Int'l Union*, 102 F. Supp. 488, 490-92 (E.D. Mich. 1951) (finding effect of § 301 was not to vest general jurisdiction in federal courts for suits by or against labor unions); *Sun Shipbuilding & Dry-Dock Co. v. Industrial Union of Marine & Shipbuilding Workers*, 95 F. Supp. 50, 53 (E.D. Pa. 1950) (same); *Snoots v. Vejlupek*, 87 F. Supp. 503, 504 (N.D. Ohio 1949) (same); *Kriss v. White*, 87 F. Supp. 734, 735 (N.D.N.Y. 1949) (same); cf. *Burlesque Artists Ass'n v. American Guild of Variety Artists*, 187 F. Supp. 393, 394-95 (S.D.N.Y. 1958) (upholding § 301 jurisdiction over claim for violation of union constitution on suit between labor unions); *Local 2608, Lumber and Sawmill Workers, United Bhd. of Carpenters v. Millmen's Local 1495, United Bhd. of Carpenters*, 169 F. Supp. 765, 767-68 (N.D. Cal. 1958) (same); analogizing dispute between constituent locals of the Carpenters' Union to one between national unions); *Local 1104, United Elec. Workers v. Wagner Elec.*

sensus began to unravel in 1959, following the passage of the LMRDA, as the lower federal courts increasingly held that the Taft-Hartley Act authorized them to hear disputes over the meaning of union constitutions. By the time the Supreme Court granted certiorari in *Local 334*, a decisive majority of federal appellate courts had held that the between-labor-organizations clause—the second clause of section 301(a)—embraced actions to enforce the union constitution, at least in some circumstances.<sup>31</sup>

In tracing the judicial transformation of section 301(a)'s second clause, this part of the Article begins by showing that the early consensus was well grounded in the language, structure and history of the Taft-Hartley Act. This part next demonstrates that courts in the 1960s abandoned this understanding of section 301(a), not because they uncovered historical support for a different reading of the Taft-Hartley Act, but because the passage of the LMRDA in 1959 obliged them, for the first time, to resolve

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Corp., 109 F. Supp. 675, 683-85 (E.D. Mo. 1951) (asserting § 301 jurisdiction over action to enforce collective bargaining agreement and dispute over union constitution).

31. At the time of the Court's decision to hear the *Local 334* case, the United States Courts of Appeals for the First, Second, Third, Fourth, Fifth, Seventh, and Ninth Circuits had held that § 301(a)'s second clause embraced suits to enforce union constitutions, at least where the dispute had a significant impact on industrial relations. See *Local 334, United Ass'n of Journeymen & Apprentices of Plumbing & Pipe Fitting Indus. v. United Ass'n of Journeymen & Apprentices of Plumbing & Pipe Fitting Indus.*, 628 F.2d 812 (3d Cir. 1980), *rev'd*, 452 U.S. 615 (1981) [hereinafter *Local 334*]; *Alexander v. International Union of Operating Eng'rs*, 624 F.2d 1235 (5th Cir. 1980); *Studio Elec. Technicians Local 728 v. International Photographers of Motion Picture Indus.*, Local 659, 598 F.2d 551 (9th Cir. 1979); *Stelling v. International Bhd. of Elec. Workers Local Union No. 1547*, 587 F.2d 1379 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979); *Local Union No. 657 of United Bhd. of Carpenters v. Sidell*, 552 F.2d 1250 (7th Cir.), *cert. denied*, 434 U.S. 862 (1977); *Local Union 1219, United Bhd. of Carpenters v. United Bhd. of Carpenters*, 493 F.2d 93 (1st Cir. 1974); *Abrams v. Carrier Corp.*, 434 F.2d 1234 (2d Cir. 1970); *Parks v. International Bhd. of Elec. Workers*, 314 F.2d 886 (4th Cir.), *cert. denied*, 372 U.S. 976 (1963). In its only opportunity to explore the question, the District of Columbia Circuit appeared to accept the possibility that disputes over the union constitution could satisfy the jurisdictional test of § 301, but refrained from answering the question directly by concluding that the case before it failed to present any such impact. See *1199 DC, Nat'l Union of Hosp. & Health Care Employees v. National Union of Hosp. & Health Care Employees*, 533 F.2d 1205, 1208 & n.1 (D.C. Cir. 1976). Only the Sixth and Tenth Circuits refused to assert jurisdiction over the union constitution. See *Trail v. International Bhd. of Teamsters*, 542 F.2d 961 (6th Cir. 1976) (refusing to assert jurisdiction over individual union member's action to enforce the union constitution); *Smith v. United Mine Workers*, 493 F.2d 1241 (10th Cir. 1974) (refusing to assert jurisdiction over challenge to order of parent union directing merger of subordinate bodies); *Adams v. International Bhd. of Boilermakers*, 262 F.2d 835, 838 (10th Cir. 1958) (no jurisdiction over action brought by individuals to enforce union constitution).

disputes over internal union affairs that had been previously litigated in state court.

A. *The Language of Section 301(a) and the Structure of Labor Unions*

Although section 301(a)'s reference to "contracts . . . between any . . . labor organizations"<sup>32</sup> may appear literally to apply to the union constitution,<sup>33</sup> a brief review of the structure and government of the modern American trade union weakens such

32. Taft-Hartley Act § 301, 29 U.S.C. § 185(a) (1988).

33. After all, the union constitution has been regarded as a contractually binding instrument for much of this century. For a discussion of this contract theory, see *supra* note 3. Moreover, at least certain provisions of the union constitution regulate the relationships between the parent union and its affiliated locals. If the parent and the local both satisfy the definition of "labor organization" in the statute, their constitutional relationship would appear to establish quite literally a contract "between labor organizations." The statute defines "labor organization" quite broadly to include any committee or group that exists, even in part, for the purpose of dealing with employers on industrial concerns. See 29 U.S.C. § 152(5). Parent and local unions plainly fit that definition. They also appear to satisfy the requirement, imposed by § 301(a)'s use of the term "such labor organizations," that they "represent[]" employees in an industry affecting commerce. *Id.* § 185(a). For the text of § 301(a), see *supra* note 8.

One might propose to define this "representation" requirement by reference to provisions that specify that the labor organization selected by the employees shall be their exclusive representative for purposes of collective bargaining. See 29 U.S.C. § 159(a). Such a reading might suggest that, before asserting § 301 jurisdiction, the court should determine whether the parent and the local both formally serve as the designated representative of employees. Such a preliminary inquiry might preclude the assertion of jurisdiction over constitutions in unions where the parent or the local (but not both) acts as the designated representative of employees.

The argument for a threshold inquiry into the union's status as a "representative" of employees runs headlong into *Retail Clerks Int'l Ass'n, Local Unions Nos. 128 & 633 v. Lion Dry Goods, Inc.*, 369 U.S. 17 (1962). In *Retail Clerks*, an action to enforce a strike settlement agreement between an employer and a union, the Supreme Court rejected a similar argument that would have allowed the employer to challenge the scope of § 301 jurisdiction by denying that the union in the particular case had retained its representation status. *Id.* at 28-29. The *Retail Clerks* result sensibly avoids complicating the jurisdictional inquiry and enjoys the support of a legislative record that reflects a desire for a broad, rather than restrictive, reading of the statute's commerce test for representation. See H.R. CONF. REP. NO. 510, 80th Cong., 1st Sess. 66 (1947), reprinted in 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, at 505, 570 (1948) [hereinafter LEGISLATIVE HISTORY].

Despite the holding in *Retail Clerks*, it remains somewhat incongruous to view a parent and local body as separate labor organizations. Irrespective of whether the parent or local formally serves as "representative," both bodies play an important role in the provision of services to any particular bargaining unit of employees. The unity of interest in discharging the representational function was reflected in the Supreme Court's recent decision that an independent union's decision to affiliate with an international did not raise serious doubts concerning the independent's continuing status as the employees' statutory representative. See *NLRB v. Financial Inst. Employees, Local 482*, 475 U.S. 192 (1986).

an interpretation. State courts have often used contract theory to enforce the provisions of the union constitutions that govern the internal relations of national and international labor unions,<sup>34</sup> but the “contract” nonetheless lacks the elements of a bargained-for exchange ordinarily associated with the term.<sup>35</sup> In most national unions, the parent body exercises wide-ranging authority over the affairs of the organization and often dictates the terms of the union constitution that govern internal relationships.<sup>36</sup> This pa-

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34. For a discussion of the use of contract theory, see *supra* note 3. The term “international” describes labor unions with affiliated locals in both the United States and Canada. See WALLIHAN, *supra* note 2, at 147-49. This Article will use the terms national and international interchangeably.

35. The shortcomings of the contract theory have been explored at some length by other writers. See Chafee, *supra* note 5, at 1001-07; Summers, *Legal Limitations*, *supra* note 5, at 1054-56; *Developments in the Law*, *supra* note 5, at 1001-02. The standard critique of using contract theory focuses on the absence of any real bargaining between members and the union at the time the member “accepts” the offer of membership. Summers, *Legal Limitations*, *supra* note 5, at 1055, 1055 n.30; *Developments in the Law*, *supra* note 5, at 1001. Moreover, it may be difficult to identify the parties with whom the member has contracted. As Chafee and Summers point out, the association itself may lack capacity to contract—a fact that forces the contractual court to find that the member entered into an absurd number of contracts with the other individual members. Chafee, *supra* note 5, at 1003; Summers, *Legal Limitations*, *supra* note 5 at 1055. Compare OAKES, *supra* note 1, § 9, at 23 (stating that “[t]he constitution, rules, and by-laws of an unincorporated union, so far as they purport to give rights of a civil nature, constitute a contract between the members themselves and between the association and the individual members”) with Chafee, *supra* note 5, at 1002-03 (finding that constitution of club with six hundred members would embody 179,700 separate contracts).

Even granting the existence of a contract, it may be difficult to identify its terms. The international union retains the power to enact new by-laws and amend constitutional provisions at its conventions. Courts have treated such alterations of the “contract” as consistent with the member’s agreement in advance to the adoption of reasonable by-laws. See, e.g., *St. Mary’s Beneficial Soc’y v. Burford’s Adm’r*, 70 Pa. 321 (1872). This fictional advance-consent argument, however, “emphasizes the anomalous nature of the relationship.” Summers, *Legal Limitations*, *supra* note 5, at 1055 n.31. Moreover, courts often hold that provisions for member discipline cannot violate “natural justice,” and therefore hold that unions must provide the rudiments of due process, even where no procedural protections appear in the constitution. *Id.* at 1058; Chafee, *supra* note 5, at 1004.

Fictions in the hands of inexperienced jurists can produce awkward results. See *McClees v. Grand Int’l Bhd. of Locomotive Eng’rs*, 18 N.E.2d 812 (Ohio Ct. App. 1938) (member’s action against his union barred; law does not permit suit against oneself); Harold J. Laski, *The Personality of Associations*, 29 HARV. L. REV. 404, 420 (1916) (citing English decision in which member who consumed alcoholic beverage at private club was said not to have purchased beverage on theory that one cannot purchase item from oneself).

36. Commentators agree that the parent body exercises substantial control over the affairs of the modern national labor union. See MILLIS & MONTGOMERY, *supra* note 2, at 257; ULMAN, NATIONAL UNION, *supra* note 2, at 3-7; WALLIHAN, *supra* note 2, at 139-40; Jack Barbash, *Power and the Pattern of Union Government*, 9 LAB. L.J. 628 (1958); George E. Barnett, *The Dominance of the National Union in*

rental authority extends both to the terms that govern existing constitutional relationships<sup>37</sup> and to those that govern new local union affiliates and their members.<sup>38</sup> Thus, although union con-

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*American Labor Organizations*, 27 Q.J. ECON. 455 (1913); Sidney E. Cohn, *The International and the Local Union*, in PROCEEDINGS OF NEW YORK UNIVERSITY ELEVENTH ANNUAL CONFERENCE ON LABOR 7, 7-14 (Emanuel Stein ed., 1958); Patricia Eames, *The Relationship Between International and Local Unions*, in PROCEEDINGS OF NEW YORK UNIVERSITY FIFTEENTH ANNUAL CONFERENCE ON LABOR 23, 29 (Emanuel Stein ed., 1962); Glocker, *supra* note 2, at 96; William J. Isaacson, *The Local Union and the International*, in PROCEEDINGS OF NEW YORK UNIVERSITY THIRD ANNUAL CONFERENCE ON LABOR 493, 501-02 (Emanuel Stein ed., 1950); George Rose, *Relationship of the Local Union to the International Organization*, 38 VA. L. REV. 843, 863-67 (1952). Such parental power frequently includes control over the admission of new members, the use of the strike weapon, the disbursement of strike benefits, the organizing and chartering of new local unions, and the terms of the collective bargaining agreement.

Of course, one still observes differences in the degree of local union autonomy from union to union. Compare ROTHBAUM, *supra* note 2, at 13 (describing reform movement that established rank and file oversight committee to monitor administration of union) with ULMAN, STEEL WORKERS, *supra* note 2, at 14-19, 51 (describing extensive centralization of control in parent body over matters such as strikes, finances and collective bargaining). See generally JACK BARBASH, LABOR UNIONS IN ACTION: A STUDY OF THE MAINSPRINGS OF UNIONISM 53-54 (1948) [hereinafter BARBASH, LABOR UNIONS IN ACTION] (explaining variation in degree of centralized control by reference to such factors as locus of product market competition, history of local union control and factionalism). For a careful consideration of the product market thesis, see ULMAN, NATIONAL UNION, *supra* note 2, at 156-200 (concluding that pattern of parental authority in national market unions was similar to that in local market unions).

37. Parental control over the terms of existing relationships begins with the wide array of explicit constitutional provisions that authorize the parent, acting through national officials, to take a wide variety of actions that determine the organization's destiny. For a discussion of the nature and scope of parental union control, see *infra* notes 38, 41-44. Most observers agree that these explicit sources actually understate the scope of parental authority. See MILLIS & MONTGOMERY, *supra* note 2, at 246, 256; Isaacson, *supra* note 36, at 499. National officers typically preside over the convention—the body of delegates that many unions vest with the power to elect officers and amend the union constitution, see MILLIS & MONTGOMERY, *supra* note 2, at 254—and often exercise a good deal of control over the appointment of members to the convention's committee on constitutional amendments. See BARBASH, LABOR UNIONS IN ACTION, *supra* note 36, at 49-50; MICHAEL HARRINGTON, THE RETAIL CLERKS 32-37 (1962); WALLIHAN, *supra* note 2, at 112-13. Most union constitutions further expand the extent of parental control by giving national officers or executive boards the power to construe and interpret the union constitution. See Cohn, *supra* note 36, at 14.

38. In most unions, the parent (perhaps with the assistance of the AFL-CIO) finances and controls most organizing activity. See, e.g., DEREK C. BOK & JOHN T. DUNLOP, LABOR AND THE AMERICAN COMMUNITY 140-50 (1970) (describing well-planned organizing campaign conducted by parent of Laborers' International Union to increase membership in local unions). Perhaps as a consequence, the parent union often dictates the terms upon which the new local will join the parent, see WALLIHAN, *supra* note 2, at 26, and the rules that will govern the local's internal affairs, see MALIN, *supra* note 8, at 12; Rose, *supra* note 36, at 868 & n.97. New members agree to accept the rights and obligations set forth in the union constitution. In neither case do the parties actually bargain

stitutions have been considered “contracts” for some purposes, they actually bear little resemblance to the negotiated agreements between parties of relatively equal bargaining strength to which the reference to contracts in section 301(a) otherwise applies.<sup>39</sup>

Even if they were properly described as contracts, albeit contracts of adhesion,<sup>40</sup> union constitutions do not govern the relationships “between labor organizations” as required by section 301(a). The typical constitution governs relationships *within*, not *between*, national labor organizations.<sup>41</sup> One might consider the parent and subordinate units of a national union as separate labor

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over the terms of their obligations. See Summers, *Legal Limitations*, *supra* note 5, at 1055, 1055 n.30; *Developments in the Law*, *supra* note 5, at 1001.

39. Aside from union constitutions, the Supreme Court has applied § 301 to two kinds of labor contracts. See *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957) (collective bargaining agreements); *Retail Clerks Int’l Ass’n, Local Unions Nos. 128 & 633 v. Lion Dry Goods, Inc.*, 369 U.S. 17 (1962) (strike settlement agreements). Both forms of agreement typically emerge from a period of negotiation and bear the signatures of the parties.

40. A vast literature explores what impact the absence of any real bargaining should have on the judicial attitude towards the enforcement of contracts of adhesion. For a summary, see E. ALLAN FARNSWORTH & WILLIAM F. YOUNG, *CASES AND MATERIALS ON CONTRACTS* 364-440 (4th ed. 1988). The evolution of the state court protections for local unions and members in their enforcement of union constitutions resembles in some respects the protections courts also developed for the consumers of contracts of adhesion such as policies of insurance. Compare Summers, *Legal Limitations*, *supra* note 5, at 1058-84 (criticizing state courts’ use of covert tools of construction to protect dissident members from anti-democratic union discipline) with Karl N. Llewellyn, Book Review, 52 HARV. L. REV. 700, 702-03 (1939) (reviewing O. PRAUSNITZ, *THE STANDARDIZATION OF COMMERCIAL CONTRACTS IN ENGLISH AND CONTINENTAL LAW* (1937)); noting that in process of construing contracts, covert tools are never reliable tools).

41. The dominance of the national labor union in the structure of organized labor is widely recognized in the literature. See MILLIS & MONTGOMERY, *supra* note 2, at 257-59; ALBERT REES, *THE ECONOMICS OF TRADE UNIONS* 25 (1962); WALLIHAN, *supra* note 2, at 110-11, 152-56. It dates from the period of the American Federation of Labor’s (AFL) challenge to the Knights of Labor during the 1880s—a challenge that succeeded in part because the AFL promised to respect the autonomy and trade jurisdiction of national trade unions. For the early history of the AFL, see MILLIS & MONTGOMERY, *supra* note 2, at 72-75; PERLMAN, *supra* note 4, 112-29; RAYBACK, *supra* note 4, at 197-226. For the different tradition of international union autonomy in the Congress of Industrial Organizations (CIO), see BARBASH, *LABOR UNIONS IN ACTION*, *supra* note 36, at 47-49. For a discussion of how the historical guarantee of autonomy continues to influence the current relations between the AFL-CIO and its affiliates, see Dunlop, *supra* note 13, at 102. For a more recent assessment, see Bok & Dunlop, *supra* note 38, at 189-206; WALLIHAN, *supra* note 2, at 152-56. Useful explanations of the economic and other factors that contributed to the emergence of national labor unions in the latter half of the 19th century appear in the works of Ulman and Glocker. See ULMAN, *NATIONAL UNION*, *supra* note 2; ULMAN, *STEEL WORKERS* *supra* note 2; Glocker, *supra* note 2; see also Philip Taft, *Collective Bargaining Before the New Deal*, in *HOW COLLECTIVE BARGAINING WORKS* 873-901 (1942).

organizations for other purposes, but it would nevertheless be difficult to describe the union constitution as a contract *between* such organizations.<sup>42</sup> The union constitution allocates power between the parent union and the locals,<sup>43</sup> defines the powers of the officers of both the parent and the locals,<sup>44</sup> provides for the day-

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42. One might argue that the parent and local labor organizations must be viewed as separate to protect the parent's treasury from liability resulting from the acts of irresponsible locals. Certainly such an assumption of separateness has informed such decisions as those that refuse to hold the parent vicariously responsible for its locals' wildcat strikes and secondary boycotts. *See, e.g., Carbon Fuel Co. v. United Mine Workers*, 444 U.S. 212 (1979) (absolving parent of liability for local's breach of the no-strike clause; rejecting claim that parent owed duty to take reasonable efforts to end strike). The rejection of vicarious liability in such cases, however, was based on common law principles of agency that the Taft-Hartley Act wrote into federal law in 1947. *See id.* at 216-17 (citing rules of agency in § 301(b)). Parent unions need not define their locals as separate bodies for all internal purposes, in short, to escape wildcat liability for the unauthorized activity of their members.

43. Most international union constitutions authorize the parent union, after notice and some kind of a hearing, to suspend the charter of, or expel, local unions that engage in specified forms of misconduct. *See U.S. BUREAU OF LABOR STATISTICS, U.S. DEPT. OF LABOR, BULL. NO. 1263, UNION CONSTITUTION PROVISIONS: TRUSTEESHIPS (1959)* [hereinafter BLS 1263] (stating that all 114 union constitutions surveyed included provisions for suspension and revocation of local charters). For a collection of state court decisions involving such parental discipline of locals, *see DANGEL & SHRIBER, supra* note 1, §§ 266-70, at 289-95.

In addition to these sources of control, most union constitutions authorize the parent to place the local union into trusteeship. *See BLS 1263, supra*, at 2 (stating that some 60% of constitutions explicitly provided for trusteeships). For the origins of union trusteeship provisions, their treatment at the hands of state court judges and their eventual regulation by Congress in the LMRDA, *see James R. Beard, Union Trusteeship Provisions of the Labor-Management Reporting and Disclosure Act of 1959*, 2 GA. L. REV. 469 (1968); *see also Doris B. McLaughlin & Anita L. W. Schoemaker, The Landrum-Griffin Act and Union Democracy* 127-43 (1979). As a disciplinary tool, unions often prefer the trusteeship, perhaps because, unlike charter suspension, it gives the parent direct control and, unlike charter revocation, it preserves the structural tie between parent and local. *See Eames, supra* note 36, at 30-32.

Other provisions that tend to ensure parental domination of local unions include those that oblige the local union to obtain parental approval of the collective bargaining agreement and the use of economic force, that place the parent union in control of strike funds, and that establish beneficial programs the value of which the local may forfeit if it leaves the organization. *See ULMAN, NATIONAL UNION, supra* note 2, at 155-90 (tracing extent of parent control over strikes, strike funds and mutual benefit programs among early national unions). In addition, many constitutions provide for forfeiture of local union property to the parent upon the local's disaffiliation. *See Isaacson, supra* note 36, at 503-10; *Summers, supra* note 6, at 262-69; *Note, Disposition of Union Assets on Disaffiliation*, 45 VA. L. REV. 244 (1959); *see also International Bhd. of Boilermakers v. Local Lodge D354*, 897 F.2d 1400, 1418 (7th Cir. 1990) (enforcing forfeiture clause).

44. Generally speaking, presidents of international unions enjoy a good deal of control over the affairs of the association. Sometimes, presidential authority simply reflects the charisma and leadership skills of those who hold the office. *See MILLIS & MONTGOMERY, supra* note 2, at 256-57; *PHILIP TAFT, THE STRUCTURE AND GOVERNMENT OF LABOR UNIONS* 36-37 (1954). More typically,

to-day administration of the institution,<sup>45</sup> allocates jurisdiction among competing locals<sup>46</sup> and prescribes duties of institutional loyalty for members<sup>47</sup> and officers.<sup>48</sup> If the union constitution

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presidential authority has a basis in constitutional documents. See WALLIHAN, *supra* note 2, at 114. While local union officials may also exercise a good deal of control over local affairs, they face stronger electoral competition than their national counterparts. See RICHARD B. FREEMAN & JAMES L. MEDOFF, *WHAT DO UNIONS DO?* 211 (1984).

45. The ultimate power in the union theoretically lies with the members, acting through the delegates they elect to represent them at the union convention. Such conventions, however, often take place at irregular intervals. See, e.g., HARRINGTON, *supra* note 37, at 35. As a result, union constitutions provide for the administration of the union in the interim by dividing authority between the national president and some form of national executive council or board. See WALLIHAN, *supra* note 2, at 112-15. For a critique of the effectiveness of such boards at checking the power of the president, see LEO BROMWICH, *UNION CONSTITUTIONS* (1959).

46. Most local union charters describe in some detail the scope of the local's trade and territorial jurisdiction. In such unions, the parent ordinarily takes care to prevent overlapping local jurisdiction. When such overlap occurs, the constitution often establishes an explicit means for the parent to resolve jurisdictional conflict. Some constitutions give the parent plenary authority to alter local jurisdiction; others provide the parent with the power to merge or consolidate overlapping locals. For examples of litigation over such provisions, see *Local 334*, 628 F.2d 812 (3d Cir. 1980), *rev'd*, 452 U.S. 615 (1981); *Local Union No. 657 of United Bhd. of Carpenters v. Sidell*, 552 F.2d 1250 (7th Cir. 1977). For an example of the experience of parent unions with such merger campaigns, see *BOK & DUNLOP*, *supra* note 38, at 145-46.

47. The union constitution typically obliges members to pay dues and to obey union rules, such as that compelling members to honor union-sanctioned picket lines. Members who fail to comply with such obligations may be subject to discipline ranging from fines to expulsion. In addition to these obligations, constitutions frequently identify a variety of member rights such as the right to attend meetings, to inspect the books and to run for union office. For a survey of the rules governing member discipline, see U.S. BUREAU OF LABOR STATISTICS, U.S. DEPT. OF LABOR, BULL. NO. 1350, *DISCIPLINARY POWERS AND PROCEDURES IN UNION CONSTITUTIONS* [hereinafter BLS 1350]. Scholars once disagreed about the extent to which unions administered their disciplinary rules to quell political dissent. Compare Summers, *Disciplinary Procedures of Unions*, *supra* note 5, at 29-31 (arguing that discipline before union tribunals constitutes ongoing threat to union democracy) and Summers, *Legal Limitations*, *supra* note 5, at 1049-50 with TAFT, *supra* note 44, at 243-44 (arguing that union discipline often administered fairly). The disclosures of the McClellan Committee, which led Congress to enact the LMRDA, did much to resolve the debate. See PHILIP TAFT, *RIGHTS OF UNION MEMBERS AND THE GOVERNMENT* 3-9, 239-41 (1975) (McClellan committee report added greatly to knowledge of financial corruption and political intolerance within unions).

48. Though less well known, the union constitution also contains provisions that govern the relationship between the officers and the organization. The constitution typically obliges the officers to comply with the laws of the organization and to hold union funds in trust for the benefit of the members as a whole. Officers who violate these rules are subject to discipline or removal from office, although the same reality that makes top-down discipline of members a threat to rank and file dissidents also reduces the likelihood of effective bottom-up discipline of officers. See BLS 1350, *supra* note 47, at 65-85, 128-54 (describ-

creates any contract at all, it creates contracts that govern at least three different relationships: that between the parent and the local; that between the union as an institution and its individual officers and members; and that among the members themselves.<sup>49</sup>

While the reference in section 301(a) to contracts between labor organizations does not capture the multiplicity of relationships in union constitutions, it accurately describes a wide range

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ing rules that govern discipline of local union officers at national level and national officers at convention level). In addition, officers who pilfer or misapply union funds may be subject to criminal sanctions for embezzlement as well as civil actions for breach of fiduciary duty under Title V of the LMRDA. For a discussion of the scope of union officers' fiduciary duties and penalties for breach, see *infra* notes 178-80.

49. Common law courts and treatise writers agree that union constitutions establish at least two different categories of contractual relationships. In addition to contracts between the members themselves, union constitutions were viewed as setting the terms of parent-local contracts and union-member contracts. For a discussion of problems inherent in the use of contract theory to resolve disputes concerning union constitutions, see *supra* note 35. A 1941 treatise on labor unions describes the contractual relations created by the union's governing documents in the following terms:

[W]here a local union is affiliated with a superior body, the constitution and laws of the superior body, and the charter it issues pursuant thereto to the local union, and the constitution and laws of the local union, constitute the contract *between the members of the union and the local union* as well as *between the local union and the superior body*.

DANGEL & SHRIBER, *supra* note 1, § 99, at 134-35 (emphasis added); accord Isaacson, *supra* note 36, at 504 (stating that in resolving conflicting property claims, courts regard international and local constitutions and charter "as a two-fold contract which binds the parent international and the local as well as the local and its individual members"); see also *Alexion v. Hollingsworth*, 43 N.E.2d 825, 828 (N.Y. 1942) (finding that voluntary association that accepted local union charter was bound to agreement); *Harris v. Backman*, 86 P.2d 456, 459 (Or. 1939) (holding that union charter binds members who forfeit right to union property and funds upon withdrawal); *Polin v. Kaplan*, 177 N.E. 833, 834 (N.Y. 1931) (stating that constitution and by-laws of union may define conditions for admission to and expulsion from membership); cf. W. A. MARTIN, A TREATISE ON THE LAW OF LABOR UNIONS § 306, at 380 (1910) (stating that "[t]he power of a union to fine, suspend or expel a member rests not in the general law, but in the agreement of the members expressed in its constitution, rules and by-laws"); OAKES, *supra* note 1, § 9, at 23 ("The constitution, rules, and by-laws of an unincorporated union, so far as they purport to give rights of a civil nature, constitute a contract between the members themselves and between the association and the individual members, which define their rights and obligations.").

Although the common law courts frequently agree to police the union-officer relationship, they do not speak expressly of a contract between the union and its officers. See *Cason v. Glass Bottle Blowers Ass'n*, 231 P.2d 6 (Cal. 1951) (action by officer for damages for wrongful expulsion from union membership and union office); *State ex rel. Dame v. Le Fevre*, 28 N.W.2d 349 (Wis. 1947) (same). Instead, common law courts base their remedial authority on the contract between the union and the members, an approach that reflects the fact that most unions draw their officers from the ranks of the membership and that many unions who wish to discipline their officers do so by withdrawing their rights as members. See, e.g., *Cason*, 231 P.2d at 10-13.

of bilateral agreements *between* national labor unions.<sup>50</sup> Such agreements frequently seek to suppress inter-union “jurisdictional”<sup>51</sup> competition for the rights to represent bargaining unit

50. In a classic article on union structure, Professor Dunlop identified the six common forms of agreement between competing national unions:

- (a) Agreements to negotiate jointly with employers or to coordinate strike action where both unions are significantly represented in plants of a company or association.
- (b) No-raiding agreements to restrict competition for workers already certified or covered by agreements or to restrict competition for run-away plants.
- (c) Agreements for joint organizing campaigns with an interim or permanent division of new members or a specific division of plants and agreements to regulate the conduct of competitive organizing campaigns or to establish Marquis of Queensbury rules.
- (d) Agreements defining jurisdiction between the organizations and settling disputes over exclusive jurisdiction . . . .
- (e) Agreements merging national unions . . . .
- (f) Agreements creating machinery providing for final and binding decisions by arbitrators in disputes over . . . raiding of workers already organized by parties to the agreement, the organization of workers unorganized or organized by unions not parties to the agreement, or work jurisdiction disputes.

Dunlop, *supra* note 13, at 104-05 (footnote omitted). Dunlop noted that competing national unions entered into at least 50 such agreements between 1948 and 1955. *Id.* at 105-106.

51. A union’s trade or working jurisdiction consists of the work it claims on behalf of its members—a claim that often has both a technical (trade) and a geographical (territorial) dimension. The union’s jurisdictional claim appears both in its constitution and in the charter it receives from the federation. Parent unions often issue charters to their locals that further refine the scope of the local’s trade and territorial jurisdiction. For useful introductions to union jurisdiction, see BOK & DUNLOP, *supra* note 38, at 209-10; MILLIS & MONTGOMERY, *supra* note 2, at 274-78; WALLIHAN, *supra* note 2, at 63-72.

Although organized labor has long attempted to suppress rival union competition by clarifying jurisdictional lines between unions, it has not achieved notable success. The AFL’s early promise of exclusive jurisdiction to its affiliates was undermined by a host of factors, including the tendency of some AFL affiliates to organize along industrial lines, the willingness of some craft unions to take in industrial units, and the inability of the AFL to mediate jurisdictional conflicts between craft unions. See MILLIS & MONTGOMERY, *supra* note 2, at 272-78.

The passage of the Wagner Act of 1935 and the creation of the CIO exacerbated the confusion over jurisdictional boundaries. The Wagner Act made the vote of interested employees within a governmentally defined bargaining unit, rather than the jurisdictional claim of interested unions, the decisive factor in determining the employees’ bargaining representative; labor’s definition of union jurisdiction, though occasionally a factor in Labor Board unit determinations, was not dispositive. See CHRISTOPHER L. TOMLINS, *THE STATE AND THE UNIONS: LABOR RELATIONS, LAW, AND THE ORGANIZED LABOR MOVEMENT IN AMERICA, 1880-1960* (Louis Galambos & Robert Gallman eds., 1985). The CIO exploited the Wagner Act model quite effectively, organizing on an industrial basis and competing successfully with many AFL affiliates for new members. See WALTER GALENSON, *THE CIO CHALLENGE TO THE AFL: A HISTORY OF THE AMERICAN LABOR MOVEMENT 1935-1941* (1960). The merger of the AFL and CIO in the 1950s left these overlapping jurisdictional claims in place. See Jack Barbash,

employees and to perform specific work.<sup>52</sup> Common examples of inter-union agreements include no-raid agreements, such as those that many unions signed in anticipation of the merger of the AFL and CIO;<sup>53</sup> agreements that seek to adjust disputes over the assignment of work;<sup>54</sup> and agreements to merge or consoli-

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*Relationship Between the Federation and the Internationals*, in UNIONS, MANAGEMENT AND THE PUBLIC 145 (E. Wight Bakke et al. eds., 3d ed. 1967); Dunlop, *supra* note 13, at 102.

52. Disputes between competing unions, which arise from the inability of organized labor to draw precise and enduring jurisdictional lines between national unions, can be divided into two general categories. Representational disputes typically involve disagreements over which of two unions should represent, or bargain on behalf of, a particular group of employees. Work assignment disputes, by contrast, arise in cases where two or more unions represent the employees of a particular firm but disagree as to which union's members should perform a specific task. See generally BARBASH, LABOR UNIONS IN ACTION, *supra* note 36, at 34-39; WALTER GALENSON, RIVAL UNIONISM IN THE UNITED STATES 1-3, 30-52 (1940).

Historically, representational disputes tended to divide organized labor along ideological lines. Thus, the craft-oriented AFL engaged in representational disputes with such industrial rivals as the Knights of Labor, the Wobblies and the CIO. See GALENSON, *supra*, at 4-29; MILLIS & MONTGOMERY, *supra* note 2, at 72-78, 102-23, 201-22. Work assignment disputes, by contrast, often developed between craft unions in the same federation. The AFL's building and construction trades department, for example, struggled for much of its history to resolve such disputes between the craft-conscious building trades unions. For an additional discussion of work assignment disputes, see *infra* note 54.

53. In a typical no-raid agreement, national unions agree to respect existing bargaining relationships and to refrain from competing for the right to represent workers that have already been organized by other signatory parties. See, e.g., *United Textile Workers v. Textile Workers Union*, 258 F.2d 743 (7th Cir. 1958) (setting forth terms of agreement). Such agreements became increasingly common in the 1950s, as the leaders of the AFL and CIO began to push for an end to wasteful raids and for the eventual unification of the two federations. See BOK & DUNLOP, *supra* note 38, at 167 n.8. By 1954, some 65 AFL and 29 CIO unions had signed the no-raid pact proposed by the federations' committee on unity. See Document, *AFL-CIO No Raiding Agreement*, 8 INDUS. & LAB. REL. REV. 102-08 (1954) (setting forth terms of, and signatories to, AFL-CIO no-raid agreement). These agreements, which later provided the jurisdictional basis for the AFL-CIO merger, called for the arbitration of disputes over allegations of raiding. For an analysis of the no-raid provisions by the impartial arbitrator who was appointed to administer their terms, see David L. Cole, *Jurisdictional Issues and the Promise of Merger*, 9 INDUS. & LAB. REL. REV. 391, 401-05 (1956). See also I AFL-CIO, DECISIONS AND RECOMMENDATIONS OF THE AFL-CIO IMPARTIAL UMPIRE: 1954-1958 (1958). On the incorporation of these provisions into the constitution of the merged federation, see Dunlop, *supra* note 13, at 105-10. For a discussion of the AFL-CIO's current practice in the no-raid arena, see WALIHAN, *supra* note 2, at 167-68; Joseph Krislov & John Mead, *Arbitrating Union Conflicts: An Analysis of the AFL-CIO Internal Disputes Plan*, 36 ARB. J. 21 (1981); Lea B. Vaughn, *Article XX of the AFL-CIO Constitution: Managing and Resolving Inter-Union Disputes*, 37 WAYNE L. REV. 1 (1990).

54. Bilateral work-assignment or jurisdictional agreements, which typically seek to resolve a particular dispute between craft unions over the performance of specific work and to create machinery for the resolution of future disputes, have become increasingly common. Professor Dunlop noted that 25 such agree-

date national unions.<sup>55</sup> Such agreements represent bargained-for

ments were signed between 1948 and 1955. See Dunlop, *supra* note 13, at 106. A recent compilation suggests that construction unions have entered into some 56 such agreements since 1957. See BUREAU OF NATIONAL AFFAIRS, CONSTRUCTION CRAFT JURISDICTION AGREEMENTS (1984). The 1941 agreement between the Laborers and the Plumbers offers a good illustration of the form such agreements may take. After resolving a dispute over work on sewers and water mains by allocating the work of joining pipes to the Plumbers and the work of digging and backfilling to the Laborers, it provides for reference of future disputes, not covered by the agreement, to the presidents of the two unions. See BUREAU OF NATIONAL AFFAIRS, CONSTRUCTION CRAFT JURISDICTION AGREEMENTS 6 (1963) (setting forth verbatim copy of agreement). For a discussion of such agreements in the Carpenters' Union, emphasizing the fact that they bind local unions, see HOROWITZ, *supra* note 2, at 51-52.

In addition to bilateral agreements between specific crafts, unions in the building and construction trades department of the AFL (and later, the AFL-CIO) have attempted to work out departmental machinery for the resolution of jurisdictional disputes. For largely negative reviews of the early efforts, see MILLIS & MONTGOMERY, *supra* note 2, at 286-300; William Haber, *Building Construction*, in HOW COLLECTIVE BARGAINING WORKS 183, 200-03 (1942); Louis L. Jaffe, *Inter-Union Disputes in Search of a Forum*, 43 YALE L.J. 424, 429-43 (1940). Following the passage of the Taft-Hartley Act in 1947, the building trades adopted a new plan for the resolution of jurisdictional disputes. In brief, the parties to a jurisdictional conflict created, by multi-lateral agreement, a Plan for the Settlement of Jurisdictional Agreements that established, among other things, a national joint board to arbitrate jurisdictional conflicts. See Document, *The Agreement Establishing a National Joint Board for the Settlement of Jurisdictional Disputes in Building and Construction Industries*, 2 INDUS. & LAB. REL. REV. 411 (1948). In making jurisdictional awards, the joint board considers a host of factors, including bilateral inter-union jurisdictional agreements that have been collected in the so-called "green book." For a general introduction, see Douglas Leslie, *The Role of the NLRB and the Courts in Resolving Union Jurisdictional Disputes*, 75 COLUM. L. REV. 1470, 1488-90 (1975). For a description of the evolution of the Plan since its adoption in 1948, see FORREST A. HENRY, WORK ASSIGNMENT DISPUTES UNDER THE NATIONAL LABOR RELATIONS ACT 132-38 (1985).

55. Between December 1955, the effective date of the merger of the AFL and the CIO, and 1978, some 57 mergers of national labor unions took place. See GIDEON CHITAYAT, TRADE UNION MERGERS AND LABOR CONGLOMERATES I (1979). See generally WALLIHAN, *supra* note 2, at 144-47. As Professor Chaison makes clear in an interesting historical survey, the relative frequency of merger activity during this recent period appears to reflect the explicit encouragement that officials of the merged AFL-CIO gave to union mergers. See GARY N. CHAISON, WHEN UNIONS MERGE 28-30 (1986). Indeed, one can link the AFL-CIO's efforts to encourage rival affiliates to enter into no-raid agreements in the years before 1955 with its efforts to encourage mergers between competing affiliates after that date. The linkage between merger and no-raid agreements simply reflects the fact that the two forms of inter-union agreement both may act as devices through which unions attempt to limit or regularize jurisdictional conflict. See CHAISON, *supra*, at 53-55.

Against this backdrop, one can conceive of the no-raid provisions of article XX of the AFL-CIO constitution as a form of multilateral inter-union agreement. Unions that affiliate with the AFL-CIO receive this no-raid protection as a matter of course. Independent unions—those that have either chosen to remain unaffiliated or those that, like the Teamsters until their recent reaffiliation, were expelled from the AFL-CIO—lack article XX protection against raids. As a consequence, strong independents, such as the Teamsters, may enter into a web of bilateral no-raid agreements that substitute for the protections of affiliation;

exchanges between autonomous national unions and bear the signatures of relevant union officials—elements that bring them comfortably within the between-labor-organizations clause of section 301.<sup>56</sup> Understood in its institutional context, therefore, the language of section 301(a) appears to contemplate federal enforcement of contracts *between* autonomous national labor unions rather than the constitutional rules that govern the internal relations *within* such unions.

### B. Section 301(a) as Originally Understood

The legislative history of the Taft-Hartley Act confirms that Congress did not intend to provide for federal enforcement of union constitutions. While the debates and reports on the statute fail to explain section 301(a)'s between-labor-organizations clause, both the structure and the drafting history of the statute suggest that the sponsors of Taft-Hartley added the clause to authorize enforcement of agreements between national unions.<sup>57</sup>

#### 1. The Argument From Structure

Section 301 primarily sought to ensure that unions would comply with the no-strike obligations that appear in many collective bargaining agreements.<sup>58</sup> In justifying the creation of a federally-imposed duty to comply, the statute's principal sponsor, Senator Robert Taft, first argued that the collective agreement

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weak independents may seek to obtain no-raid protection through merger with an affiliate. *See id.* at 82-83 (describing Brewery Workers' unsuccessful efforts to identify merger partner within AFL-CIO before they were absorbed by Teamsters).

56. For a representative sample of "jurisdictional" agreements, see BUREAU OF NATIONAL AFFAIRS, *supra* note 54. For examples of merger agreements, see CHITAYAT, *supra* note 55, at 170-204. Such forms of agreement bear the signatures of union officials and emerge from often protracted negotiations.

57. For the text of § 301(a), see *supra* note 8. The between-labor-organizations clause was added to § 301(a) by the House-Senate conferees but was not mentioned in either the Conference Report or the post-conference debates. The absence of any overt legislative history provides federal courts with considerable interpretive freedom. *See Local 334*, 452 U.S. 615, 623 (1981); *Parks v. International Bhd. of Electrical Workers*, 314 F.2d 886, 915 (4th Cir. 1963), *cert. denied*, 372 U.S. 976 (1963).

58. Congress was concerned that unions had largely escaped responsibility for compliance with no-strike clauses by virtue of their status as unincorporated associations. *See S. REP. NO. 105*, 80th Cong., 1st Sess. 15-18 (1947), *reprinted in 1 LEGISLATIVE HISTORY*, *supra* note 33, at 421-24. It thus conceived § 301 as an initiative designed to make unions responsible for their contracts on a collective or entity basis, "as if they were corporations." 93 CONG. REC. 3839 (1947) (statement of Sen. Taft).

was a matter of established federal concern.<sup>59</sup> Second, Senator Taft claimed that the enforcement of such contracts would preserve industrial peace for the life of the agreement and would thus remove unjustifiable burdens on interstate commerce.<sup>60</sup>

Both the federal-province and the labor-peace rationales apply to the enforcement of work assignment and jurisdictional agreements between competing national unions. The Eightieth Congress was deeply concerned with rival union strikes and boycotts, which it regarded as unfair to both employers and the public.<sup>61</sup> The Taft-Hartley Act thus prohibits unions from using

59. Senator Robert Taft, a principal sponsor of the Act and the legislator most familiar with § 301, understood that the Wagner Act obliged employers to bargain in good faith with their employees' designated representative and to reduce the resulting agreement to writing. *See* S. REP. NO. 105, 80th Cong., 1st Sess. 15-17 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 421-23. He thus argued that the collective agreement was a creature of federal law that deserved federal enforcement. *See* Pfander, *supra* note 8, at 303 & n.248 (quoting Taft's defense of propriety of making collective agreement enforceable as matter of federal law).

60. Senator Taft's argument for the statute's adoption specifically relied on the tendency of § 301 to encourage compliance with no-strike clauses and thus to furnish a solution to what he described as an interstate commerce difficulty. *See* Pfander, *supra* note 8, at 303 & n.248. The industrial peace rationale continues to inform the statute's interpretation. *See* *Groves v. Ring Screw Works Fernalde Fastener Div.*, 111 S. Ct. 498 (1990) (holding that collective bargaining agreement clause reserving right to union use of economic weapons did not bar federal resolution under § 301(a)); *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970) (allowing injunction to enforce binding arbitration clause in collective bargaining agreement under § 301).

61. Although other provisions of the Taft-Hartley Act triggered partisan disputes in Congress, there was broad bipartisan support for legislation to address the problem of inter-union rivalry. President Truman set the tone in his State of the Union address, which called for legislation that would ban representational strikes and foster "peaceful and binding determination" of work-assignment disputes. 93 CONG. REC. 136 (1947). Members of Congress were virtually in unanimous accord with the President. *See* 93 CONG. REC. A1295-97 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 582-84 (remarks of Rep. Landis describing costs of such disputes in lumber and agricultural industries); 93 CONG. REC. 3534 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 615 (remarks of Rep. Hartley describing delays in construction of public housing in New Jersey); 93 CONG. REC. 1890-91 (1947), *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 952 (remarks of Sen. Morse collecting statistics on loss of man-days as a result of jurisdictional and rival union strikes); 93 CONG. REC. 3329-30 (1947), *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 995-97 (remarks of Sen. Lucas describing jurisdictional dispute between Machinists and Carpenters over installation of machinery at brewery in Belleville, Illinois). *See generally* HARRY MILLIS & EMILY CLARK BROWN, *FROM THE WAGNER ACT TO TAFT-HARTLEY: A STUDY OF NATIONAL LABOR POLICY AND LABOR RELATIONS* (1950).

The principal drafter of the provisions dealing with inter-union conflict was Senator Wayne Morse of Oregon. Early in the Senate's consideration of the Taft-Hartley Act, Morse presented a detailed analysis of the problem of inter-union rivalry that not only distinguished rival union disputes from other forms of jurisdictional conflict, but also set forth statistics detailing the costs of such

economic force in support of competing representational<sup>62</sup> and jurisdictional demands.<sup>63</sup> In addition to providing an array of remedies,<sup>64</sup> the Taft-Hartley Act explicitly seeks to encourage unions to enter into agreements with one another that establish a peaceful method for resolving jurisdictional disputes.<sup>65</sup> Congress thus expected that rival unions would negotiate agreements, that such agreements would govern disputes in an identified area of federal concern and that the federal enforcement of such agreements would help maintain industrial peace.<sup>66</sup>

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disputes. See 93 CONG. REC. 1890-91 (1947), reprinted in 2 LEGISLATIVE HISTORY, *supra* note 33, at 951-52. The final version of the statute closely resembled Morse's proposal.

62. Subparagraphs (B) and (C) of § 8(b)(4) declare that unions cannot use economic force to obtain recognition, suggesting instead that they should seek representational rights through the Labor Board election process. See Taft-Hartley Act § 8(b)(4)(B)-(C), 29 U.S.C. § 158(b)(4)(B)-(C) (1988). Close students of the Taft-Hartley Act attribute these provisions to the desire of Congress to suppress rival union disputes between the AFL and the CIO. See MILLIS & BROWN, *supra* note 61, at 443-48. For background on the rivalry, see GALENSON, *supra* note 51, at 3-74.

63. On the assumption that such disputes were responsible for the loss of some 600,000 working days in 1945 alone, Congress enacted two interlocking provisions to prohibit unions from using economic force in support of their demands for the assignment of particular work. Section 8(b)(4)(D) bars strikes in support of a work-assignment demand unless the employer's assignment fails to conform with the Board's award. See 29 U.S.C. § 158(b)(4)(D). For background on Congress' assumption regarding lost working days, see 93 CONG. REC. 1890-91 (1947), reprinted in 2 LEGISLATIVE HISTORY, *supra* note 33, at 952. Section 10(k) of the Act supplements this provision by empowering the Labor Board to hear and decide disputes over the assignment of work. See 29 U.S.C. § 160(k). See generally HENRY, *supra* note 54. For an argument that the Board, in administering its authority to resolve work-assignment disputes, has given undue weight to the preferences of employers, see Leslie, *supra* note 54.

64. Congress provided injured parties with an array of remedies for economic losses resulting from representational and jurisdictional strife. To begin with, the statute defines such conflict as an unfair labor practice and specifically gives the Labor Board the power to petition the federal district courts for injunctive relief. See Labor Management Relations (Taft-Hartley) Act § 10(j)-(l), 29 U.S.C. § 160(j)-(l) (1988) (authorizing Labor Board to seek injunctions against union practices that allegedly violate ban on inter-union strikes and providing that such matters receive expedited consideration). Moreover, § 303 of the Act declares inter-union strikes unlawful and authorizes the federal courts to award damages to any person injured thereby in the person's business or property. See *id.* § 303(a)-(b), 29 U.S.C. § 187(a)-(b) (1988).

65. Section 10(k) of the Act authorizes the Board to hear and decide such disputes but specifies that the Board must dismiss the claim where the parties submit "satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute." 29 U.S.C. § 160(k). This requirement of Labor Board deference was taken from Senator Morse's proposed statute and was designed to encourage the parties to work out private methods of dispute resolution. See 93 CONG. REC. 1911-13 (1947), reprinted in 2 LEGISLATIVE HISTORY, *supra* note 33, at 983-87.

66. Members of Congress quite clearly expressed the view that legislation

While the Taft-Hartley Act clearly articulates a federal interest in the enforcement of rival union agreements, it fails to identify any concern that would justify the federal enforcement of union constitutions. In marked contrast to its rather extensive treatment of jurisdictional warfare between rival unions, the Eightieth Congress declined to regulate the union's internal constitutional relationships. Thus, the statute does not purport to regulate the relationships between the union and its members on such matters as fines and expulsion.<sup>67</sup> Nor does the Taft-Hartley

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was required because unions had failed to adopt binding methods of private dispute resolution. See 93 CONG. REC. 1890, 1911, 1912 (1947), *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 950, 983, 985 (remarks of Sen. Morse); H.R. REP. NO. 245, 80th Cong., 1st Sess. 24 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 315 ("Union leaders themselves acknowledge the evils of [jurisdictional disputes]. . . but they have failed to provide effective remedies. The Nation must, in self-defense, provide its own remedies."); see also 93 CONG. REC. 136 (1947) (Truman's criticism of work-assignment disputes in his State of the Union Address focused on failure of unions to resolve such disputes between themselves). Senator Morse emphasized his belief that making certain kinds of jurisdictional pressure unlawful would prevent many abuses "because the unions themselves will proceed to establish within their own organizations machinery capable of settling such disputes short of economic action." *Id.* at 1911, *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 983.

Congress' prediction that the creation of a statutory penalty for jurisdictional conflict would compel unions to work out jurisdictional agreements was essentially accurate. Professor Dunlop reported that national unions entered into some 50 such agreements during the period from 1948 to 1954. See Dunlop, *supra* note 13, at 105-06. The passage of the Taft-Hartley Act undoubtedly contributed to what Dunlop labeled the "age of bilateral agreements" between competing national unions. *Id.* at 104; *cf.* Leslie, *supra* note 54, at 1488-89 (attributing building trades' plan for settling jurisdictional conflict to passage of Taft-Hartley Act).

67. To be sure, Congress established a series of union unfair labor practices aimed at particular economic weapons, such as the secondary boycott, and at union practices viewed as unfairly coercing employees into joining or retaining membership in unions. See generally 1 CHARLES J. MORRIS, *THE DEVELOPING LABOR LAW* 41-42 (2d ed. 1983); Archibald Cox, *Some Aspects of the Labor Management Relations Act, 1947, I*, 61 HARV. L. REV. 1, 24-34 (1947). Importantly, however, Congress framed its protections for individuals in terms of the job-related rights of "employees"—a term defined at some length in the statute. See Taft-Hartley Act § 2(3), 29 U.S.C. § 152(3) (1988). Although the statute thus protects individual employees from certain coercive acts and limits the manner in which unions deal with their members, it does not "undertake[]" to protect union members "in their rights as members." *International Ass'n of Machinists v. Gonzales*, 356 U.S. 617, 620 (1958) (emphasis added). Individual members did not receive such protections until Congress adopted the union members' bill of rights as Title I of the Labor Management Reporting and Disclosure Act of 1959. See 29 U.S.C. § 411.

The statute's approach to the problem of union security illustrates the regulatory focus of the Taft-Hartley Act on the rights of employees. The Taft-Hartley Act permits so-called "union shop" or "maintenance of membership" agreements but prohibits closed shop agreements under which the employer agrees to hire only union members. See generally Archibald Cox, *Some Aspects of the Labor Management Relations Act, 1947, II*, 61 HARV. L. REV. 274, 296-99 (1948).

Act purport to define the proper allocation of power between a parent union and its constituents or affiliated locals.<sup>68</sup> These statutory omissions were quite deliberate; Congress considered and

These restrictions on union security made rather dramatic inroads into the union's power to discipline its members with threats of loss of employment. *See id.* at 298-99; *see also* MILLIS & BROWN, *supra* note 61, at 429-40. The restrictions, however, were framed in terms of the rights of employees. Thus, Congress added a series of provisos to the Act that made clear its intention to leave other aspects of the relationship between the union and its members to the ordinary processes of union government. *See* Taft-Hartley Act § 8(b)(1)(A), 29 U.S.C. § 158(b)(1)(A) (1988) (proscribing coercion of employees in exercise of right to refrain from concerted action, subject to right of organization to enforce membership rules). On the basis of these provisos, a key supporter of the legislation, Senator Ball, would claim that it "was never the intention of the sponsors of the pending amendment to interfere with the internal affairs or organization of unions." 93 CONG. REC. 4400 (1947), *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 1141 (comment of Sen. Ball regarding proviso to § 8(b)(1)(A)).

68. The House bill contained a variety of provisions that sought to transfer authority over collective bargaining from the parent union to its affiliated locals. *See* H.R. REP. NO. 245, 80th Cong., 1st Sess. 35-36 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 326-27 (permitting local unions to affiliate, but only so long as they were free of common control over their collective bargaining demands and decision to strike). H.R. 3020, 80th Cong., 1st Sess. 62-64 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 92-94 (subjecting unions to antitrust treble damages in cases where they engaged in "monopoly" strikes). The Senate Labor Committee bill, S. 1126, omitted these provisions, calling instead for a careful study of internal union affairs. *See* S. REP. NO. 105, 80th Cong., 1st Sess. 46 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 452. Although Senators Ball and Taft offered amendments on the Senate floor that would have placed explicit limits on the power of international unions, the Senate rejected these "industry-wide bargaining" amendments and they were omitted from the Act. *See* H.R. CONF. REP. NO. 510, 80th Cong., 1st Sess. 46-47 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 550-51 (noting omission of House's industry-wide bargaining provision from conference agreement); 93 CONG. REC. 4803 (1947), *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 1302 (recording vote in Senate).

Perhaps the best explanation of the proposed industry-wide bargaining amendments appears in the supplemental views that Senators Taft and Ball, among others, attached to the Senate Labor Committee's report on S. 1126. Under the heading "More Autonomy for Local Unions," the Senators announced their intention to seek amendments that would check "the trend toward [n]ation-wide bargaining" and provide local employees with "some freedom from the arbitrary dictates of the leaders of national unions." S. REP. NO. 105, 80th Cong., 1st Sess. 51 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 457 (providing four supplemental views on S. 1126).

The Senate was well aware of the provisions in union constitutions through which parent unions exercised control over collective bargaining agreements. Senator Taft recounted the manner in which the Steelworkers union had invoked asset forfeiture provisions in its constitution to punish local unions in Southern Ohio that broke ranks and negotiated their own agreement with their employers. *See* 93 CONG. REC. 4706-07 (1947), *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 1239-40. Elsewhere, he described the use by internationals of fines, charter revocations and receiverships as examples of improper coercion, and explained that these "are the methods we are trying to stop." *Id.* at 4713, *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 1253.

rejected a series of provisions that would have regulated internal union affairs in some detail.<sup>69</sup> In the wake of such a refusal to legislate, it is difficult to identify a federal interest that would justify a congressional (or judicial) decision to authorize the federal courts to enforce union constitutions.<sup>70</sup>

## 2. *The Argument From Drafting History*

The drafting history of the Taft-Hartley Act confirms that concern with the enforcement of agreements between unions, and not the enforcement of union constitutions, led Congress to add the “between-labor-organizations” clause to section 301. The conferees agreed to work from the Senate version of the bill, which provided that the federal courts and the Labor Board

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69. In addition to provisions that would have shifted power from the national to the local union, the House version of the bill included many provisions that explicitly regulated the relationship between the union and its members. Section 8(c) of the House bill made it an unfair labor practice for a labor organization to charge initiation fees in excess of \$25 per member, to require members to participate in benefit plans, to limit the member’s ability to resign, to expel or discriminate against members for having exercised political independence and to expel members except for defined acts of misconduct or without according them such due process protections as a fair hearing. See H.R. 3020, 80th Cong., 1st Sess. § 8(c), at 22-26 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 52-56.

The House Minority report criticized these provisions as “attempting the impossible, *i.e.*, attempting a regulation of the infinite details involved in the internal functioning of thousands of trade-unions having millions of members.” H. MIN. REP. NO. 245, 80th Cong., 1st Sess. 76 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 367. Similar opposition surfaced in the Senate, and these provisions were largely dropped in conference. See H.R. CONF. REP. NO. 510, 80th Cong., 1st Sess. 8 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 512.

70. Opponents of Taft’s proposal mounted a spirited defense of industry-wide bargaining. See 93 CONG. REC. 4570-71 (1947), *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 1221-22 (remarks of Sen. Revercomb regarding stability in glass industry bargaining); *id.* at 4569-70, *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 1220 (remarks of Sen. Lodge regarding stability in shoe industry with one large union organization); *id.* at 4791-92, *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 1282 (remarks of Sen. Ives citing study results showing stability in trades with industry-wide bargaining). They also argued that Congress should refrain from intervening in the structure and government of labor unions. See *id.* at 4795, *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 1287 (“I do not think it should be considered to be within the prerogatives of the Congress of the United States to tell the unions by just what delegation procedure they shall reach their collective bargaining agreements.” (remarks of Sen. Morse)); *id.* at 4794, *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 1287 (criticizing amendment as effort to have Congress “step in and dictate the terms of the constitution of an international union, adopted by such international union through its locals operating under the government of the international”). After rejecting industry-wide bargaining initiatives, Congress could scarcely justify an amendment to § 301(a) to provide the federal courts with power to police relations between the international and its subordinate bodies.

would share responsibility for the enforcement of labor contracts.<sup>71</sup> The Senate effected this division of responsibility by restricting the application of section 301 to suits for violations of collective bargaining agreements<sup>72</sup> and by including unfair labor practice provisions that gave the Labor Board responsibility for enforcing both collective bargaining agreements and arbitration agreements.<sup>73</sup> The unfair labor practice provisions were drawn broadly enough to vest the Labor Board with the power to police not only employer-union arbitration agreements, but also the inter-union arbitration agreements that Congress expected unions to draft as a way of avoiding liability for jurisdictional strikes.<sup>74</sup>

The House conferees vehemently opposed all provisions that gave the Labor Board responsibility for policing labor contracts and arbitration agreements.<sup>75</sup> Their opposition produced a series

71. The House conferees' agreement to work from the Senate bill reflected their understanding that a presidential veto was likely and that dramatic changes in the Senate bill would reduce the likelihood of a successful override in that chamber. An override in the House was virtually assured. See MILLIS & BROWN, *supra* note 61, at 384.

72. Although the House and Senate versions of § 301(a) both provided federal courts with jurisdiction over actions to enforce labor contracts, the two chambers disagreed concerning the scope of federal power. The House version conferred jurisdiction on the federal courts to hear any action "involving a violation of an agreement between an employer and a labor organization." H.R. 3020, 80th Cong., 1st Sess. 64 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 221, (quoting § 302(a)). The Senate version applied more narrowly to contracts concluded "as a result of collective bargaining." H.R. 3020, 80th Cong., 1st Sess. 121 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 279 (quoting Senate version of § 301(a)).

73. Sections 8(a)(6) and 8(b)(5) of the Senate bill made it unlawful for employers and unions to "violate the terms of a collective-bargaining agreement or the terms of an agreement to submit a labor dispute to arbitration" and thus gave the Labor Board a measure of responsibility for enforcing such agreements. See H.R. 3020, 80th Cong., 1st Sess. 81 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 239 (setting forth Senate version of § 8(a)(6)); H.R. 3020, 80th Cong., 1st Sess. 83-84 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 241-42 (setting forth Senate version of § 8(b)(5)). The Senate report on the bill makes clear that the upper chamber contemplated that the Labor Board and the federal courts would exercise overlapping jurisdiction. The report describes § 301 as applying to actions for breach of collective bargaining agreements and indicates that it "should be read in connection with the provisions of § 8 of Title I also dealing with breach of contracts." S. REP. No. 105, 80th Cong., 1st Sess. 30 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 436.

74. By treating collective agreements and arbitration agreements as separate instruments and by making them both enforceable, the language of the deleted unfair labor practice provision contemplated that unions might agree to arbitration through instruments other than the collective agreement. It thus contemplated Labor Board enforcement of inter-union arbitration agreements. For a discussion of the deleted unfair labor practice provision, see *supra* note 73.

75. The House's hostility towards the Labor Board was clearly reflected in

of changes in the bill, including the deletion of unfair labor practice provisions that had given the Labor Board power to enforce arbitration agreements.<sup>76</sup> The conferees also agreed to delete a reference from section 10(k) that authorized the Labor Board to appoint an arbitrator to hear and decide jurisdictional disputes between rival unions.<sup>77</sup> Having stripped the Labor Board of all responsibility for the arbitration of inter-union disputes, the conferees apparently agreed to transfer enforcement authority to the federal courts.<sup>78</sup> The conferees' desire to complete this transfer of authority best explains why they provided, in section 301(a), for federal court enforcement of contracts "between labor organizations."

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its bill. Section 102 of the House bill abolished the National Labor Relations Board and created in its place a Labor-Management Relations Board. *See* H.R. 3020, 80th Cong., 1st Sess. 51-53 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 208-10. Under the House bill, the new Board was to have no role in the enforcement of labor contracts. *See* 93 CONG. REC. 6600 (1947), *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 1539 (statement of Sen. Taft). Counsel to the Senate Labor Committee later revealed that the House conferees displayed a consistent pattern of hostility towards arbitration in general and to the Labor Board's role in arbitration in particular. The House conferees also strongly favored a judicial, rather than administrative, approach to policing labor contracts. *See* Gerard D. Reilly, *The Legislative History of the Taft-Hartley Act*, 29 GEO. WASH. L. REV. 285, 299 (1960). Among other conference changes, this hostility resulted in the elimination of references to Labor Board-sponsored arbitration from § 10(k). *Id.*

76. *See* H.R. CONF. REP. NO. 510, 80th Cong., 1st Sess. 7-8 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 511-12 (reflecting deletion of unfair labor practice provisions in § 8(a)(6), 8(b)(5)). For authority that links the deletion of these unfair labor practice provisions to the House's preference for judicial enforcement, *see infra* note 78.

77. *See* H.R. CONF. REP. NO. 510, 80th Cong., 1st Sess. 15 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 519 (quoting provision of § 10(k)); *id.* at 57, *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 561 (noting deletion of provision for Board-appointed arbitration of jurisdictional strikes). The conference committee's decision to delete the provision calling for appointment of an arbitrator to hear and decide the jurisdictional dispute was not explained in the committee's report.

78. Two sources link the deletion of Senate provisions for arbitration in § 8(a)(6) and 8(b)(5) to the conferees' expansion of the language of § 301. First, a statement by Senator Taft that has been accepted by courts and commentators as an important guide to the compromises made in conference explains that the House conferees objected to the Labor Board's contract-enforcement role and wanted to transfer this responsibility to the courts. *See* 93 CONG. REC. 6600 (1947), *reprinted in* 2 LEGISLATIVE HISTORY, *supra* note 33, at 1539. Second, the report of the conference committee explained that these changes were intended to transfer authority for the enforcement of such contracts from the Labor Board to the federal courts in keeping with "the usual processes of the law." H.R. CONF. REP. NO. 510, 80th Cong., 1st Sess. 41-42 (1947), *reprinted in* 1 LEGISLATIVE HISTORY, *supra* note 33, at 545-46.

### C. *The Emerging Consensus*

Early judicial developments were consistent with the language, structure and history of section 301(a)'s between-labor-organizations clause. Most federal courts during the 1950s took the view that the union constitution regulated the affairs *within* a labor organization<sup>79</sup> and thus did not satisfy section 301(a)'s reference to "contracts . . . *between* any such labor organizations."<sup>80</sup> The federal courts also consistently ruled that the statute gave them the power to enforce no-raid agreements between rival unions.<sup>81</sup> Commentators in the 1950s generally agreed with the judicial view that section 301(a)'s between-labor-organizations clause federalized no-raid agreements between national unions, but left internal disputes over the union constitution in the hands of state

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79. Early decisions occasionally recognized that the statutory term "contract" might apply to the constitution and laws of labor unions, but avoided the question whether the union constitution was a § 301 contract by holding that the statute did not authorize individual union members to bring enforcement proceedings. *See Adams v. International Bhd. of Boilermakers*, 262 F.2d 835, 838 (10th Cir. 1958) (holding section 301 limited to suits between employer and labor unions or suits between labor unions—not suits between labor union and members); *Murphy v. Hotel & Restaurant Employees Int'l Union*, 102 F. Supp. 488, 490-92 (E.D. Mich. 1951) (finding effect of § 301 was not to vest general jurisdiction in federal courts for suits by or against labor unions).

Courts more frequently held that such internal documents governed the affairs of a single labor organization. Thus, "family squabble[s]" between constituent bodies of a single union, *see Sun Shipbuilding & Dry-Dock Co. v. Industrial Union of Marine & Shipbuilding Workers*, 95 F. Supp. 50, 53 (E.D. Pa. 1950), even those that ranged "from top to bottom," *Kriss v. White*, 87 F. Supp. 734, 735 (N.D.N.Y. 1949), failed to satisfy the jurisdictional requirement that the dispute involve a contract between separate labor organizations. *See also United Elec. Workers v. Wagner Elec. Corp.*, 109 F. Supp. 675, 684 (E.D. Mo. 1951); (upholding federal jurisdiction in dispute involving breach of collective agreement where rival unions involved); *Snoots v. Vejlupek*, 87 F. Supp. 503, 504 (N.D. Ohio 1949) (holding § 301 "not meant to aid the settling of intra-union fights").

80. For the text of § 301(a), *see supra* note 8.

81. *See, e.g., International Bhd. of Firemen v. International Ass'n of Machinists*, 338 F.2d 176 (5th Cir. 1964) (noting section 301 provides federal court jurisdiction once requisite jurisdiction over arbiter is found); *United Textile Workers v. Textile Workers Union*, 258 F.2d 743 (7th Cir. 1958) (holding private no-raiding agreement between unions enforceable under § 301); *cf. Schatte v. International Alliance of Theatrical Stage Employees*, 182 F.2d 158, 164 (9th Cir. 1950) (suggesting that no-raid agreement between Carpenters and IATSE would have been enforceable under § 301(a) but for fact that alleged breach of contract took place before effective date of statute), *cert. denied*, 340 U.S. 827 (1950). *But cf. International Union of Doll & Toy Workers v. Metal Polishers Int'l Union*, 180 F. Supp. 280 (S.D. Cal. 1960) (declining to enforce no-raid award to avoid interference with primary jurisdiction of NLRB). For accounts of the Textile Workers' dispute, *see Benjamin Aaron, Interunion Representation Disputes and the NLRB*, 36 TEX. L. REV. 846, 846-49 (1958); Meltzer, *supra* note 8, at 295-301.

courts.<sup>82</sup>

The language and history of the LMRDA<sup>83</sup>—the “first comprehensive regulation by Congress of the conduct of internal union affairs”<sup>84</sup>—appear to confirm the consensus interpretation of section 301.<sup>85</sup> The LMRDA established a series of protections for individual union members and subjected labor unions and their officers to a range of reporting, disclosure and fiduciary requirements.<sup>86</sup> Congress was acutely aware of the possibility that this wide array of regulations would destroy existing state protections through application of the preemption doctrine.<sup>87</sup> It thus adopted a series of “savings” provisions that explicitly preserved state and federal rights.<sup>88</sup> As Professor Clyde Summers, a close

82. See Meltzer, *supra* note 8, at 297 (commenting that no-raid pacts represent primary type of inter-union agreement to which § 301(a) applies); Comment, *supra* note 8 (arguing that § 301(a) properly applies to no-raid agreements and should not be extended to actions for breach of union constitution).

83. Pub. L. No. 86-257, 73 Stat. 519 (1959) (codified at 29 U.S.C. §§ 401-531 (1988)).

84. NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 193 (1967).

85. Although the statements of the 1959 Congress do not provide a definitive guide to the construction of the 1947 Taft-Hartley Act, the Supreme Court recognized that, “as another step in an evolving pattern of regulation of union conduct, the 1959 Act is a relevant consideration.” NLRB v. Drivers Local 639, Int’l Bhd. of Teamsters, 362 U.S. 274, 291 (1960).

86. Title I of the LMRDA establishes a so-called “bill of rights” for individual union members, ensuring them the equal right to vote and participate in union affairs, the right to express their opinions free from retaliation, the right to due process in internal disciplinary proceedings, and the right to sue. See 29 U.S.C. § 411(a)(1)-(5) (1988). Title I also creates a federal cause of action to enforce these rights. See *id.* § 412. Title II of the LMRDA imposes certain reporting requirements on union, employers and labor persuaders. See *id.* §§ 431-440. Title III limits the duration of trusteeships and requires the parent union to file periodic reports concerning the status of subordinates under trusteeship. See *id.* §§ 461-466. Title IV governs union elections. See *id.* §§ 481-484. Title V imposes fiduciary obligations on the officers of labor organizations and requires such officers to post bonds. See *id.* §§ 501-504. Title VI includes a series of miscellaneous provisions including bans on extortionate picketing, and a broad non-preemption provision. See *id.* §§ 522-523. For an overview, see Benjamin Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 HARV. L. REV. 851 (1960); Archibald Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 MICH. L. REV. 819 (1960); Russell A. Smith, *The Labor-Management Reporting and Disclosure Act of 1959*, 46 VA. L. REV. 195 (1960).

87. The preemptive effect of its legislation became an issue in the Senate during the debates over the Kennedy-Ives bill, a 1958 predecessor to the LMRDA, when the ACLU raised the possibility that federal regulation of union elections might displace state remedies. See Summers, *Pre-Emption*, *supra* note 5, at 122.

88. See LMRDA § 101, 29 U.S.C. § 411 (preserving state and federal remedies for individual union members); *id.* § 306, 29 U.S.C. § 466 (declaring federal trusteeship relationships supplemental to state remedies); *id.* § 403, 29 U.S.C. § 483 (providing exclusive federal remedy for challenges to union elections); 29 U.S.C. § 623 (providing generally that federal regulation, except as specifically

observer of the LMRDA, remarked shortly after Congress passed the statute: "Congress considered the union constitution as the main core of the state law to be preserved and it found no fault in state court interpretation of it."<sup>89</sup>

By the end of the Eisenhower era, in short, there was a broad consensus that actions to enforce the union constitution were to be decided in the state court system. Lower federal courts refused to assert jurisdiction over the union constitution under the between-labor-organizations clause of section 301(a), and the commentators agreed with their interpretation. Moreover, Congress adopted the LMRDA on the assumption that the state courts' historic control over disputes arising from the union constitution not only survived the passage of the Taft-Hartley Act in 1947, but also flourished sufficiently to deserve congressional protection. As the next section makes clear, however, the consensus did not survive.

#### D. *The Judicial Transformation of Section 301(a)*

It was not a mere coincidence that the remarkable change in the interpretation of section 301(a) followed the passage of the LMRDA. The LMRDA established federal statutory rights to fair treatment in internal union affairs<sup>90</sup> and explicitly authorized union members and local unions to sue in federal court to vindicate such rights.<sup>91</sup> The statute thus transferred a host of disputes to federal court that had previously been resolved in state fora. Such disputes often raised questions of federal law that indirectly implicated the union constitution.<sup>92</sup> Moreover, union members

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stated to contrary, shall not limit obligations of labor organizations and their officers under state law). Congress also amended § 14 of the NLRA in response to the Supreme Court's preemption decision in *Guss v. Utah Labor Relations Bd.*, 353 U.S. 1 (1957). See 29 U.S.C. § 164(c).

89. Summers, *Pre-Emption*, *supra* note 5, at 144. It is worth noting that Professor Summers' exhaustive discussion of the preemptive effect of the 1959 labor reform act fails to admit the possibility that § 301 had transferred litigation over the meaning of the union constitution into the federal domain. Indeed, Summers assumes that state law would continue to govern the interpretation of the union constitution and proceeds to review at some length the interpretive problems posed by overlapping or coexisting state and federal rights. *Id.* at 143-52.

90. For a description of the LMRDA protections, see *supra* note 86.

91. See 29 U.S.C. § 411(d) (1988) (protection of right to sue); *id.* § 412 (civil action for enforcement); *id.* § 413 (retention of existing rights). For a discussion of individual member suits, see *infra* notes 143-73 and accompanying text.

92. Federal courts must construe union constitutions to decide such questions under the LMRDA as whether (1) a union's violation of its members' equal right to vote violates 29 U.S.C. § 411(a)(1); (2) a union's proposed justification

and local unions often joined their federal statutory claims with actions for breach of the union constitution.<sup>93</sup> Litigants who sought to enforce rights under the LMRDA thus more frequently argued that the open-ended language of section 301(a) embraced suits to enforce the union constitution.<sup>94</sup>

A close review of the leading decisions suggests that the lower federal courts accepted this argument, in the face of strong contrary authority, for essentially pragmatic reasons. Indeed, in *Parks v. International Brotherhood of Electrical Workers*,<sup>95</sup> the leading analysis of the Taft-Hartley Act's between-labor-organizations clause in the years immediately following the passage of the LMRDA, the Court of Appeals for the Fourth Circuit relied specifically on the capacity of section 301(a) to fill gaps in the LMRDA and to provide litigants with complete relief.<sup>96</sup> These practical concerns played a large part in the court's decision that section 301(a) applied to actions to enforce the union constitution.

The difficulty for the *Parks* court stemmed from the local union's claim that the revocation of its charter violated both the LMRDA and the International Brotherhood of Electrical Workers

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of member discipline meets the "reasonable rules" test under 29 U.S.C. § 411(a)(2); (3) a union constitution authorizes imposition of a trusteeship as allowed under 29 U.S.C. § 426; or (4) an officer charged with fiduciary breach has complied with the constitution as required by 29 U.S.C. § 501(a).

93. For examples of such joinder and a discussion of attendant issues, see *infra* note 117. Professor Summers recognized the inevitability of such joinder in litigation arising under the LMRDA and argued for an expansive interpretation of state concurrent and federal pendent jurisdiction to allow both fora to hear the entire dispute. Summers, *Pre-Emption*, *supra* note 5, at 143-53.

94. For example, many local union members challenged the denial of their right to ratify collective bargaining agreements as a violation of the union constitution and of their equal right to vote under the LMRDA. For examples of such cases, see *infra* note 117. Union members removed from office or subjected to disciplinary proceedings frequently assert claims under both the LMRDA and the union constitution. See, e.g., *Kinney v. International Bhd. of Elec. Workers*, 669 F.2d 1222, 1225 (9th Cir. 1981) (union officer arguing removal from position violated 29 U.S.C. §§ 411, 529 and union constitution); *Cehaich v. International Union of Automobile Workers*, 496 F. Supp. 912, 913 (E.D. Mich. 1980) (union member challenged removal as unpaid benefits representative under LMRDA and union constitution), *aff'd*, 710 F.2d 234 (1983); *Vincent v. Plumbers & Steamfitters Local No. 198*, 384 F. Supp. 1379 (M.D. La. 1974) (union member denied membership when he moved to new state challenged action under provisions of 29 U.S.C. §§ 411-412).

95. 314 F.2d 886 (4th Cir.), *cert. denied*, 372 U.S. 976 (1963).

96. *Id.* at 916. An earlier decision by the Court of Appeals for the Second Circuit relied exclusively on the open-ended language of § 301(a) and failed to consider the history or previous interpretation of the Taft-Hartley Act. See *Local 33, Int'l Hod Carriers v. Mason Tenders Dist. Council*, 291 F.2d 496, 501-02 (2d Cir. 1961) (declaring that "provisions of section 301(a) are simple and direct").

(IBEW) constitution.<sup>97</sup> Although the court readily disposed of the LMRDA claims,<sup>98</sup> the appeal was complicated by the international union's argument that federal courts lacked power to hear the parties' dispute over the proper interpretation of the union constitution.<sup>99</sup> A dismissal on jurisdictional grounds would have

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97. *Parks*, 314 F.2d at 890-91. In *Parks*, the Baltimore local of the Electrical Workers called a strike in support of its demand for higher wages without first obtaining approval from the international union as the constitution apparently required. *Id.* at 899. After conducting a hearing, the international revoked the local's charter, issued a charter to a new local union and took steps to foster collective bargaining between the new local and the contractors' association. *Id.* at 900-01. The old local and its members brought suit in federal district court claiming that the charter revocation violated the LMRDA and the union constitution. *Id.* at 902. From an order of the district court granting a portion of the relief sought, both parties appealed. *Id.* at 891-92.

The dispute in *Parks* focused on the power of the international to insist that the Maryland local surrender its right to strike for higher wages in exchange for the right to submit disputes over wages and working conditions to an industry-wide interest arbitration panel comprised of representatives from the union and the national contractors' association. *Id.* at 898. The Maryland local had grown disenchanted with interest arbitration after the panel issued a wage award lower than that the membership desired. The local's attempt to escape from the interest arbitration process and reestablish its right to strike was foiled by an "evergreen" clause that required future submission to interest arbitration as an element of each panel award. *Id.* The district court's view that this "evergreen" clause represented an illegal curtailment of the local's right to strike lay at the center of its decision to grant relief. *Id.* at 909. The Court of Appeals for the Fourth Circuit disagreed with the district court's conclusion that the "evergreen" clause rendered the international's action in disciplining the local unlawful. *Id.* at 909-10.

The district court rejected the old local's claim that the international had evaded the trusteeship provisions of Title III of the LMRDA by revoking its charter—a determination the Fourth Circuit upheld on appeal. *Id.* at 924. The district court found, however, that the decision of the international president to revoke the charter denied the local its statutory right to an impartial tribunal and violated the president's fiduciary obligations under the union constitution. *Id.* at 904. Although the Fourth Circuit agreed that these violations were legitimate theoretical grounds for intervention under the LMRDA, it disagreed that actual violations of the statute had been shown. *Id.* at 904, 913-14.

98. *Id.* at 906-07. The court was satisfied that the international president acted within his authority under the constitution in effecting the charter revocation and that federal courts had no roving authority, in the name of local autonomy, to alter the allocation of power set forth in the union's fundamental laws. *Id.* On this basis, the court concluded that the international did not violate the LMRDA, either by failing to provide the local with an unbiased tribunal or by imposing an excessively harsh sanction. *Id.* at 907.

99. The local argued strenuously that the international had no power under the constitution to exercise supervisory authority over its strike. *Id.* at 890. Even assuming that the international acted within its constitutional rights in suspending the local's charter, the local and its members raised substantial questions concerning the members' right to transfer their membership to the new local and to retain their stake in certain local pension and benefit plans. *Id.* at 926. Although the union constitution governed both questions, the IBEW argued that the court lacked power under § 301(a) to resolve them. *Id.* at 914.

enabled the old local and its members to relitigate their challenge to the exercise of parental discipline in a subsequent state court proceeding.

The court averted this distasteful possibility by holding that section 301(a) embraced suits for violation of the union constitution,<sup>100</sup> at least in cases where the dispute had “traumatic industrial and economic repercussions.”<sup>101</sup> In a remarkably frank opinion for the court, Judge Sobeloff admitted that neither the history of section 301(a) nor the decided cases supported the assertion of jurisdiction over the union constitution.<sup>102</sup> The court nonetheless deemed it permissible to adopt what it termed a literal interpretation of the statute—one that supported jurisdiction. In a footnote, the court observed that a broad construction of section 301(a) advanced the regulatory scheme of the LMRDA by “making a whole remedy available in a federal court when the same conduct inflicts injury, adjudicable under LMRDA, upon individual members and also injury, not adjudicable under LMRDA, upon local unions.”<sup>103</sup>

As construed in *Parks*, section 301(a) established less an independent federal right to enforcement of the union constitution than a source of discretionary federal power over disputes under the LMRDA, a source of power closely resembling that available today under the doctrine of supplemental jurisdiction.<sup>104</sup> First ar-

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100. *Id.* at 916. This holding, coupled with the court’s finding that the Norris-LaGuardia bar to the issuance of labor injunctions had no application in enforcing the union constitution, clothed the district court with the power, on remand, to resolve all matters in dispute between the parties. *Id.* at 917-19. The court carefully protected the thrust of its decision upholding the assertion of parental control by making clear that the recognition of federal court jurisdiction to enforce the union constitution did not imply any judicial power to “re-make the contract by introducing even salutary provisions not legislatively prescribed or necessarily implied.” *Id.* at 917.

101. *Id.* at 916. This reference to the importance of some industrial impact was apparently drawn from *Retail Clerks International Ass’n, Local Unions Nos. 128 & 633 v. Red Lion Dry Goods, Inc.*, 369 U.S. 17 (1962). In *Retail Clerks*, the Supreme Court asserted jurisdiction over a strike settlement agreement on the ground that it was a contract between an employer and a union “significant to the maintenance of labor peace between them.” *Id.* at 28.

102. The Fourth Circuit noted that the legislative history of the Taft-Hartley Act failed to disclose a definitive interpretation of the between-labor-organizations clause of § 301. *Parks*, 314 F.2d at 915. The court went on to collect authority from courts and commentators to the effect that the clause was not meant to apply to the union constitution. *Id.* at 915 nn.47-48.

103. *Id.* at 916 n.50.

104. Supplemental jurisdiction, which refers to the power of federal courts to hear claims over which they lack an independent basis of jurisdiction, embraces both pendent and ancillary jurisdiction. For useful reviews of the origins of the doctrine, see WRIGHT et al., *supra* note 11, § 3567, at 106-61; Thomas M.

ticulated in its modern form three years after the *Parks* decision,<sup>105</sup> the doctrine of supplemental jurisdiction enables federal district courts to hear state law claims that arise from the same common nucleus of operative facts that give rise to jurisdictionally sufficient federal claims.<sup>106</sup> As recently codified by Congress,<sup>107</sup> the doctrine would have enabled the *Parks* district court to hear the local union's claims for breach of the union constitution, by treating them not as federal law claims under section 301(a), but as state law claims cognizable under supplemental jurisdiction.<sup>108</sup>

Whatever one's view of the Fourth Circuit's use of section 301(a) to solve litigation problems that courts today might choose to address by invoking supplemental jurisdiction,<sup>109</sup> the *Parks* ap-

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Mengler, *The Demise of Pendent and Ancillary Jurisdiction*, 1990 B.Y.U. L. REV. 247, 250-55; Wendy C. Perdue, *Finley v. United States: Unstringing Pendent Jurisdiction*, 76 VA. L. REV. 539, 541-51 (1990).

105. See *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).

106. *Id.* at 725. In adopting the common nucleus test, the *Gibbs* Court rejected as "unnecessarily grudging" earlier decisions that authorized the exercise of pendent jurisdiction only in cases where state law claims could be considered but a single "cause of action." *Id.* See generally Note, *The Evolution and Scope of the Doctrine of Pendent Jurisdiction in the Federal Courts*, 62 COLUM. L. REV. 1018 (1962) (surveying exercises of pendent jurisdiction under "single cause of action" standard).

107. See 28 U.S.C. § 1367 (Supp. 1990) (codifying doctrine of supplemental jurisdiction). For a summary of the factors that led to the doctrine's codification, see Thomas M. Mengler et al., *Congress Accepts Supreme Court's Invitation to Codify Supplemental Jurisdiction*, 74 JUDICATURE 213 (1991). For a critique of the new statute, see Richard D. Freer, *Compounding Confusion and Hampering Diversity: Life After Finley and the Supplemental Jurisdiction Statute*, 40 EMORY L.J. 445 (1991) (arguing that statute is biased against diversity jurisdiction, restricts pendent party jurisdiction in alienage cases and is generally poorly drafted and confusing).

108. The state law claims for breach of the IBEW constitution in *Parks* plainly arose from the same "common nucleus" of operative facts as the local's challenge to its charter revocation under the LMRDA. They would thus satisfy the supplemental jurisdiction test as claims arising from a single constitutional case or controversy. See 28 U.S.C. § 1367. For a discussion of the facts in *Parks*, see *supra* notes 97-99 and accompanying text.

109. The availability of the supplemental jurisdiction alternative complicates the assessment of the Fourth Circuit's interpretation of § 301(a) in *Parks*, at least for those who believe that the absence of historical support does not end the discussion. On the one hand, the availability of an alternative basis for the assertion of federal power suggests that courts can achieve the *Parks* court's efficiency goals without reading § 301(a) in a way that threatens state control over actions to enforce the union constitution. On the other hand, the theoretical difference in the basis on which federal courts assert jurisdiction over the union constitution may not affect the outcome of every dispute, especially in areas where the undeveloped character of state law provides federal courts with discretion in "finding" the state law that would control pendent claims. The debate over the approach in *Parks* focuses less on its concrete impact on a specific dispute than on its threat to state court competence through the application of the

proach proved extremely influential. Appellate courts generally agreed with the conclusion in *Parks* that while section 301(a) embraced certain internal disputes, state courts were to retain control over many claims for breach of the union constitution.<sup>110</sup> Other courts thus followed the Fourth Circuit's lead in holding that section 301(a) embraced only those claims that arose from internal union disputes that produce what later became known as a "significant impact" on industrial relations.<sup>111</sup> Finally, as they struggled to define the scope of federal power, the courts were often reluctant to assert jurisdiction except in cases where enforcement of the union constitution would provide relief that was required by the structure of the LMRDA.

Decisions that invoked *Parks* as authority for enforcing union trusteeships illustrate the influence of the LMRDA in the assertion of section 301(a) jurisdiction.<sup>112</sup> Although the LMRDA does not explicitly authorize parent unions to sue in federal court to obtain an order compelling a defiant local union to comply, it does declare, as a matter of federal law, that lawful trusteeships enjoy a presumption of validity.<sup>113</sup> The presumption attaches for a period of eighteen months to any trusteeship that the parent union imposes, after a fair hearing, for one of four statutorily-

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§ 301 preemption-removal doctrine. For a discussion of the role of § 301 in the *Parks* decision, see *supra* notes 100-03 and accompanying text.

110. See *Local Union 1219, United Bhd. of Carpenters v. United Bhd. of Carpenters*, 493 F.2d 93, 96 (1st Cir. 1974) (citing *Parks* in support of decision upholding assertion of § 301 jurisdiction); *Abrams v. Carrier Corp.*, 434 F.2d 1234, 1248 (2d Cir. 1970) (same); *Brotherhood of Painters v. Brotherhood of Painters*, *Local Union 127*, 264 F. Supp. 301, 305 (N.D. Cal. 1966) (same).

111. See, e.g., *Local 334*, 628 F.2d 812, 818 (3d Cir. 1980), *rev'd*, 452 U.S. 615 (1981). The federal courts expressed concern that a completely open-ended assertion of jurisdiction would invite a flood of litigation. As a consequence, they limited the scope of § 301 jurisdiction to disputes that entailed a "significant impact on labor-management relations or industrial peace." *Id.*; see also *Stelling v. International Bhd. of Elec. Workers Local Union No. 1547*, 587 F.2d 1379, 1384 (9th Cir. 1978) (holding that § 301 provides basis for jurisdiction when controversy will have a major impact on external labor relations), *cert. denied*, 442 U.S. 944 (1979); *Local Union No. 657 of United Bhd. of Carpenters v. Sidell*, 552 F.2d 1250, 1255 (7th Cir.) (holding that § 301 does not apply where there are no extrinsic effects that would adversely impact labor-management relationships), *cert. denied*, 434 U.S. 862 (1977). The test was clearly aimed at limiting federal jurisdiction to those disputes that posed some threat to stable labor-management relations and to avoid hearing disputes over purely internal union affairs that touched upon little of federal concern.

112. For background on the origins of the union trusteeship regulations in Title III of the LMRDA, see *infra* notes 183-98 and accompanying text.

113. See LMRDA § 304(c), 29 U.S.C. § 464(c) (1988) (trusteeships established in conformance with union constitution or bylaws and properly authorized and ratified "shall be presumed valid").

approved purposes.<sup>114</sup> Reasoning that such statutory provisions implicitly approve of proper trusteeships, the federal courts have held that section 301(a) empowers them to entertain a parent's action to enjoin its local union from disobeying a trusteeship that passes muster under the LMRDA.<sup>115</sup>

While the federal courts were thus occasionally successful in using section 301(a) to supplement the LMRDA, they proved largely incapable of developing a consistent approach to the exercise of federal power. Some courts refused to assert jurisdiction over certain kinds of disputes on the ground that the required impact on industrial relations was missing.<sup>116</sup> Other courts held

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114. *Id.* Parent unions may lawfully impose trusteeships to correct corruption or financial malpractice, to assure the performance of collective bargaining agreements, to restore democratic procedures and to otherwise carry out the legitimate objects of the organization. *Id.* § 302, 29 U.S.C. § 462.

115. The LMRDA explicitly provides for suits by individual union members and subordinate bodies to challenge a trusteeship. *Id.* § 304(a), 29 U.S.C. § 464(a). The statute does not provide, however, for federal court enforcement of the trusteeship by the union or trustee. *See* Beard, *supra* note 43, at 517 (“[N]o provision is made in the Act for suits to effectuate a trusteeship by either the union imposing it or the designated trustee.”). In early decisions in Puerto Rico, the federal courts refused to take cognizance of actions by the parent to enforce trusteeships. *See* *Union de Trabajadores Industriales v. Union de Empleados*, 55 Lab. Cas. (CCH) ¶ 11,938 (D.P.R. 1967) (holding that Title III does not contemplate suit against employer who has nothing to do with administration or imposition of trusteeship); *Ramos Ducos v. Maldonado*, 207 F. Supp. 271, 273 (D.P.R. 1962) (holding no jurisdiction provided for action by trustee against subordinate body).

The late Judge Friendly recognized that the prospect of local union non-compliance was inconsistent with the structure of federal trusteeship provisions, which assumed that litigation over the propriety of the trusteeship would proceed with the trusteeship in place. In *National Ass'n of Letter Carriers v. Sombrotto*, 449 F.2d 915 (2d Cir. 1971), he relied upon *Parks* to support his decision that § 301 supplied a jurisdictional basis for a parent union's action to obtain an injunction directing local union officials to comply with a trusteeship that otherwise met federal standards. *Id.* at 918-21. Other federal courts had previously upheld the use of § 301 to implement a trusteeship. *See* *Brotherhood of Painters v. Brotherhood of Painters, Local 127*, 264 F. Supp. 301, 306 (N.D. Cal. 1966) (stating that international may bring suit under § 301 to have trusteeship enforced). Judge Friendly's opinion in *Sombrotto*, however, has been the decisive factor in the widespread federal recognition of the availability of injunctive relief to implement trusteeships. *See* *International Bhd. of Boilermakers v. Olympic Plating Indus., Inc.*, 870 F.2d 1085, 1088 (6th Cir. 1989) (citing *Sombrotto*); *International Bhd. of Boilermakers v. Local Lodge 714, Int'l Bhd. of Boilermakers*, 845 F.2d 687, 691 (7th Cir. 1988) (same); *Hansen v. Guyette*, 814 F.2d 547, 552 (8th Cir. 1987) (same).

116. One can understand the “significant impact” test as permitting federal courts to hear only those disputes that implicate the federal interest in avoiding work stoppages. *Compare* *Local Union No. 657 of United Bhd. of Carpenters v. Sidell*, 552 F.2d 1250, 1252-56 (7th Cir. 1977) (asserting jurisdiction over local union's challenge to order from international union directing it to affiliate with district council) *and* *Local Union 1219, United Bhd. of Carpenters v. United Bhd. of Carpenters*, 493 F.2d 93, 96 (1st Cir. 1974) (upholding § 301 jurisdic-

that section 301(a) jurisdiction was a doctrine of last resort, available for use in cases where they could not definitively resolve a dispute under other federal labor statutes but unavailable in cases where such federal statutes would dispose of the claim.<sup>117</sup> As a

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tion over suit in which newly chartered local asserted that parent failed to provide support in local's jurisdictional disputes with other locals) *with Hotel & Restaurant Employees Local 400 v. Svacek*, 431 F.2d 705, 706 (9th Cir. 1970) (refusing to hear local union's action to collect fine from wayward member by stating union constitution not "contract" authorizing district court jurisdiction where dispute is intra-union problem not related to collective bargaining agreement).

Unfortunately, the ad hoc character of the decisions left the federal interest in enforcing union constitutions largely undefined. In disputes over changes in work standards that the parent imposed from above, courts have found a significant impact where the local brought suit but failed to recognize such an impact where the local's acceptance of the parent's authority forced members to bring suit. *See Trail v. International Bhd. of Teamsters*, 542 F.2d 961, 963-65, 968 (6th Cir. 1976) (refusing to assert jurisdiction over action brought by individual union members who challenged action by local and international union implementing amendment to collective contract without submitting change for membership ratification; no analysis of impact). *Compare Stelling v. International Bhd. of Elec. Workers Local Union No. 1547*, 587 F.2d 1379, 1382, 1384 (9th Cir. 1978) (concluding that members' suit challenging national pension plan agreement that local's business agent signed over members' protest at specific direction of international president failed to allege sufficient impact on labor-management relations), *cert. denied*, 442 U.S. 944 (1979) and *Alexander v. International Union of Operating Eng'rs*, 624 F.2d 1235, 1236, 1239 (5th Cir. 1980) (same; international project agreement) *with Sidell*, 552 F.2d at 1251, 1255-56 (finding significant impact where local union opposed parental directive to affiliate with district council and asserted that order would affect stable bargaining relationships with employers in its jurisdiction) and *Local Union 1219*, 493 F.2d at 95-96 (same; action by local union seeking parental support in jurisdictional dispute with other locals). Relatively compliant locals that presented their trade jurisdiction claims to dispute resolution machinery under the union constitution and then challenged the outcome in court were denied a federal forum that may have been extended to a more bellicose local. *See, e.g., Studio Elec. Technicians Local 728 v. International Photographers of Motion Picture Indus., Local 659*, 598 F.2d 551, 554 (9th Cir. 1979) (refusing to assert jurisdiction over suit by local to set aside several union board decisions awarding work in question to competing local). Such cases suggest that the outcome of the jurisdictional inquiry might turn on the grace with which the local accepts parental control. In two cases where local unions brought suit to challenge parental actions that produced essentially identical industrial consequences, however, courts disagreed as to their significance for jurisdictional purposes. *Compare Sidell*, 552 F.2d at 1255 (finding of impact predicated on disruption of established bargaining relationships that would accompany affiliation with district council) *with Local 334*, 628 F.2d 812, 820 (3d Cir. 1980) (finding no impact despite local's claim that consolidation order would disrupt bargaining relationships similar to those at issue in *Sidell*), *rev'd*, 452 U.S. 615 (1981).

117. Cases in which international unions denied local unions their constitutional right to ratify the terms of a new collective bargaining agreement illustrate the tendency of the federal courts to use § 301 less as an independent source of federal rights than as a source of power to supplement other federal statutes. *See Stelling*, 587 F.2d at 1382 (discussing ratification of agreement made by local's business manager at direction of international president over members' opposi-

consequence, it was difficult for litigants to know whether to bring their claims for violation of the union constitution in state or federal court and whether to measure their rights and obligations under the union constitution by state or federal standards.

Although the lower court decisions that transformed section 301(a) thus depended to a large extent on the LMRDA, they left the LMRDA out of the jurisdictional calculus. Instead, the courts deployed a variety of techniques to pick and choose among the disputes that would support section 301(a) jurisdiction. Although the courts' choices can be understood and perhaps defended on pragmatic grounds, they failed to generate consistent answers to jurisdictional questions.<sup>118</sup> Indeed, they left the federal interest

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tion); *Trail*, 542 F.2d at 964-65 (noting amendment to collective bargaining agreement implemented without local member approval). In each case, the appellate court refused to assert jurisdiction over the members' § 301 claim, despite the fact that other courts had done so on similar facts. In each case, the refusal to assert § 301 jurisdiction accompanied a finding that other federal statutes provided the members with a basis for challenging the alleged denial of ratification rights. The Court of Appeals for the Seventh Circuit found that union officers violated their fiduciary duty under the LMRDA by denying ratification rights under the constitution and proceeded to definitively resolve the constitutional question on that ground. *Stelling*, 587 F.2d at 1385-89. The Court of Appeals for the Fifth Circuit reached the constitutional issue by finding that the denial of ratification rights violated the union's duty of fair representation. *Alexander*, 624 F.2d at 1240-41. The Court of Appeals for the Sixth Circuit held that the alleged denial of ratification rights stated a claim for relief under both the duty of fair representation and under the equal right to vote provisions of the LMRDA. *Trail*, 542 F.2d at 966, 968.

Although they disagreed in certain respects about the proper interpretation of the other federal statutes at issue, the courts' agreement on the question of § 301 jurisdiction suggests a willingness to use that provision only where a constitutional determination necessary to dispose of the case could not be reached on other grounds. The Sixth Circuit made this point explicitly during its discussion of § 301. See *Trail*, 542 F.2d at 968. After observing that the plaintiffs could tender evidence in support of their claims either under their LMRDA or duty of fair representation theories, the court went on to explain that the availability of these alternative remedies undercut the necessity for a finding of § 301 jurisdiction:

Since Congress and the courts have provided specific and complete remedies for the instant case, we see no need to employ [§ 301] to make a decision on the difficult general question of individual union member third party beneficiary suits against unions based on union constitution and charter; and we specifically decline to do so.

*Id.*

118. Decisions that refuse to hear the claims of individual union members, either on the basis that the statute does not embrace such claims or on the basis that the particular dispute did not threaten a work stoppage or other significant impact on industrial relations, reflect the view that such claims often fail to implicate matters of federal concern. Such decisions also indicate an understandable reluctance to open federal dockets to a host of claims that were previously handled in state courts. Commentators have suggested that such pragmatic considerations properly inform the analysis of other federal jurisdictional questions.

in the enforcement of union constitutions largely undefined.<sup>119</sup>

### III. SECTION 301(a) AND THE SEARCH FOR A FEDERAL INTEREST

The federal role in enforcing union constitutions remains undefined, despite the fact that the federal courts continue to struggle with the task of defining the boundaries between state and federal power. In tracing this continuing struggle to the present date, this part of the Article first reviews the Supreme Court's opinion in *Local 334*. This part next explores the division of lower court authority that remains in place following the *Wooddell* decision. Finally, this part concludes that the federal courts have thus far failed to articulate a federal interest in the enforcement of union constitutions that justifies, and properly delimits, the exercise of federal power.

#### A. *The Decision in Local 334*

The *Local 334* case arose as a dispute between the United Association of Plumbers and Pipe Fitters (the UA) and a mixed local of plumbers and pipefitters in northern New Jersey. During the 1970s, the UA developed a plan to consolidate some twenty-seven such mixed locals throughout the state into a smaller number of plumber and pipefitter locals.<sup>120</sup> Local 334 brought

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*See* William Cohen, *The Broken Compass: The Requirement that a Case Arise "Directly" Under Federal Law*, 115 U. PA. L. REV. 890 (1967) (arguing for recognition of pragmatic limit on federal question jurisdiction). Others, however, have criticized the apparently ad hoc nature of such a pragmatic inquiry and favor the return to bright line rules. *See* Linda R. Hirshman, *Whose Law Is It, Anyway? A Reconsideration of Federal Question Jurisdiction Over Cases of Mixed State and Federal Law*, 60 IND. L.J. 17 (1984).

119. If the justification for an expanded interpretation of § 301(a) in *Parks v. International Brotherhood of Electrical Workers*, 314 F.2d 886 (4th Cir.), *cert. denied*, 372 U.S. 976 (1963), resembles the efficiency rationale of supplemental jurisdiction, then one might suppose that the results in subsequent "significant impact" cases would resemble those results the courts would achieve through the careful application of supplemental jurisdiction. For background on supplemental jurisdiction, see *supra* notes 104-07. Such a theory might explain the federal courts' reluctance to hear disputes absent some clear federal interest under the LMRDA. Courts may invoke the doctrine of supplemental jurisdiction, after all, only where the assertion of a substantial federal claim supplies jurisdiction to which state law claims may be appended. *See* *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966) (holding that federal claim "must have substance sufficient to confer subject matter jurisdiction on the court"). In many cases where the dispute failed the "significant impact" test, such a substantial federal claim was missing from pleadings alleging only a violation of the union constitution.

120. The plan called for Local 334, and eight other northern locals, to transfer their plumbers to Local 14 and their pipefitters to Local 274. *Local 334*, 452 U.S. 615, 616-17 (1981). After effecting the transfer, Local 334 would cease

suit in state court, seeking to block the ordered consolidation as a violation of the union constitution. After removing the action to federal court, the UA obtained summary judgment on alternative grounds.<sup>121</sup> On appeal, the Court of Appeals for the Third Circuit joined the majority of appellate courts in ruling that the federal courts enjoy jurisdiction over only those internal union disputes that have a significant impact on labor relations.<sup>122</sup> Finding no such impact in the facts before it, the court ordered the case dismissed on jurisdictional grounds.<sup>123</sup>

Perhaps we expect too much of the Supreme Court. A thorough review of the jurisdictional question in *Local 334* would have shown that, as a historical matter, contracts “between any such labor organizations” were agreements between autonomous national unions.<sup>124</sup> It would also have recognized that the LMRDA played an enormously influential role in the decisions by lower courts to reject the historically correct interpretation and apply section 301(a) to union constitutions as well.<sup>125</sup> Instead of wrestling with the legitimacy of the expanded reading, however, the Court’s opinion in *Local 334* denied the relevance of the LMRDA and simply held that section 301(a) provides a basis for federal court jurisdiction over suits for violation of the union constitution.<sup>126</sup>

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to exist. When resistance to the plan surfaced, the UA invoked a provision in its constitution that authorized the president of the parent union to order consolidation of superfluous locals when such action was in the “best interest” of the association. *Id.* at 617.

121. The district court dismissed the suit on the ground that the UA was entitled to judgment against *Local 334* because the local failed to exhaust its internal union remedies before bringing suit, and, in the alternative, because the union constitution authorized the UA to order the contested consolidation. See *Local 334*, 628 F.2d 812, 814 (3d Cir. 1980), *rev’d*, 452 U.S. 615 (1981).

122. *Id.* at 818 (“[C]ourts are uniform in holding that intra-union disputes do not present a federal question under § 301(a). . . . [D]isputes between local and parent unions must involve . . . a significant impact on labor-management relations or industrial peace in order for there to be jurisdiction under § 301(a).”).

123. *Id.* at 820.

124. For a discussion of the history of the between-labor-organizations clause, see *supra* notes 30-56 and accompanying text.

125. For a discussion of the role of the LMRDA in lower courts’ decisions to apply § 301 to union constitutions, see *supra* notes 90-119 and accompanying text.

126. *Local 334*, 452 U.S. 615, 625-27 (1981). Nothing obliged the Court to ignore the LMRDA. Its earlier decisions had recognized that, as part of the evolving federal regulation of industrial relations, the LMRDA might shed light on the reach of the Taft-Hartley Act. For an early comment by the Court on the role of the LMRDA, see *supra* note 85. In deciding to dismiss the LMRDA, probably to dodge the implications of the statute’s non-preemption provisions, the

The Supreme Court offered a surprisingly cursory, even glib, analysis of the jurisdictional question. The Court proceeded essentially by syllogism, first observing that the state and federal courts had long regarded the union constitution as a “contract.”<sup>127</sup> Next, the Court observed that both the parent union, the UA, and its affiliate, Local 334, were labor organizations within the terms of the Taft-Hartley Act.<sup>128</sup> On this basis, the Court concluded that the plain meaning of section 301 supported the assertion of jurisdiction over the union constitution as a contract between labor organizations.<sup>129</sup> It found nothing in its brisk tour of the legislative history to undermine this conclusion.<sup>130</sup> Thus, the Court observed that the Eightieth Congress was undoubtedly familiar with state courts’ use of contract doctrine to enforce union constitutions and would not have used the unqualified term “contract” if it had not intended to bring such contracts within the federal domain.<sup>131</sup>

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Court lost any chance for a candid elaboration of the application of § 301(a) to union constitutions. For a discussion of the virtues and vices of judicial candor, see Nicholas S. Zeppos, *Judicial Candor and Statutory Interpretation*, 78 GEO. L.J. 353, 412-13 (1989) (suggesting that call by Guido Calabresi and William Eskridge for candor in dynamic statutory interpretation may lead courts beyond the boundary of legitimate interpretation and into judicial lawmaking).

127. *Local 334*, 452 U.S. at 621.

128. *Id.* at 622. The Court failed to establish by reference to anything in the record that both the parent and the local were in fact engaged in representing employees. *Id.* Rather, the Court relied upon earlier decisions involving suits for violation of collective bargaining agreements in which parent and local unions were treated as labor organizations within the meaning of § 301. *Id.*

129. *Id.* at 627.

130. *Id.* at 622-25. The Court noted that the conference committee failed to explain its decision to add the between-labor-organizations clause to the statute, and also noted that the primary purpose of the Taft-Hartley Act was to promote collective bargaining. *Id.* at 623. The Court then recited a series of statements from the legislative history suggesting that Congress also sought to counteract jurisdictional defects that contributed to the instability of labor agreements by making unions subject to suit as entities in federal court. *Id.* The Court concluded, without pointing to any support in the legislative history, that the policy supporting enforcement of labor contracts was equally applicable to suits to enforce union constitutions. *Id.* at 624-25 (“Surely Congress could conclude that the enforcement of the terms of union constitutions . . . would contribute to the enforcement of labor stability.”). The Court thus extended the policy of stability that Congress had fashioned for negotiated agreements to the enforcement of constitutional rules that unions rarely negotiate.

131. *Id.* at 624. In support of its claim that Congress undoubtedly meant its reference to contracts between labor organizations to encompass the union constitution, the Court claimed, without citation, that at the time the statute was enacted such constitutions were “probably the most commonplace form of contract between labor organizations.” *Id.* Whatever light this unsupported assertion sheds on the literal meaning of the statute, it simply begs the question whether union constitutions were among the inter-union agreements with which Congress was concerned in adding the second clause to § 301(a).

Although the opinion thus briefly considered the language and history of section 301(a), the Court appeared more intent on masking, rather than elaborating on, the meaning of the between-labor-organizations clause.<sup>132</sup> To begin with, the Court simply ignored arguments that would undermine its literal reading of the statute. Local 334 argued that section 301 applied to agreements such as no-raid agreements, but the Court's opinion never mentioned the existence of such agreements, let alone the possibility that section 301(a) had been drafted with them in mind.<sup>133</sup> Local 334 also argued that the non-preemption provisions of the LMRDA reflected a legislative understanding that state court control of actions to enforce union constitutions survived the passage of the Taft-Hartley Act.<sup>134</sup> The Court dismissed the LMRDA as irrelevant to the task of interpreting the earlier statute.<sup>135</sup>

In a maneuver more telling than the Court's deliberate failure to address arguments that would undermine its reading of section 301(a), the Court invoked its "wide-ranging" authority

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132. I argue in a separate article that the Court was on solid ground in concluding that § 301(a) makes the collective agreement federally enforceable. See Pfander, *supra* note 8, at 287-309 (contending that "the language, structure, and history of section 301" support this view). The same can be said of the Court's decision that § 301(a) embraces the arbitration provisions of a strike settlement agreement. See *Retail Clerks Int'l Ass'n, Local Unions Nos. 128 & 633 v. Red Lion Dry Goods, Inc.*, 369 U.S. 17 (1962) (holding strike settlement agreement fell plainly within § 301(a)). As the Court noted, the deliberate decision of Congress to use the term "contracts" in § 301, rather than the more restrictive term "collective bargaining agreements," suggests that Congress intended the statute to reach beyond the collective agreement. *Id.* at 25-26. Moreover, the conferees' decision to broaden the Senate bill by striking the limiting reference to contracts "concluded as a result of collective bargaining," though not relied upon by the Court, certainly suggests that § 301 includes other forms of agreement between employers and unions. For a comparison of the language in the Senate and House bills, see *supra* note 72. Finally, the conferees' decision to transfer jurisdiction over arbitration agreements from the Labor Board to the federal courts suggests that the arbitration provision of a strike settlement agreement that contributed to labor peace was precisely the kind of contract that Congress meant to bring within § 301. See *Retail Clerks*, 369 U.S. at 28 (stating that § 301 threshold is "agreement between employers and labor organizations significant to the maintenance of labor peace between them"). For comments on the transfer of enforcement authority from the Labor Board to the courts, see *supra* notes 75-78.

133. Local 334 contended that Congress intended the second clause of § 301 to encompass no-raid and other jurisdictional agreements. Respondent's Brief at 21-24, *Local 334*, 452 U.S. 615 (1981) (No. 80-710). Additionally, such an argument was made in secondary authority that the Court noted and purported to rely on in its opinion. See *Local 334*, 452 U.S. at 624 (citing Comment, *supra* note 8). No explicit reference to this argument appears in the opinion, however.

134. *Local 334*, 452 U.S. at 625-26 & nn.10-15.

135. *Id.* at 626.

over federal labor contracts to support its decision.<sup>136</sup> The existence of such authority as a general matter sheds little light on the question whether Congress intended to bring the union constitution within the federal domain of section 301(a).<sup>137</sup> It does suggest, however, that the Court was conscious of flaws in its interpretation and was nonetheless determined to uphold the assertion of federal power.<sup>138</sup>

The opinion in *Local 334* can thus be criticized for failing to justify its assertion of jurisdiction in the history of section 301 or in an asserted need to carry out a mission articulated in other federal statutory schemes.<sup>139</sup> Consequently, the opinion fails to pro-

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136. *Id.* at 627 ("Congress intended the federal courts to enjoy wide-ranging authority to enforce labor contracts under § 301.").

137. Since the Court's decision in *Textile Workers Union v. Lincoln Mills*, it has been clear that federal courts must develop a body of federal common law to govern the outcome of disputes over labor contracts that come within its terms. *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 456-57 (1957). The Court noted that "[t]he range of judicial inventiveness will be determined by the nature of the problem." *Id.* at 457. The Court's decision to unleash such "judicial inventiveness" drew criticism from judges and commentators who regarded the development of principles to govern the enforcement of collective bargaining agreements as a matter for which federal judges were unsuited. Pfander, *supra* note 8, at 274-78.

Whatever the merit of the critique, Congress clearly intended to authorize the federal courts to play a wide-ranging role in the enforcement of the collective agreement. *Id.* at 304 ("Congress intended for the federal courts to work out the detailed rules that would govern the enforcement of labor contracts."). The fact that Congress approved of such a role as to the collective agreement, however, furnishes no warrant for extending such inventiveness to union constitutions.

138. Although the opinion fails to identify any such federal interest, it seems likely that the Court based its decision on its perception that the growing assertion of federal control over internal union affairs in the LMRDA made it appropriate to federalize at least some obligations found in the union constitution.

139. In a dissent joined by then-Associate Justice Rehnquist, Justice Stevens forcefully criticized the majority's conclusion that § 301 conferred jurisdiction over suits for violations of the union constitution. *Local 334*, 452 U.S. at 634-69 (Stevens, J., dissenting). Justice Stevens found the legislative history utterly devoid of any suggestion that Congress was concerned with ensuring the enforcement of union constitutions or that such constitutions involve "any federal interest sufficient to warrant the creation of federal rights." *Id.* at 635 (Stevens, J., dissenting). Noting the absence of the expressions of congressional concern and related statutory provisions that guided the Court in *Lincoln Mills*, Justice Stevens concluded that the action failed to present a federal question arising under the laws of the United States within the meaning of Article III of the Constitution. *Id.* at 635, 638-39 (Stevens, J., dissenting).

As Part II of this Article makes clear, Justice Stevens argued correctly that the history of § 301(a) furnished no support for the majority's decision. For a critique of the majority opinion, see *supra* notes 127-38 and accompanying text. Justice Stevens argued that the "arising under" clause of Article III of the United States Constitution barred the assertion of jurisdiction over union constitutions. *Local 334*, 452 U.S. at 633-34, 637-39 (Stevens, J., dissenting). Justice

vide the lower federal courts with meaningful guidance as to what kind of union constitution disputes they may hear. On the one hand, the Court suggested that essentially every dispute arising from the constitution will satisfy the statute. Thus, the Court indicated that union constitutions are “contracts” within the meaning of section 301—a term, the Court noted, that Congress used without “any special qualification or limitation on its reach.”<sup>140</sup> On this basis, the Court reversed the Third Circuit’s decision that jurisdiction under section 301 was limited to disputes with a “significant impact” on industrial peace.<sup>141</sup> On the other hand, the Court suggested a willingness to tolerate limits on the statute’s scope by leaving open the question whether individual union members may bring actions under section 301 to enforce union constitutions.<sup>142</sup>

### B. *Individual Member Suits and the Decision in Wooddell*

The question left open by the *Local 334* decision produced a division in lower court authority. Most lower federal courts agreed to hear member claims,<sup>143</sup> reasoning by analogy to the

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Stevens thus echoed Justice Frankfurter’s challenge to the constitutionality of § 301(a)’s application to the collective bargaining agreement. See *Lincoln Mills*, 353 U.S. at 460-84 (Frankfurter, J., dissenting).

In brief, the Frankfurter-Stevens argument rests on the contention that the jurisdictional provisions of § 301(a) fail to make labor contracts enforceable as a matter of federal law and fail to offer guidance to courts charged with policing the agreements. See *id.* at 469 (Frankfurter, J., dissenting). Lacking guidance, federal courts will simply borrow state law. Actions to enforce labor contracts under such a borrowed body of state law, so the argument goes, do not “arise under” federal law for purposes of Article III. *Id.* at 469-70 (Frankfurter, J., dissenting).

Justice Frankfurter’s deployment of this argument against the enforcement of collective agreements under the statute’s first clause was more than a little overdrawn. See Pfander, *supra* note 8, at 279-309 (collecting historical support for enforcement under § 301). Justice Stevens’ use of the same argument to attack the enforcement of union constitutions under the between-labor-organizations clause enjoys a good deal more historical support because one has difficulty finding in the history of the Taft-Hartley Act either a declaration of the federal enforceability of union constitutions or a body of legislative standards to guide the creation of federal common law.

140. *Local 334*, 452 U.S. at 624-25 (“[W]e cannot believe that Congress would have used the unqualified term ‘contract’ without intending to encompass that category of contracts represented by union constitutions.”).

141. *Id.* at 619.

142. See *id.* at 627 n.16.

143. See *DeSantiago v. Laborers Int’l Union, Local No. 1140*, 914 F.2d 125, 128-29 (8th Cir. 1990) (holding that federal question jurisdiction arose where claims against local union based on local and international constitutions were preempted by § 301); *Pruitt v. Carpenters’ Local Union No. 225*, 893 F.2d 1216, 1219 (11th Cir. 1990) (holding that § 301 covers suits for contract violations

claims the Court permitted individual employees to bring to enforce the collective bargaining agreement in *Smith v. Evening News Ass'n*.<sup>144</sup> The Court of Appeals for the Sixth Circuit, however, rejected the analogy to *Smith*. The Sixth Circuit had previously declined to hear actions brought by individual members for breach of the union constitution,<sup>145</sup> and nothing in the *Local 334* decision persuaded the court to change its mind.<sup>146</sup> In *Wooddell v. Interna-*

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between employers and labor organizations and term "contract" includes union constitutions); *Lewis v. International Bhd. of Teamsters Local 771*, 826 F.2d 1310, 1314 (3d Cir. 1987) ("If individual union members are third party beneficiaries of collective bargaining agreements, it follows that they have the same status with respect to union constitutions."); *Kinney v. International Bhd. of Elec. Workers*, 669 F.2d 1222, 1229 (9th Cir. 1982) (holding that Ninth Circuit's position is clear that individuals can use § 301 to sue on union constitution); *Rodonich v. House Wreckers Union Local 95 of Laborers' Int'l Union*, 624 F. Supp. 678, 682-83 (S.D.N.Y. 1985) (citing *Kinney* as controlling law on issue); *Legutko v. Local 816, Int'l Bhd. of Teamsters*, 606 F. Supp. 352, 356 (E.D.N.Y.) (allowing suit for breach of voting rights by local union and likening to suits brought for breach of unique personal rights), *aff'd*, 853 F.2d 1046 (2d Cir. 1985); *Davis v. American Postal Workers Union*, 582 F. Supp. 1574, 1575 (S.D. Fla. 1984) (holding that federal jurisdiction conferred where member sues union for breach of union constitution); *Gordon v. Winpisinger*, 581 F. Supp. 234, 239 (E.D.N.Y. 1984) (same as *Legutko*); *Alford v. National Post Office Mail Handlers*, 576 F. Supp. 278, 285 (E.D. Mo. 1983) (holding that union member may sue for violation of constitution under same circumstances that would allow union itself to sue); *Doby v. Safeway Stores, Inc.*, 523 F. Supp. 1162, 1166 (E.D. Va. 1981) (finding that "member's right to sue under a collective bargaining agreement applies equally to suits by members for breach of a contract in the form of a constitution").

144. 371 U.S. 195 (1962). In *Smith*, the Court rejected the employer's claim that the language of § 301 limited the scope of jurisdiction to suits between parties to the collective bargaining agreement and thus barred individuals' suits. *Id.* at 200. The Court emphasized that § 301 required only a contract between an employer and a union, not a lawsuit between such parties. *Id.* The Court upheld the assertion of jurisdiction over claims of the individual employees based, in part, on the fact that the individual claims "lie at the heart of the grievance and arbitration machinery [and] are . . . inevitably intertwined with union interests." *Id.*

For cases that extend *Smith* by analogy to individual claims to enforce union constitutions, see, e.g., *Kinney*, 669 F.2d at 1229 (incorporating discussion of *Smith* by citing *Stelling v. International Bhd. of Elec. Workers Local Union No. 1547*, 587 F.2d 1379, 1382-83 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979)); *Doby*, 523 F. Supp. at 1166 (stating that because constitution is contract within meaning of § 185, *Smith* reasoning applies to constitutions as well as collective bargaining agreements).

145. See *Trail v. International Bhd. of Teamsters*, 542 F.2d 961, 967 (6th Cir. 1976) (explaining that *Smith* does not compel expanded reading of § 301 to include suits concerning intra-union disputes (citing *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957))).

146. See *Corea v. Welo*, 937 F.2d 1132, 1145-46 (6th Cir. 1991) (declining to adopt *Smith* to permit plaintiffs' suit for alleged violations of union constitution and bylaws); *Tucker v. Bieber*, 900 F.2d 973, 980 (6th Cir.) (reaffirming *Trail* and holding that § 301 does not reach suits brought by individual members), *cert. denied*, 111 S. Ct. 135 (1990).

*tional Brotherhood of Electrical Workers, Local 71*,<sup>147</sup> the Supreme Court agreed to decide whether the Sixth Circuit's ongoing interpretation remained correct.

The dispute began when Guy Wooddell, a member of the Electrical Workers, Local 71 in Ohio, opposed amendments to the Local's bylaws.<sup>148</sup> Wooddell's brother, the president of Local 71, brought internal union disciplinary charges against him and allegedly caused Local 71 to refuse to give Wooddell job referrals through its hiring hall.<sup>149</sup> Wooddell brought suit in federal court, alleging that the disciplinary proceeding<sup>150</sup> and the denial of job referrals violated the LMRDA and the duty of fair representation.<sup>151</sup> He also charged Local 71 with violations of its contractual duties under the IBEW constitution and its own bylaws.<sup>152</sup>

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147. 112 S. Ct. 494 (1991).

148. *Id.* at 497. Wooddell's complaint alleged that Local 71 commenced a campaign in January 1986 to amend the Local's bylaws to raise union dues and assessments. Wooddell claimed that his opposition to the amendments led to retaliation at the hands of the Local's president. Joint Appendix at 7-8, *Wooddell*, 112 S. Ct. 494 (1991) (No. 90-967).

149. *Wooddell*, 112 S. Ct. at 497; *see also* Joint Appendix at 8-10, *Wooddell* (No. 90-967).

150. Joint Appendix at 11, *Wooddell* (No. 90-967). Wooddell challenged the fairness and propriety of the disciplinary proceeding his brother initiated against him as a violation of both the LMRDA and the IBEW constitution. *Wooddell*, 112 S. Ct. at 497. Under the LMRDA claims, Wooddell asserted that the procedural protections were inadequate and that, in any case, the proceeding was initiated against him in retaliation for his assertion of his right to oppose the dues increase. Joint Appendix at 11, *Wooddell* (No. 90-967). The IBEW constitutional claims were based on a provision of the IBEW constitution that requires local unions to grant accused members a "fair and impartial trial." *Id.* at 12, 37.

151. Joint Appendix at 13, *Wooddell* (No. 90-967). Wooddell's theory was that Local 71 had an obligation under the duty of fair representation to refer him for work fairly and without discrimination. *Id.* As a consequence, he attacked the discrimination both as a violation of the duty of fair representation and as a form of retaliation prohibited by the LMRDA. *Id.* at 11, 13. Local 71 obtained the dismissal of these claims on the theory that they came within the exclusive jurisdiction of the NLRB. *Wooddell v. Electrical Workers, Local 71*, 135 L.R.R.M. (BNA) 2926, 2929-30 (S.D. Ohio 1988), *aff'd in part, rev'd in part*, 907 F.2d 151 (6th Cir. 1990), *rev'd*, 112 S. Ct. 494 (1991).

Wooddell also attacked the discrimination in job referrals as a violation of provisions in Local 71's collective bargaining agreement that required the Local to refer members in accordance with seniority. Joint Appendix at 9, *Wooddell* (No. 90-967). This violation, in turn, was said to violate Local 71's obligation under the IBEW constitution to comply with its collective bargaining agreements, as well as a parallel obligation under the Local's bylaws. *Id.* at 12, 24.

152. Joint Appendix at 12-13, *Wooddell* (No. 90-967). Wooddell first claimed that Local 71 violated its duty under the IBEW constitution to comply with its collective agreements. Article XVII, § 10 of the IBEW constitution provides: "All L.U.'s [local unions] shall be compelled to live up to all approved agreements unless broken or terminated by the other party or parties, which fact shall first be ascertained by the I.P. [International President]. No agreement of any kind or nature shall be abrogated without sanction of the I.P." *Id.* at 24

Finally, Wooddell charged his brother and the business manager individually with violations of their constitutional obligations as officers of Local 71.<sup>153</sup>

After the district court's dismissal of Wooddell's action was largely upheld on appeal, the Supreme Court granted certiorari to decide whether section 301 extended to Wooddell's claims under the union constitution.<sup>154</sup> Justice White's opinion for a

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(quoting IBEW constitution). Wooddell also charged that Local 71 violated its obligation to provide union members with a fair trial. *Id.* at 11. Article XXVII, § 5 of the IBEW constitution provides: "The trial board [made up of the executive board of the local union] shall proceed with the case . . . . The accused shall be granted a fair and impartial trial. He must, upon request, be allowed an I.B.E.W. member to represent him." *Id.* at 37 (quoting IBEW constitution). In addition to these claims under the IBEW constitution, Wooddell asserted claims under bylaws of Local 71 that were not made part of the Joint Appendix. *See Wooddell*, 112 S. Ct. at 497 (petitioner's complaint included alleged violations of Local 71 bylaws). These claims alleged that certain bylaw provisions obligated Local 71 to provide Wooddell with a fair trial, to provide for his material welfare and to comply with its collective agreements. *Id.*

153. Joint Appendix at 12-13, *Wooddell* (No. 90-967). The claims against Wooddell's brother, the president of the Local, were predicated on provisions of the IBEW constitution stating that the Local's president "shall be held responsible for the strict enforcement of this Constitution and the rules herein and the L.U. bylaws." *Id.* at 13, 29 (quoting IBEW constitution). The basis for the claim against the business manager was less clear. It may have been based on vaguely worded constitutionally-based obligations of the business manager, or on general constitutional provisions stating that "member[s] may be penalized for . . . [v]iolation of any provision of this Constitution and the rules herein, or the bylaws, working agreements, or rules of a L.U." *Id.* at 32 (quoting IBEW constitution).

In addition, Wooddell claimed that the individual defendants tortiously interfered with his contract rights in violation of state law. *Id.* at 13-14. Whether such tortious interference claims may be based on contracts within the exclusively federal domain of § 301 has been the subject of much lower court discussion. For the flavor of the debate, compare *Wilkes-Barre Publishing Co. v. Newspaper Guild, Local 120*, 647 F.2d 372, 381-82 (3d Cir. 1981) (determining that § 301 jurisdiction encompasses tortious interference claims against non-signatory to federal labor contract) with *Carpenters Local Union No. 1846 v. Pratt-Farnsworth, Inc.*, 690 F.2d 489, 502 (5th Cir. 1982) (finding no federal jurisdiction). The Court of Appeals for the Sixth Circuit adopted the position that while § 301 preempts state law claims for tortious interference, it does not create a federal claim to fill the void. *See Dougherty v. Parsec, Inc.*, 824 F.2d 1477, 1478-79 (6th Cir. 1987) (holding § 301 preempts state law claims); *Service Employees Union, Local 47 v. Commercial Prop. Servs., Inc.*, 755 F.2d 499, 506 (6th Cir.) (holding there was no § 301 subject matter jurisdiction and dismissing pendent state claim), *cert. denied*, 474 U.S. 850 (1985).

154. *Wooddell*, 112 S. Ct. at 497. The Court adopted the issue presented by the parties—whether § 301 creates a "federal cause of action under which a union member may sue his union for a violation of the union constitution?" *Id.* at 498 n.3. The Court's analysis, however, clearly focused on the question of jurisdiction. Indeed, the Court opened its textual discussion of the question by asking "[w]hether the subject-matter jurisdiction conferred on the district courts by § 301 extends to suits on union constitutions brought by individual union members." *Id.* at 498.

unanimous Court answered the question in the affirmative, but did so on extremely narrow grounds.<sup>155</sup> For jurisdictional purposes, the Court ignored much of Wooddell's complaint and focused on the allegation charging Local 71 with violating an IBEW constitutional provision that obligated local unions to comply with their collective bargaining agreements.<sup>156</sup> Such a provision, as the Court repeatedly emphasized, established a parent-local contract between the IBEW and Local 71 within the meaning of existing law.<sup>157</sup>

Having found in the complaint an alleged breach of the parent-local contract, Justice White based the remainder of his opinion for the Court on well-established law. The IBEW could bring suit under section 301 to enforce Local 71's obligation to comply with its collective agreements; prior decisions made at least that much clear and had also held that federal law would govern the resolution of the dispute.<sup>158</sup> Because Local 71 was charged with violating a contract between unions, the decisive question in the case was whether section 301 also applied where the claim was brought by an individual, such as Wooddell, who was not himself a party to the contract. That question had also been answered previously, albeit in the context of an action brought by an individual employee to enforce the collective agreement against an employer.<sup>159</sup> *Wooddell's* only innovation—its assertion that individual union members “are often the beneficiaries of . . . inter-union contracts, and when they are, they likewise may bring suit on these contracts”<sup>160</sup>—was hardly startling news.

Understandably, the Court gave short shrift to the Local's arguments. Local 71 contended, as had Local 334 before it, that the Taft-Hartley Act left disputes over union constitutions in the hands of state courts and that the LMRDA preserved that state

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155. *Id.* at 498-99 & n.4. In addition to the jurisdictional question, the Court decided that Wooddell was entitled to trial by jury on his claims under the LMRDA. *Id.* at 498.

156. *Id.* at 499. For the text of the relevant provision of the IBEW constitution, see *supra* note 152.

157. *Wooddell*, 112 S. Ct. at 499. By identifying this provision as one Local 71 allegedly breached, the Court explained, Wooddell had charged a “violation of a contract between two unions” within the meaning of § 301. *Id.* The related footnote observed that both parties to the “contract,” the IBEW and Local 71, were indisputably labor organizations as the statute defines the term. *Id.* at 499 n.5.

158. *Id.* at 499-500 (citing *Local 334*, 452 U.S. 615, 624 (1981); *Local 174, Int'l Bhd. of Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962)).

159. *Id.* (citing *Smith v. Evening News Ass'n*, 371 U.S. 195, 200 (1962)).

160. *Id.* at 500.

role.<sup>161</sup> Just as it had done previously, the Court refused to confront the LMRDA directly.<sup>162</sup> The Court also quickly dismissed the Local's contention that the assertion of jurisdiction would flood federal courthouses with trivial disputes over internal union affairs.<sup>163</sup> The Court expressed doubt that it could properly consider such a factor but nonetheless cited leading cases in which the federal courts agreed to hear individual claims, apparently to illustrate its point that such claims were anything but trivial.<sup>164</sup>

The ease with which the Court resolved the jurisdictional question should not obscure the important fact that Justice White took pains to characterize Wooddell's claim as one brought by a third-party beneficiary to enforce the contract between Local 71 and the IBEW. Such an approach differs markedly from the manner in which many common law courts of general jurisdiction might have characterized Wooddell's complaint.<sup>165</sup> Those courts might well treat Local 71's duty to refrain from violating its col-

161. See Brief for Respondents at 10-14, *Wooddell* (No. 90-967).

162. Instead, the Court reformulated the Local's argument. Assuming that § 301 embraced the individual claim, the Court focused on the question whether the LMRDA purported to restrict the reach of the earlier statute. *Wooddell*, 112 S. Ct. at 500. Needless to say, the Court found no evidence that the LMRDA meant to curtail the federal courts' authority to interpret union constitutions; no one regarded § 301 as having conferred such authority on the federal courts at the time the LMRDA was adopted. *Id.*

163. *Id.*

164. *Id.* Interestingly, the Court's illustrative cases arise from disputes over internal union affairs that implicate other provisions of federal law. See *DeSantiago v. Laborers Int'l Union, Local No. 1140*, 914 F.2d 125, 126-27 (8th Cir. 1990) (member who charged local with violating union constitution in operation of hiring hall had earlier filed claims with NLRB); *Pruitt v. Carpenters' Local 225*, 893 F.2d 1216, 1218-19 (11th Cir. 1990) (member's challenge to local's failure to instate him in office alleged separate violations of LMRDA and union constitution); *Kinney v. International Bhd. of Elec. Workers*, 669 F.2d 1222, 1225-27 (9th Cir. 1981) (complaint for unlawful removal from union office based both on LMRDA and on union constitution).

In *Lewis v. International Brotherhood of Teamsters, Local Union No. 771*, the members based their challenge to their local union's failure to permit them to ratify a change in their collective bargaining agreement entirely on provisions in the national constitution. *Lewis v. International Bhd. of Teamsters, Local Union No. 771*, 826 F.2d 1310 (3d Cir. 1987). Other plaintiffs in such cases often allege breaches of either the officer's fiduciary duty under LMRDA or the union's duty of fair representation. For a discussion of cases in which both LMRDA and constitutional challenges have been made, see *supra* note 117 and accompanying text.

165. Common law courts viewed the union constitution as establishing contracts between the union and the members, among the members themselves, and between the parent and the local. For a discussion of common law treatment of union constitutions, see *supra* note 49 and accompanying text. As courts of general jurisdiction, they did not face the problem of characterization that the Court faced in *Wooddell*.

lective bargaining agreements as establishing a contract with both the IBEW and with each of its individual members; they might thus view Wooddell's complaint as one to enforce not the rights of the parent union, but Wooddell's own rights under his separate union-member contract with Local 71.<sup>166</sup>

At a minimum, Justice White's deliberate decision to characterize Wooddell's claim as one for breach of the parent-local contract rather than as one to enforce Wooddell's own contract suggests that the Court sought the narrowest ground of decision.<sup>167</sup> There is some evidence to indicate that the Court went further, implicitly rejecting the assertion of section 301 jurisdiction over actions that implicate the union-member and union-officer contracts. For example, the Court repeatedly described Wooddell's claim as one that alleged a violation of an "interunion contract" instead of using the more generic reference to union constitutions. Such a deliberate choice of the more narrow phrase reflects a conception of section 301 as limited to that subset of provisions in a national constitution that regulate the parent-local relationship.<sup>168</sup>

The Court's handling of the standing question further underscores its narrow view of the scope of section 301. Justice White observed in a footnote that the parties did not dispute Wooddell's standing to bring suit against Local 71, a remark designed to reserve that question for future determination.<sup>169</sup> Although Wood-

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166. State courts generally viewed claims by members to remedy procedural flaws in union discipline as suits to enforce the members' own contract with the union. They thus might well have viewed Wooddell's contract claim against Local 71 for breach of the fair trial requirement in the national constitution as one for violation of the union-member contract. For a discussion of Wooddell's claims, see *supra* notes 150-53 and accompanying text. Such a characterization may have little relevance for purposes of defining the scope of § 301 jurisdiction, however. Indeed, as I show below, virtually every claim that charges a union with a violation of its duties under a national constitution appears to allege the breach of a parent-local contract. For a discussion of this issue, see *infra* notes 222-24 and accompanying text.

167. As part of its deliberately narrow reach, the Court's opinion refrained from addressing a variety of contract claims in *Wooddell*. Wooddell charged Local 71 with violations of its own bylaws and charged individual defendants with a violation of their duties as officers of Local 71. *Wooddell*, 112 S. Ct. at 497. For a discussion of these claims and the Court's actual focus, see *supra* notes 152-54 and accompanying text. The Court refused to address the jurisdictional sufficiency of both claims, perhaps because it could not characterize them as alleging a violation of a contract between unions.

168. In other sections of the opinion, the Court repeatedly refrains from referring ambiguously to the union constitution and refers instead to a "contract between unions." See, e.g., *Wooddell*, 112 S. Ct. at 498 n.3 ("contract between two labor organizations"); *id.* at 499, 500 ("interunion contract").

169. *Id.* at 498-99 n.4. The Court's handling of the issue for decision ex-

dell clearly had standing to enforce his own contract with Local 71, he might not enjoy standing to enforce the IBEW's right under the national constitution to insist on local union compliance with the collective agreement.<sup>170</sup> By leaving the standing question open, Justice White's opinion emphasizes that section 301 jurisdiction applies to individual claims not because they implicate the IBEW constitution, but rather because they seek to enforce the provisions in the constitution that specifically regulate the parent-local relationship.

It appears, nonetheless, that lower courts will adopt an exceedingly broad view of the scope of federal power in the wake of *Wooddell*. In *Shea v. McCarthy*,<sup>171</sup> for example, the Court of Appeals for the Second Circuit held that section 301 embraced a suit brought by individual members that charged a former president of the Teamsters union with a violation of his duties under the national constitution.<sup>172</sup> Though limited on its facts to suits against union officers, the rationale of *Shea* extends federal power to claims for breach of virtually every provision of the national

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plains why it was so careful to leave the standing question open. An early footnote noted that the issue on which certiorari had been granted was whether § 301 "create[s] a federal cause of action under which a union member may sue his union for a violation of the union constitution." *Id.* at 498 n.3. The Court did its best to recast its discussion in terms of jurisdiction, but it was still obliged to answer the "cause of action" question in the affirmative. *Id.* at 499. Recognizing potential problems with a decision that cleared the way for *Wooddell* to enforce his local union's collective agreements, the Court thus chose to leave open the standing question. *Id.* at 498 n.4 (noting that sole issue was subject matter jurisdiction; petitioner's standing was "not disputed before this Court").

170. For a discussion of individual member standing to enforce compliance with the collective agreement, see *infra* note 236 and accompanying text.

171. 953 F.2d 29 (2d Cir. 1992).

172. *Id.* at 30. *Shea* brought suit against Teamsters President William McCarthy, alleging that McCarthy fired him as part of a deliberate plan to suppress dissent within the union. *Id.* Specifically, *Shea* alleged that McCarthy violated two separate provisions of the Teamsters constitution: one that imposed on the president the obligation to "act to the best of his ability in furthering the interests of the organization," and one that allowed the president to remove union officials such as *Shea* only "for the best interests of the International Union." Appendix to Appellant's Brief on Appeal to United States Court of Appeals for the Second Circuit at 5, *Shea*, 953 F.2d 29 (No. 91-7483) (quoting Teamsters constitution, article VI, § 1(a)).

The District Court for the Southern District of New York dismissed all claims. *Shea*, 953 F.2d at 30. The court found that § 301 did not extend to *Shea's* allegation in the first count of his complaint that McCarthy's plan violated his obligation under the constitution to manage the union's affairs in good faith and in compliance with union law. *Id.* *Shea* made the strategic decision to exhaust his LMRDA claims and to appeal only from the dismissal of the first count. *Id.* As it came to the Second Circuit, therefore, the appeal presented only the question whether § 301 applies to claims against individual union officials. *Id.*

union constitution and, if widely followed, would lead to the virtual displacement of state control.<sup>173</sup>

#### IV. TOWARD A THEORY OF FEDERAL JURISDICTION

This part of the Article proposes to define the scope of section 301 jurisdiction more narrowly to apply only to suits that implicate the parent-local relationship in a national union constitution. The proposed interpretation finds support in both the language of section 301 and the pains the *Wooddell* Court took to limit its decision to suits for violation of the parent-local contract. The proposed interpretation would rest uneasily, however, on nothing more substantial than the language of a provision that the framers of the Taft-Hartley Act drafted for reasons other than to authorize the federal enforcement of union constitutions.<sup>174</sup>

Accordingly, this part of the Article considers more explicitly the structure of the statute that doubtless led to the federal enforcement of union constitutions—the oft-ignored LMRDA. It shows that although the LMRDA offers some federal guidelines to courts facing disputes between the parent and subordinate bodies of national labor unions, the statute deliberately leaves one side of the relationship between the union and its individual members and officers in the hands of the state courts. The proposed limitation on the scope of section 301 jurisdiction to suits that allege a violation of the parent-local contract thus would allow federal courts to hear all disputes that plausibly implicate the interest in internal union affairs that Congress defined in the LMRDA. At the same time, it would permit state courts to retain control over claims brought by the union against its individual members and officers, in keeping with the LMRDA's non-preemption provisions.

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173. The Court of Appeals for the Second Circuit recognized that *Wooddell* involved a claim by individual members against the union and thus did not squarely answer the question it faced on appeal. *Id.* at 31. It nonetheless read *Wooddell* as support for the assertion of jurisdiction over Shea's claims against McCarthy. Reasoning that *Wooddell* permitted Shea to sue his union, the court argued that the policies of uniform contract interpretation and judicial economy also supported the assertion of jurisdiction over Shea's claims against McCarthy. *Id.* at 31-32. Otherwise, Shea would be forced "to seek equitable relief from the wrongdoing individuals in a separate forum, where different rules of law might apply." *Id.* at 33. Such an assertion fails to recognize that the doctrine of supplemental jurisdiction would apparently permit Shea to join McCarthy as a pendent party defendant to the state law claims that arise from the same constitutional case or controversy. See 28 U.S.C. § 1367 (Supp. 1990).

174. For a discussion of the original understanding of § 301, see *supra* notes 30-119 and accompanying text.

### A. *The LMRDA and the Union Constitution*

In passing the LMRDA, Congress generally chose to regulate only one side of the many two-sided relationships addressed in union constitutions. In Title I, Congress established a bill of rights for union members<sup>175</sup> and specifically authorized them to bring suit for violations of these rights against either their local or parent union.<sup>176</sup> Congress did not, however, impose any federally enforceable obligations on the union's members and did not authorize unions to bring suit against members to collect fines or assessments. The union's interest in disciplining members thus received no federal protection, aside from the LMRDA's requirement that members exhaust internal remedies before suing the union, and the statute's creation of a reasonable-rules defense.<sup>177</sup>

The same unilateral regulatory approach characterizes Title V of the LMRDA. There, Congress imposed a range of fiduciary obligations on union officials, including the obligations to obtain a performance bond and to hold union property solely for the benefit of the union.<sup>178</sup> Although it made the union, as a whole,

175. LMRDA, Pub. L. No. 86-257, § 101, 73 Stat. 519 (1959) (codified at 29 U.S.C. § 411 (1988)). For background on the origins of Title I, see R. ALTON LEE, EISENHOWER AND LANDRUM-GRIFFIN: A STUDY IN LABOR-MANAGEMENT POLITICS 95-116 (1990); McLAUGHLIN & SCHOOMAKER, *supra* note 43, at 74-76; Summers, *American Legislation*, *supra* note 5, at 283-90.

176. LMRDA § 102, 29 U.S.C. § 412 (1988).

177. *Id.* § 101(a)(1)-(2), 29 U.S.C. § 411(a)(1)-(2) (recognizing "reasonable rules" defense); *id.* § 101(a)(4), 29 U.S.C. § 411(a)(4) (imposing exhaustion requirement).

178. *Id.* §§ 501-504, 29 U.S.C. §§ 501-504. Section 501 appeared in Title V of the LMRDA as part of a group of provisions designed to protect labor organizations from irresponsible officials. Thus, § 501 establishes the officers' fiduciary duty to the organization, creates a derivative action in favor of members who may sue the officer following demand upon the organization, and establishes criminal penalties for embezzlement or conversion of union funds. *Id.* § 501, 29 U.S.C. § 501. Section 502 establishes a bonding requirement applicable to officers and agents who handle union funds. *Id.* § 502, 29 U.S.C. § 502. Section 503 prohibits loans to union officers. *Id.* § 503, 29 U.S.C. § 503. Section 504 prohibits certain persons, including members of the Communist Party and those convicted of crimes, from engaging in labor relations work. *Id.* § 504, 29 U.S.C. § 504.

Title V evolved rather substantially during congressional consideration of the LMRDA. It initially appeared in the Senate version of the bill reported out of committee as a hortatory suggestion to labor unions that federal policy supported the establishment of ethical practice codes to govern internal affairs—a suggestion that reflected the efforts of the AFL-CIO to head off detailed regulation by establishing such codes. See S. REP. No. 187, 86 Cong., 1st Sess. 50-52 (1959). The minority report on the bill criticized the failure of the committee to establish firm fiduciary obligations and to provide members with a right to sue to enforce them. *Id.* at 72. On the Senate floor, the minority view prevailed and an explicit fiduciary obligation was inserted in the bill. See S. 1555, 86th Cong., 1st

the object of these fiduciary obligations, the LMRDA nevertheless specifically refrained from permitting the union itself to bring actions against its officers. Instead, the statute conferred the right to sue only on individual union members.<sup>179</sup> It also refrained from creating any rights in favor of union officers, apart from those they enjoy as members of the union.<sup>180</sup>

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Sess. (1959). The House referred the Senate bill to Rep. Bardin's labor committee, which adopted the fiduciary provisions that appear in the statute. See H.R. REP. NO. 741, 86th Cong., 1st Sess. 44-47 (1959). The House report included a majority statement describing the purpose of the provisions as well as a plethora of supplementary and minority views. See *id.* at 1 (purpose), 77-92 & 100-06 (supplementary), 94-99 (minority). See generally R. Theodore Clark, Jr., *The Fiduciary Duties of Union Officials Under Section 501 of the LMRDA*, 52 MINN. L. REV. 437 (1967) (discussing ambiguities in § 501); Frank J. Dugan, *Fiduciary Obligations Under the New Act*, 48 GEO. L.J. 277 (1950) (discussing common law development of fiduciary concept through enactment of § 501, its effect on union officials and its interpretation by courts); Douglas Leslie, *Federal Courts and Union Fiduciaries*, 76 COLUM. L. REV. 1314 (1976) (describing scope accorded Title V by courts and suggesting more appropriate modes of analysis); Donald H. Wollett, *Fiduciary Problems Under Landrum-Griffin*, in PROCEEDINGS OF NEW YORK UNIVERSITY THIRTEENTH ANNUAL CONFERENCE ON LABOR 267 (Emanuel Stein ed., 1960) (discussing fiduciary problems under § 501); Comment, *Determining Breach of Fiduciary Duty Under the Labor-Management Reporting and Disclosure Act: Gabauer v. Woodcock*, 93 HARV. L. REV. 608 (1980); (discussing § 501 challenge to political contributions made by union); John M. McEnany, Note, *The Fiduciary Duty Under Section 501 of the LMRDA*, 75 COLUM. L. REV. 1189 (1975) (studying judicial extension of § 501 beyond pecuniary matters).

179. LMRDA § 501(b), 29 U.S.C. § 501(b). Section 501 imposes a fiduciary duty on union officers and specifically entitles the union's members to enforce that duty in an action brought in federal court. *Id.* § 501(a)-(b), 29 U.S.C. § 501(a)-(b) (1988). The statute includes a demand requirement that contemplates some attempt by members to convince the union to prosecute the claim. *Id.* § 501(b), 29 U.S.C. § 501(b). See *Coleman v. Brotherhood of Ry. & S.S. Clerks*, 340 F.2d 206, 208 (2d Cir. 1965) (stating that individual member can bring suit only if union refuses or fails to sue within reasonable time after request); *Local 443, Int'l Bhd. of Teamsters v. Pisano*, 753 F. Supp. 434, 436 (D. Conn. 1991) (holding that union member must first request that union sue union official suspected of wrongdoing before member is permitted to bring suit); *International Bhd. of Boilermakers v. Freeman*, 683 F. Supp. 1190, 1192 (N.D. Ill. 1988) (holding that union member must first request union to sue and union must fail or refuse to do so); *Safe Workers Org., Chapter No. 2 v. Ballinger*, 389 F. Supp. 903, 908 (S.D. Ohio 1974) (stating that before suit can be brought by individual member, member must first request union to bring suit and must secure, on showing of good cause, court permission to proceed with action). The statute does not, however, authorize the union itself to enforce the fiduciary obligations of officers by suit brought in federal court. For the contrary view, see MALIN, *supra* note 8, at 322 (arguing that union may bring implied right of action against officers). To the extent that § 501 fails to create such a right of action for the union, state law surely imposes fiduciary obligations on union officials and authorizes the union to bring suit for their breach. See Cox, *supra* note 86, at 827.

180. Most union constitutions include provisions that limit the class of individuals who may hold union office to members in good standing. The LMRDA certainly protects the rights of such officers in their capacity as members, but it does not protect union officials as such. Compare *Finnegan v. Leu*, 456 U.S. 431,

While Titles I and V establish federally enforceable rules to protect union members, their unilateral character leaves largely unexplored the role of the courts in protecting the union's institutional interest from officers and members who violate their obligations to the organization.<sup>181</sup> Congress deliberately left these

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436-42 (1982) (stating that LMRDA § 102 and § 609 protect rights of union members as members; appointed union official may not challenge patronage-based removal from office by newly elected president) *with* Sheet Metal Workers' Int'l Ass'n v. Lynn, 488 U.S. 347, 358-59 (1989) (holding that removal from office of elected union official who expressed dissent may violate official's right as member to freedom from retaliation for expression of protected views).

Provisions in Title IV govern union elections and terms in office. LMRDA §§ 401-404, 29 U.S.C. §§ 481-482. Aside from those provisions, and in the absence of retaliation for the exercise of protected rights, the LMRDA leaves the method of choosing and removing union officials in the control of union laws and state judges.

181. In keeping with a narrow conception of § 501, early decisions of the lower federal courts generally concluded that the statute applied only to claims of financial self-dealing on the part of officers and members. *See* Phillips v. Osborne, 403 F.2d 826, 830 (9th Cir. 1968) (holding that LMRDA applies only to fiduciary responsibility with respect to money and property of union (citing *Gurton v. Arons*, 339 F.2d 371 (2d Cir. 1964))). *But see* *Kerr v. Shanks*, 466 F.2d 1271, 1275 (9th Cir. 1972) (suggesting that breadth of statute remained open); *Johnson v. Nelson*, 325 F.2d 646, 649 (8th Cir. 1963) ("Careful analysis of Title V refutes the notion that the statute is narrow in its terms and scope and that it is limited solely to pecuniary responsibility or the proper or improper use of union funds.").

Over time, however, courts concluded that union officials owed an obligation under the statute not only to refrain from self-dealing in financial affairs but also to administer the union's affairs in keeping with general principles of fairness. *See* *Stelling v. International Bhd. of Elec. Workers Local Union No. 1547*, 587 F.2d 1379, 1387 (9th Cir. 1978) (finding that allegations that appellees failed to submit collective bargaining agreement to general membership vote is sufficient assertion of breach of trust), *cert. denied*, 442 U.S. 944 (1979); *Pignotti v. Local 3, Sheet Metal Workers Int'l Ass'n*, 477 F.2d 825, 832-35 (8th Cir.) (affirming conclusion in *Johnson v. Nelson*, 325 F.2d 646 (8th Cir. 1963), that § 501 imposes broad fiduciary obligations), *cert. denied*, 414 U.S. 1067 (1973); *Sabolsky v. Budzanoski*, 457 F.2d 1245, 1250-51 (3d Cir.) (concluding that allegation of financial self-dealing is not required as § 501 "was not intended to be limited to such a narrow construction"), *cert. denied*, 409 U.S. 853 (1972). Such decisions read § 501 as providing a roving grant of authority to police the parent union's administration of internal union affairs.

This broad conception of the federal role receives some support from commentators, *see* MALIN, *supra* note 8, at 305; Clark, *supra* note 178, at 439-44, but it lacks historical support. The courts that read § 501 broadly do so on the basis of a statement that appears in the supplementary views that five representatives attached to the House's report on its version of the bill. *See* H.R. REP. NO. 741, 86th Cong., 1st Sess. 81 (1959) (supplementary views). The statement affirmed that the committee bill was broader and stronger than the provisions of S. 1555 which related to fiduciary responsibilities. *Id.* It then explained this breadth as follows:

S. 1555 applied the fiduciary principle to union officials only on their handling of "money or other property" (see S. 1555, sec. 610), apparently leaving other questions to the common law of the several States. Although the common law covers the matter, . . . the committee bill

gaps in the regulatory scheme, assuming that the unions would enforce their own internal rules against members either by invoking disciplinary procedures or by bringing suit in state court.<sup>182</sup> As a consequence, the LMRDA does not consider the circumstances under which unions may judicially enforce the obligations of their members and officers, nor does it address such important remedial questions as the availability of damages or injunctive relief.

The LMRDA does establish, however, a more complete

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extends the fiduciary principle to all the activities of union officials and other union agents or representatives.

*Id.* (emphasis added). Courts that have extended § 501 have done so on the basis of this suggestion that the fiduciary principle covers all union activities. *See, e.g., Stelling*, 587 F.2d at 1387 (collecting cases but failing to note that language appeared in supplementary views of five representatives rather than in body of House report).

While this statement does suggest that the House version reaches more broadly than the Senate bill, it does not supply the basis for wide-ranging judicial review of official action. The Senate bill simply imposed a duty of trust on officers and agents with respect to "money and property" in their possession by virtue of their positions. S. REP. NO. 187, 86th Cong., 1st Sess. 8 (1959) (discussing S. 1555). The House bill broadened this obligation to apply not only to money and property in the officers' possession but also to forbid officers "from dealing with such organization as an adverse party . . . and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization." H.R. REP. NO. 741, 86th Cong., 1st Sess. 81 (1959). Thus, the House bill went beyond "money or property" in the possession of an officer and reached all traditional self-dealing situations as the majority House report explains. *See id.* at 10 (likening fiduciary duty in § 501 to that imposed traditionally on trustees, agents and bank officers). Even if one accepts the supplementary statement as definitive evidence of legislative intent, therefore, it does not compel a reading of § 501 that would permit courts to review officers' conduct of union affairs under an open-ended fairness standard.

Further evidence of the limited focus of the fiduciary duty in § 501 appears in the structure of the statute. The enforcement scheme in § 501(b) permits a union member to sue an officer to recover funds or profits "for the benefit of the labor organization." LMRDA § 501, 29 U.S.C. § 501(b) (1988). Such a scheme fits well with the traditional derivative action to remedy alleged instances of self-dealing, but does not make sense when used to challenge the general administration of union affairs. *See Gurton v. Arons*, 339 F.2d 371, 375 (2d Cir. 1974) (stating that § 501 was not meant to be catch-all provision allowing suits against union officials for any charges of misconduct). *See generally* Leslie, *supra* note 178, at 1320-28 (suggesting that courts might limit their intervention to "acts which confer a financial or political benefit on an officer but are supported by no significant institutional interests").

182. For recognition that Title I of the LMRDA establishes only minimal federal guarantees, rather than a comprehensive code, see Summers, *Pre-Emption*, *supra* note 5, at 124 (discussing legislative history of Title I). For similar recognition in the case of Title V, see Aaron, *supra* note 86, at 894 (stating that Title V represents minimum ethical and legal standards by which to measure behavior of union officials) and Summers, *Pre-Emption*, *supra* note 5, at 140 (stating that in Title V Congress sought to establish federal minimum fiduciary obligations for union officers).

scheme to regulate union trusteeships.<sup>183</sup> Title III of the LMRDA generally expresses federal approval of the union trusteeship as a device by which parent unions may exercise control over affiliated locals.<sup>184</sup> It declares presumptively valid<sup>185</sup> those trusteeships imposed by parent unions for federally approved purposes.<sup>186</sup> The presumption of validity lasts for a period of eighteen months and can be overcome only by "clear and convincing proof" that the parent union acted for a wrongful purpose.<sup>187</sup>

Although such provisions express general congressional approval of the trusteeship, Title III also recognizes that some unions use the trusteeship for improper purposes. The statute thus prohibits parents from using the trusteeship as a device to acquire the assets or the voting power of trustee locals.<sup>188</sup> It also expressly permits local unions and their members to bring suit in federal court to block the implementation of unlawful trusteeships.<sup>189</sup> Finally, Title III directs the federal courts to develop a body of common law to determine whether the purposes underlying the trusteeship advance the "legitimate objects" of the institution.<sup>190</sup>

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183. Useful discussions of the trusteeship provisions of Title III appear in Beaird, *supra* note 43; Janice Bellace, *Union Trusteeships: Difficulties in Applying Sections 302 and 304(c) of the Landrum-Griffin Act*, 25 AM. U. L. REV. 337 (1975); William J. Isaacson, *Union Trusteeships Under the Landrum-Griffin Act*, in PROCEEDINGS OF NEW YORK UNIVERSITY FOURTEENTH ANNUAL CONFERENCE ON LABOR 97, 121-22 (Emanuel Stein ed., 1961); Arnold R. Weber, *Local Union Trusteeship and Public Policy*, 14 INDUS. & LAB. REL. REV. 185 (1960); Donald R. Anderson, Comment, *Landrum-Griffin and the Trusteeship Imbroglia*, 71 YALE L.J. 1460 (1960).

184. See S. REP. NO. 187, 86th Cong., 1st Sess. 16-17 (1959) (declaring that trusteeships "are among the most effective devices which responsible international officers have to insure order within their organization").

185. LMRDA § 304(c), 29 U.S.C. § 464(c) (1988).

186. *Id.* § 302, 29 U.S.C. § 462. For identification of the four permissible purposes for which the parent union may impose a trusteeship, see *supra* note 114.

187. LMRDA § 304(c), 29 U.S.C. § 464(c). In addition to adducing "clear and convincing proof," local unions may, under § 302, overcome the presumption of validity by showing that the trusteeship violates the union constitution or by showing that the trusteeship was imposed without the fair hearing adverted to in § 304(c); see *id.* §§ 302, 304(c), 29 U.S.C. §§ 462, 464(c). See generally MALIN, *supra* note 8, at 180-81.

188. LMRDA § 303, 29 U.S.C. § 463 (imposing criminal sanctions on those who willfully use trusteeships to acquire local unions' political power or assets). The statute requires reports within 30 days of the imposition of the trusteeship that specify, *inter alia*, the subordinate's financial condition and the reason for the trusteeship. *Id.* § 301(a), 29 U.S.C. § 461(a). The statute also requires follow-up reports semiannually thereafter. *Id.* Such reporting provisions seek to prevent parent unions from using trusteeships to "milk" local treasuries.

189. *Id.* § 304(a), 29 U.S.C. § 464(a).

190. *Id.* § 302, 29 U.S.C. § 462. Among the most significant elements of

Title III, in regulating the union trusteeship, does not necessarily leave other aspects of the relationship between parent and local untouched. It is true that the LMRDA does not, by its terms, regulate the method by which a parent union might suspend or revoke a local's charter or the manner in which a parent, like the UA in *Local 334*, may choose to deal with overlapping jurisdiction by ordering the merger of local unions.<sup>191</sup> Nevertheless, many courts have applied the trusteeship provisions of Title III to such forms of parental control.<sup>192</sup> Such courts do so either by citing a provision that defines the concept of trusteeship broadly to include any parental action that suspends local union autonomy<sup>193</sup> or by following the generally deferential thrust of the trusteeship provisions in litigation over other forms of discipline.<sup>194</sup>

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the legislative history of the trusteeship provisions, the Senate report makes clear that the Eighty-Sixth Congress expressly contemplated that the federal courts would exercise their common lawmaking powers in the course of deciding what constitutes "legitimate objects" of the union:

The bill does not specify in detail all of the reasons for which a trusteeship may be imposed. For instance, the elimination of Communist or other forms of subversion has long been recognized by the courts as a justification for imposing a trusteeship. More rigid standards than these might prevent international intervention when fully justified. It should not be difficult to decide whether the general tests are met in a particular case after all the facts have been developed. Congress has followed the same course in dealing with "restraint of trade" and "unfair methods of competition."

S. REP. NO. 187, 86th Cong., 1st Sess. 17 (1959) (discussing S. 1555).

191. The provisions of Title III apply only to trusteeships, which are defined quite broadly as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws." LMRDA § 2(h), 29 U.S.C. § 402(h). Title III thus applies to charter suspensions and revocations, to the merger of local unions and to the removal of local union officers when such common methods of control suspend the local's "otherwise available" autonomy. *Cf. Parks v. International Bhd. of Elec. Workers*, 314 F.2d 886, 923-24 (4th Cir.) (holding charter revocation was not trusteeship), *cert. denied*, 372 U.S. 976 (1963). *See generally* McLAUGHLIN & SCHOOMAKER, *supra* note 43, at 135-36 (discussing methods of disciplining local unions without implicating Title III); Beaird, *supra* note 43, at 502-10 (discussing what constitutes imposition of trusteeships).

192. *See, e.g., Local No. 2, Int'l Bhd. of Tel. Workers v. International Bhd. of Tel. Workers*, 261 F. Supp. 433, 434 (D. Mass. 1966) (finding charter suspension to compel compliance with international directive constitutes trusteeship). *See generally* MALIN, *supra* note 8, at 178 (noting that courts take case-by-case approach in determining whether to treat forms of local union reorganization as trusteeships).

193. For a discussion of the Senate's broad construction of trusteeship implementation, see *supra* note 191 and accompanying text.

194. *See Parks v. International Bhd. of Elec. Workers*, 314 F.2d 886 (4th Cir.), *cert. denied*, 372 U.S. 976 (1963). In *Parks*, the Court of Appeals for the Fourth Circuit concluded that a parent's revocation of its local's charter was not a trusteeship within the meaning of the LMRDA. *Id.* at 924. Yet the court bor-

In sum, on a structural basis Title III does more than impose unilateral obligations on unions that the members may enforce in federal court.<sup>195</sup> It appears to create a bilateral regulatory scheme that establishes rights for both the local union and its members on the one hand and for the parent union on the other.<sup>196</sup> Accordingly, federal courts permit parent unions to bring suit in federal court to compel their local unions to comply with lawful trusteeships.<sup>197</sup> Such decisions, which rest on both the structure of the LMRDA and section 301 of the Taft-Hartley Act, reject the negative implications that would ordinarily flow from the fact that Title III creates an explicit right of action for the local union and its members but not for the parent.<sup>198</sup>

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rowed the generally deferential thrust of the trusteeship provisions in concluding that federal courts have no power to alter the allocation of power in the union's governing documents. *Id.* at 906-07; *see also* Local Union No. 657 of United Bhd. of Carpenters v. Sidell, 552 F.2d 1250, 1256-57 (7th Cir. 1974) (upholding parent union's power to order local to affiliate with district council pursuant to its constitutional powers).

195. In this respect, the balance Congress struck in distinguishing between legitimate trusteeships and those that violate federal standards creates the kind of continuum that Professor Gottesman recently identified in rethinking traditional rules of labor preemption. *See* Michael H. Gottesman, *Rethinking Labor Law Preemption: State Laws for Unionization*, 7 YALE J. ON REG. 355, 394-410 (1990). Gottesman argues that in regulating union behavior, Congress often draws a line that separates conduct made illegal by federal law from that which federal law affirmatively protects. *Id.* at 395. Because the rules governing union trusteeships in Title III appear to draw such a line, they leave little room for state law to operate. Professor Gottesman does note, however, that the states may regulate employer conduct that the NLRA was *not* intended to protect, even if the NLRB would reach a different result on the legitimacy of such conduct. *Id.* at 404-05.

196. Title III also differs from Title I in that a good deal more care and committee work went into drafting the trusteeship provisions than the bill of rights. The provisions of Title III were enacted largely in the form in which they emerged from committee, where they were drafted by Senator Kennedy with the assistance of Archibald Cox. *See* Isaacson, *supra* note 183, at 122. Title I, by contrast, was introduced by Senator McClellan on the floor of the Senate and amended two days later into its final form; it thus did not receive careful committee attention. *See* Aaron, *supra* note 86, at 858-59 (discussing adoption of "McClellan amendment").

197. For a discussion of the enforcement of lawfully imposed trusteeships, *see supra* note 115 and accompanying text.

198. The Second Circuit's decision in *National Ass'n of Letter Carriers v. Sombrotto* made clear that the LMRDA played a central role in the court's influential decision to take cognizance of the parent union's action to enforce a lawful trusteeship. *National Ass'n of Letter Carriers v. Sombrotto*, 449 F.2d 915, 918-21 (2d Cir. 1971). There, the court concluded that the statutory scheme reflected an understanding that litigation over the legality of union trusteeships would go forward with the trusteeship in place. *Id.* at 919. With federal standards to guide the assessment of the trusteeship's legality and an evident congressional assumption that subordinate bodies were to comply with trusteeships that passed federal muster, the court had little difficulty in holding that parent un-

The relevant non-preemption provisions confirm the difference between the one-sided character of Titles I and V and the more complete regulatory approach of Title III. Because Titles I and V create rights only in favor of union members, they save from preemption only such rights as existing state and federal laws confer on union members.<sup>199</sup> That they do not save the rights of unions thus underscores the fact that no such federal rights have been created. The provisions also make clear that although the states must respect the minimum federal standards, they remain free to establish rules more protective of the rights of union members than those set forth in federal law.<sup>200</sup>

The non-preemption provision in Title III, on the other hand, does not contain the same confirmation of a one-sided regulatory scheme. Rather, it declares that the provisions of Title III

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ions were entitled, as a matter of federal law and more or less as a matter of course, to injunctive relief to enforce lawful trusteeships. *Id.* at 921. The court's conclusion in *Sombrotto* was obviously easier to achieve by reliance on the open-ended reference in § 301(a) to the enforcement of contracts between labor organizations. *Id.* at 918 (noting that § 301 language "constitute[s] a clear predicate for jurisdiction"); see also LMRDA § 301, 29 U.S.C. § 185(a) (1988) (allowing suit to be brought for violation of contract between employer and labor organization or between labor organizations). The decision to grant injunctive relief to the parent, however, was clearly designed to implement the LMRDA. *Sombrotto*, 449 F.2d at 921 (noting that properly created trusteeships are presumed valid for 18 months and "Congress [could] hardly have wanted to leave the local the option of reversing this statutory burden" by failing to allow judicial enforcement).

199. LMRDA § 103, 29 U.S.C. § 413 (1988). Section 103 of the LMRDA, the savings provision applicable to Title I's bill of rights, provides as follows: "Nothing contained in this subchapter shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization." *Id.*

Section 603, the provision that saves state remedies generally, and those for breach of fiduciary duty in particular, provides as follows:

Except as explicitly provided to the contrary, nothing in this chapter shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, under any other Federal law or under the laws of any State, and, except as explicitly provided to the contrary, nothing in this chapter shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal law or law of any State.

LMRDA § 603(d), 29 U.S.C. § 523(a).

Both provisions thus operate in a rather one-sided way, preserving state-created remedies for union members and state-created responsibilities for unions and their officers, but failing to preserve the union's state-created rights as against its members. As a result the language of the statute limits federal law to a supplemental role and prevents it from establishing any rights for unions. For a discussion of the origins of these provisions and the protections offered to union members, see Summers, *Pre-Emption*, *supra* note 5, at 123-26, 140-41.

200. For the text of the relevant LMRDA sections, see *supra* note 199.

should be regarded as supplementary to “*all* other rights and remedies at law or in equity.”<sup>201</sup> On its face, the statute appears to save all state rights, including those that conflict directly with the federal statute. Professor Summers, a noted authority in this field, has rejected such a reading. He observes that the statute contemplates judicial enforcement of trusteeships by parent unions and the application of federal rules to govern such enforcement proceedings.<sup>202</sup> The word “other” in Title III thus serves to distinguish the (preempted) state laws that conflict with federal standards from the (non-preempted) state rights and remedies that address matters “other” than those the federal statute regu-

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201. The relevant non-preemption provision provides:

The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies at law or in equity: *Provided*, that upon the filing of a complaint by the Secretary the jurisdiction of the district court over such trusteeship shall be exclusive and the final judgment shall be *res judicata*.

LMRDA, § 306, 29 U.S.C. § 466 (1988).

The provision originally appeared in a slightly different form in Senate Bill 1555, at a time when Title III failed to create any right of action in federal court for subordinate unions or their members. *See* S. 1555, 86th Cong., 1st Sess. 306 (1959) (“[n]othing contained in this title shall be deemed to authorize any suit in any court of the United States except upon complaint of the Secretary”). The provision as initially drafted thus contemplated that all litigation over the legality of trusteeships would go forward in state court, except in cases where the Secretary of Labor filed suit in federal court on the complaint of a member. *See* S. REP. NO. 187, 86th Cong., 1st Sess. 19 (1959) (“Enactment of the bill will not affect the right of a local union or its members to challenge a trusteeship in the State courts.”). The retention of the provision in the final version of the bill, following the creation of a private right of action for local unions and their members, reflects some continuing commitment to state court litigation of trusteeship issues.

202. Summers, *Pre-Emption*, *supra* note 5, at 132. Professor Summers notes that the non-preemption provision in Title III, like those elsewhere in the LMRDA, makes federal law exclusive when it establishes minimum protections for union members but not exclusive when it presumptively validates a parent union’s lawful trusteeship. *Id.* Summers thus argues that state courts remain free to fashion standards more protective of individual rights than those in the federal law but that they lack the power to enforce a trusteeship that fails to meet minimum federal standards. *Id.* at 131-32.

I find such a one-sided approach difficult to square with the language of the relevant non-preemption provisions. Title I’s non-preemption provision specifically adopts a one-sided approach by preserving only the “rights and remedies of any member” of a labor union under state law; it does not purport to save a labor organization’s rights. For the text of this provision, see *supra* note 199. The same may be said of the non-preemption provision that applies to Title V; § 603 prevents preemption of state law that imposes greater responsibilities on union officials, but does not save state laws that impose less demanding standards. For the text of § 603, see *supra* note 199. By contrast to such provisions, both of which emphasize the minimal character of the federal standard, Title III’s provision applies to “all other rights and remedies” without specifying the rights of locals and members. *See* LMRDA § 306, 29 U.S.C. § 466.

lates. On such a reading, Title III's reference to *all* rights and remedies, rather than to only the rights and remedies of union members, takes on greater significance because it suggests a desire to protect the federal rights of both the local and the parent unions.<sup>203</sup>

To summarize, Title III differs from other sections of the LMRDA in the completeness of its regulatory scheme. Although Titles I and V create rights in union members, they provide the federal courts with little guidance in deciding whether, and in what circumstances, the union may vindicate its institutional interest in stability by bringing enforcement actions against members and officers. Title III, by contrast, not only prescribes rights for local unions and their members, but also expresses approval of union trusteeships imposed by parent unions for statutorily acceptable reasons.<sup>204</sup> Title III thus provides federal courts with far

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203. Like Summers, I believe the federal standards should control in state court litigation. Unlike Summers, however, I believe that those standards should control where they protect local unions and their members and where they favor the imposition of parental control. Congress, after all, took the relationship between parent and local closely in hand and struck a nice balance between the parent's interest in administering the union and the local's right to freedom from oppressive supervision. In recognizing the propriety of parental control to ensure compliance with the collective bargaining agreement, for example, the LMRDA establishes a federal rule in an area of acknowledged federal interest.

While my interpretation of the statute thus differs from that of Summers, we ultimately reach similar conclusions. In a prescient article written shortly after the LMRDA became law, Professor Summers recognized that litigation over internal affairs would go forward in both state and federal fora but that the content of law applied to such disputes, though supplied by different sovereigns, would tend to coalesce around the federal statute into parallel sets of rules. *See Summers, State Courts, supra* note 5, at 354-58 (discussing advantages and disadvantages of parallel rules). He sought to encourage state courts to continue to fashion common law in the hope that the federal statute would help them overcome the indecisiveness that had plagued pre-statutory developments. *Id.* at 351. At the same time, he encouraged the federal courts to use the common law experience of the state courts as an aid to the interpretation of the federal statute. *See id.* at 352-53.

At least in the area of parent-local relations, Summers' prophecy has been only partially fulfilled. The law has tended to coalesce around the federal standards in Title III, but the state courts have all but abdicated their role in the regulation of trusteeships. Even during the period before *Local 334* made the federal forum available on removal grounds, plaintiffs largely abandoned the state courts in preference for the federal forum. Moreover, the non-preemption provision of Title III has never been cited in a litigated case. The LMRDA thus occupied the field as a practical matter, even if its non-preemption provision sought to prevent that result.

204. Although their arguments differ from mine in important respects, other commentators have recognized that Title III offers a fairly complete guide to the relations between parent and locals and the basis for the development of a body of federal common law. *See, e.g., Beaird, supra* note 43, at 518 (arguing that

more guidance in deciding whether to enforce the union constitution at the parent union's behest than do other provisions in the LMRDA.

B. *The Theory Derived: The LMRDA and Section 301(a)*

Courts and commentators have long criticized the Supreme Court's conclusion that the first clause of section 301(a) of the Taft-Hartley Act authorizes the federal judicial enforcement of collective bargaining agreements.<sup>205</sup> While criticisms of the legitimacy of the judicial role in collective bargaining have been exaggerated,<sup>206</sup> one can certainly question the judicial extension of section 301 to union constitutions. Nothing in the text or history of the Taft-Hartley Act suggests that Congress contemplated federal enforcement of union constitutions or laid down guidelines to govern such enforcement decisions.<sup>207</sup> To overcome these criticisms, this Article proposes a narrow interpretation of section 301's reference to contracts between "any such labor organizations" limited to those provisions of the union constitution that regulate the relationship between the parent union and its subordinate bodies.<sup>208</sup>

Such an interpretive approach confines the judicial role under section 301 within the parameters defined in the LMRDA, which played a decisive role in the application of section 301 to union constitutions, but it also finds support in the language of

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"[m]uch can be said . . . for the uniformity that would result in the law of internal union affairs through the development of a federal common law"); Isaacson, *supra* note 183, at 122-23 (same).

205. For the classic critique of the Supreme Court's decision in *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957), which upheld federal enforcement of collective bargaining agreements, see Alexander M. Bickel & Harry H. Wellington, *Legislative Purpose and the Judicial Process: The Lincoln Mills Case*, 71 HARV. L. REV. 1 (1957). The predicate for the authors' critique was their agreement with Justice Frankfurter's view that § 301(a) conferred jurisdiction on the federal courts but failed to establish federal standards for the enforcement of the collective bargaining agreement. *Id.* at 28, 38. Bickel and Wellington thus claimed that § 301 called upon the courts to undertake a task of lawmaking for which they were "enormously unfit." *Id.* at 38.

206. See generally Pfander, *supra* note 8, at 279-309 (suggesting that conventional critique of *Lincoln Mills* ignores text and history of § 301).

207. For the history of the between-labor-organizations clause of § 301(a), see *supra* notes 30-119 and accompanying text.

208. For a discussion of the between-labor-organizations clause, see *supra* notes 32-56 and accompanying text.

section 301 itself.<sup>209</sup> In developing the contract theory<sup>210</sup> (that the Court eventually emphasized in *Local 334* and *Wooddell*), state judges proceeded upon the assumption that the union constitution established a variety of *separate* contracts, including those between the members and the organization, the parent union and its locals, and among the members themselves.<sup>211</sup> One can fairly read section 301 as applying only to the contractual relationship between the parent and its affiliated locals—the only contract between labor organizations defined in the union constitution. Accepting the logic of *Local 334* and *Wooddell* and the application of section 301 to union constitutions does not, therefore, necessarily oblige the federal courts to police the separate “contracts” between the union and its individual officers and members.<sup>212</sup>

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209. For a discussion of the judicial role in the enforcement of union constitutions under the LMRDA, see *supra* notes 90-119 and accompanying text.

210. For a discussion of the contract theory, see *supra* notes 35-39 and accompanying text.

211. See *Shea v. McCarthy*, 953 F.2d 29, 31-33 (2d Cir. 1992) (holding that union constitution establishes contracts between unions, between union and members, and among members). For a discussion of the common law view of the contractual relationships in union constitutions, see *supra* note 49 and accompanying text.

212. If one accepts the holdings in *Local 334* and *Wooddell* and the application of § 301 to some constitutional relationships, then restricting the statute to the parent-local relationship makes both practical and historical sense.

Early national unions were, in a rather literal sense, the result of contracts between local unions that met in convention to work out the scope of the national body's power. See HOROWITZ, *supra* note 2, at 1. In their initial structure, those national unions were little more than loose confederations of autonomous local bodies. See ULMAN, NATIONAL UNION, *supra* note 2, at 108; see also NORMAN J. WARE, THE LABOR MOVEMENT IN THE UNITED STATES: 1860-1895, at 167 (1929) (noting that unions were national “only in name”). Early union constitutions were drafted to recognize that locals retained control of all union affairs, except those expressly ceded to the parent body. See ULMAN, NATIONAL UNION, *supra* note 2, at 135. Indeed, they defined local unions as members of the national union, much the way national unions now act as members of the AFL-CIO. *Id.* at 109. Such autonomy meant that locals had sufficient bargaining power to join and withdraw from national groups without committing their assets to the national treasury. See *Moyer v. Butte Miners' Union*, 232 F. 788 (D. Mont. 1916) (refusing to apply forfeiture clause in contract between member union and national), *cert. denied*, 245 U.S. 671 (1918); *Sanders v. DeLucia*, 266 F. Supp. 852 (S.D.N.Y.) (interpreting Constitution to permit local union to withdraw from parent union without surrendering assets), *aff'd*, 379 F.2d 250 (2d Cir. 1967); MARTIN SEGAL, THE RISE OF THE UNITED ASSOCIATION 101-03 (1970) (describing split of Manhattan local United Brotherhood of Plumbers and Gas Fitters from Amalgamated Society and subsequent negotiations with United Association).

Local unions today rarely negotiate the terms of their affiliation with the national body and rarely retain the right to withdraw with their assets intact. See, e.g., *Tile, Marble, Terrazzo Finishers Int'l Union v. Tile, Marble, Terrazzo Finishers Local 32*, 896 F.2d 1404, 1409-10 (3d Cir. 1990) (holding that forfeiture clause in contract with parent required local to turn over all property to parent

The proposed approach not only finds support in the statute's text, it limits the scope of section 301(a) to the class of constitutional disputes that Congress has most carefully regulated. The LMRDA subjects the class of disputes arising from the parent-local relationship to federal judicial review and supplies reasonably definite standards to govern resolution of such disputes. In the course of resolving disputes over the imposition of trusteeships moreover, the federal courts have developed a body of decisional law that defines the extent of parental control and the nature of local union misconduct that justifies the imposition of discipline.<sup>213</sup> Such a body of law can appropriately govern the

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on withdrawal). But one can find a modern analogy to the historical bargaining between locals over the terms of affiliation in the merger agreements that autonomous national unions have frequently entered into since the merger of the AFL and CIO. For a discussion of merger activity between national unions, see *supra* note 55. Such merger agreements appear to fall squarely within the language of § 301 both as historically understood and as currently interpreted. The proposed application of § 301 to relations between constituent bodies thus ensures that federal courts will retain control over the merger agreement after its effectiveness produces a single merged organization. It thus ensures that the federal common law of merger agreements continues to apply to the resolution of the disputes that occasionally arise after the merger takes effect. For examples of such disputes, see *International Brotherhood of Boilermakers v. Local Lodge D354*, 897 F.2d 1400 (7th Cir. 1990) and cases cited therein.

213. Federal courts rather routinely approve the imposition of trusteeships where the local engages in a strike that violates its collective bargaining agreement. See, e.g., *National Ass'n of Letter Carriers v. Sombrotto*, 449 F.2d 915, 921-22 (2d Cir. 1971) (holding that parent union can impose trusteeship to prevent possible illegal strike); *Jolly v. Gorman*, 428 F.2d 960, 965 (5th Cir. 1970) (finding that such strike comes within § 302 of the LMRDA, which allows imposition of trusteeship to assure performance of collective bargaining agreement), *cert. denied*, 400 U.S. 1023 (1971); cf. *Hansen v. Guyette*, 814 F.2d 547, 550 (8th Cir. 1987) (enforcing trusteeship where local continued to strike after international lifted strike sanction). But see *Benda v. Grand Lodge of Int'l Ass'n of Machinists*, 584 F.2d 308, 313 (9th Cir. 1978) (declaring trusteeship invalid where parent sought to restructure locus of bargaining authority), *cert. dismissed*, 441 U.S. 937 (1979). Similarly, federal courts routinely approve trusteeships where the local fails to assure orderly election procedures. See, e.g., *C.A.P.E. Local 1983 v. International Bhd. of Painters*, 598 F. Supp. 1056, 1072 (D.N.J. 1984) (holding trusteeship permissible when actions of parent threaten election procedures); *Tam v. Rutledge*, 475 F. Supp. 559, 568 (D. Haw. 1979) (upholding imposition of trusteeship based on proliferation of legal actions and public charges that caused delay in holding supervised elections). Finally, courts often approve trusteeships where the local fails to account properly for union funds. See, e.g., *International Bhd. of Boilermakers v. Local Lodge D461 of Cement Workers*, 663 F. Supp. 1031, 1034-35 (M.D. Ga.) (upholding trusteeship where local ceased sending monthly per capita tax to national as required in union constitution), *stay denied*, 663 F. Supp. 1031 (M.D. Ga.), *aff'd*, 835 F.2d 1439 (11th Cir. 1987); *Graphic Arts Int'l Union v. Graphic Arts Int'l Union, Local No. 529*, 529 F. Supp. 587, 594 (W.D. Mo. 1982) (holding that actions constituting "financial malpractice" will support imposition of trusteeship even if taken in good faith).

Courts have divided, however, on the question of whether a local's attempt

federal courts' resolution of parent-local disputes under section 301(a), even where the dispute arises from actions other than the imposition of a trusteeship.<sup>214</sup>

The dispute in *Local 334*, for example, may have resulted in the imposition of a trusteeship if, instead of filing suit to challenge the legality of the merger order, the local had simply refused to cooperate with that order. In resolving a challenge to the legality of such a trusteeship, federal courts would have assessed the issues of whether the merger order complied with the UA's constitution and whether it carried out a "legitimate object" of the union within the meaning of the LMRDA.<sup>215</sup> Such an analysis might well (and perhaps did) prove dispositive on the issue of whether the UA's merger order was valid even where, as in *Local 334*, no trusteeship was imposed because the local filed suit first in state court to challenge the order.<sup>216</sup>

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to disaffiliate justifies imposition of a trusteeship. Compare *Flight Eng'rs Int'l Ass'n v. Continental Airlines, Inc.*, 297 F.2d 397, 403 (9th Cir. 1961) (refusing to uphold trusteeship for dissolution where dissolution occurred prior to enactment of constitutional provision allowing for trusteeship in case of dissolution), *cert. denied*, 369 U.S. 871 (1962) with *Gordon v. Laborers' Int'l Union*, 490 F.2d 133, 138 (10th Cir. 1973) (upholding imposition of trusteeship where local refused to use district council as provided for in union constitution and instead bargained for contract on its own), *cert. denied*, 419 U.S. 836 (1974). For Judge Posner's thoughts on the disaffiliation question, see *International Bhd. of Boilermakers v. Local Lodge 714, Int'l Bhd. of Boilermakers*, 845 F.2d 687, 691-92 (7th Cir. 1988) (expressing doubt that parent body may impose trusteeship to prevent disaffiliation that constitution appears to contemplate and regulate). See generally *Bellace*, *supra* note 183, at 350-61.

214. For a discussion of the past judicial use of § 301 and the LMRDA, see *supra* notes 90-119 and accompanying text.

215. For a discussion of *Local 334*, see *supra* notes 120-42 and accompanying text. To the extent such merger orders seek to achieve economies of scale and to eliminate small or redundant locals, they are generally upheld. See *Bellace*, *supra* note 183, at 353-58. The proposed approach thus ensures that the federal standards Congress developed and the courts elaborated upon will apply irrespective of the posture of the litigation.

216. As this discussion makes clear, the threat of a trusteeship to secure local union obedience frequently lurks in the background of any serious dispute between parent unions and affiliated locals. See, e.g., *DAVE HAGE & PAUL KLAUDA, NO RETREAT, NO SURRENDER: LABOR'S WAR AT HORMEL* 235 (1989) (describing United Food & Commercial Worker's attempt to persuade local union to adopt more amicable stance toward Hormel and underlying threat of trusteeship if local failed to do so); *Eames*, *supra* note 36, at 29-30 (describing process by which local attempts to secede and parent invokes trusteeship to prevent secession). Both parties to the dispute measure their conduct against the standards of Title III and the likelihood that a trusteeship, if any, complies with federal law. At the same time, both parties have incentives to compromise their differences and avoid the necessity of a trusteeship. See *MCLAUGHLIN & SCHOOMAKER*, *supra* note 43, at 134 (discussing deterrent effect of Title III on parent that would otherwise impose trusteeship). By fostering uncertainty over the applicable source of law, an approach to § 301 that permits local unions to escape the federal standards of

In the case of the parent-local relationship, therefore, the LMRDA supplies a body of federal substantive guidelines that courts may use to create the common law that they are obliged to fashion under section 301(a) of the Taft-Hartley Act and the *Local 334* and *Wooddell* decisions. Aside from the enforcement of provisions that regulate the parent-local relationship, however, the LMRDA provides incomplete guidance to the courts charged with policing the union constitution. The LMRDA does not, for example, define the extent to which unions may bring suit to collect fines and assessments from their members.<sup>217</sup> Nor does the statute establish standards that govern the relationship between the union and its officers.<sup>218</sup> The absence of guidance perhaps explains why courts chose to adopt dubious tactics to avoid hearing suits brought by unions against individual members. Lacking any LMRDA provision to establish a federal interest, the courts may simply view such cases as a burden on their dockets.<sup>219</sup>

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Title III by initiating litigation in state court would diminish the prospects for a compromise of differences short of all-out litigation.

217. The Supreme Court has long held that suits brought in state court to collect fines do not interfere with the scheme of the Labor Act, so long as the members remain free to resign from the organization and escape from the obligation. See *Scofield v. NLRB*, 394 U.S. 423, 430 (1969) (holding such fines enforceable only where rule was properly adopted, reflected legitimate union interest, impaired no congressional policy, and was reasonably enforced against members who were free to leave union and escape rule); *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 196 (1967) (holding that union may seek to enforce fines in state court actions against "full" union members). For further refinement of the free resignation requirement, see *Pattern Makers' League v. NLRB*, 473 U.S. 95 (1985) (holding that union could not collect fine where league rules prevented resignation). On the union's power to collect fines in judicial proceedings, see Harry H. Wellington, *Union Fines and Workers' Rights*, 85 *YALE L.J.* 1022, 1053-55 (1976).

218. Title V of the LMRDA, to be sure, establishes fiduciary standards that the federal courts might borrow in the course of working out a common law of the union-officer relationship. See LMRDA §§ 401-403, 29 U.S.C. §§ 481-483 (1988). On this basis, one can argue that Title V provides the guidance needed to federalize the union-officer relationship under § 301.

Such an argument ignores the fact that the LMRDA fails to provide any federal rights for officers as such. For a discussion of the statute's failure to provide union officers with federal rights, see *supra* note 180 and accompanying text. While federal courts might borrow Title V law for fiduciary breach claims brought by unions, they would still lack guidance in the broad range of employment disputes between unions and their officers that such an assertion of federal power would compel them to hear.

219. Early decisions of the lower federal courts tended to treat § 301 as a source of discretionary authority over certain aspects of disputes that touched upon matters of federal concern under the LMRDA. The federal courts were thus quick to dodge claims that failed to implicate the LMRDA. For a discussion of the federal courts' use of doctrines such as the "significant impact" test and supplemental jurisdiction to avoid hearing such cases, see *supra* notes 116-19 and accompanying text.

C. *The Theory Applied: Resolving the Open Questions*

Under the approach proposed in this Article, section 301 of the Taft-Hartley Act confers jurisdiction on the federal courts to hear claims that implicate the parent-local relationship. Such an approach makes the existence of jurisdiction turn on allegations that either the parent union or an affiliated local violated its obligations under a national union constitution. As this section of the Article discusses, such an interpretation of section 301 nicely resolves the questions left open after *Wooddell* and does so with greater clarity and simplicity than other approaches.

1. *Suits by Individual Members and Officers*

This Article's proposed interpretation makes the scope of section 301 jurisdiction depend not on the identity of the claimant who brings suit, but on the nature of the constitutional provision from which the claim arises. So long as the plaintiff alleges a breach of any provision in the national constitution that imposes limits or regulations on the power of the parent or the local, federal courts have jurisdiction to hear the claim. It thus follows that section 301 jurisdiction extends to most claims that individual members bring to enforce the national constitution. Federal court jurisdiction would extend, for example, to the plaintiff's claim in *Wooddell* that Local 71 violated its obligation to comply with its collective bargaining agreements.<sup>220</sup> Such a provision, made binding on Local 71 by the IBEW constitution, regulates the parent-local relationship and thus represents a proper subject for the assertion of federal power.

The proposed approach clarifies the basis of federal power by requiring the federal courts to focus on the specific terms of the constitutional provision from which the claim arises. In *Kinney v. International Brotherhood of Electrical Workers*,<sup>221</sup> the Court of Appeals for the Ninth Circuit heard the claim of a local union official who challenged his removal from office by the parent union. Like the decisions of many lower federal courts,<sup>222</sup> the

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220. For a discussion of the applicable portions of the *Wooddell* decision, see *supra* notes 151-52 and accompanying text.

221. 669 F.2d 1222 (9th Cir. 1981).

222. In both *DeSantiago v. Laborers Int'l Union, Local No. 1140*, 914 F.2d 125, 126-27 (8th Cir. 1990), and *Pruitt v. Carpenters, Local Union No. 225*, 893 F.2d 1216, 1217-18 (11th Cir. 1990), the courts asserted § 301 jurisdiction over actions that included claims for breach of both the national and local union constitutions. Their failure to invoke supplemental jurisdiction over the claims to enforce the local union constitution suggests that the courts read § 301 as con-

*Kinney* decision did not set forth the language of the constitutional provision that the parent union allegedly violated. The *Kinney* court thus apparently assumed that all claims brought by individuals meet the jurisdictional standard.<sup>223</sup> The approach proposed here would produce the same jurisdictional result, but only where plaintiffs such as *Kinney* allege a breach of constitutional provisions that either empower local unions to elect their own officers or regulate the parent's power to remove them.

Although the proposed approach clarifies the source of federal authority, it does not impose any substantial *jurisdictional* limits on the power of federal courts to hear individual claims. Individual members and officers can readily frame their complaints in terms that allege violations of the union constitution by either the parent or the local. In *Doby v. Safeway Stores, Inc.*,<sup>224</sup> individual members brought suit in federal court claiming that their parent union, the Teamsters, violated the union constitution by transferring their local's working jurisdiction to a competing local. In *Lewis v. International Brotherhood of Teamsters, Local 771*,<sup>225</sup> the members alleged that their local union violated a provision in the Teamsters constitution that guaranteed local unions the right to ratify their collective bargaining agreements. Finally, in *Wooddell*, the plaintiff alleged that Local 71 violated its obligations both to comply with its collective agreements and to provide him with a

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ferring an independent source of power over such claims, though it obviously falls short of a square holding to that effect. Much the same can be said of the decision by the District Court for the Northern District of Georgia in *Gable v. Local 387, Int'l Ass'n of Bridge Workers*, 695 F. Supp. 1174 (N.D. Ga. 1988). Although the court ultimately refused to assert jurisdiction on another ground, it appeared to assume that officer's action to enforce the "Bylaws and Constitution of Local 387" came within § 301. *Id.* at 1175.

223. See *Kinney*, 669 F.2d at 1229. This lack of clarity later posed difficulties for the Ninth Circuit in *Truck Drivers, Local 420 v. Traweek*, 867 F.2d 500 (9th Cir. 1989), an action initiated by the local union against its former officers. The *Traweek* court ultimately refused to assert jurisdiction over Local 420's claim, although it did so by adopting a problematic interpretation of § 301(b). *Id.* at 505-07. The court could have achieved the same result by recognizing that Local 420's complaint alleged a violation of the union-member contract, whereas its earlier decision in *Kinney* implicated the parent-local contract. Instead of adopting this distinction, the Ninth Circuit offered a confusing discussion of "litigant permutations," in an effort to justify what it regarded as a departure from earlier decisional law. See *Traweek*, 867 F.2d at 507. For additional discussion of *Traweek*, see *infra* notes 250-53 and accompanying text.

224. 523 F. Supp. 1162 (E.D. Va. 1981). As the *Doby* case illustrates, federal courts are unlikely to face a dispute between two local unions that does not also implicate the parent-local provisions of the national constitution. If such a local-local dispute should arise, however, the courts should conclude that it comes within § 301 jurisdiction.

225. 826 F.2d 1310 (3d Cir. 1987).

fair trial.<sup>226</sup> Although such claims implicate widely divergent constitutional provisions, they all meet the jurisdictional test proposed in this Article.

The assertion of jurisdiction over such claims may appear to expand section 301 beyond the parent-local relationship and into the sphere of individual member rights, where the LMRDA fails to provide the guidance necessary to support the exercise of federal common law-making power. Although claims such as those in *Wooddell* appear to implicate the interests of the individual far more concretely than the interests of the membership, they rest on alleged violations of constitutional provisions that expressly limit the power of the parent union and its affiliated locals. Thus, the local union could have sued the parent union in *Kinney* to challenge the exercise of parental control, just as the parent in *Wooddell* might have initiated suit against Local 71 to remedy the local's alleged violation of its collective agreement.<sup>227</sup> In order to draw consistent jurisdictional boundaries, federal courts must agree to hear all claims that implicate such constitutional provisions without regard to the identity of the claimant. The Court's decision in *Wooddell* requires no less.

The obligation to maintain jurisdictional clarity, however, does not compel federal courts to adjudicate all individual claims within their jurisdiction on the merits.<sup>228</sup> Rather, the federal courts must still consider whether the individual plaintiffs enjoy standing to assert the claims. The Court in *Wooddell* invited such consideration by leaving open the question whether the plaintiff had standing to bring suit against Local 71.<sup>229</sup> Skillful use of

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226. *Wooddell v. International Bhd. of Elec. Workers, Local 71*, 112 S. Ct. 494, 495 (1991).

227. Of course, it seems unlikely that the parent union of the IBEW would exercise its constitutional powers to discipline a local for having breached a provision of the union constitution or that it would bring suit against the local under § 301 to remedy such a breach. More likely, the parent union would simply correct any errors during *Wooddell*'s appeal from the imposition of improper discipline. The existence of real-world alternatives to federal court litigation of disciplinary matters does not alter the fact that disputes over the enforcement of collective agreements often lead to serious rifts that require federal solutions. To preserve jurisdictional clarity, the courts must apply § 301 to all allegations that the local breached its obligations under the national constitution.

228. On the distinction between jurisdiction and standing, see *Abrams v. Carrier Corp.*, 434 F.2d 1234, 1250 (2d Cir. 1970), *cert. denied*, 401 U.S. 1009 (1971). On the analogous problem of permitting individual members to assert collective rights under the LMRDA, see *Mamula v. United Steelworkers*, 304 F.2d 108, 112 (3d Cir.), *cert. denied*, 371 U.S. 823 (1962).

229. See *Wooddell*, 112 S. Ct. at 498-99 & n.5.

standing rules can preserve crisp jurisdictional lines without extending federal power in ways that threaten to interfere with other federal labor schemes or invite excessive intervention in internal affairs.

Standing rules pose the least difficulty in cases such as *Doby*, where the individual members bring suit on behalf of the entire local union.<sup>230</sup> Ordinary rules of derivative litigation should probably govern member standing in such cases<sup>231</sup> and thus per-

230. See *Doby v. Safeway Stores, Inc.*, 523 F. Supp. 1162, 1163-64 (E.D. Va. 1981).

231. Some courts suggest that the individual member's standing to enforce rights of the local vis-a-vis the international should turn upon the ability to show that the local breached a duty of fair representation by failing to prosecute the claim on the individual member's behalf. See *Lewis v. International Bhd. of Teamsters*, 826 F.2d 1310, 1313 n.2 (3d Cir. 1987); cf. *Santos v. District Council of United Bhd. of Carpenters*, 547 F.2d 197, 202-03 (2d Cir. 1977) (finding that union's failure to seek compliance with article XX award under AFL-CIO constitution constituted breach of duty sufficient to justify individual suit to confirm award; ignoring language of AFL-CIO constitution denying judicial enforcement of such awards). Such a fair representation theory of standing borrows the rule, developed in the collective bargaining context, that an individual employee may bring suit to enforce the collective bargaining agreement only after exhausting rights under the agreement by filing a grievance, and then only upon a showing that the union breached its fair representation duty by handling the grievance in an arbitrary, discriminatory or perfunctory manner. See *Vaca v. Sipes*, 386 U.S. 171, 191 (1967) (concluding that while "union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion," individual employee does not have absolute right to have grievance taken to arbitration); *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652-57 (1962) (noting that employee must file grievance prior to filing suit to enforce collective bargaining agreement).

Courts that propose to use the fair representation model to govern a member's standing to enforce rights of the local under the union constitution fail to identify any statutory basis for such use. See Matthew W. Finkin, *The Limits of Majority Rule in Collective Bargaining*, 64 MINN. L. REV. 183, 193-98 (1980) (expounding on judicial roots for duty of fair representation in contract making). The duty of fair representation has been judicially implied from provisions of the Labor Act that give the union the "exclusive" right to represent employees in the relevant bargaining unit. See *id.* at 193 & n.49 (citing *Steele v. Louisiana & Nashville R.R.*, 323 U.S. 192, 202-03 (1944), which held that Railway Labor Act imposed upon statutory representatives "at least as exacting a duty to protect equally the interest of the members . . . as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates"). Courts recognize that such an exclusive right attaches only to the union's representation of employees through the employer, and generally refuse to extend the duty to the relationship between the union and its members under the union constitution. See *Price v. International Union, UAW*, 795 F.2d 1128, 1134-35 (2d Cir. 1986) (refusing to invoke duty of fair representation in challenge to "union shop" clause in collective bargaining agreement requiring payment of dues that would, in part, be used to support certain political and ideological causes), *vacated*, 487 U.S. 1229 (1988); *Kolinske v. Lubbers*, 712 F.2d 471, 481 (D.C. Cir. 1983) (refusing to extend UAW's obligation toward member under duty of fair representation to UAW eligibility rules for strike benefits); *Bass v. International Bhd. of Boilermakers*, 630 F.2d 1058, 1062-63 (5th Cir. 1980) (finding that union conduct affecting only individual relationships within

mit members to sue freely, so long as they meet the demand and adequate representation requirements.<sup>232</sup> Two reasons support this view. First, local union officers may refrain from pursuing viable claims against parent unions for political reasons.<sup>233</sup> Second, Title III of the LMRDA permits both local unions and members to challenge trusteeships, an approach that signifies a relatively generous attitude toward the members' standing to prosecute similar claims.<sup>234</sup>

Cases such as *Wooddell* raise more difficult questions. In *Wooddell*, the plaintiff alleged that Local 71 refused to refer him for work on a non-discriminatory basis and that such refusal violated its obligation under the IBEW constitution to comply with its collective agreements.<sup>235</sup> Federal labor policy surely does not permit individual members to bypass the complex rules that govern actions to enforce collective agreements by simply invoking a provision in the union constitution that obliges the local to comply with its contracts.<sup>236</sup> Indeed, the constitutional provision it-

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union structure is not circumscribed by constraints of duty of fair representation). Where no statutory duty to bring suit exists, it seems anomalous to condition the union member's standing upon a showing that the local breached the duty of fair representation in failing to sue the parent.

232. See, e.g., FED. R. Civ. P. 23.1 (articulating demand and adequate representation requirements).

233. Suits to remedy the Teamsters' ongoing refusal to honor local ratification rights, for the most part, have not been brought in the name of the local union. See *Lewis*, 826 F.2d 1310 (3d Cir. 1987) (suit brought by individual member); *Trail v. International Bhd. of Teamsters*, 542 F.2d 961 (6th Cir. 1976) (class action suit brought in name of 10,000 individual plaintiffs); *Legutko v. Local 816, Int'l Bhd. of Teamsters*, 606 F. Supp. 352 (E.D.N.Y. 1985) (claim raised by union members in personal capacities).

234. See LMRDA § 304(a), 29 U.S.C. § 464(a) (1988).

235. Wooddell also claimed that Local 71 violated a provision that obliged the local to provide him with a fair trial on any disciplinary charges. *Wooddell v. International Bhd. of Elec. Workers*, 112 S. Ct. 494, 497 (1991). It makes little sense, however, to permit Wooddell to sue Local 71 directly for violation of the fair-trial requirement without first giving the parent union an opportunity to correct the error through internal procedures.

236. Courts carefully separate questions of standing from questions of jurisdiction in determining whether to permit individual employees to enforce the collective agreement against their employers. An individual employee may invoke the federal courts' § 301 jurisdiction in such cases, bringing suit to enforce the collective agreement as a third-party beneficiary of the employer's promises to the union. See *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962). To do so, the individual employee must first exhaust any arbitral remedies in the collective agreement. See *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653 (1965). Next, the employee must convince the court to look behind the result of the arbitral process by showing that the union breached its statutory duty of fair representation. See *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). Only if the employee establishes both a violation of the contract and a breach of the union's duty of fair representation may the employee recover under § 301.

self suggests that it was meant to be enforced, if at all, by the parent union.<sup>237</sup> Even if Wooddell had unsuccessfully demanded that the parent enforce the provision, federal courts might well deny him standing to enforce it on the ground that the union constitution gives the parent union alone the power to decide whether to insist that local unions comply with their collective agreements.<sup>238</sup>

It seems far superior to use flexible standing doctrines in or-

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Claims such as that brought by Wooddell seek to enforce neither the employer's contractual obligations nor the union's duty of fair representation but instead the union's contractual obligations under the collective agreement. Such claims implicate federal law and may go forward only where the employee points to specific language in the collective agreement that creates enforceable rights in favor of the employee. See *United Steelworkers v. Rawson*, 495 U.S. 362, 344 (1990) (declining to allow § 301 suit because collective agreement did not contain rights directly enforceable by employee against union); *International Bhd. of Elec. Workers v. Hechler*, 481 U.S. 851 (1987) (holding that employee must show that collective agreement creates an enforceable duty of union to provide safe workplace). The Supreme Court has thus made clear that most union promises that appear in the collective agreement operate for the benefit of the employer, not the employees, and may be enforced only at the employer's instance. Wooddell's action, which sought to enforce the collective agreement indirectly by alleging a breach of Local 71's constitutional obligation to comply, thus presents a significant threat of interference with the contract enforcement scheme that § 301 was enacted, and has been interpreted, to preserve.

237. The constitutional provision cited as the basis for jurisdiction in *Wooddell* appears to contemplate a role for the international union, and only the international union, in policing the local's obligation to comply with its agreements. Although the provision obliges all local unions to "live up to all approved agreements unless broken or terminated by the other party or parties," it also provides that the parent union's president must determine that such a breach or termination has occurred *before* the local union may treat the agreements as abrogated. Joint Appendix at 24, *Wooddell*, 112 S. Ct. 494 (1991) (No. 90-967). For the full text of the provision, see *supra* note 152. Such a provision creates a parental role in determining the extent of the local's obligation to comply with its collective agreements and complements other provisions that bar locals from entering into agreements or engaging in strike action without first obtaining parental consent.

The provision thus appears to contemplate an ultimate determination by the parent union of the extent of the local's obligation to comply. While an individual member may bring the local's non-compliance to the parent's attention, either by filing a formal complaint through the internal union adjudication machinery, or by making informal contact with an officer of the parent, it is far less clear that an individual should be permitted to insist on local union compliance by bringing an action for breach in federal court. Such an action would substitute the judgment of the individual member (and the court) for that of the parent union in determining whether the local's violation posed a threat sufficient to require remedial action. Simply put, the provision does not appear to create any enforceable rights in favor of the individual member.

238. Federal courts generally subscribe to a policy of deference to structural allocations of decisionmaking authority in union constitutions. See, e.g., *Parks v. International Bhd. of Electrical Workers*, 314 F.2d 886, 906-07 (4th Cir.), *cert. denied*, 372 U.S. 976 (1963). Under such an approach, a finding that the IBEW constitution commits decisions about the breach of collective agree-

der to refrain from hearing Wooddell's claim on the merits rather than to use avoidance tactics that manipulate jurisdictional lines. Disagreements between parents and locals over compliance with collective bargaining agreements frequently lead to divisive labor disputes. Federal courts must therefore assert jurisdiction over all such claims. Once the jurisdictional boundary has been clarified, all dispositions within the scope of the federal courts' jurisdiction become a part of the federal common law under section 301. Unlike a jurisdictional dismissal, the rejection of Wooddell's claim on other grounds would preclude him from prosecuting the same claim in state court.<sup>239</sup> Precluding re prosecution in state court would prevent inconsistent decisions, thus vindicating the federal interest in the uniform interpretation of union constitutions in an area of acknowledged federal concern.<sup>240</sup>

## 2. *Suits Against Individual Members and Officers*

While the approach proposed in this Article would enable federal courts to assert jurisdiction over most claims brought by individuals against their parent and local unions for breach of national constitutions, it would dramatically restrict the federal role in actions brought to enforce the constitutional obligations of union members and officers. Such obligations—which typically include the duty to refrain from violating the constitution, the duty to pay dues on time, the duty to remain loyal to the union and the duty to refrain from working behind picket lines<sup>241</sup>—have long been treated as enforceable contracts between the individual and the union.<sup>242</sup> Suits for violation of such obligations do not,

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ments to the judgment of the union's president should, in the absence of a showing that the president acted in bad faith, preclude further judicial review.

239. The suggestion that plaintiffs such as Wooddell lack standing to prosecute their constitutional claims against the local union rests on the federal labor policy of deference to structural allocations of power in the union constitution. For a discussion of this policy, see *supra* note 238. Such a policy-driven denial of standing would obviously bind state courts as a matter of federal common law. One should therefore distinguish the binding effect of denials of standing that rest on labor policy from those denials of standing that rest on Article III limits on the exercise of federal judicial power and normally do not bind state courts. See William A. Fletcher, *The "Case or Controversy" Requirement in State Court Adjudication of Federal Questions*, 78 CAL. L. REV. 263, 263-64 & n.1 (1990).

240. For a discussion of the nature of the federal interest in the uniform interpretation of union constitutions, see *infra* notes 257-58 and accompanying text.

241. For a discussion of the obligations of union members and officers, see *supra* notes 47-48 and accompanying text.

242. For further discussion of the contract theory, see *supra* notes 34-56 and accompanying text.

however, implicate the relationship between unions and would thus lie beyond the reach of section 301 as interpreted in this Article.

In practice, the proposed interpretation blocks the federal courts from hearing most claims that allege a violation of constitutional norms by individual defendants, except of course as a matter of supplemental jurisdiction.<sup>243</sup> It would, for example, preclude the federal courts from hearing a union's action to collect fines and assessments from its members.<sup>244</sup> It would also bar the courts from hearing an action brought against union officers for violation of their constitutional duty of loyalty, whether the action was prosecuted by the union itself<sup>245</sup> or by members of the union.<sup>246</sup> Finally, it would require the dismissal, on jurisdictional grounds, of Wooddell's claim for damages against the officers of Local 71. All such claims rest on an alleged breach of an individual's contractual duties to the union.

By denying the federal courts jurisdiction over claims against individual defendants, the proposed interpretation of section 301 precludes federal courts from hearing that class of claims for which the LMRDA offers no federal standards.<sup>247</sup> Such a limitation makes sense for a variety of reasons. For example, it relieves the federal courts of the task of policing the relatively minor disputes over the enforcement of union dues and assessments, which pose the gravest threat to the federal docket.<sup>248</sup> Furthermore, the

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243. For a discussion of the prior treatment of claims brought by individuals alleging violations of union constitutions, see *supra* notes 164-66 and accompanying text.

244. *But see* National Ass'n of Basketball Referees v. Middleton, 688 F. Supp. 131, 135 (S.D.N.Y. 1988) (holding that federal jurisdiction exists when local union sues members for collection of fines).

245. *See* Truck Drivers, Local 420 v. Traweek, 867 F.2d 500 (9th Cir. 1989) (union counterclaim against expelled members); Local 443, Int'l Bhd. of Teamsters v. Pisano, 753 F. Supp. 434, 436 (D. Conn. 1991) (union sued former officer to recover improper payments made to him).

246. *Shea v. McCarthy*, 953 F.2d 29 (2d Cir. 1992) (upholding jurisdiction over action by union members to enforce constitutional obligations of union officers).

247. For a discussion of the LMRDA's regulatory scheme, see *supra* notes 175-82 and accompanying text.

248. Actions brought by individuals to enforce constitutional norms almost invariably present closely related federal claims under the LMRDA or other federal labor statutes. For a discussion of cases that combine union constitution claims with other federal claims, see *supra* notes 94-117 and accompanying text. Assertion of federal control over the contractual components of such claims thus adds little to the federal docket that federal courts could not already hear under the doctrine of supplemental jurisdiction. Actions brought by unions against members or officers, by contrast, ordinarily fail to assert other federal claims.

proposed interpretation preserves state court control over internal union relations and thus accords a measure of respect to the decision of the Eighty-Sixth Congress to save such state law from preemption.<sup>249</sup>

The interpretation of section 301 advocated here protects the federal docket and preserves state court control without fostering the confusion over jurisdictional lines that other approaches engender. Partly to avoid hearing "internal squabbles" over union relations, the Court of Appeals for the Ninth Circuit in *Truck Drivers, Local 420 v. Traweek*<sup>250</sup> held that the federal courts lack jurisdiction over claims brought by a local union against individual union officers.<sup>251</sup> Although *Traweek* duplicates the *result* proposed here, the *analysis* in *Traweek* may present problems in the future. The court based its denial of jurisdiction on a provision of section 301(b) that immunizes individual union members from liability for damages.<sup>252</sup> The *Traweek* court's transformation

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*See* *Hotel & Restaurant Employees Local 400 v. Svacek*, 431 F.2d 705 (9th Cir. 1970) (local sued member for violation of union constitution); *Middleton*, 688 F. Supp. 131 (S.D.N.Y. 1988) (suit by union against members for collection of fines). The assertion of § 301 jurisdiction over such union-initiated claims would shift them from state to federal court.

249. For a discussion of the LMRDA non-preemption and savings clauses, see *supra* notes 199-200 and accompanying text.

250. 867 F.2d 500 (9th Cir. 1989). The district court entered final orders directing former union officers to repay some \$55,000 in reimbursed legal fees that they caused the union to disburse to themselves without proper authorization under local union bylaws. *Id.* at 505. The Ninth Circuit reversed these judgments. *Id.* at 508.

251. *Id.* at 505-07.

252. *Id.* at 507. Section 301(b) provides that a "money judgment against a labor organization . . . shall be enforceable only against the organization as an entity and . . . shall not be enforceable against any individual member or his assets." LMRDA § 301, 29 U.S.C. § 185(b) (1988). By its terms, this language precludes judgment creditors of the union from reaching the assets of individual members; it seemingly fails to address the liability of an individual for his or her *own* breach of contract and thus appears to have little relevance in determining the union member's liability for a violation of his or her obligations under the union constitution.

In a line of cases beginning with *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238, 249 (1962), however, the Supreme Court extended § 301(b) to protect individual employees from damages claims arising from their own alleged breach of the collective agreement. In *Atkinson*, the Court held that § 301(b) bars an employer from suing individual union officers and members in contract and tort for breach of the agreement's no-strike clause. *Id.* In *Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401, 417 (1981), the Court held that this bar applied to claims against those who engage in authorized strikes, as in *Atkinson*, as well as to those who engage in wildcat strikes.

The *Atkinson-Reis* doctrine focuses on the employer's suit for damages under § 301(a) or § 303 of the Labor Management Relations Act [hereinafter LMRA]. *See Complete Auto Transit*, 451 U.S. at 414. The rationale of those cases does not necessarily extend to the union's suit to enforce the union constitution. To be-

of that immunity into a jurisdictional limit suggests, incorrectly in my opinion, that union officers and members enjoy immunity from equitable claims brought to remedy their *own* breaches of duty to the union.<sup>253</sup>

Rejection of the analysis in *Traweek* need not compel, however, the adoption of the expansive view of federal authority advocated by the Court of Appeals for the Second Circuit in *Shea v. McCarthy*.<sup>254</sup> The *Shea* court held that section 301(a) confers power on the federal courts to hear claims brought by union members against officers who allegedly violated duties owed to the union. The court correctly read the provisions of section 301(b) as providing immunity from the award of damages, thus rejecting the approach in *Traweek*. The *Shea* court nevertheless upheld the power of the federal courts to entertain actions for injunctive relief. While the court correctly concluded that injunctive relief may be issued against individuals under section 301,<sup>255</sup>

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gin with, § 301(b) sought to protect members from liability to employers. *See id.* at 406-07 (collecting history). Congress was not concerned with the need to relieve members of their financial obligations to their own unions.

Moreover, the policies that underlie the Court's refusal to permit damages claims in *Atkinson* and *Reis* have little application to suits to enforce union constitutions. To be sure, unions may attempt to enforce their rules by suspending or expelling their members. But the Supreme Court has refused to interpret federal labor policy to require unions to rely exclusively on these methods of self-help in disciplining their members. Rather, the Court has upheld the union's right to bring a state court damages action to collect an otherwise proper fine over the objection that such actions improperly coerce employees in the exercise of their rights to refrain from union membership. Unlike employer damages claims, therefore, actions to collect union fines from individuals do not violate federal labor policy.

Actions such as that brought by the union in *Traweek* to compel union officials to disgorge union assets that they obtained in breach of their duty to the union bear even less resemblance to the claims for damages that gave rise to the *Atkinson-Reis* doctrine. Such restitutionary claims seek to recover assets that the officials took improperly; they do not threaten individuals with the potentially ruinous damages liability that Congress sought to preclude in § 301(b).

253. Under the approach to § 301 proposed in this Article, actions brought by unions to collect fines from members and to remedy fiduciary breaches by officers must go forward in state courts. To the extent that state judges find § 301(b) helpful in working out their own theory of limited liability for union members on such state-created claims, state judges should read *Traweek* as adopting the jurisdictional theory proposed in this Article, not as a necessary element of limited liability for union members and officers. The provisions of § 301(b) that limit member liability to employers shed little light on the propriety of permitting the union to enforce equitably the constitutional obligations of members and officers.

254. 953 F.2d 29 (2d Cir. 1992).

255. As *Shea* points out, federal courts often assert jurisdiction over claims against individual defendants for injunctive relief from violations of the union constitution. *Id.* at 30. In the cases *Shea* cites, however, the courts would enjoy equitable remedial authority to bind union officers, either by invoking supple-

it improperly extended that injunctive authority beyond the parent-local relationship and threatened a new and broad-ranging intrusion into union affairs.<sup>256</sup>

The prospect that either state or federal law may apply to the terms of a union's constitution, depending on the nature of the claim, suggests that the approach proposed here may result in a certain lack of uniformity. This potential for disparity may particularly trouble labor practitioners, who have grown accustomed to thinking of section 301(a) as a statute that Congress enacted to supersede the conflicting approaches of state courts and to achieve nationally uniform rules to govern the enforcement of the collective bargaining agreement.<sup>257</sup>

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mental jurisdiction over the officer's state law duty to comply with the constitution or by treating the officer as a party with notice of the injunction who was bound to refrain from causing the union to violate its terms. The asserted need to preserve such remedial authority thus offers no justification for *Shea's* interpretation of § 301 to encompass the union's action to enforce its members' contractual duties.

256. The decision in *Shea* threatens to subject the great mass of union decisionmaking to the vagaries of federal judicial review. Not only does it squarely uphold the power of federal courts to police the obligations of union officers, it also suggests that its rationale would extend to actions brought against members and that such an extension would serve the interests of "accountability, consistency, conformity and stability." *Id.* at 31. By thus approving of derivative actions brought by members to enforce the union's contract with other individuals, the court greatly expanded the reach of federal power.

Surprising enough on its own terms, such an expansion of federal power seems more startling when considered against the backdrop of the Second Circuit's restrictive approach to member suits under § 501 of the LMRDA. The Second Circuit has consistently viewed § 501 as limited to derivative actions against officers to recover money and property for the benefit of the union, rather than as a roving grant of authority to remedy official misconduct. For a discussion of the treatment of § 501 by the Second Circuit as well as other courts, see *supra* note 179. The decision in *Shea* appears to accomplish under § 301(a) of the LMRDA what the Second Circuit had long and properly resisted under § 501 of the LMRDA.

The decision in *Shea* does not necessarily oblige the federal court on remand to provide the plaintiff with relief. The court might well build on the arguments made in connection with *Wooddell*, and view *Shea* as leaving open the question whether *Shea* has personal standing to enforce the president's obligation to conduct the union's affairs to further "the best interests of the organization." For a summary of the relevant arguments made in *Wooddell*, see *supra* notes 148-70 and accompanying text. Conceivably, the district court might conclude that the constitution provides the union president, in the absence of bad faith, with essentially unreviewable discretion in the hiring and firing of union officials. The breadth of the *Shea* opinion lies less in its assurance of the availability of a federal remedy than in its expansive view of federal jurisdiction.

257. The Senate Report on § 301 expresses dissatisfaction with conflicting state approaches to the enforcement of labor contracts and a desire for a nationally uniform approach. See S. REP. NO. 105, 80th Cong., 1st Sess. 15-18 (1947), reprinted in 1 LEGISLATIVE HISTORY, *supra* note 33, at 421-24 (discussing problems encountered in suing unions in state court). The Supreme Court relied on this

For several reasons, however, the argument for uniform rules carries less weight in the case of the union constitution. Consider, for example, the fact that the Eighty-Sixth Congress chose to accept differences in law from one state to another when it enacted the LMRDA's supplemental standards to govern internal union affairs, rather than enact comprehensive standards.<sup>258</sup> Because the LMRDA played a decisive role in bringing about the current application of section 301 to union constitutions, the LMRDA's tolerance of non-uniformity expresses a legislative purpose more relevant than the Taft-Hartley Act's demand for uniformity in connection with collective bargaining.

In any case, the proposed approach would produce nationally uniform rules in the area in which they seem most desirable—the parent-local relationship. A parent union must monitor the activities of local affiliates in all fifty states.<sup>259</sup> By making disputes that arise from such relationships the subject of a uniform federal law, the proposed approach offers the officials of parent unions some assurance that the union constitution will have a uniform meaning for each of their affiliated locals in the United States.<sup>260</sup>

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rationale in holding that Congress intended a uniform body of § 301(a) law to prevail over "inconsistent local rules." *Local 174, Int'l Bhd. of Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 104 (1962). Professor Malin argues that the need to achieve such uniformity in interpretation of the collective agreement "appears to apply with equal force to union constitutions." MALIN, *supra* note 8, at 11.

258. For a discussion of the Eighty-Sixth Congress' decision to enact only minimum or supplemental federal standards, see *supra* notes 182 & 199 and accompanying text.

259. Parent unions often solve the monitoring problem by creating regional or district offices that coordinate the affairs of locals in the region. See WALLIHAN, *supra* note 2, at 132-34.

260. Union constitutions frequently grant the parent body extensive control over the local collective bargaining process. See ULMAN, STEEL WORKERS, *supra* note 2, at 51-54 (Steelworkers designate parent as bargaining representative). Constitutions often confer such control by directly designating the parent as the employees' representative. They also frequently designate the local as the bargaining representative and include other constitutional provisions that authorize the parent to play a significant role in bargaining, such as provisions allowing the parent to approve the local's bargain or its resort to the use of economic force. *Id.* at 51-54.

Parent unions rely on such provisions to maintain control of firm-wide or industry-wide negotiations that involve a host of geographically dispersed local unions. See CHARLES R. PERRY & DELWYN H. KEGLEY, DISINTEGRATION AND CHANGE: LABOR RELATIONS IN THE MEAT PACKING INDUSTRY 149-65 (1989) (describing national negotiating process in meat packing industry); *cf.* Hansen v. Guyette, 814 F.2d 547, 550 (8th Cir. 1987) (upholding parent's imposition of trusteeship where local broke away from parent-led negotiations and pursued an independent bargaining strategy). For a description of the congressional rejection of proposals to restrict industry-wide collective bargaining, see *supra* note 68. The success of the union's overall bargaining strategy may thus depend on

Disputes arising from the parent-local relationship, moreover, most often trigger strikes, walkouts and other breaches of industrial peace.<sup>261</sup> By authorizing the federal courts to hear parent-local disputes, the proposed approach also gives such courts the power to sort out the conflicting interests implicated in the class of internal union disputes most likely to disrupt established bargaining relationships.<sup>262</sup>

Most claims that implicate the individual's relationship with his or her union, by contrast, grow out of the local union's attempt to enforce fines and assessments imposed in the course of internal discipline.<sup>263</sup> The officials of such locals can readily consult state law<sup>264</sup> to determine whether courts will assist the local in imposing discipline. Additionally, the form of punishment imposed may itself vary from local to local, particularly in unions that do not insist on uniform local union constitutions.<sup>265</sup> Moreover, disputes over individual claims rarely occasion the kind of breach of industrial peace in which the federal courts have expressed an interest.<sup>266</sup>

Finally, the law of internal union affairs can probably tolerate some variation from one state to another in order to preserve

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its receiving a nationally uniform reading of the provisions it uses to control local affiliates.

261. Parent-local disagreements over collective bargaining strategy often produce disagreements over the use of economic force. *See generally Hansen*, 814 F.2d at 550; *Benda v. Grand Lodge of Int'l Ass'n of Machinists*, 584 F.2d 308, 311-12 (9th Cir. 1978), *cert. dismissed*, 441 U.S. 937 (1979); *National Ass'n of Letter Carriers v. Sombrotto*, 449 F.2d 915 (2d Cir. 1971); *Parks v. International Bhd. of Elec. Workers*, 314 F.2d 886 (4th Cir.), *cert. denied*, 372 U.S. 976 (1963).

262. To the extent that § 301(a) recognizes a federal interest in stable collective bargaining relationships, the proposed approach thus confers jurisdiction on the federal courts sufficient to vindicate the interest. *See Groves v. Ring Screw Works, Ferndale Fastener Div.*, 111 S. Ct. 498, 502-03 (1990) (discussing federal interest in collective bargaining).

263. For a defense of the fairness of most union discipline, recognizing its local origin, see *TAFT*, *supra* note 44, at 117-37, 243-44 (1954) (discussing union systems of discipline and appeals). *See also Horowitz*, *supra* note 2, at 191-92 (discussing Carpenters' president's careful review of appeals from local discipline proceedings).

264. The jurisdiction of local unions in some metropolitan areas extends across state lines but many locals enjoy only intra-state jurisdiction. In the building trades, union constitutions often allocate jurisdiction by county. Choice of law problems, therefore, would not appear to present an insurmountable obstacle to identifying a controlling body of law.

265. *See Wallihan*, *supra* note 2, at 236 (discussing fact that unions do not invariably insist on identical local union constitutions).

266. Indeed, early applications of the "significant impact" test were designed to keep such claims out of the federal courts. *See Hotel & Restaurant Employees Local 400 v. Svacek*, 431 F.2d 705 (9th Cir. 1970).

state court control over the union's action to enforce individual obligations in the union constitution. State courts can draw on a variety of sources in working out the elements of such claims including, perhaps, the protections they have developed for individual employees. The LMRDA's non-preemption provisions, moreover, make it quite clear that state courts should retain control over at least some aspects of the internal relations of labor unions.<sup>267</sup> The proposed approach respects that congressional judgment, at least for internal union disputes that fail to implicate the parent-local relationship.

Nor does the proposed approach make the body of applicable law depend on the identity of the claimant. Consider a hypothetical dispute arising from an attempt by Local 71 to collect a fine from Wooddell to punish him for working behind a sanctioned picket line.<sup>268</sup> State law would govern the provisions in the IBEW constitution that impose obligations on members to honor picket lines and would control the question whether the fine was an appropriate method of discipline.<sup>269</sup> Federal standards in the LMRDA would control the question whether Local 71 observed its constitutional obligation to provide Wooddell with fair trial procedures.<sup>270</sup> Wooddell could assert his federal claims either as defenses to a state court action by the union to

267. For a discussion of the LMRDA non-preemption provisions, see *supra* notes 199-203 and accompanying text.

268. The IBEW constitution, which was made a part of the joint appendix in the *Wooddell* case, prohibits members from working with any employer declared to be in "difficulty" with the union. Joint Appendix at 7-11, *Wooddell*, 112 S. Ct. 494 (No. 90-967). It also permits the union to impose fines, suspensions and expulsions as penalties for the violation of union rules. *Id.* The IBEW constitution thus appears to supply adequate textual basis for an action in state court to recover a duly imposed fine.

269. The union's action to collect the fine would be subject, of course, to a host of potential defenses recognized by state and federal law. Some states, for example, have refused to enforce union fines in the absence of constitutional provisions that specifically authorize such enforcement. See, e.g., *United Glass Workers Local 188 v. Seitz*, 399 P.2d 74 (Wash. 1965); cf. *Local 165, Int'l Bhd. of Elec. Workers v. Bradley*, 499 N.E.2d 577 (Ill. App. Ct. 1986) (allowing suit where constitution authorized judicial enforcement of fines). Even where states agree to enforce fines, federal labor law bars the union from imposing the fine in circumstances that violate the protections accorded both individual employees in the Labor Act, and individual union members in the LMRDA. For a discussion of the ban on imposing fines when employees' or union members' protections would be violated, see *supra* notes 67 & 175-77 and accompanying text.

270. As noted earlier, the requirement of "fair trials" in the IBEW constitution appears to impose duties on Local 71 of the sort that would support the assertion of jurisdiction over an action for breach under § 301. Questions of standing and exhaustion, however, would remain. For a discussion of *Wooddell*, see *supra* notes 148-70 and accompanying text.

collect the fine or as claims affirmatively asserted against the union in federal court to block the imposition of discipline.<sup>271</sup>

### 3. *Other Open Questions*

The preceding discussion answers most of the questions that have divided the lower courts. Under the proposed approach, section 301 embraces only those provisions in the national union constitution that regulate the parent-local relationship. Actions to enforce local union constitutions or bylaws would lie beyond the reach of federal power.<sup>272</sup> This approach preserves state court control over the interpretation of locally variable provisions of union laws. It nevertheless permits federal courts to hear disputes over claims that the local's constitution fails to comply with the requirements of the national constitution—the only disputes that plausibly demand uniform federal rules of construction.<sup>273</sup>

Refusal to assert jurisdiction over actions arising from local union constitutions and bylaws would avoid federal involvement

271. In an action such as the one brought by Wooddell, the federal court would enjoy supplemental jurisdiction over the union's counterclaim to enforce the fine in accordance with state law. See 28 U.S.C. § 1367 (Supp. 1990) (failing to set forth exception from broad rule of supplemental jurisdiction for compulsory counterclaims).

272. Local union constitutions regulate the relationships between the local's members and the local itself, define the authority of the local's officers, and set forth rules to govern union meetings, officer elections and the like. For a discussion of the nature of local union constitutions, see *supra* notes 47-48 and accompanying text. Such provisions create enforceable contracts but do not appear to establish contracts between unions within the meaning of § 301. See *Alford v. National Post Office Mail Handlers*, 576 F. Supp. 278 (E.D. Mo. 1983) (finding that local union constitution standing alone did not satisfy jurisdictional prerequisite of contract between labor unions); cf. *Wooddell*, 112 S. Ct. at 498 (describing plaintiff's claim under local's bylaws but refraining from basing jurisdiction on alleged breach of such obligations).

Professor Malin has nonetheless argued that courts should construe § 301 as reaching the local union constitution to "avoid the anomaly of having state law govern local constitutions while federal law governs the international constitution to which it is subordinate." MALIN, *supra* note 8, at 12. Contrary to Professor Malin's argument, an interpretation of § 301 that leaves local matters to local courts does not appear anomalous, particularly where it insures that federal courts may hear all claims that implicate the national constitution.

Many union constitutions require local unions either to adopt a model local union constitution or to submit all local bylaws and amendments for national approval or both. See *id.* Such provisions obviously seek to impose uniform limits on the conduct of local union affairs; because they implicate the parent-local contract, claims for violation of such limits come within the scope of § 301 as interpreted here. Where the union itself fails to assert an interest in uniformity by imposing limits in the national constitution, it is difficult to see why § 301 should control disputes over local union bylaws.

273. For a discussion of the desire for uniformity in the interpretation of collective bargaining agreements, see *supra* note 257 and accompanying text.

in a host of minor disputes without blurring jurisdictional lines. In *Gable v. Local Union No. 387, International Ass'n of Bridge Workers*,<sup>274</sup> the District Court for the Northern District of Georgia employed the "significant impact" test to avoid hearing a local union official's action for three weeks of accumulated vacation pay.<sup>275</sup> Rather than relying on the discredited "significant impact" test,<sup>276</sup> the court should have refused to assert jurisdiction on the ground that the complaint charged a violation of the local union's constitution and bylaws—documents that do not regulate inter-union relations.<sup>277</sup>

The proposed approach to section 301 not only supplies a basis for jurisdictional dismissal that avoids continued reliance on the "significant impact" test, but also leaves state courts largely in control of the employment relations between the union and its officers and employees. Union officials certainly enjoy rights as members under the LMRDA,<sup>278</sup> just as union employees enjoy

274. 695 F. Supp. 1174 (N.D. Ga. 1988).

275. *Id.* at 1177-78. For other cases that rely on the "significant impact" test, despite its rejection in *Local 334*, see *Brown v. American Arbitration Ass'n*, 717 F. Supp. 195, 198-99 (S.D.N.Y. 1989) (citing pre-*Local 334* "significant impact" authority to reject jurisdiction over intra-union dispute with no relationship to collective bargaining); *Finnie v. District No. 1, Marine Eng'rs Beneficial Ass'n*, 538 F. Supp. 455, 460 (N.D. Cal. 1981) (permitting individual union members to sue but only where dispute significantly affects labor-management relations—an approach apparently rejected in *Kinney v. International Bhd. Elec. Workers*, 669 F.2d 1222, 1229 (9th Cir. 1982)).

276. For authoritative rejections of the test, see *Lewis v. International Bhd. of Teamsters*, 826 F.2d 1310, 1313 (3d Cir. 1987); *Kinney v. International Bhd. of Elec. Workers*, 669 F.2d 1222, 1229 (9th Cir. 1982); *Doby v. Safeway Stores, Inc.*, 523 F. Supp. 1162, 1166 (E.D. Va. 1981). See also MALIN, *supra* note 8, at 11. The test suffers from the distinct disadvantage of making jurisdiction, and choice of applicable law, turn on the judge's own assessment of the likely seriousness of the particular dispute. For a critique of the test, see *supra* notes 116-19 and accompanying text.

277. Again, the court failed to set forth the precise provisions of the union constitution on which it rested its jurisdictional analysis. See *Gable*, 695 F. Supp. at 1176-77. It appears from the text of the opinion, however, that the right to vacation pay which the union official sought to vindicate was set forth in local bylaws. *Id.* at 1174-75.

The jurisdictional analysis might well change, though, if the national constitution included a provision that required Local 387 to comply with its local bylaws. In such a case, the plaintiff in *Gable* could plausibly allege a violation of a contract between unions by claiming that the violation of local bylaws also constituted a breach of the national constitution. Unions could, of course, draft the constitution to avoid such a federalization of local employment relations either by qualifying the local's obligation to comply with its own bylaws, or by handling employment matters in separate contracts with individual officers rather than in the union's organizational documents.

278. For a discussion of the rights of union officers under the LMRDA, see *supra* notes 178-80 and accompanying text. State courts have generally rejected the argument that Title IV of the LMRDA preempts their power to fashion rem-

rights under the National Labor Relations Act.<sup>279</sup> The existence of these federal regulatory schemes does not provide an adequate reason for transferring routine litigation over individual employee rights in the union context from state to federal court under section 301.

The approach proposed here prevents the shift to federal court by treating the extra-constitutional contracts of labor unions, such as local bylaws and employment contracts with individual officers and employees, as matters within the states' general contract jurisdiction. Except where a union officer such as Kinney bases his challenge to removal from office on the provisions of a national constitution,<sup>280</sup> therefore, state law would continue to control the claim. Garden variety claims for unjust dismissal—those that do not rest on a theory of retaliation under the LMRDA—would thus remain the province of state courts.<sup>281</sup>

In sum, the division between state and federal power advocated here produces uniform federal interpretation of constitutional provisions that regulate interstate relations between the constituent bodies of the union, but leaves the more localized relationship between the union and the individual to state law. By preserving state court control over the class of claims that the federal courts have historically sought to avoid, the proposed approach achieves a measure of uniformity and clarity. It thus seems preferable to a broad interpretation that could require the

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edies for former officers and employees of labor unions who wish to challenge their removal from office. *See, e.g.*, *Hodcarriers Local Union No. 89 v. Miller*, 52 Cal. Rptr. 251 (Ct. App. 1966) (finding that federal law did not preempt state court from hearing breach of contract action by local union members); *Buffalow v. Bull*, 619 S.W.2d 913 (Mo. Ct. App. 1981) (holding that Title IV does not preempt state court action); *Hannifin v. Retail Clerks Int'l Ass'n*, 511 P.2d 982 (Mont. 1973) (asserting jurisdiction over action by former officer of local union for wrongful dismissal). A review of the relevant provisions fully justifies their conclusion. While LMRDA § 401(h)-(i) authorizes the Secretary of Labor to conduct a secret ballot vote to recall a union officer, and the non-preemption provision for Title IV makes federal remedies for challenging elections exclusive, the LMRDA does not make the Secretary's "removal" authority exclusive of other state regulation. *See* LMRDA § 401(h)-(i), 29 U.S.C. § 481(h)-(i) (1988) (authorizing secret recall vote); *id.* § 403, 29 U.S.C. § 483 (governing exclusivity of federal election remedies and removal authority). Indeed, the Secretary's power seeks to protect members from a lack of recall provisions, whereas the state courts have fashioned remedies to protect the officers themselves.

279. Union employees enjoy the same rights as other employees in the private sector to organize and bargain for mutual aid and protection. *See* 29 U.S.C. § 157 (1988).

280. For a discussion of individual member suits alleging violations of a national union constitution, see *supra* notes 220-40 and accompanying text.

281. For a summary of such claims, see HOWARD A. SPECTER & MATTHEW W. FINKIN, *INDIVIDUAL EMPLOYMENT LAW AND LITIGATION* 288-501 (1989).

federal courts to hear all constitutional disputes and thus invite them to adopt strained avoidance techniques. The proposed approach also restricts the scope of federal power within the limits of legitimacy defined by the LMRDA.

## V. CONCLUSION

When the late Judge Henry Friendly first encountered the between-labor-organizations clause of section 301 of the Taft-Hartley Act, he expressed the view that the provision did not justify the assertion of jurisdiction over an unwritten, intra-union custom that was said to have broadened the scope of a local union's jurisdiction beyond that set forth in the union constitution.<sup>282</sup> Judge Friendly explained that "[t]he box that Congress opened [by enacting the between-labor-organizations clause] need not become Pandora's unless the courts make it so."<sup>283</sup> When Judge Friendly next considered the Taft-Hartley Act's between-labor-organizations clause, he held that it authorized federal district courts to entertain a parent union's application for an order enforcing its local union's constitutional obligation to comply with a lawful trusteeship.<sup>284</sup>

Though Judge Friendly did not say so, his differing approach to the two cases encapsulates much of the federal experience with the application of section 301 to union constitutions. His cautionary invocation of Pandora's box provides an apt metaphor for the confusing overlap of state and federal law that may result from section 301's indiscriminate application to the various relationships in the union constitution. His subsequent opinion recognizes that Title III of the LMRDA asserts a sufficiently clear federal interest to justify the federal courts in policing the constitutional relationships between parent and local.

This Article articulates what Judge Friendly and the majority opinions in *Local 334* and *Wooddell* left unsaid. The task of articulation begins with the recognition that the LMRDA, and not sec-

282. See *Local 33, Int'l Hod Carriers v. Mason Tenders Dist. Council*, 291 F.2d 496, 506 (2d Cir. 1961) (Friendly, J., concurring) ("[T]he truism that courts will sometimes enforce an intra-union custom or constitution is scarcely a sure sign that this was what Congress had in mind when it enacted section 301(a) . . . .").

283. *Id.* at 507 (Friendly, J., concurring).

284. See *National Ass'n of Letter Carriers v. Sombrotto*, 449 F.2d 915 (2d Cir. 1971). Chief Judge Friendly stated: "If locals were permitted to refuse to accept trusteeships and the federal courts have no jurisdiction to assist parent unions, the trusteeship scheme established by Congress would be effectively thwarted." *Id.* at 919.

tion 301, supplies the impetus for the assertion of federal power over the union constitution. Early decisions of the lower federal courts acknowledged the decisive role of the LMRDA, explaining that their interpretation of section 301 was adopted less to effectuate the design of the Taft-Hartley Act than to fill out the remedial scheme of the LMRDA. While the Supreme Court in *Local 334* failed to offer so candid an explanation of its opinion, the LMRDA undoubtedly drove its analysis as well.

Having established that the LMRDA explains it as a practical matter, this Article next considered whether the LMRDA also justifies the Court-approved federal role in the enforcement of the union constitution. Although Title III of the LMRDA does not expressly authorize federal courts to enforce the union constitution, its articulation of standards to guide the federal courts in resolving disputes that arise from the parent-local relationship provides an adequate justification for a federal role in policing parent-local relations. The failure of the LMRDA to set forth similarly detailed federal standards to govern the constitutional relationships between the union and its members and officers, moreover, suggests that federal courts should leave such relationships in the hands of state courts.

This Article thus proposes to define the second clause of section 301(a) as if its reference to contracts between labor organizations applies not to every term and condition in the union constitution but only to provisions that regulate the relations between affiliated parent and local bodies. The Court's carefully circumscribed decision in *Wooddell* not only permits such an interpretation, it also contains a measure of support for confining federal power to the enforcement of inter-union contracts. The proposed approach supplies answers to the many vexing jurisdictional questions that will occupy the lower courts in the wake of *Wooddell* without requiring the major shift of litigation from state to federal courts contemplated by the decision in *Shea*. It does so, moreover, without opening the box to which Judge Friendly referred.

