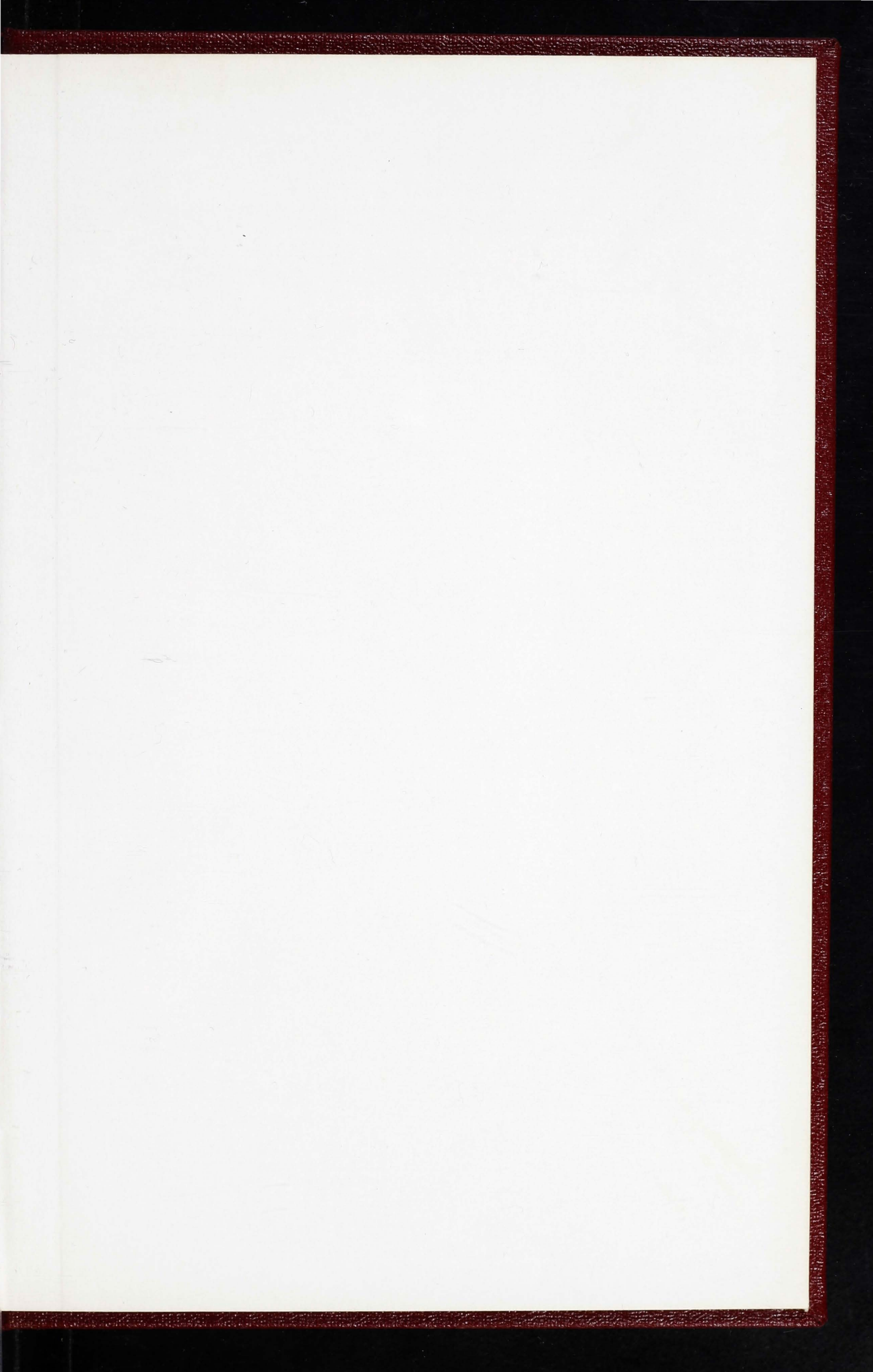
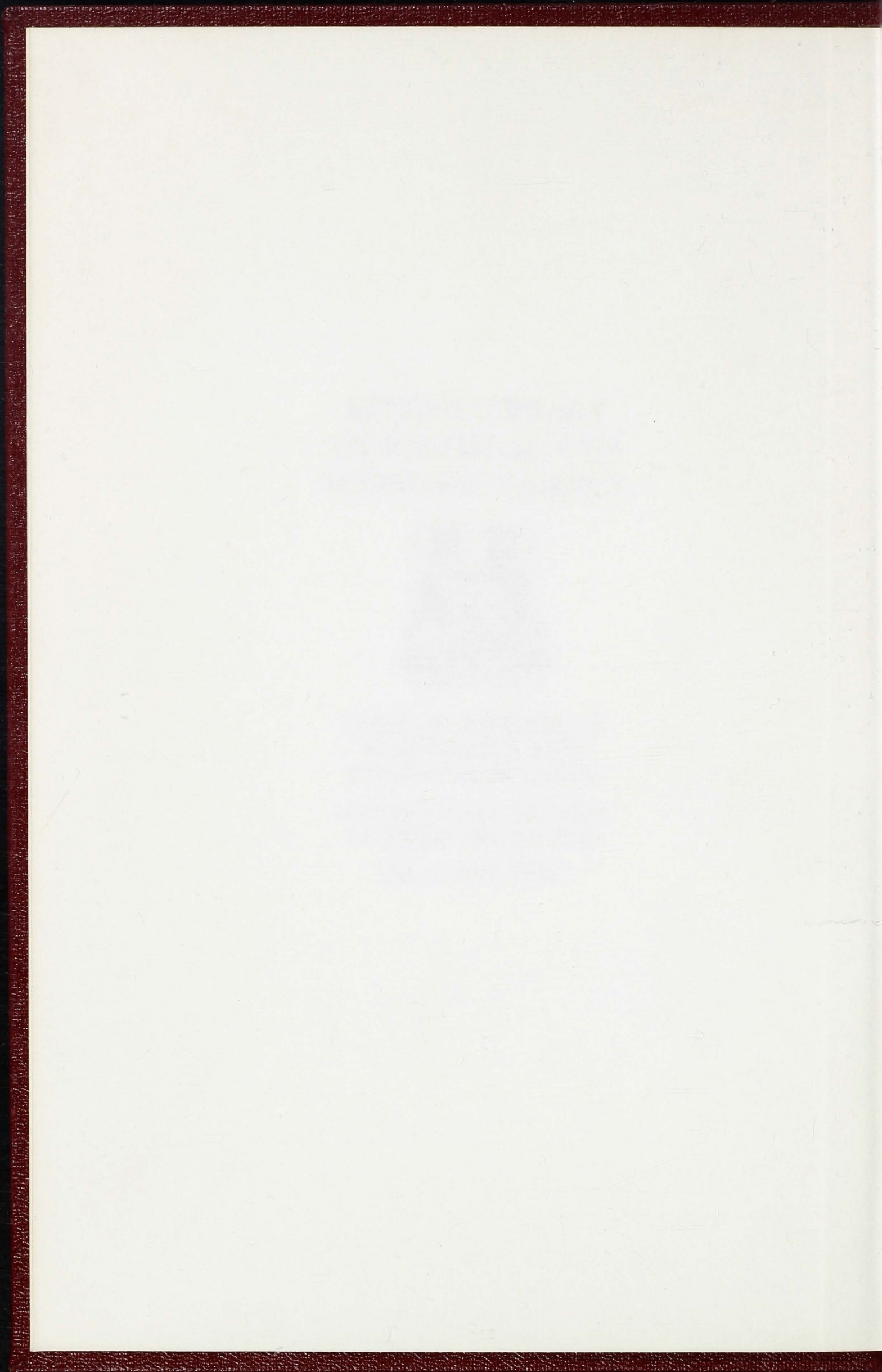


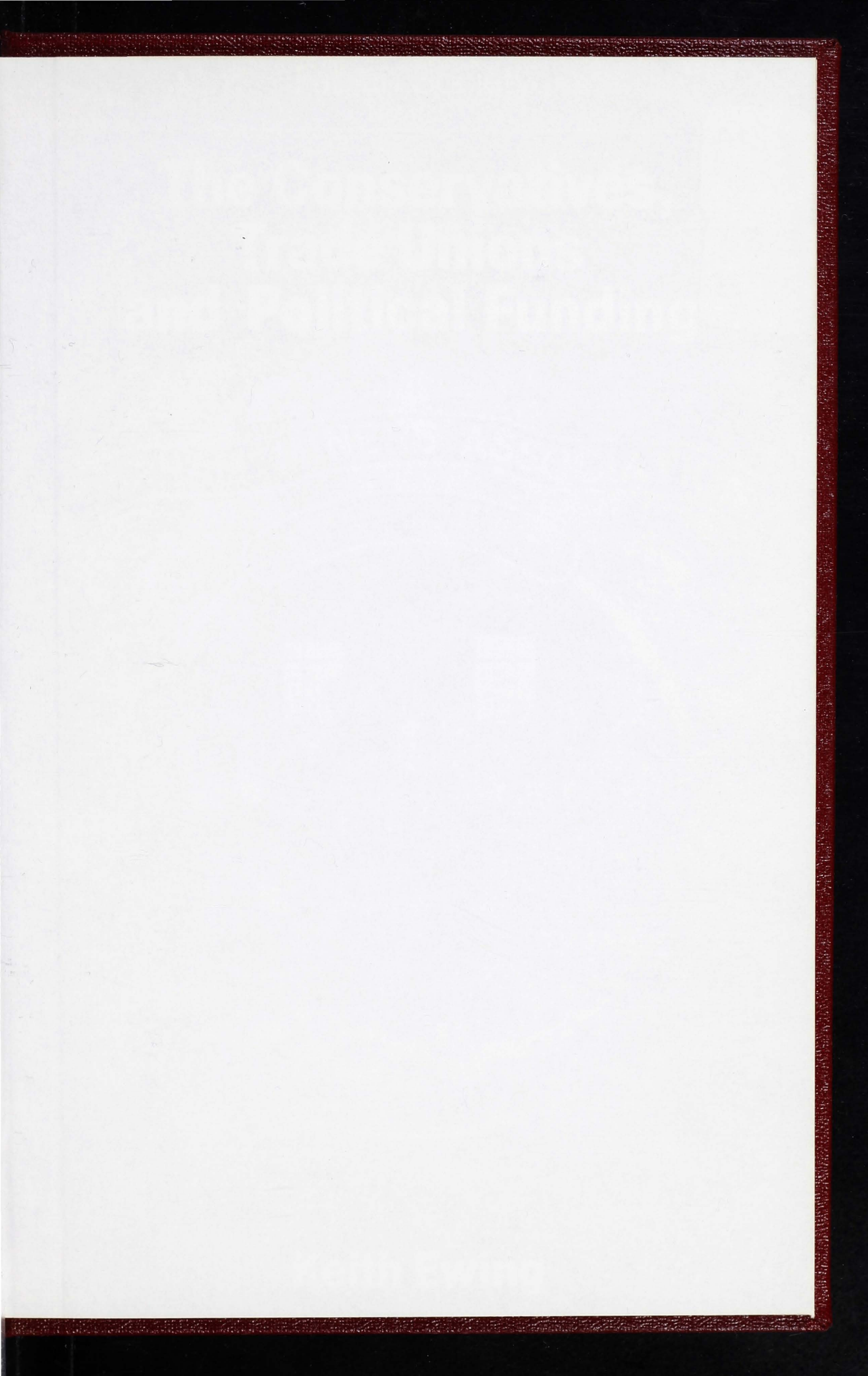
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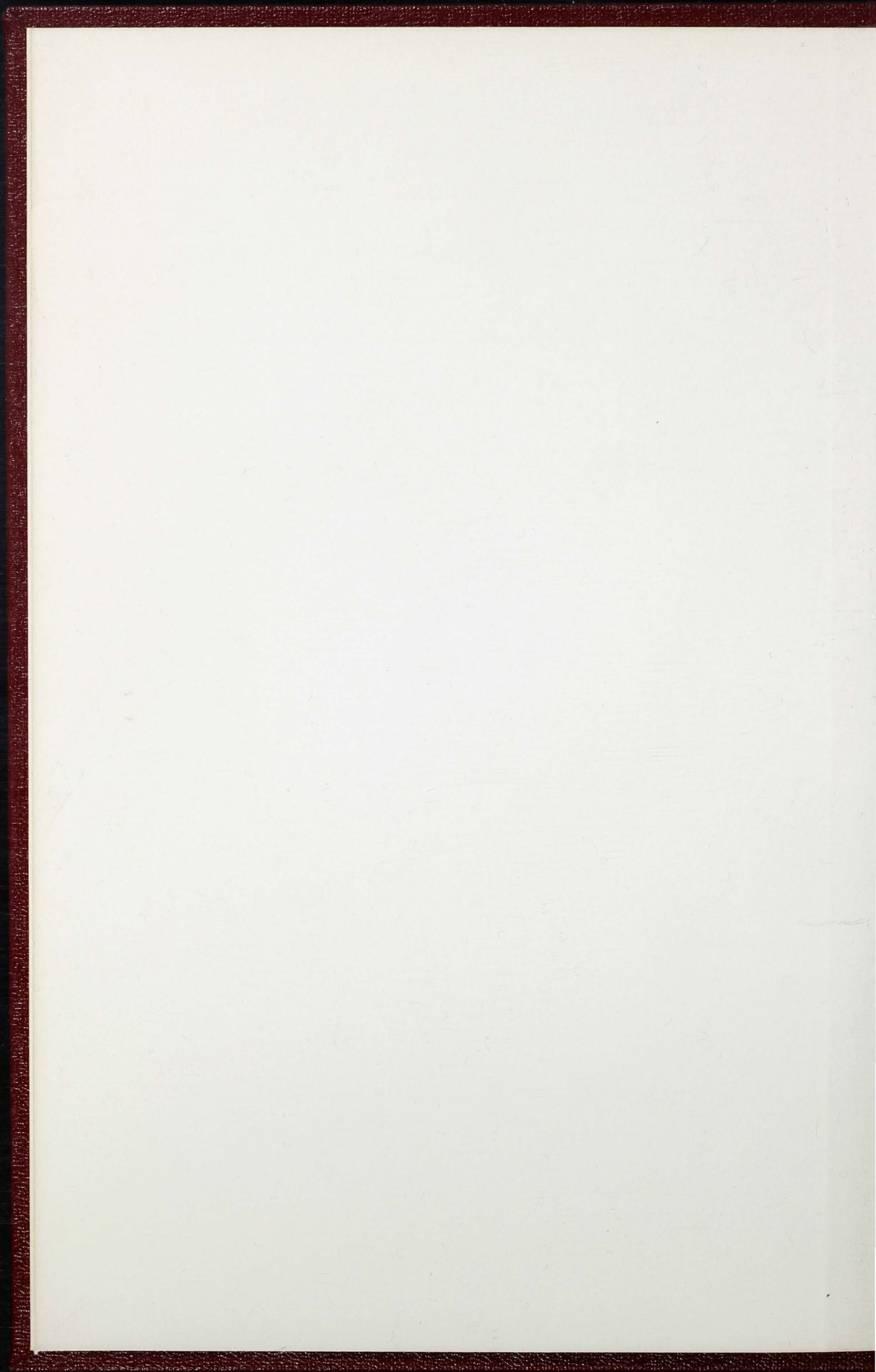


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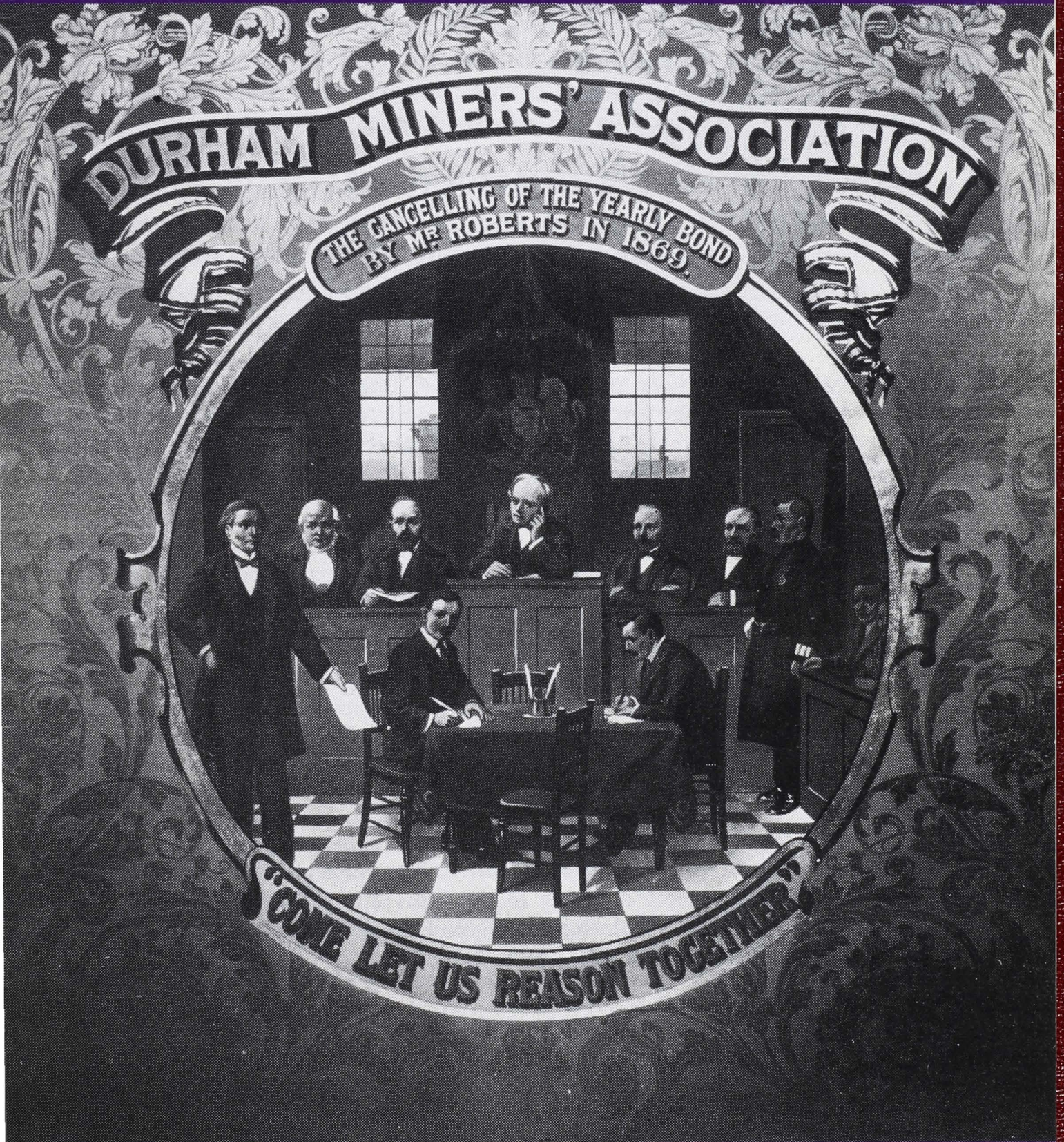
The Conservatives, Trade Unions and Political Funding

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Keith Ewing

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The Conservatives, Trade Unions and Political Funding

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1. Introduction

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Political parties are essential to the effective operation of modern government: in the words of the Houghton Committee, "without them democracy withers and decays" (*Report of the Committee on Financial Aid to Political Parties*, Cmnd. 6606, para 9.1). One of the first tasks of the parties is to recruit and select people to stand for office, an elementary requirement of any large parliamentary system. Of equally fundamental importance is the fact that the parties are engaged in the business of policy formulation and development, and thus offer "a basis for electoral choice by putting what they consider to be the central policy issues before the voting public" (Hansard Society, *Paying for Politics* (1981), p.13). In the appeal for popular support the party which wins under the rules will form the government and control the administration. Its nearest rival will form the official opposition which in turn is under a heavy constitutional obligation vigilantly and vigorously to oppose in order to ensure that the government properly accounts to the nation for its tenure in office.

But these are not the only important functions which the parties serve. In a mass democracy the parties provide the means whereby individuals can take part in the discussion of political issues and become involved in the formulation of policies for government. The parties thus give some content to the citizen's right to participate in the political process. Also, a properly balanced party system ensures that there is scope for the representation of the wide spectrum of interests, expectations and aspirations which exists in the community at any time. It is on this function that the legitimacy of parliamentary democracy relies heavily, as indeed it relies on the expectation that the parties representing these different segments of opinion will have a fair opportunity of election to government.

It is in this representative context that the Labour Party performs a unique function. In the first place, the Party is the expression of the hopes and fears of a large number of working people whose voices would otherwise be excluded from the political process or would at the very most be heard with a lack of compassion and understanding. As Anthony Howard has

written in a perceptive piece, the Labour Party is necessary for otherwise the economically dispossessed would become the politically deprived and the country would be divided into "an aggressor, triumphant nation and an aggrieved dispirited territory destined to be the object as much of political neglect as of economic indifference" (*The Observer*, 5 June 1983).

Secondly, the Labour Party is the political vehicle which represents and seeks to realise the goals of British trade unionism. The Party is to a very large extent a product of the fact that trade unions must be involved in the political arena in order to protect the day-to-day interests of their members. As the late Allan Flanders wrote, unions must be involved in politics "in order to establish and maintain the legal and economic conditions in which they can flourish" (*Management and Unions* (1975 ed.) p.20). Indeed it was the attack by the judges on the freedom to strike in notorious developments such as the *Taff Vale* case which was largely responsible for moving many of the unions to support the embryonic Party after its formation in 1900. The relevance of the trade union commitment to the Labour

Party is now all too evident with the unions being caught in a pincer movement of legal restriction on the one side and an inhospitable economic policy on the other.

The Politics of Trade Unionism

The need of the unions for a political arm is reflected by the fact that 51 are now affiliated to the Labour Party. The total

number of trade union members who are affiliated in this way amounts to 6,181,560, which compares with a total of 10,510,157 trade unionists in 102 trade unions affiliated to the TUC. The annual affiliation fee to the Labour Party per affiliated member was 45p in 1982 and is currently 50p. So in 1982 the unions paid a total of £2,789,000 in affiliation fees to the Party. The ten largest affiliates are shown in Table 1.

Table 1

<i>Trade Union</i>	<i>Affiliated membership 1983</i>
TGWU (Transport Workers)	1,250,000
AUEW (Engineering Section)	850,000
GMBATU (General & Municipal)	650,000
NUPE (Public Employees)	600,000
USDAW (Shop Workers)	405,000
NUM (Mineworkers)	237,000
UCW (Post Office Workers)	192,000
UCATT (Building Workers)	180,000
EETPU (Electricians)	180,000
NUR (Railwaymen)	160,000

The affiliation fees from the unions provide the bulk of the Party's finances at national level, amounting to 78% of head office income in 1982. In addition, the unions provide the Party with the bulk of the money required to fight election campaigns. 1983 was no exception.

Yet despite this commitment to the Labour Party, it is true that trade union support for the Party is much less solid now than it has been in the past. This is reflected in a number of ways. First, there has been an apparent decline in the number of trade union members voting for the Labour Party. In October 1974, 55% of them voted for the Party. By 1979 this had fallen to 51% and in June 1983 to 39%. In fact it is only amongst non-skilled manual trade unionists that Labour has 50% of the votes. Secondly, the proportion of trade union members affiliated to the Party has declined steadily over the years. The level of affiliation fell from about 90% of the TUC affiliated membership in 1909 to just over 50% in 1978. Indeed the level of affiliation was higher in some of the years between 1927 and 1946 when trade unions collected the political levy by a system of

contracting in rather than by the present method of contracting out, which is thought to favour the Party. Thirdly, the Party has found it difficult to attract new affiliations. In recent years the Hosiery Workers, BBC Staff and NALGO balloted their members with a view to setting up a political fund, with eventual affiliation to the Labour Party being an objective in at least two of these cases. In each case the members refused to support the creation of a political fund, in NALGO's case by a rather decisive margin.

In many ways these developments are not surprising given the trend towards white-collar trade unionism, the inability of the Party to respond to the expectations of the new breed of trade unionists, and the continued dominance in the Party of the leaders of traditional trade unions. The figures show that Labour has a lot to do if it is to be directly representative of the trade union population as a whole. Nevertheless, although these developments are important, they do not undermine the role of the party, nor do they indicate that the unions can operate effec-

tively without a foothold in the political arena. Apart from anything else, it is clear that the Party continues to represent a considerable proportion of trade unionists in a significant number of unions. It is also clear that the Labour Party plays an important role indirectly to represent those unions which are not affiliated to it. Increasingly the so-called non-political unions are being drawn into active campaigning against government policy. This is particularly true of unions in the public sector.

But rather than direct this political energy through the established parties, these unions are engaging in traditional promotional pressure group campaigns designed to educate and influence public opinion to respond negatively to government policy. Recent examples of this include NALGO's £1m campaign against the public service cuts. Another is the campaign by the Education Alliance, of unions affiliated and unions not affiliated to the Party, designed to encourage the electors to "Vote for Education". Yet though there may well be a growing diversity of trade union political response, ultimately even non-affiliated unions rely on the success of the Labour Party and indeed are influential in its affairs. These promotional campaigns are clearly designed to persuade the electorate to vote for the party which offers the greatest likelihood of supporting the policies proclaimed. In almost every case the most obvious beneficiary will be the Labour Party, and ultimately these campaigns depend for their success on the return of a Labour government. Furthermore, the TUC - Labour Party Liaison Committee has played an important part in shaping the Labour Party's economic strategy. The Committee includes representatives of the TUC who as a result are given "a direct line into Labour Party policy making and thus into general election manifestoes" (J Elliot, *Conflict or Co-operation? The Growth of Industrial Democracy* (1978) p31). So in this way even unions not affiliated to the Party have some influence in its affairs and indirectly are represented by it.

Financial and Legal Constraints

It is no secret that the Labour Party is in a parlous financial position which threatens seriously to impede it in the fulfilment of its functions. An internal Commission of Inquiry reported in 1980 that "the Party has effectively no reserves, a thoroughly inadequate income and is moving into serious deficit and debt." The 1983 Conference revealed that money continues to be a real cause for concern. Rising unemployment and the decline in trade union membership means that trade unions will be unable to maintain their present level of affiliation, far less be able to provide the Party with additional revenue. In addition the Party has been dealt a heavy blow by a recent decision of the Employment Appeal Tribunal (*Parkin v ASTMS*, *The Times*, 7 October 1983) which confirmed earlier decisions of the Certification Officer (against both ASTMS and NUM) that the unions involved in the consortium which financed the Walworth Road development must find the money from political funds rather than their general funds. Ultimately this will mean that £1.6m will have to be transferred from union political funds to meet the cost, at a time when union funds are already depleted by large donations to the Labour Party's general election campaign.

These orders were made by the Certification Officer in consequence of the Trade Union Act 1913 which imposes obligations on trade unions of a kind which no other organisation has to endure. The 1913 Act was passed by a Liberal government, with Conservative support, to free the unions from the bondage of the *Osborne* judgment, which is one of the most infamous of all legal decisions affecting trade unions, and which consequently contributes greatly to the suspicion with which trade unionists have always viewed the judges. It was in that case that first the Court of Appeal and then the House of Lords held that political action was beyond the powers of a registered trade union.

Before the *Osborne* judgment the unions had levied a political subscription from all their members. The 1913 Act did not res-

tore that position, though Labour MPs and a solid group of Liberal MPs argued that it should. Rather what it does is to require all trade union expenditure on party political objects to be financed from a separate political fund which in turn must be financed only by a separate political levy of the members. A union may not use general funds or regular dues for political purposes. A political fund can be established only with the approval of a majority of members voting in a secret ballot. And even if a majority approve the adoption of a fund, individual members have a right to claim exemption from payment of the levy. Any member claiming exemption has a right not to be placed at any disability or disadvantage (except in relation to the control and management of the political fund) by reason of his exemption. If a member alleges that any of these requirements has been breached, he may, as already indicated, complain to the Certification Officer from whom an appeal lies to the Employment Appeal Tribunal, thence to the Court of Appeal and ultimately to the House of Lords.

The Government's Proposals

In a Green Paper (*Democracy in Trade Unions*, Cmnd. 8778) published in January 1983 the government made a number of proposals for changing the 1913 Act. Each of these proposals seems calculated to make it more difficult for unions to maintain political objects and to collect political contributions from their members. The Green Paper considered whether unions should be required to ballot their members periodically to authorise the continuation of political funds; whether the method of collecting the political levy should be changed from one whereby objectors contract out to one whereby those willing to pay contract in; and whether it should be possible to collect the political levy under check off agreements whereby employers deduct trade union dues at source and pass on the balance to the union concerned. After a period of consultation the government published a

White Paper on 12 July 1983 which indicated a firm intention to require trade unions to ballot their members every ten years to determine whether there is support for the continued operation of political funds. This proposal has now been included as Clause 8 of the Government's Trade Union Bill which was published on 26 October 1983. It is expected that unions will be required to hold the first ballots before the end of 1986.

On the other issues raised in the Green Paper, the government now appears more cautious. Neither the check-off nor contracting in are dealt with in the Bill. On the latter, the Government has expressed a preference for an agreement to be reached with the TUC whereby the unions will ensure that their members are "freely and effectively able to decide" whether or not they pay the political levy. However, both Mr Tebbit and Mr King have indicated that the Bill will be amended to introduce contracting in if no satisfactory agreement can be reached.

The Employment Secretary is under not inconsiderable pressure to legislate for contracting in. Such a move is supported by independent organisations, such as a majority of the recent Hansard Society commission; by spokesmen for right wing business organisations, such as Aims of Industry, which appears to enjoy some influence with the government; by Conservative backbenchers; and by the SDP. So even if the TUC reach some agreement with Mr King, amendments will almost certainly be tabled in Parliament. It remains to be seen whether radical Conservative backbenchers will permit themselves to be upstaged by the six SDP members.

It is widely anticipated that the government's proposals, if implemented, will have a serious impact on Labour finances. One anticipated effect of the ballot provision is that the Labour Party eventually could be left with a rump of only 20 or so hard core unions, located mainly in traditional industries, with the unions in turn suffering from declining memberships. The obvious problems which this would present to the Party will be compounded if

Parliament elects to go for a system of contracting in. Such a system was in operation between 1927 and 1946, having been introduced by the Conservatives in the aftermath of the General Strike. There is evidence to suggest that this change in the law made very little difference to the numbers paying the political levy in at least one union (the Railway Clerks' Association, now TSSA) (see K.D. Ewing, *Trade Unions, the Labour Party and the Law: A Study of the Trade Union Act 1913* (1983)

ch 3). However this appears exceptional and was due in large measure to the high priority which the union gave to this question and to the resources which it committed to overcoming the apathy of its members. In general, however, the number of trade unionists affiliated to the Party fell from over 75% to 48% of the total TUC membership. There can be little doubt that this fall was due to a very large extent, if not exclusively, to the change introduced by the 1927 Act.

2. The Case for Reform

Questions of Principle

The case for reforming the present law is based upon three different arguments. The first relates to questions of principle. This is perhaps the most important justification presented by the government for its proposals, with Mr Tebbit having said that "this really is more a matter of principle than anything else" (H.C. 213-iii, 232). Questions of principle have always informed policy on the political levy. The fundamental principle which moved the Liberal government when it enacted the 1913 Act was that trade unions had a right to represent their members in the political arena through affiliation to the Labour Party. A secondary, but nevertheless important, principle recognised in 1913 was that trade union members should not be compelled to pay a political levy as a condition of employment. In other words, there was a concern to ensure that where a closed shop operated, an employee should not be faced with the dilemma of compromising his conscience by paying the levy or resigning from his union with the consequent loss of employment.

It was mainly for this reason that the right to contract out was introduced. Consequently, it might be argued that the function of this secondary principle has disappeared with the relaxation by the present government of the rules relating to the closed shop. But even without a closed shop there may still be a case for retaining some form of exemption procedure. For as

Mr Tebbit rightly pointed out in oral evidence to the Commons Select Committee on Employment: 'Very often the particular trades union is the only trades union which is able to represent the member, the individual. He has no choice as to which union he belongs to; sometimes he has no choice but to belong to that union' (*ibid*, 240). In other words,

trade unions perform valuable functions in the representation of workers and in the protection of their interests. Employees should not be dissuaded from seeking the benefits of membership by being required to pay a political levy against their will.

The government is now appealing to rather different principles. First, it is wrong in principle that unions should continue to finance political action without the regular approval of their members. By this the government means the formal and mechanistic approval of compulsory secret ballots. In the White Paper it is claimed to be "indefensible that political funds should be operated on the basis of decisions taken up to 70 years ago" (para. 12), and Mr Tebbit has argued that the present members of trade unions should not be bound forever by a ballot that may well have been taken before any of them were born. The Green Paper adopted a more measured tone, claiming at para 85 that it is "not self-evident that a majority of the present members of a trade union in which a ballot was held many years ago would wish their union still to pursue political objects or to continue previous political affiliations."

The second principle to which the government appeals is based on a belief that it is insufficient that trade union members should have the right of exemption. In the Green Paper, it is thought "objectionable in principle that anyone should have to indicate his dissent from the political alignment of his union to avoid contributing to political activities or to a political party to which he is opposed" (para 94). So rather than claim exemption, trade union members should be required actively to indicate their willingness to pay the levy. Thirdly, the government is concerned that it is wrong in principle that the political levy should be collected by a method which tends to conceal from individual trade unionists the fact that they actually contribute to the political fund of their respective unions. The major problem here is the check-off. This practice gives rise to the problem whereby "the union member is unaware that he is making a regular political contribution because it is not distinguished from his union sub-

scription" (para 122). In some cases, even where the employee does know of the existence of the levy, an employer may still deduct it from the employee's wages and require him to claim a rebate from the union. This procedure has been criticised as coming near to "fraudulent conversion" and as requiring a union member "to repeat what may well be to him an act of courage, time and again for ever" (quoted by A.I. Marsh and J.W. Staples, *Royal Commission on Trade Unions and Employers' Associations, Research Paper 8*, p 57).

Problems in Practice

The second general argument for the changes proposed by the government is that the present law is not working well in practice in the sense that it is failing adequately to protect the freedom of trade unionists who do not support the Labour Party and who do not wish to pay the political levy. A number of claims of this kind have been made. For example in 1978 Aims of Industry published a pamphlet written by Michael Ivens in which he alleged that: "in Britain today we have the shameful situation of millions of workers who vote Conservative, Liberal and Nationalist or not at all contributing through the trade unions to the Labour Party. They do this because of fear, pressure, the desire for a quiet life, apathy and sheer ignorance". (*Trade Union Political Funds* (1978) p 1). More recently, a Conservative MP has claimed that the present system is "immoral", it is like taking money under false pretences. Many hundreds of thousands of trade unionists are actually supporting financially a party they do not vote for (Marcus Fox, *The Sunday Express*, 11 April 1982).

More recently still the government warmed to this theme in the Green Paper where it was suggested that available evidence "gives rise to serious doubt whether the statutory requirements for contracting out work satisfactorily in practice in all unions" (para 88). Two factors give rise to these doubts. The first is that in 14 unions, over 95% of the members pay the political

levy. This, it is claimed, contradicts psephological studies which indicate a considerable variation in the voting behaviour of trade unionists. The second factor which casts doubt on the effectiveness of the present arrangements is that there is no way of explaining why some unions have a high contracting out rate whereas others have a very low one. A key point which is thought relevant is that "the proportion of contracted out members does not follow any discernible occupational or other pattern" (para 91). It is also claimed that there are wide variations of between 36% and 100% in the proportion of members paying the levy in different areas of the NUM. And the authors of the Green Paper draw attention to the fact that there may even be wide differences in contracting out between two unions recruiting members in the same industry and area. For example, in NACODS (Durham Area) 99.9% of the members allegedly pay the levy, whereas in NUM (Durham Area) only 37.2% of the members allegedly pay the levy. This evidence (which is considered below, ch. 4) led the authors of the Green Paper to conclude that a significant cause of the disparity must be differences in trade union practices which make it more difficult for the members of some unions to contract out than it is for the members of others. There is, however, little direct evidence to support this view.

Institutional Dependence

The third argument in favour of change is based on an appeal to democratic values. One of the great problems of British democracy is the extent to which the political parties are dependent on corporate and institutional donors for their funds. This creates an obvious danger of governments and parties becoming accountable, not to the people who voted for them, but to the interests who pay their bills, and which in most democratic systems have no legitimate claim to direct representation. This problem of institutional influence is thought to be of particular significance in the Labour Party

with the unions collectively supplying most of the money available to the Party nationally. In return for this finance, the affiliated unions have a voting strength on crucial issues such as the election of the Party leaders and the formulation of Party policy which some might say corresponds directly to the amount of money which each union contributes. In other words, the higher the contribution the greater the influence in terms of voting strength of the union concerned.

Certainly the activities of some unions in recent years are hardly a matter of pride. Questions might well be raised about the motive of unions which affiliate more members to the Party than actually pay the levy and which in some cases affiliate on the basis of more people than they have in membership. The threat by the unions to withhold money from the Party because of its policies also gives rise to serious cause for concern. A recent manifestation of this was the threat made by union leaders on the right of the Party that they would pull out unless the Party abandoned its "silly policies". There is reason to believe that some of the support for the move to contracting in is based upon a perceived need to free the Labour Party from these pressures. The question of institutional dependence clearly troubled the Hansard Society commission of inquiry, which wrote in 1981 that it did not believe that excessive institutional dependence by any political party "serves the public interest" (*op. cit.* p.29).

Following on from this concern, a majority of the members of the commission recommended the change to contracting in as a way of "increasing popular participation in politics and of lessening the excessive degree of institutional dependence in the financing of political parties" (*ibid.* p 39). Mr Tebbit according to press reports appeared to be thinking along similar lines, in the sense that he was seeking to force the Labour Party to develop a mass membership to preserve its financial position. But for him this would not only lead to a reduction in union influence in the Party's affairs, but "would automatically force out the bed-sitter

brigades and militant leftists and Bennites which have all but destroyed the Labour Party of old" (*The Sunday Times*, 27 March 1983). Mr Tebbit has also asked why it is that the Labour Party cannot be like the Conservative Party which raises the bulk of its money from members by way of functions such as coffee-mornings, fetes, jumble-sales and bazaars. And just to illustrate that there is no question of

double standards in the government's proposals, Mr Tebbit has pointed out, in oral evidence to the Commons Employment Committee, that the Conservatives rely on corporate donations for only something like 10 per cent of the total Conservative Party income (*op.cit.* 238). The clear implication is that, unlike the Labour Party, institutional dependence just is not an issue for the Conservatives.

3. Questions of Principle

In chapter 2, reference was made to the government's appeal to principle as a major justification for its proposals. Although in the abstract each of the principles may be highly commendable, on close examination they are not always as convincing as they first appear. For example, it is difficult to appreciate the need in principle for periodic ballots. Although there may be a case for an initial ballot to enable a union to change its rules to adopt political funds, it is to be noted that neither the participants in the ballot nor successive generations of trade union members are bound by the ballot decision. The case for periodic ballots would be stronger if normal democratic principles were to prevail so that all trade union members were required to pay the levy if the majority of those voting endorsed the proposal to set up a fund.

But the fundamental question is not the relative merits of each of the "principles" advanced by the government. Rather it is to establish whether these principles of periodic approval for political action and positive affirmations of willingness to finance such action are in fact principles recognised by British public policy. For this purpose it is necessary to examine what happens in other bodies which make political contributions. The most obvious bench-mark for this purpose is the position which prevails in corporations and the protection which is provided for shareholders and employees. It is true that there are wide differences between trade unions and companies with regard to their nature and purpose. Nevertheless, comparisons between the two are highly relevant when the debate centres on questions of principle.

Thus, the editor of *The Times* has written that "company contributions to the Tory Party are not precisely analagous, but the parallel is uncomfortably close" (12 January 1983). It is also clear that the government itself regards the comparison as both legitimate and crucially important. Earlier in 1983 the following exchange took place between Mr Tebbit and Mr Jim Craigen when the former appeared before the Commons Employment Committee:

"(Mr Craigen) Would you just say why there should be any legal regulation of trade union political expenditure?"

(Mr Tebbit) I would think so for several reasons. One, of course, is that it puts it on a footing alongside companies who are also required to report and regulate their political expenditure."

(H.C. 213 - iii, 227).

Yet although the government considers the comparison with companies to be relevant, it is clear that the principles which it seeks to impose on trade unions have no parallel in company law. In fact there is not even an arrangement which simply permits individuals to indicate their dissent in order to be relieved from the obligation to finance a political donation. In other words, there is not even an equivalent to the contracting out procedures. The only legal protection for shareholders is contained in section 19 of the Companies Act 1967, which requires companies to disclose in their annual reports donations to political parties in excess of £200. But this requirement is a rather ineffective gesture which, far from protecting shareholders who object to political donations, merely serves to remind them that their money is being used without prior approval and for purposes to which they object. This falls far short of the standards which presently exist under the 1913 Act, not to mention those which the government now seeks to impose on trade unions. And it must be said that when attempts have been made to extend to shareholders the rights *now* enjoyed by trade unionists, members of the present administration have shown some reluctance to be guided by questions of principle.

In 1978 Mr Doug Hoyle introduced a Companies (Regulation of Political Funds) Bill. The provisions of the Bill, which suffered the fate of most private members' bills, were revived a year later when Mr Ian Mikardo included them as a proposed clause in an amendment to the Labour government's ill-fated Companies Bill. The Hoyle-Mikardo proposal was that companies could be permitted to engage in party-political expenditure only if this was first approved by a resolution of the shareholders in a ballot. Armed with this authority the company would be free to create a separate political fund which would be financed only by dividends otherwise payable to shareholders. But no portion of the dividends payable to shareholders who objected to this use of their money could be allocated to the fund. So in other words, a portion of the dividend of each

shareholder would be allocated for political purposes, unless the shareholder objected, in which case he would receive a slightly higher dividend than the other members of the company. The Bill would also have required companies with political funds to give notice to each of their shareholders, acquainting them of their right of exemption and informing them that a form of exemption notice could be obtained from the head office of the company.

This measure, if introduced, would have gone a long way towards introducing a measure of fairness and equity into the system. The liberty of the shareholder would be put on a par with that of the trade unionist. Though not quite, for the trade unionist has a cheap remedy via the Certification Officer to enforce his rights. The shareholder in contrast would be obliged to take expensive legal action in the ordinary courts if he was faced by obstruction on the part of his company. Yet though the shareholder would still have been at a major disadvantage, the Hoyle-Mikardo proposal was strongly resisted by Conservative MPs as going too far. Mr Nicholas Ridley noted that Doug Hoyle had entered on well trodden and contentious ground where "it would perhaps be better if the two sides could strike a bargain". And he continued trying to pour oil on troubled waters by saying that "it ill behoves a Conservative Member to suggest that we should return to contracting in for the political levy just as it ill behoves the Hon. Gentleman (Doug Hoyle) to seek to win political battles by seeking to reduce the funds made available to his political opponents" (H.C. Debs, 20 June 1978, col 218).

But although shareholders do not enjoy the right to object in principle to political donations, or to be consulted in a ballot, attempts are made to argue that the present company position is not unfair. No less a figure than the Prime Minister herself has contributed to the debate. She has pointed out that the individual shareholder can go to the shareholders' meeting and persuade the other members to instruct the directors to discontinue political

donations in the future. If he fails, he can always sell his shares and invest in a company which does not finance the Conservatives. But arguments of this kind are not wholly convincing. They do not illustrate the principle of the need for regular prior approval before political donations are made, or the principle that people ought not to be required to indicate their dissent to making a political contribution, which are what the government now seeks to impose on the unions. Rather, they illustrate a reverse principle. The member is forced to take positive action to campaign against company policy or to take the ultimate step which is to sell his shares. In practice the reality of corporate democracy is such that the latter is the only real option. A classic statement of company democracy and shareholder access to decision-making is provided by Lord Denning, who said in 1978:

"It sometimes happens that public companies are conducted in a way which is beyond the control of the ordinary shareholders. The majority of the shares are in the hands of two or three individuals. These have control of the company's affairs. The other shareholders know little and are told little. They receive the glossy annual reports. Most of them throw them into the wastepaper basket. There is an annual general meeting, but few of the shareholders attend. The whole management and control is in the hands of the directors. They are a self-perpetuating oligarchy; and are virtually unaccountable."

(Norwest Holst Ltd v Secretary of State for Trade (1978) 3 All. E.R. 280)

It is thus unsurprising that the government's arguments have failed to convince even its most loyal supporters. The editor of *The Times* has written that "although political contributions by companies are not directly comparable, the parallel is so close that it would be widely seen as unfair to legislate on the levy without reference to shareholders' rights" (25 May 1983). *The Daily Telegraph* described arguments similar to those advanced by the Prime Minister as being "trite and anachron-

istic", and continued with uncharacteristic candour to point out that: "by far the largest shareholders in Britain today are the financial institutions, such as pension funds... it is highly probable that the majority of people who invest in pension funds are not committed supporters of the Tory party" (11 August 1983).

The issue of pension funds introduces an important element into the debate. For it is clear that the option of selling shares, the remedy proposed by the Prime Minister, is not available to the member of a pension fund which may have invested in a company which finances the Conservative Party. There are thus people in the company context who effectively are compelled to finance companies which in turn make political donations. There is no requirement of consultation with contributors to pension funds and there is no arrangement whereby such contributors can opt out of the common obligation. It is to be noted that not only does such compulsion have no parallel in the trade union context, it is the very antithesis of the principle which the government seeks to impose on trade unions.

What this illustrates is that in this country there is no dominant principle that people should not have to take positive action to claim exemption from making a political payment. Indeed there is not even a principle which operates anywhere other than in trade unions to the effect that individuals are not required to make a political contribution as condition of membership. In fact if we were to proceed on the basis of the dominant principle which currently prevails, the 1913 Act would not be amended to provide for either periodic ballots or contracting in, but would be amended to remove all legal restraints from trade union political expenditure. That is to say, there would be neither a right to contract in nor out, but rather each union would be free to finance from its general fund as much political expenditure as it thought necessary to protect the interests of its members. The trade union member who objected to this course could go to his branch meeting and persuade the other members to pass a

resolution calling on the executive to discontinue political donations. The resolution could then go forward to the union's annual conference for discussion. If the member was unsuccessful he could always leave the union. But unlike his counterpart, the company shareholder, the union

member need not now suffer any economic loss as a result of his commitment to his political principles. Because of the government's legislation on the closed shop, it is unlikely that a trade unionist could ever be fairly dismissed for leaving a union in such circumstances.

4. Problems in Practice

The second argument for changing the present arrangements on the political levy is that the 1913 Act's procedures are ineffective in practice. It is claimed that the Act is failing adequately to protect the trade union member who does not support the Labour Party and who has no desire to pay the political levy of his union. These claims are supported by the fact that in some unions over 95% of the members pay the levy, even though psephological studies show wide variations in voting patterns amongst trade unionists. The claims are also supported by evidence that there are wide variations in practice in the levels of exemption in different unions and even in unions recruiting in the same industry and in the same area. Thus, the government draws attention to the fact that in NACODS (Durham Area) 99.9% of the members pay the levy, whereas in NUM (Durham Area) only 37.2% pay.

But this latter problem is exaggerated and indeed misrepresents the evidence (see K D Ewing and W M Rees, "Democracy in Trade Unions" (1983) 133 *New Law Journal* 100). As the Certification Officer pointed out in his 1982 Annual Report, these figures "are not in all cases a true indication of the proportion of members who have exercised their rights under the 1913 Act to be exempt from making the political contribution. The total membership reported by some trade unions includes a number of special categories (eg honorary, retired, unemployed) who are

members under the union's rules but who are required neither to pay the political levy nor to seek formal exemption" (pp 25-26). In the NUM (Durham Area) only 15,078 out of a total formal membership of 40,143 were eligible to pay the levy in 1981. The remaining 25,065 recorded members were retired, unemployed or sick. So if the relevant figure examined is the correct one of 15,078 it is the case that in Durham over 99% of the NUM members eligible actually pay the political levy, which makes it no different from any of the other mining unions referred to in the

Green Paper. The same considerations apply to the figures cited in the Green Paper in relation to the NUM (Northumberland Area) for 1981: the Paper claims that just 36.3% of the membership pays the levy when, in fact, the proper figure is 99%. (see Ewing and Rees, *ibid*, p.101).

Nevertheless, even when this correction is made it remains true that in some unions a very high proportion of members pay the levy and that there are variations in the levels of contribution in different unions. In TGWU, for example, 98% of the members pay, while in AUEW-TASS only 54% pay. But it is difficult to see why this should be a source of surprise. Rather, it is precisely what might be anticipated if psephological indicators are to be believed. It has never been suggested that a fixed percentage of the members of each and every union voted non-Labour and it is only to be expected that there would be wide variations in the voting patterns of the members of different unions. It is thus perfectly feasible, and indeed quite likely, that the Conservative and Alliance voters were to be found not only in those unions with no political funds, but also in those unions with political funds which have a lower percentage of members paying the levy. Thus as trade unions recruit among people who are less likely to vote Labour, so the level of contracting out rises. And while in some unions there are very high levels of contribution to political funds, these tend to be in unions where Labour Party loyalties are strong. Thus rather than be a cause for concern, there would be more grounds for suspicion and alarm if the position was otherwise than is indicated by the trends noted in the Green Paper.

Nevertheless it seems highly unlikely that the Labour Party is supported by all the trade union members who pay the levy. At the election in 1983, Labour polled only some 8 million votes. In 1982, the political levy was paid by 7.2 million trade union members in 81 unions. If all these people voted Labour, it would mean that the party attracted less than 1 million votes from non-unionists, from the spouses and families of trade unionists: and from the members of non-affiliated trade unions.

Not only is that hardly credible, but it is known from the opinion polls that all the levy paying members could not possibly have voted Labour. Indeed, if only 50% of manual workers voted Labour, it is highly unlikely that 98% of the members of the TGWU would be included amongst them.

Intimidation?

But it does not follow from these figures that trade union members are paying the levy for sinister reasons, that is because of fear or intimidation, of any other form of "pressure", as is claimed by the Director of Aims of Industry. The Green Paper does not expressly endorse allegations of this kind, though it comes close to doing so in para 94 by arguing that trade union members may have good reasons for wishing to keep their political views private "given the realities of the shopfloor and trade union power". Yet there is no evidence to indicate that intimidation or coercion takes place on any significant scale. Aims of Industry refers to the case of the "brave" Mr Jack Cleminson who complained for 12 years that his employer deducted the political levy from his wages against his will. Yet far from undermining the integrity and efficiency of the 1913 arrangements, this affair provides a vindication. When Mr Cleminson did eventually complain to the Certification Officer a ruling was made in his favour.

If pressure or intimidation is exerted on contracting out or potentially contracting out members, the trade unionist has a cheap and easily accessible remedy by way of complaint to the Certification Officer. In most cases the Officer draws the attention of the union to the alleged breach of the political fund rules and the matter is usually settled by the union agreeing to change its practice to accommodate the member's grievance. In a very small minority of cases an informal hearing of the parties may be necessary to resolve the complaint. If the complaint is upheld and an order is made against the union this will be registered in the county court. Failure by the union to comply with the order

could lead to contempt proceedings. Such proceedings have never been necessary and it has never been suggested that the right to complain to the Certification Officer is ineffective to deal with the small number of complaints which arise. In 1982 only 24 complaints were made, though at the time trade unions with political funds represented some 9 million members.

Yet unsubstantiated claims of intimidation continue to be made. In fact the evidence which is available tends to undermine these claims. The last senior politician who made such an allegation was rather seriously embarrassed. In evidence to the Donovan Royal Commission on Trade Unions and Employers' Associations (1965-1968), Mr Robert Carr (later the Conservative Government's Secretary of State for Employment at the time of the enactment of the Industrial Relations Act 1971) claimed that contracting-out was indefensible and created pressures and inequities which should be removed. Mr Carr was then asked to provide details of such abuses. In its Report (Cmnd. 3623) the Commission noted (at para 923) that "He thought... that he might be able to supply details of specific cases if given the time - an expectation apparently not fulfilled". As a result the Royal Commission was unable to recommend any change to the status quo, commenting in the process that the reason why fewer people paid the levy under a system of contracting in "is due very largely to the innate reluctance of people to take positive steps involving the filling up and despatch of a form when only a very small sum is involved" (para 924). Donovan found no evidence that a system of contracting out leads to people being forced to pay the levy against their will.

Further support for this view was provided more recently by Dr James McFarlane, the Director General of the Engineering Employers Federation. Earlier this year, Dr McFarlane was questioned by the Commons Employment Committee which at the time was examining proposals for the reform of the 1913 Act. In the course of the proceedings, the following exchange took place between

Frank White MP and Dr McFarlane:

"(Frank White) ... have you any evidence at all to put before this Committee that people are paying a political levy unwillingly?

(Dr McFarlane) Not anything that I think you would recognise as evidence, no."

(H.C. 243-i, 84)

It would in fact be highly surprising if anything other than isolated examples of abuse were to be found. There is a lot of substance in the view expressed by Professor Grunfeld when he wrote in 1966 that:

"To say that the obligation to contract-out deprives trade unionists in this country of their freedom of political dissent is seriously to underestimate the independence of mind and initiative of the British working man and woman. Currently, among these unions that have a political fund, around one million members have exercised their right to obtain exemption. It is most ingenious to allege that other individuals are not perfectly free to do the same when so large a company stands as an example before them."

(*Modern Trade Union Law*, p.296)

There are now 1.7 million trade unionists who do not pay the levy in those unions where a political fund exists.

Concealment?

So there is no evidence to show that trade unionists are being systematically intimidated into paying the political levy. Even if there was, it is difficult to see what benefits would be brought by contracting in. Non-contributors to political funds will be known to trade union officials under such a system, just as they are known to union officials under the present system. If pressure and intimidation is rampant in trade unions, non-contributors would continue to be the targets of it.

So what other possible abuses may be responsible for the fact that non Labour supporters pay the levy? The Green Paper claimed that there is evidence that many trade unions do not take adequate steps

“to ensure that their members know that they can contract-out or how they can do so” (para 92). But even this is both an overstatement and a misstatement. It is an exaggerated claim since there are just *two* studies, based on very small samples, one of “affluent workers” in Luton in 1962-1964 and another of a UPW branch in Colchester published in 1974, which displayed a measure of ignorance amongst trade unionists about the political levy. As the Hansard Society commission pointed out in its report, much more evidence than this is necessary before any meaningful conclusions can be drawn. It is also a misstatement in the sense that neither of these studies enquired into the cause of the members’ lack of knowledge. It is as reasonable to speculate that the fault lay in the indifference of the membership as it did in any alleged deceit on the unions’ part. For these studies *did* show that a sizeable number of members actually knew and understood the rules relating to the political fund.

If this is the only evidence of irregularity which the government has been able to find, there is no reason why sweeping reforms should be contemplated in response. If the problem is thought worthy of attention then it can be easily dealt with by simple administrative techniques. One such measure which springs immediately to attention was actually proposed by a Conservative backbench MP in a private members’ bill in 1967. This is the suggestion that trade unions should provide details of the right to contract-out on their applications forms. Some unions already make such provision, and still manage to maintain a high proportion of members willing to pay the levy. However, it is difficult to see why even this should be required by law. Unions are already under an obligation to supply their members with a copy of the political fund rules. The government’s case is certainly not strengthened by its confession that it does

not know how far this obligation is complied with. In the absence of any evidence that the unions are not complying with their duties, the case for change is difficult to sustain.

The publicity which has been given to the question of the political levy in recent years can only have contributed to public awareness. Interest has also been stimulated by recent pronouncements by the S.D.P. and by active “units” of Conservative Trade Unionists operating in many unions. It is difficult to see how trade union members could contrive to escape this attention. Nevertheless, the government claims that the only way the member can find out about his right of exemption is by “reading through an often complicated and long rule book” (para 92). In truth the task is not quite so daunting. Information about the right to contract out, the right to complain to the Certification Officer, and the address of the Certification Officer is to be found in the rule books of every trade union which has a political fund. Almost all of these rule books are indexed, and the indexes generally include a reference to the political fund. In any event it is difficult to see why it should be a matter for regret that trade union members are forced to read the rule book to discover their rights. Arguably, there is some inconsistency between this concern and the commitment expressed in the Green Paper to “the need for trade unions to become more democratic and responsive to the wishes of their members” (para 1). This surely involves some effort on the part of the member just as it does on the part of the union. The only way to create an alert and active membership is to encourage members to become familiar with the rule book. Trade union democracy depends on measures which encourage people to read the rules, not on ones which relieve them of the obligation to do so.

5. The Issue of Institutional Dependence

The third possible justification for the government's proposals is that they would help to reduce party dependence on institutional finance and support. But although this ideal merits serious consideration, it is not one which would be met by the proposals to amend the law relating to the trade union political levy.

Corporate Finance and the Conservative Party

The introduction of contracting in for trade unionists would do nothing to relieve the Conservative Party of its dependence on corporate money. It is well known that companies make substantial donations to the Conservative Party. However, it is difficult to know precisely how much corporations do provide. Unlike in many modern democracies, political parties in this country are not required to publish their accounts, or to publish details of contributors to their funds. It is true that section 19 of the Companies Act 1967 requires companies to disclose their political donations in excess of £200. But this provision suffers from a number of defects which make it difficult to determine the true extent to which the Conservatives rely on corporate money. In the first place, the Act did not set up any enforcement machinery to ensure that this duty is complied with. As a result it is widely believed that a number of companies fail to comply with section 19, understate the amount of their political contributions, or give the money to pro-Conservative business organisations which may either pass it on to the party or use it for independent advertising in support of the Conservatives.

A second difficulty with the 1967 Act is that it is designed simply as a means of making company directors accountable to their shareholders. There is no attempt at accountability to the electorate which, it may be argued strongly, has a right to know the extent to which Big Business is

paying for the circulation of Conservative Party ideas and propaganda. What this means in practice is that there is no public document which identifies all the corporate donors together with the size of their donations. This contrasts with the trade union position where the Certification Officer publishes an Annual Report which in an Appendix includes full details of trade union political fund income and expenditure. Anyone interested in building up a complete picture of corporate political donations would have to spend weeks trawling through the records of each company registered at Companies House. A noble effort in this direction is made by the Labour Research Department, which publishes an annual list of its findings. But LRD is the first to admit the limits of its research. It simply does not have the resources to check the records of every company, and there are serious doubts about the accuracy of the returns made by the companies which it does examine.

As a result it is impossible to determine the extent to which the LRD research understates the true nature of corporate financing of the Conservative Party. Out of a total of 700,000 companies, LRD will normally check the records of the 2,000-3,000 largest. What its research does reveal, however, is shown in Tables 2 and 3. Table 2 gives an indication of the total amount of corporate political donations while Table 3 lists the top 6 donors. An interesting coincidence to which Labour Research also draws attention is that chairmen of 4 of these 6 companies have received peerages from Mrs Thatcher,

though it is not suggested that these honours were awarded in return for financial donations to party funds.

Table 2

**Political donations 1973-81
as recorded by LRD**

Year	No of Companies	Total donations (£)
1973	393	922,329
1974	412	1,598,836
1975	363	1,201,935
1976	358	1,218,811
1977	378	1,439,594
1978	403	1,807,677
1979	445	2,548,742
1980	492	2,199,984
1981	340	2,045,729

Source: Labour Research

Table 3

**The top six donors to
Conservative Party Funds (1982)**

Company	Donation (£)
British & Commonwealth Shipping	95,810
Trafalgar House	40,000
Hanson Trust	40,000
Northern Engineering Industries	40,000
Trusthouse Forte	37,500
Newarthill	35,000

Source: As Table 2

Two important points arise from these figures and from further information which has been made available about Conservative Party financing. This information is provided in the work of Dr Michael Pinto-Duschinsky (*British Political Finance 1830-1980 (1981)*), who was given access to Conservative Party accounts for the purpose of his study. The first point to note is that the figures in Table 2 demonstrate that typically the Conservative Party actually receives more money from corporations than the Labour Party receives in

affiliation fees from trade unions. The money received by Labour from the unions in the period 1973-79 is shown in Table 4. It is to be kept in mind when contrasting the figures in Tables 2 and 4 that the figures in the former may significantly understate the full extent of corporate support. Until there are proper disclosure laws in this country, the true position will never be known.

Table 4

Trade Union Support for the Labour Party

Year	Total trade union affiliation fees to Labour Party (£000)
1973	670
1974	738
1975	1,118
1976	1,211
1977	1,268
1978	1,501
1979	1,842

Source: Dr Michael Pinto-Duschinsky, *British Political Finance 1830-1980 (1981)*, p. 164

Note: The Labour Party receives additional sums from trade unions for election campaigns.

The second point to note is that the figures which are available indicate that the Conservative Party centrally is almost every bit as dependent on institutional financial support as is the Labour Party. The commonly held belief that the Conservatives are financed by bazaars is just not supported by the evidence. The extent of institutional dependence is shown in Table 5.

These figures show that the Conservative Party nationally received only 20% of its income from the constituency associations. If anything these figures may understate the true position slightly. There is other evidence to suggest that 77% of Conservative Party income comes from "large outside donations".

Cause for Concern

It is clear then that the government's proposals do not really make an important contribution to resolving the problem of

Table 5

Estimated Sources of Conservative Central Office Income, 1950-1977/1978
(percent)

<i>Source</i>	<i>1950-64</i>	<i>1967/68 - 1973/74</i>	<i>1974/75 - 1977/78</i>
Corporations by institutions (companies, banks and partnerships)	67.4	62.5	56.3
Individual donations	16.9	15.6	14.1
Constituency quotas	11.9	19.2	21.5
Interest	3.9	2.8	2.2
State grant for parliamentary services inside the Palace of Westminster	—	—	5.8
Total	100.0	100.0	100.0

Source: as Table 4, p. 139

the institutional dependence of the parties: the Conservatives will be permitted to continue to draw at will on the corporate reserves at their disposal. Yet there seems little justification for tackling union donations to the Labour Party but not company donations to the Conservatives. For it cannot be claimed that the latter present no threat to the democratic process. It is true, as the Hansard Society pointed out, that companies which donate to the Conservative Party enjoy no formal representation in the constitutional organs of the party, and have no votes at the annual conference. The Society also claimed that there is no evidence that the industrial policies of the Conservative Party have been influenced by corporate donations (*op.cit.*, p.10). But such complacency is not shared by everyone. For example the authors of a Canadian Royal Commission on Corporate Concentration which reported in 1978 pointed out that there is always a danger that "corporate contributions may lead to some sense of obligation and conflict of interest, as well as suspicion, even though the companies involved... neither ask nor expect any *quid pro quo*" (p.343).

In a similar vein, a respected American commentator has remarked in a perceptive passage "it is widely

acknowledged... that at the very least, the large contributor gains access to the office-holder; such access is usually denied to the average voter. But it would be naive to contend that the influence ends with access. The actual effect upon public policy apparently covers a spectrum from the most blatant purchase of legislation to influences which are so subtle that the office—holder may not be aware he or she is being biased" (M A Nicholson, "Campaign Financing and Equal Protection" (1974) 26 *Stanford Law Review* 815, at p.820). And as if to indicate that these fears are neither fanciful nor theoretical, Dr Wyn Grant noted that "... the Chairman of the Beecham Group (which gave £20,000 to the Conservatives in 1977-78) did link criticisms of the party's economic and industrial policies with a hint that further financial aid might not be forthcoming" ("Business Interests and the British Conservative Party" (1980) 15 *Government and Opposition* 143 at p.155).

The Legality of Company Donations

As a point with which to conclude this chapter, it may be reflected that it is perhaps surprising that corporate money

should be used for political purposes. For not only are political donations made without any shareholder consultation, they are almost certainly unlawful in many cases. Although frequently made in practice, political donations have never been expressly authorised by a court in this country. Most companies do not have an express power to make political payments. This means that it must be established that the payments are reasonably incidental to the objects of the individual companies concerned.

Some support for the view that political donations would be lawful on this ground is provided by the decision of the House of Lords in 1955 in the case of *Morgan v Tate and Lyle Ltd.* (1955) A.C.21 which was concerned with expenditure by the company of some £15,339 in a propaganda campaign against Labour Party proposals to nationalise the sugar industry. The question which arose was whether the company was entitled to income tax relief for this expenditure on the ground that the money was "wholly and exclusively laid out or expended for the purposes of the trade". The House of Lords replied in the affirmative on the ground that "if the assets are seized, the company can no longer carry on the trade which has been carried on by the use of these assets. Thus the money is spent to preserve the very existence of the company's trade."

This decision provides strong support for the view that political action is lawful. If the expenditure was for the purposes of trade then it could be claimed that it would normally be incidental to the objects of the company. Nevertheless it does not follow that expenditure on all forms of political action would be lawful. The *Tate and Lyle* case was concerned with a campaign against nationalisation conducted by Aims of Industry which was designed to preserve the very identity and existence of the company in a commercial sense. That is rather different from a gratuitous donation to a political party. There is in fact authority for the view that while company involvement in pressure group campaigns is lawful, donations to political parties are

not. One of the reasons given by one of their Lordships for the decision in the famous *Osborne* judgment in 1910, in which the House of Lords held that trade unions could not finance political parties, was quite simply that a similar facility was denied to companies. In an important passage which is frequently overlooked by company lawyers, Lord Atkinson said that "it was not the business" of either trade unions or companies "to support particular political parties or to promote a particular political policy". In other words, what was sauce for the corporate goose was sauce for the trade union gander.

The *Osborne* judgment so far as trade unions are concerned was of course overturned by the Trade Union Act 1913. This permits unions to make political donations provided they first ballot their members to set up a political fund and then permit any objectors to contract out of the obligation to contribute to the fund. But insofar as the *Osborne* judgment cast doubt on the legality of company spending, it has never been altered by legislation. Nor have the remarks relating to companies been challenged by a court in a subsequent case. Until that happens, the presumption must be that political donations are *ultra vires*. It is not surprising then that in a recent case the High Court held that a payment by the League against Cruel Sports to the Labour Party in 1979 was unlawful. The League is a limited company and the court held that political donations could be lawfully made only if they were used to further the express objects of the company. Following this reasoning a company donation to the Conservative Party is lawful only if the money is used by the Party to promote the express objects of the company, whether this is the manufacture of baked beans or the sale of chocolate bars. Also following the reasoning in the League against Cruel Sports case, a donation to a free enterprise body, ultimately to be used to finance the Conservative Party's Free Enterprise Account, may likewise be unlawful as being too remote from the principal objects of the company concerned.

6. Conclusion

We may conclude by asserting that none of the government's arguments provides a convincing case for reform. There is, however, a fourth function which these proposed changes are designed to serve which has not yet been touched upon. That is simply that they represent a small but important contribution in the fulfillment of the administration's political and economic goals. It is well known that the government draws intellectual inspiration from the work of Professor F A Hayek. The Prime Minister is a "great admirer" of his "absolutely supreme" work (H.C. Debs, vol 1000, col 756). In one of these works, *The Constitution of Liberty* (1960), Hayek claimed that "the whole basis of our free society is gravely threatened by the powers arrogated by the unions" and indeed that this is nowhere as spectacular than in Britain (pp 268, 269). Hayek also expressed concern that unions "necessarily reduce the productivity of labor" (*ibid.* p.272).

In view of the government's intellectual debt to Hayek, it is unsurprising that recent legislation should contain responses to the union practices to which he specifically refers as being unduly coercive of either employees or employers. Thus, the Employment Acts 1980-82 and several Codes of Practice have led to controls on picketing (organised pressure which in a free society should not be permitted); the closed shop (next only to picketing as a means of coercing individual workers); and secondary strikes and boycotts (a means of forcing other workers to fall in with union policies). But for any government which is persuaded by these arguments and the goals of "liberty," "justice" and "freedom" which Hayek is concerned to protect, the Labour Party presents something of a problem. The question of trade union restriction and control was never in the past a realistic option in the development of British economic policy, even if there had been any government seriously committed to this course. A major reason for this is that the Labour Party, as the only credible and realistic opposition, could always be relied upon to secure election and to reverse the restrictive policies of earlier administrations. In other words economic policy was constrained by the structural reality of British politics.

There is reason to believe that the proposed changes to the 1913 Act are designed deliberately to aid a restructuring of that framework in order to secure the survival of the legacy which the government hopes to leave the nation. The Labour Party is a threat not only because it is committed to the repeal of the Hayek-prescribed trade union legislation of the last three years, but also because it is committed to policies which are inconsistent with the anticipated legacy of the present administration. It is not surprising then that the Prime Minister claimed that she would be immensely pleased if "the trade unions were not a part of the Labour Party" (*The Observer*, 1 May 1983). More explicitly, she has expressed the hope that the Labour Party should be replaced by the Alliance as the main opposition to the Conservatives. The intention, it seems, is to create an American style electoral choice, limited to two parties committed to the free enterprise system. In the pursuit of this aim, the amendments to the 1913 Act clearly have an important role, a point not lost on the editor of *The Times* who wrote that the purpose behind this particular proposal was "the political one of quickening the decline of the Labour Party, and perhaps also assisting the realignment of the left" (13 August 1983).

In the implementation of its proposals,

the government seems prepared to overcome some fairly substantial obstacles. The first of these is the established conventions of the British Constitution which, ironically, have been so established by the usage of Conservative politicians. On one occasion when a resolution was before the House of Commons urging the political parties to publish their accounts, this was fiercely resisted by Conservatives, one of whom, Mr Quintin Hogg (the present Lord Chancellor), claimed that "it is repugnant to the feelings of all decent people... to use the power of a party majority in the House of Commons to force a Division upon something which is designed solely to do political damage to their opponents about a controversial matter concerning the machinery of election and party administration..." (H.C. Debs., vol 470, col. 2990). In making these remarks, Mr Hogg was echoing the point made by Sir Winston Churchill some years earlier when he said that "it has become a well established custom that matters affecting the interests of rival parties should not be settled by the imposition of the will of one side over the other" (H C Debs., vol 447, col. 859-860).

But the government seems prepared to cast aside more than just the customs and usages of the constitution. A more serious obstacle is the values which hitherto have informed the British system of government. For many it had always been thought that democracy was an end in itself and certainly an indispensable requirement (though not a guarantee) of any system of government which promised liberty, justice and freedom. At the centre of the government's proposals is a fundamental rejection of this assumption and the adoption of an approach which views democracy as a dispensable means to an end. In the words of Professor Hayek, in *The Constitution of Liberty*:

"However strong the general case for democracy, it is not an ultimate or absolute value and must be judged by what it will achieve... Though there is a strong presumption in favour of the democratic method of deciding where it is obvious that some collective action is required, the problem of whether or not

it is desirable to extend collective control must be decided on other grounds than the principle of democracy as such." (emphasis added).

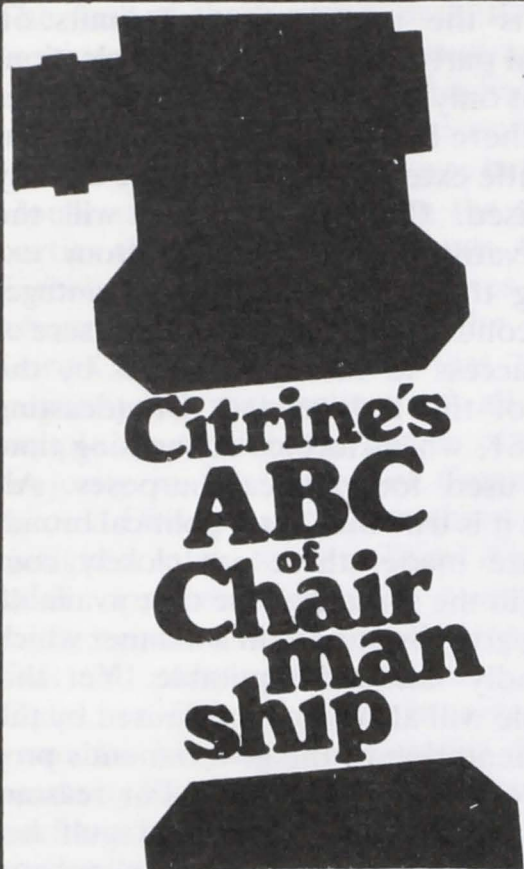
The government's proposals on the political levy illustrate the extent to which the new Conservative ideology conflicts with the established values and assumptions on which the British system of democracy relies. If the predictions about the effect of these proposals are realised, the already financially troubled Labour Party will be struck a severe blow. It is estimated that income will fall by more than £2 million which is more than half the present level of income. A result of this will be to disable the Party from fulfilling effectively its constitutional role as official opposition, always a difficult task anyway because the resources of political parties can never hope to compete with the resources of the government and the state. A second result will be to place the Party at a major disadvantage in its bid for power. It is already the case that the Conservatives traditionally outspend Labour. In 1964 Conservative election expenditure was 229% that of Labour, while in 1974 (October) it was 181% and in 1979 149%. These figures seem likely to have been eclipsed by Conservative spending at the 1983 election, with the estimated Tory expenditure of between £5m and £20m ranging from anywhere between 166% and 1,000% of the estimated Labour expenditure of £2-3 millions. If the anticipated effects of the government's proposals are realised, the gulf in the spending capacity between the two parties will grow even wider.

The government's proposals will thus contribute to a state of affairs on the question of political finance which is the very antithesis of the democratic values which have traditionally informed the principles governing British political finance. The first principle which has guided public policy to date is that the state will ensure, by the use of public money if necessary, that the parties representing the major currents of opinion will have sufficient funds to give them a fair opportunity to compete in the political process. Considerations of this kind were partly responsible

for the implementation in 1911 of a scheme for the payment of MPs. This was done initially to relieve the financial plight of the Labour Party in the aftermath of the *Osborne* judgment. More recently financial assistance has been introduced to aid the Opposition parties more effectively to fulfill their parliamentary duties. This money, known as the Short money after the sponsor of the proposal, Mr Edward Short, the then leader of the Commons, was introduced in recognition of the fact that it is "increasingly difficult for Opposition parties to keep up with those who are backed by the vast resources of the Government, either in research or administration." These developments may yet be taken to their logical conclusion by the introduction of annual cash grants to the parties to be used for purposes unspecified by the state.

The second principle which has informed British public policy in this general field is that the parties should enjoy a broad measure of fair and equal access to the electorate. In the British system this is recognised in two ways. The first is by the existence of a ceiling on permitted ex-

penditure by parliamentary candidates. The natural and logical extension of these limits is the introduction of limits on national party expenditure at an election. It seems only a matter of time before this is done, there being widespread support for the gentle extension of a principle already recognised. Only in this way will the Conservatives be prevented from exploiting their great financial advantage. The second attempt to secure a measure of equal access to the electorate is by the terms of the Independent Broadcasting Act 1981, which forbids advertising time to be used for political purposes. Although it is true that party political broadcasts are made, these are closely controlled in the sense that the time available to the parties is divided in a manner which is broadly fair and equitable. Yet this principle will also be compromised by the implementation of the government's proposals on the political levy. For reasons already discussed the financial gulf between the parties will grow even wider and the principle of equal access, once enshrined in British law, will become more elusive than ever.



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The Conservatives, Trade Unions and Political Funding

The Conservative Government has published its proposals for placing further legal restrictions on the circumstances in which trade unions can spend funds on political purposes. Keith Ewing argues that trade unions are already subject to specific restrictions which do not apply to companies, although it is not widely realised that the legality of company donations to the Conservative Party is itself open to serious question. He shows that the arguments of principle which the Government claims to apply in proposing further protection for the individual trade unionist would apply more strongly to the shareholder and pension fund member. Evidence of alleged practical difficulties with the "contracting-out" procedure is examined and found to give little support to the Government's case. While the threat to Labour Party finances would seriously imperil the adequate funding essential to the operation of democracy, the Government's proposals would do nothing to reduce the dependence of the Conservative Party on corporate finance. He concludes that the real motives are to restructure the framework of British politics in accordance with the ideology of Hayek, and in a way which departs from democratic conventions of the British constitution previously accepted by Conservatives.

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