# CAPITAL, LABOR, AND STATE

## *The Battle for American Labor Markets from the Civil War to the New Deal*

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# THE AMERICAN FEDERATION OF LABOR CONFRONTS EMPLOYERS

> "[W]e have come to the conclusion that wherever we can help ourselves we will do it, without asking the aid of the Government, and if we want to make a law we will make it in our own trades unions and try to enforce it through them by contracts with our employers."
>
> —Carpenter P. J. McGuire, 1883[1]

Frustrated by ineffective regulation, America's labor leaders concluded that they could not depend primarily on their government to protect workers. This conclusion toughened labor's instinctive resolve to rely on union power. Leaders of the American Federation of Labor (AFL) argued that if unions organized workers in every employer's shop, labor itself could unilaterally establish and enforce the eight-hour day, higher wages, and better working conditions. This union shop strategy obligated the AFL militantly to demand concessions from employers. It also obligated the organization, in principle, to bring virtually the entire American nonfarm workforce into unions.

The AFL's union shop strategy included an important, if secondary, role for government regulation, labor market management, and trade union policy. As chapters 2 and 6 explain, labor leaders lobbied government to regulate those parts of the labor market that were unorganized and difficult to organize, such as shops that employed a large number of children. Unions also sought government protection of their economic weapons, such as the strike, picket line, and boycott. Finally, unions also supported new public labor market institutions, such as bureaus of labor statistics and public employment offices, that held out the prospect of union-staffed public agencies, giving unions more leverage in disputes with employers.

As public labor market regulation frustrated American labor leaders, however, their experiences with trade union policy and public labor market institu-

tions disillusioned them further. American employers grew ever more skillful in using public institutions, especially courts, to disarm unions and nullify state laws protecting union powers. Although public labor agencies were created, they did not give unions the expected advantages in the battle for the labor market. Labor statistics bureaus generally failed to press the union agenda effectively, and public employment offices did not weaken employers' hiring power. Nineteenth-century immigration controls had little apparent impact on the flood of foreign job seekers.

For all these setbacks, the United States in 1900 had not decisively abandoned the path to substantial limitations on employer prerogatives. Had the union shop strategy met with success, limitations on employer prerogatives would have developed as they did in Germany rather than as in Great Britain. Collective bargaining, rather than statute law, would have established protection for most of the workforce. It was not the union shop strategy, but the employer reaction to it, that decisively caused the United States to deviate from the path of labor market policy that other nations were about to follow.

## VOLUNTARISM IN 1900: THE AFL'S THREAT TO EMPLOYER AUTONOMY

Leaders of the AFL had committed the federation to a strategy of "voluntarism" by the turn of the century. Voluntarism held that unions were private and voluntary institutions. They sought nothing from the state and sought absolute freedom from state regulation. This view emphasized "pure and simple" material gains for labor, particularly better wages, hours, and working conditions. AFL leaders repudiated socialism and alliances with existing political parties.[2] Compared to a more self-consciously Marxist trade union movement, such as that in Germany, voluntarism seemed relatively tame. Unlike the Knights of Labor, the AFL seemed little interested in building working-class solidarity.[3]

The voluntarism espoused by AFL leaders in 1900, however, posed a sweeping, confrontational, and credible challenge to employers' prerogatives in the labor market. AFL leaders sought no less than a fully unionized industrial capitalist economy. A blanket of union rules, argued the dominant voices in the AFL, would protect the nation's nonagricultural workforce. This union shop[4] economy would do no less than place unions, rather than employers, in control of the terms of employment and worker security in the United States.

In July 1900 the AFL Executive Council called on the nation's "wealth producers to unite and federate regardless of whether they are located East, West, North or South; irrespective of sex, politics, color or religion." These workers should "organize unions where such do not now exist, to join those already organized ... and to affiliate in one common bond of labor upon the broad platform and under the proud banner of the American Federation of Labor." The unity and consequent solidarity of American labor would permit workers to confront the "oppressor," the "possessors of wealth," whose combination and concentration allowed "no sectional or state lines to interfere with their power."[5]



This union shop strategy would establish inclusive worker protection and universal restraints on employers without direct government help. AFL leaders had argued for union self-reliance from the federation's inception. By the turn of the century, AFL leaders had turned this principle into a broad-based strategy for increasing workers' labor market power. AFL president Samuel Gompers articulated this vision in his address to the 1901 AFL convention in Scranton, Pennsylvania:

> The first convention of our Federation declared that it is absolutely essential to a successful resistance to the combined power of capital that the laboring element of the whole population should be joined in one united federation of labor, based on the broadest principles of justice to all men of good will who contribute to the general welfare of humanity by useful labor.... [W]e will not cease our effort until every wage-earner in our land is a member of the grand army of labor, and we shall have left in our whole social life not a vestige of the wrongs from which the workers have suffered from time immemorial.[6]

"The trade union is not a Sunday-school," Gompers wrote later. It should be militant and inclusive in pursuit of its self-interest. If men and women "are good enough to be employed for profit by the employer they are good enough for us to accept as members into the trade unions for their and our common protection."[7]

With a workforce that was fully unionized (including all female and minority workers),[8] the labor movement could impose maximum hours, minimum wages, employment security, and self-funded social insurance without regard to state lines or the separation of powers. Stonecutter and AFL vice president James Duncan argued that the experience with regulation proved that unions should themselves legislate worker protection. He wrote that "the delays, obstacles, machinations and even duplicity" with which Congress handled the federal eight-hour bills had exasperated labor. A union contract that bound employers to the eight-hour day provided a "more permanent, safe, and honest enactment" of this principal labor goal than any statute.

AFL leaders frequently asserted that union contracts could constitute a more effective form of legislation than a public statute (see the McGuire quote, above). Duncan observed that the Granite Cutters established the eight-hour day through collective bargaining with employers on May 1, 1900. They governed the workplace far more effectively than American government ever could, according to Duncan, because

> They know no veto by one man could stampede them; they had no fears of governmental parasites side tracking their "act." There were no horrors of questions of jurisdiction being raised. They had no fear of a capitalistic judge deciding the question as unconstitutional; they lost no sleep about what the Supreme Court might do about it. Their own Supreme Court had decided the question was constitutional. . . . The law's delay was conspicuous by its absence. . . . [T]he granite cutters present the object lesson to their fellow-workers that they, in the short period of 12 years, have gained by trade unionism what Congress had failed to accomplish in 32 years' agitation, namely, a permanent 8-hour workday that is not subject to be knocked out in municipal, State or federal courts. . . .[9]

The AFL and its leaders, of course, would enjoy tremendous power if this vision became reality. This enhanced AFL power also stoked the leaders' passionate support for the union shop economy.

It has been easy to view as disingenuous Gompers's later claim to socialists that "we go further than you."[10] The AFL's goal of monopolizing control over labor skills and the conditions of employment unambiguously posed a direct challenge to employers' right to manage their firms, however. Moreover, American unions pressed the goal of union shops with a force and vigor unparalleled in other nations such as Great Britain.

At its Scranton, Pennsylvania, convention in 1901, the AFL formalized the union shop strategy as its predominant approach to worker protection in America. Both socialism and independent labor politics constituted potential alternatives to the union shop strategy. Supporters of these approaches introduced resolutions endorsing them. In response, AFL leaders substituted a resolution that identified the trade union movement as "the most practical, safe, and legitimate channel" for workers "to continue to seek redress for their wrongs." The resolution unambiguously made unionization a priority. It relegated policy lobbying to a distinctly secondary role. A union "can strengthen [workers'] economic position until it will control the political field, and thereby place labor in full possession of its inherent rights," it stated.

The AFL's union shop strategy posed a substantial threat to employers. The employers' need for scarce skilled labor constituted their greatest economic vulnerability. The union shop strategy aimed to exploit that vulnerability to the fullest. The highly skilled crafts, such as the building trades, had already demonstrated that this craft monopoly could cement union strength. The Scranton convention established crafts skills as the basis for union organizing. "The future success, permanency, and safety" of the AFL and the trade unions depended on the principle of craft autonomy. In principle, the dominant craft unions would organize workers in the large enterprises, such as steel plants (or the carriage factories that would soon produce automobiles). Closely allied crafts would work together toward a common goal of a stronger trade union movement.[11] For a generation, AFL leaders invoked the Scranton resolution as the authoritative federation position that crafts should be the basis of organization.[12]



Establishing such economic power also required the unions to monopolize control of the potential material incentives—higher wages, shorter hours, and collateral benefits—necessary for attracting and retaining union membership. If workers could enjoy better hours, wages, working conditions, and work insurance as union members, most would be likely to join unions freely. If business or government established better working conditions, however, such benefits could hurt unions. Workers would avoid unions because they could "free ride," enjoying higher benefits without paying the costs of union dues. When a committee recommended against public pensions at the 1902 AFL convention, it explained that "the conditions, wages, and other concerns of the working people should be arranged through the efforts of organized labor."[13]

American employers had good reason to take the union shop as a credible threat, especially given the unions' established willingness to use strikes and other economic weapons to win labor disputes. The AFL was growing rapidly. Its membership exploded from about a quarter of a million in 1898 to well over a million and a half in 1904. By the fall of 1903, Chicago had a quarter of a million trade union members, nearly matching London as center of trade unionism.[14] Comparative statistics, though necessarily rough estimates, suggest that American unionization rates did not differ substantially from those in Great Britain or Germany around 1900 (figure 1.1).

The organization of the industrial labor force, the backbone of labor parties and employer limitations abroad, had not been decisively delayed. As the following chapter documents, employers behaved as if the AFL's strategy constituted a serious threat to the control of both skilled and unskilled workers.

The federation pursued its goals in the political realm with a determined and opportunistic nonpartisanship. The AFL's top policy priorities in 1900—a stronger federal eight-hour law that would cover government contractors, and a law protecting the widest possible use of unions' economic weapons—constituted plausible threats to the balance of labor market power.[15] The AFL, trying to maximize the direct political impact of workers, endorsed the direct

election of the president and the U.S. Senate, as well as the use of the initiative and referendum.[16]

Headquartered in Washington, D.C., beginning in 1897, the AFL Executive Council met with key congressional and executive leaders in order to influence committee and executive agency appointments, the legislative agenda, the details of specific bills, and the implementation of existing federal laws. In February 1901, AFL lobbying was credited with the defeat of an injunction bill objectionable to the federation.[17] Gompers's influence with American workers, both union and nonunion, was sufficient for President Theodore Roosevelt to ask House Speaker Joseph Cannon to stop criticizing Gompers by name in the 1906 congressional campaign.[18] Even in the 1908 presidential election, when the AFL generally supported the national Democratic ticket, AFL vice president Daniel J. Keefe endorsed Republican presidential candidate William Howard Taft because of his support for the eight-hour day when he was secretary of war.[19]

Leaders of German and British unions in 1900 articulated the same key strategic premises as the AFL leaders. "Ambivalence toward the state ran hard, indeed, through all the workers' institutions of the Atlantic economy," in Daniel Rogers's words.[20] Successful labor leaders abroad primarily concerned themselves with strengthening their economic bargaining power. German and British crafts workers were among the strongest unions, and like American crafts workers they sought to monopolize control over hours, wages, benefits, and other conditions of employment. Gary Marks demonstrates that German, British, and American printing unions were much more similar than different in their emphasis on economic independence, political nonpartisanship, and reluctance to turn to government for help in gaining labor market leverage.[21]

Key leaders in both the British and German union movements also embraced political independence in the 1890s. British machinists in 1891 voted by a two-to-one margin to seek the eight-hour day "by voluntary trade union action rather than by legislation." This vote represented a decisive victory for the many British machinists who viewed legislation as interference with the "natural liberties" of "free adult males."[22] In the late 1890s German trade union leader Carl Legien told the emerging peak organization of the German trade union movement that "In the economic struggle all forces need to be concentrated without enquiring into the political creed of the individual."[23]

This union shop strategy constituted a realistic and rational response to the circumstances that American trade unions faced at the turn of the century. The separation of powers and federalism had foreclosed the effective establishment of comprehensive worker protections through legislation. Gompers often entered statements of his frustration with American government in the public record, as he did before the U.S. Industrial Commission in 1900.[24]



The president of the United Mine Workers of America (UMWA) expressed similar frustrations with government, especially with federalism. Compared to the skilled workers who dominated many other AFL unions, the coal miners had much less bargaining power for securing shorter hours and other benefits. Few groups of workers needed statutory protection more than the miners. In Great Britain, miners constituted a powerful force for legislative protection. Nevertheless, UMWA president John Mitchell argued that its federal structure foreclosed the possibility of legislative protection available to miners abroad.

> Unlike England, France, Belgium, and other countries, the United States is not a single, unified nation, but its powers of government are divided between the nation and the several states. . . . A victory gained in one state may sometimes be nullified by the failure to gain a like victory in neighboring states. A British law regulating hours of labor in the cotton factories applied to all the cotton factories in the United Kingdom; but a Massachusetts law has no validity in Pennsylvania. Whenever legislation for benefiting the workman is sought in one state, it is contested on the ground that its passage and enforcement will drive the industry in question from that state. [Uniform state laws have] never been possible and legislation in one state has been hampered by the failure to secure similar legislation in another. The ordinary advantage of labor laws as compared with reforms obtained by strikes or negotiation is their more general application and validity. This, however, is very much less the case in the United States than in other countries, owing to the subdivision of the powers of government and, sometimes, to inefficient and even dishonest administration. Many laws tending to improve the conditions of workingmen remain a dead letter, or are enforced so unequally and unfairly that benefits which might otherwise arise from them are lost.[25]

Contemporary labor experts did not question either the reasonableness of the AFL's private pursuit of worker protection or the organization's militancy. The foremost labor economist of the day, John R. Commons, concluded that "a kind of natural selection" had instilled in American unions "a more 'pragmatic' or 'opportunistic' philosophy, based on the illogical variety of actual conditions, and immediate necessities."[26]

Labor was not an indiscriminate opponent of government. It was a very discriminating proponent of particular government action. The AFL, its headquarters newly relocated to the nation's capital, had not abandoned the political field. It continued to support legislation that strengthened its bargaining position, protected hard-to-organize workers, and established public offices that could further its goals.[27] It selectively supported candidates for office. Its demand for the wider use of the initiative and referendum seemed, considering union growth, a reasonable device for maximizing labor's electoral power.

Today, many experts view the AFL's crafts-based, union shop strategy as a sensible adaptation to structural limitations. The wide gap between the letter of the law and the reality of policy, according to labor historian David Montgomery, "made the administrative task of translating statutory prescription into public practice revert to the trade unions."[28] William Forbath, a historian of labor law, concludes that the crafts-based strategy "was a matter of necessity and grudging accommodation." Trade union leaders "had concluded that legislation was a distressingly unreliable engine."[29]

The AFL's expressed attitude toward women and African American workers was consistent in principle with the AFL's crafts-based, union shop strategy. Theoretically, the union shop strategy required the organization of both groups of unorganized workers. Despite substantial opposition from male crafts workers, the AFL leadership maintained its rhetorical commitment to these workers in the early twentieth century. When a delegate at the 1898 AFL convention offered a resolution calling on the federal government to ban women from the workplace, advocates of "pure and simple" unionism angrily sank it. They substituted a call for the unionization of women workers.[30] The AFL remained a consistent advocate of the unionization of women and invested resources in organizing them.

Critics, however, blamed the AFL for failing to match its rhetoric with adequate resources necessary for unionizing female workers. These critics have substantial evidence. Several international unions maintained constitutional bars to the admission of women; the UMWA did so until 1942.[31] More important, the deeply held identification of craftsmanship as a masculine virtue undermined the theoretical imperative of union shop solidarity between men and women.

Race posed an even more formidable obstacle to American worker solidarity than gender.[32] The AFL adapted the union shop strategy to African American workers by accommodating segregation. The AFL constitution prohibited unions from barring black members. Gompers had insisted that the International Association of Machinists (IAM) remove formal racial discrimination from its charter before it joined the AFL.[33] Though the IAM dropped its whites only policy when it joined the AFL in 1895, its locals retained effective power to exclude blacks. In 1900, the AFL convention altered its constitution to permit African American unions to create separate central bodies in cities where whites had already established such bodies. By the end of World War II, twenty AFL international unions with two and a half million members still had constitutions, bylaws, or established practices that explicitly denied admission to blacks.[34] At the same time, interracial unionism persisted in some places and in some unions, such as the UMWA.[35]



Undoubtedly, the AFL's willingness to accommodate racial discrimination limited American trade unions' ability to mobilize the workforce. Racism does not distinguish the AFL's initial *policy* strategy from that of counterparts abroad, however. Race and gender discrimination obstructed working-class solidarity in the United States, but did not make the decisive difference in the AFL's strategy for labor market power, or in the way the AFL adapted to economic and political defeats.

## TRADE UNION LAW

The union shop strategy made it imperative that government fully protect unions' ability to strike, boycott, and picket employers. These weapons permitted unions to squeeze employer profits and weaken employer resistance to the union shop and the demands for better pay, hours, and working conditions. When government limited strikes, picketing, or boycotts, it limited unions' effectiveness in securing benefits from employers. When government permitted employers to sue unions for financial damages resulting from these activities, it jeopardized critically needed union resources.

Though most nations treated unions as illegal conspiracies in the early 1800s, American courts had pioneered legal tolerance of trade unions. The Massachusetts Supreme Court in 1842 ruled that employers could enter into an agreement with a union to establish a union shop and that workers could lawfully strike against an employer to require his employees to join the union.[36] This decision acknowledged that workers could advance their collective self-interest as long as they used lawful means to do so. By the 1850s and 1860s, jurists in other American states cited the Massachusetts case in similar rulings. In the late 1800s, however, other nations put trade unions on a firmer legal footing than did the United States. The British Parliament swept away the conspiracy doctrine with statutes in 1871 and 1875. These new laws legalized trade unions, protected their funds, and permitted peaceful picketing.[37]

American labor leaders sought similar laws to protect trade union powers, economic weapons, and resources. Unlike the government of Great Britain, however, no single American governing body had authority to enact and enforce such a law. The national government lacked authority to do so. The states reacted with predictable diversity when union leaders demanded statutory protection. Several states enacted laws that aimed to prevent the courts from returning to the conspiracy doctrine.[38] Other states legally permitted workers to act collectively to protect or advance their wages; state courts, however, defined these laws narrowly.[39] When union militancy increased in the late 1870s

and 1880s, courts began to reassert the conspiracy doctrine to limit strikes and picketing.[40] Most states did not respond at all to demands for laws protecting unions from adverse court rulings.

Some labor leaders initially believed that incorporation and arbitration laws could protect unions. They changed their minds, however, as public officials proved themselves increasingly untrustworthy in the 1880s and 1890s. A number of union leaders felt that American government should permit trade unions to incorporate, much like private businesses. Incorporation protected business in a number of ways. For example, it limited the liability of those participating in the business. One of the initial demands of the New York Workingmen's Assembly was a state incorporation law for unions. The Iron Molders' International Union petitioned Congress for national incorporation in 1874.[41] Asked about remedies for labor's problems in 1883, union leader P. J. McGuire named "the legalization, by incorporation, of the trade and labor unions" as his first priority. Gompers advocated the British trade union law as a model before the same committee.[42] American legislators responded supportively to this union demand. Advised that the Federation of Organized Trades and Labor Unions (FOTLU) supported the bill, the U.S. Congress enacted a trade union incorporation law in 1886 for the District of Columbia and the federal territories. Four states had done the same by 1900.[43]

American labor leaders reversed their position on incorporation over the next decade as anti-trust law exposed unions to government legal action. The Sherman Anti-Trust Act of 1890 outlawed conspiracies among businesses to limit prices and production that "restrained" free trade (see the following chapter). The Sherman Act initially posed little threat to trade unions. The violent 1894 strike against the Pullman Palace Sleeping Car Company, however, prompted some federal courts to define union activities, such as strikes, as illegal conspiracies to restrain trade outlawed by the Sherman Act.

As courts and business lawyers reinterpreted anti-trust laws, they became anti-union weapons, making union incorporation risky. If they incorporated, unions' assets could be more vulnerable to adverse legal decisions. From labor leaders' perspective, incorporation would merely give employers a new way to defeat unions. In a survey in the early 1900s, the Massachusetts Bureau of Labor reported that a majority of the labor leaders believed that union incorporation would be "inimical to [union] interests."[44] No prominent national union had incorporated under the federal law by 1900.[45] Instead, the AFL began to lobby for legislation that would decisively exempt trade unions from the Sherman Anti-Trust Act.

In the 1880s, many union members also advocated government arbitration of labor disputes because arbitration promised to force employers to deal with



unions as worker representatives. When two hundred union members testified on behalf of state arbitration in 1885, the New York Bureau of Labor Statistics concluded that "the workingmen want it." Gompers and other labor leaders, wary of state compulsion, were unenthusiastic about government arbitration but conceded its value under the right circumstances. In hearings in New York in 1885, Gompers expressed conditional agreement with the idea of a state arbitration board. The main obstacle to arbitration in the 1880s, reported the New York bureau, was not worker opposition but "the hostile attitude, or contemptuous indifference, of many employers to the wants and needs of their employees."[46] Opposition to arbitration in Massachusetts came from employers who objected to it as an intrusion into business privacy.[47]

In the 1880s, American governments enacted many arbitration laws perceived as part of the union agenda. New Jersey, Pennsylvania, Ohio, Kansas, and Iowa established arbitration at the county level. New York and Massachusetts created the nation's first state-level arbitration boards in 1887. The federal government's first labor relation law, the Arbitration Act of 1888, established a voluntary process for arbitrating railroad disputes. The act provided for presidential boards to investigate the causes of such disputes. Only President Grover Cleveland used this provision, after the Pullman strike. Its arbitration features never were used.[48]

In the early 1890s, however, trade unionists abandoned arbitration while employers embraced it. Employers came to view compulsory arbitration as a tool for preventing strikes. The Pullman strike prompted seven states to enact arbitration laws in 1894 or 1895. In these states, notably in Illinois, support for this legislation came from conservatives reacting against the disorder resulting from the strike. By 1900, twenty-three states had enacted arbitration machinery.[49] As states reacted to the Pullman strike with arbitration laws, labor leaders' opposition to state arbitration intensified.[50]

When the U.S. Congress deliberated arbitration for railroads in the wake of the Pullman strike, only the conservative railroad brotherhoods supported the proposal. These brotherhoods—representing the locomotive engineers, the firemen, trainmen, and conductors—sought narrow advantages for the skilled craftsmen they represented. From the brotherhoods' perspective, a national railroad labor relations law could ratify their preeminent status in the industry and protect their large insurance funds. The railroad unions collaborated with the chair of the House Labor Committee and with the U.S. labor commissioner to draft an acceptable railroad arbitration bill.[51]

The railroad arbitration bill passed in 1898 only when the AFL abandoned opposition to it. The law, the Erdman Act of 1898, initiated a federal mediation process in the railroad industry and encouraged voluntary arbitration. It prevented

railroads from requiring new employees to sign "yellow-dog" contracts (in which they agreed not to join a trade union). The law also prohibited discrimination against workers who were members of unions.[52] The Erdman Act protected the railroad brotherhoods' insurance funds and established national mediation mechanisms that ratified their bargaining status. This law, then, channeled railway brotherhoods toward an emphasis on private benefits for their members.[53]

As labor leaders abandoned their flirtation with incorporation and arbitration, the courts were expanding their power to limit unions' use of economic weapons.[54] With increasing frequency in the 1880s and early 1890s, federal courts began to issue injunction orders prohibiting unions from striking. By the mid-1890s, Gompers called attention to the increasing use of court injunctions to frustrate and defeat unionization drives.[55] Courts used injunctions even more aggressively as the century turned and the union shop drive gained momentum. The injunction issue rose to the top of the AFL agenda by 1902. For many years federation lobbyists unsuccessfully sought congressional legislation to sterilize the conspiracy doctrine and to limit injunctions.

Many judicial rulings that were adverse to labor would not have had much effect without support from the American military and police. The railroad strikes of 1877 prompted New York, Pennsylvania, New Jersey, and Connecticut to transform their militias into effective riot and strike control forces. Business often provided officers for these militia units. By the turn of the century these state militias had become "a formidable internal police force of over 100,000 men, most of whom were located in the industrial states."[56] Federal courts did not implement the injunctions against Pullman strikers; federal bayonets did. Strikes "are an education to the working classes," commented McGuire, "in showing us what we have to expect from the Government, when it uses its police and soldiers at the instant bidding of the capitalists to imprison us or to shoot us down."[57]

## "IN CLOSE TOUCH WITH ORGANIZED LABOR": LABOR MARKET MANAGEMENT

In the late nineteenth century, trade union leaders viewed new government institutions as a way to level the playing field with employers. Unions lobbied for labor statistics bureaus, public employment offices, and licensing arrangements that promised them leverage in the labor market. Though legislatures favorably responded to these demands, these new labor market institutions were relegated to the margins of political and economic influence.



As the initial fervor for the eight-hour day peaked in the 1860s, the U.S. House of Representatives signaled labor's importance when it established a Committee on Education and Labor in 1867. The resolution establishing the House committee announced that the protection of workers constituted a natural next step after the defeat of slavery in the South.[58] The Senate created a similar committee in 1870. The rise of the Knights of Labor coincided with the creation of a separate House Labor Committee in 1883. Representative John O'Neill (D, Missouri) described the new body as one "to which the representatives of the laboring element can submit their claims."[59]

Congress also created special committees to investigate labor issues. The Senate Committee on the Relations between Labor and Capital publicized labor's grievances in 1883. Special congressional committees investigating individual strikes showed considerable sympathy to the strikers' point of view.[60] The United States Industrial Commission, established in 1898, produced nineteen volumes of material on labor issues. Its final report anticipated much of the Progressive Era labor reform agenda.[61]

Labor leaders, however, had a much greater interest in permanent labor agencies than in investigative commissions. They lobbied intensely for these new offices. Bureaus of labor and, to a lesser extent, public employment offices, could give unions control of public offices that could break the labor market logjam created by the separation of powers. If unionists staffed these offices, they could use them to legitimate and advance union priorities and the spread of union shops. By the turn of the century, however, labor leaders' experiences with bureaus of labor statistics, public employment offices, and immigration controls further underscored the limited utility of American government for the union shop strategy.

### *Bureaus of Labor Statistics*

American governments created labor bureaus before other nations created them because unions demanded these bureaus. All the major national labor organizations of the period—the National Labor Union in 1867, the Knights of Labor in 1878, and the FOTLU in 1881—lobbied for the creation of national and state bureaus of labor statistics. These labor organizations envisioned these bureaus as agencies for exposing employer greed and labor market injustice.

Labor leaders and reformers led the fight for the first state labor bureau in Massachusetts, for example. When that state's eight-hour commission of 1866 rejected an eight-hour law, it recommended the creation of a fact-finding bureau. This new public agency annually would provide "reliable statistics in

regard to the condition, prospects, and wants of industrial classes." In 1869, when a Labor Reform party won 10 percent of the vote in statewide elections, the state legislature approved a bill creating a state labor statistics bureau.[62] Reform-minded Henry Oliver became the bureau's first chief, and George McNeill, Ira Steward's associate and the president of the Boston Eight-Hour League, became deputy chief. Oliver initially aspired to report facts about labor conditions that would produce "mingled surprise, shame, and indignation" and thus demands for reform. The bureau soon drew criticism for its excessive partiality to the eight-hour movement.[63] Even the more neutral Carroll Wright, who replaced Oliver in 1873, described the bureau's goal as "giving information of real conditions" with the hope "that, through public sentiment or legislation, conditions that are not favorable may be improved."[64]

Trade unions led the legislative campaign for labor statistics bureaus in other states as well. The New York State Workingmen's Assembly received credit for persuading New York legislators to approve the bureau in that state. Labor leaders also influenced legislative approval of bureaus in Colorado, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, New Hampshire, North Carolina, Ohio, Oregon, Pennsylvania, Virginia, Washington, and West Virginia.[65] Once established, organized labor often staffed these bureaus and provided their agenda. McGuire, later an organizer of the United Brotherhood of Carpenters and Joiners of America and vice president of the AFL, briefly served as deputy commissioner of the Missouri Bureau of Labor Statistics. John McBride, a founder and second president of the UMWA (and in 1894 the only labor leader to defeat Gompers for the AFL presidency), served for a time as commissioner of the Ohio Bureau of Labor Statistics. The understaffed New York bureau relied on trade unionists to investigate labor conditions.[66]

The U.S. Congress explicitly acknowledged labor's influence when it approved the creation of a similar federal agency in 1884.[67] Many Knights of Labor and other unionists lobbied President Chester A. Arthur to appoint Terence Powderly, the Knights of Labor leader and the nation's most prominent union spokesman, to direct the bureau. Instead Arthur nominated John Jarrett, a Republican, the leader of the Amalgamated Association of Iron and Steel Workers, and a founder of the embryonic AFL. When Arthur later withdrew Jarrett's name and instead nominated Wright, the head of the Massachusetts bureau, labor newspapers applauded the choice. Wright served as U.S. commissioner of labor statistics for a generation. He often worked closely with Gompers, who consulted with Wright on setting up the New York and federal labor statistics bureaus. Gompers also helped encourage Congress to grant the bureau more autonomy in 1888, recommended the publication of a regular bulletin in the 1890s, and provided a sounding board for bureau investigations.[68]



Labor's strong support for these bureaus rested on three expectations. First, the bureaus would provide unions with direct access to the policy process. Louis F. Post, of the New York City Central Labor Union, expressed the hope that such an agency would have "a man at its head who will not only be competent to administer such a bureau, but also in sympathy with the laboring classes." In retrospect, a turn of the century commentator observed that many of the bureaus had, like New York State's, furnished "a certain official mouthpiece for organized labor in the state." The Missouri Bureau of Labor Statistics said as much in its 1899 report: "Being in close touch with organized labor this department should take cognizance of its just demands."[69] In some states these bureaus had assumed responsibility for factory inspection, free public employment offices, and mediation services by 1900.

Second, trade unionists believed that the bureaus could arm labor with politically potent information about the unfair distribution of profits and wages in the United States. Gompers relied on census data to argue in 1883 that labor did not get a fair share of business profits. Jarrett sought a national bureau that would provide information on profits, investment, and wages. This information, he said, would allow workers to "know exactly what they pay for their labor and for everything that enters into the manufacture of iron and steel, and the same in other manufactures."[70] U.S. Bureau of Labor Statistics reports on the "cost of production" in the early 1890s aimed to advertise the gap between profits and wages.[71] These reports constituted a preliminary step in justifying militant labor action and the redistribution of income. State bureau reports also pursued information on this gap between profits and wages.[72]

Third, union-inspired bureau investigations of unfair practices and poor conditions would further the union policy agenda. Responding to a union resolution, the New York State bureau spent 1884 investigating child labor. This study laid the groundwork for New York's factory act. Florence Kelley's meticulous investigation of "sweating" for the Illinois bureau in the early 1890s similarly shaped the anti-sweatshop provisions of the Illinois Factory Act of 1893. Reports by the Ohio bureau included investigations of slums in Cincinnati, "scrip" money redeemable only in company stores, and yellow-dog contracts. State labor commissioners helped mediate some of the 1885 Knights of Labor strikes to the strikers' advantage. Missouri's labor commissioner, Lee Meriwether, used the 1896 report to expose abuses by the street railway companies in St. Louis, stimulating a reform movement in that city.[73]

Under Wright's direction, the U.S. Bureau of Labor published reports that reflect an ambitious reform agenda. These reports included macroeconomic concerns (*Industrial Depressions*, its first report) and strikes and lockouts in peak years of industrial conflict (1887 and 1894). The bureau's reports on vocational

education, social insurance, prohibition, and municipal socialism questioned the fundamental assumptions of laissez-faire and anticipated the Progressive Era agenda. Wright's 1893 report on compulsory social insurance in Germany brought that option to policymakers' attention two generations before the U.S. Social Security Act of 1935.[74]

Though the labor statistics bureaus met unions' expectations to some degree, the bureaus could neither enact laws nor ensure that enacted laws would be implemented effectively. The bureaus could not compel employers to provide them with information or prevent employers from forbidding employees from providing information.[75] Some of the bureaus were losing both their militancy and their influence by 1900. The New York bureau's annual report, eagerly purchased in the mid-1880s, was so complex that it was "practically unread" by 1900. Many bureaus followed the lead of Massachusetts and installed statistical experts rather than labor officials at the helm of these offices. By replacing trusted labor comrades with neutral experts, states undermined labor's faith in the offices. Labor analyst Fred Rogers Fairchild commented that the New York bureau had devoted itself "almost exclusively to the interests of *organized* labor" (emphasis in the original). Middle-class reformers discounted the neutrality of bureaus that remained under trade union control.[76]

### *State Employment Services*

Private employment offices became prime targets of trade unions and bureaus of labor statistics by the 1880s. Some for-profit employment agencies used fraudulent advertising to extract fees from desperate job seekers (often immigrants), and then sent these unfortunate individuals to distant, nonexistent jobs or to serve as strikebreakers. Labor leaders described the offices as "leeches engaged in sucking the life blood from the poor." Labor bureau investigations built support for state regulation of these private agencies. By 1910, twenty-five states had enacted private employment agency regulations.[77]

In the mid-1880s some labor leaders argued that public employment offices could provide an effective remedy for the private employment agency problem. Cincinnati's labor congress drafted state legislation to establish public employment offices in Ohio's major cities. The Ohio legislature enacted this law, authorizing the nation's first state-level public employment offices in April 1890. A letter by the Ohio secretary of state to a national weekly claimed that "the duty of the State to lessen as much as possible the number of unemployed is the strongest reason for the establishment of free employment agencies."[78]

Other cities and industrial states created public employment offices because state labor commissioners, organized labor, and settlement house activists pressed them to do so. Five states (Montana, New York, Nebraska, Illinois, and Missouri) and two cities (Los Angeles and Seattle) emulated Ohio and created similar public bureaus in the 1890s.[79] Without legislative authorization, the California labor commissioner opened a free public employment office in San Francisco in 1895 as a model for the state. The Illinois Bureau of Labor Statistics drafted that state's 1899 law, and both organized labor and settlement house activists from Chicago's Hull House lobbied successfully for its enactment. Missouri's labor commissioner established its offices without formal authorization in 1898. Connecticut's commissioner of labor recommended such offices in his 1899 report, and the state federation of labor instructed its legislative committee to lobby for them in 1900. In 1892, a national convention of labor commissioners passed a resolution recommending the spread of public employment office legislation. The Knights of Labor endorsed the idea at their national convention in the same year.

Trade unionists initially staffed many of these offices. The state commissioner of labor statistics selected employment office superintendents and clerks in Wisconsin (1901), Illinois, Missouri, and Michigan. By one estimate early in the twentieth century, as many as three-quarters of the employment office superintendents were trade unionists.[80]

Soon after the turn of the century, though, it was becoming clear that these offices were not much help for union members or much of a threat to private employment agencies. Skilled workers, particularly in the construction trades, preferred to control placement through business agents and hiring halls. These unions had little reason to surrender placement in their industry to public officials, even if they were fellow unionists. In Wisconsin, labor leaders expressed some fear that the offices would interfere with their prerogatives. Other crafts workers felt that it would be degrading to search for work in the company of unskilled workers.[81] Trade unions' stake in the offices shrank even more when courts struck down laws in Wisconsin and Illinois that prohibited the use of the offices for breaking strikes. When it became possible for the public employment offices to serve as labor centers for scabs (workers hired to replace union members who were on strike), many unionists also lost interest in the offices. By the early twentieth century, American public employment offices were being orphaned by their potential clients and becoming marginal players in labor markets.[82]

### *Apprenticeship and Licensing*

American trade unions had little interest in government-sponsored apprenticeship programs. In the volatile construction industry, small-scale employers,

fixed-term projects, and seasonal unemployment made it difficult to sustain labor solidarity. Union-controlled apprenticeship seemed a natural tool for strengthening unions. Building trades workers carried their own tools from job to job, and employers preferred workers trained in a variety of tasks (in contrast to their mass production counterparts). By 1888, the United Brotherhood of Carpenters and Joiners endorsed a union-controlled apprenticeship system to all its locals.[83] Public laws concerning apprenticeship had fallen into "complete disuse" by the late nineteenth century.[84]

By the end of the century, craft licensing seemed to be replacing apprenticeship as a tool for controlling the supply of skilled labor. By 1900, thirteen states (including New York, Pennsylvania, Massachusetts, Illinois, and California) licensed plumbers or gas fitters. Four states licensed stationary engineers. Six states licensed horseshoers. Two states licensed barbers. An 1889 Pennsylvania law required miners to have a certificate of competency. Local boards of miners examined prospective miners under oath about evidence that they had two years of practical experience. Missouri also provided that miners produce evidence of two years' experience and competency.[85] Other specific rules about construction and crafts work also strengthened the unions' power over the skilled workforce. In New York State, unions successfully lobbied for thirty-four building trades laws and thirteen metal trades laws, enacted between 1894 and 1918, affecting safety and protecting union apprenticeship.[86]

### *Managing Immigration*

Immigration constituted one policy area in which the national government unquestionably could exercise jurisdiction. The federal government had encouraged immigration during the Civil War. Though the government reversed its wartime immigration policy in 1868, the Republican platform that year advocated immigration. The Republican administration's Burlingame treaty with China guaranteed travel rights to Chinese citizens in the United States.[87] Court decisions in the 1870s lodged responsibility for immigration control squarely with the federal government. The states had long imposed restriction on the immigration of potential paupers and those posing health risks, and now coastal states enacted new, far-reaching limitations on immigration.[88] In 1876, the U.S. Supreme Court declared unconstitutional the New York, California, and Louisiana immigration taxes on incoming aliens.[89] These Supreme Court decisions swept away his state's "feeble barriers" protecting native workers, declared a California senator.[90]

Trade unions, especially in the western states, intensely resented these perceived Asian rivals and began to lobby for immigration restrictions. As many as



a quarter of San Francisco's 1870 wage earners were Chinese. By 1867, leaders of eight-hour leagues in San Francisco helped create "anti-coolie" organizations in the state. Hostility to Chinese workers helped Democrats defeat Republicans in the gubernatorial campaign of that year. When some Chinese began to manufacture shoes, clothing, cigars, and other products on a small scale, the opposition to Chinese labor broadened to include white employers who owned small manufacturing shops.[91] Chinese labor became a national issue when Massachusetts employers transported Chinese coolies across the country to break an 1870 shoemakers strike. By 1880, the Republican Party platform promised to "limit and restrict" Chinese immigration. The Democrats went much further. Their 1880 platform promised "no more Chinese immigration except for travel, education, and foreign commerce, and that even carefully guarded."[92]

As state authority over immigration evaporated, labor's opposition to Chinese workers concentrated on Congress. Congress amended the Burlingame treaty in 1880 to permit restrictions on Chinese labor. Bills to implement these restrictions flooded Congress the following year. By 1882, debate turned on how long Chinese workers would be banned, rather than whether they would be banned. Senator John Miller (R, California) proposed a twenty-year ban. Lead by fervent support in the West, close votes in the Senate (21–20) and the House (131–100) turned back amendments to reduce the term to ten years. President Arthur vetoed the bill and then agreed to a compromise that shortened the ban to ten years.[93] Congress extended Chinese exclusion for another decade in 1892 and extended it indefinitely in 1902.

Organized labor also successfully pressured Congress to enact the Alien Control Labor (Foran) Act of 1885. The Foran Act aimed to eliminate the presumably widespread practice whereby employers signed contracts to import low-wage European craftsmen into American shops. The window glass workers union took the lead in formulating the proposal. In 1879–80, American glass manufacturers had imported Belgian craftsmen under contract to break strikes. Representative Martin Foran (D, Ohio) championed the bill in Congress and spoke for it at labor gatherings. Both the Knights of Labor and AFL crafts workers also supported the bill. Gompers expressed the hope that the ban would prevent the future importation of strikebreakers. Congress passed the Foran Act with little opposition. Employers generally did not oppose the bill, a fact that suggests the unimportance of contract labor for business. Supporters of a high tariff supported the measure as consistent with the argument that protection benefited workers as well as business.[94]

The Foran Act provided labor with yet another lesson in American government's unreliability, however. The law proved hard to enforce and easy to evade. Originally, the law failed to provide for any enforcement at all. Only in

1890 did the secretary of the treasury receive authority to deport violators. The following year, the government established a new Bureau of Immigration. Powderly headed the new bureau. Until 1909, however, the bureau had only two inspectors to police the Atlantic seacoast and Canadian border. The law exempted labor contracts arranged by immigration bureaus run by the states. Courts interpreted the statute narrowly enough to acquit many defendants. A loophole permitted contract labor for "new" industries, and administrators and courts usually accepted employers' definition of "new."[95] Though Congress strengthened the Foran Act several times (1887, 1888, 1891, 1893, 1903, and 1907) in response to labor pressure, immigrants continued to pour into the United States. It became apparent that the act could do little to stem the tide. Most European workers did not immigrate with contracts to work for specific employers; 6,291 contract laborers were deported from 1889 through 1899, years in which two hundred thousand to six hundred thousand immigrants were arriving annually.

In the 1890s, a coalition of workers and other interests gradually formed around further immigration restriction. Conservative Henry Cabot Lodge (R, Massachusetts) proposed a literacy test as a tool for excluding immigrants, arguing that "we have the right to exclude illiterate persons from our immigration." Congress approved such a test, but President Cleveland vetoed it in 1897. Late that year, the AFL took a much stronger anti-immigration stand than it had before. The federation, previously divided over immigration, overwhelmingly passed a resolution supporting the literacy test. After this, the federation grew increasingly supportive of strict immigration limits.[96]

## NOT THE TURNING POINT

Many writers argue that the ascendance of the AFL and its voluntarist strategy marked the turning point in American labor exceptionalism. Kim Voss argues that the decline of the Knights of Labor after 1887 removed from American politics a labor organization that advocated an expansive and inclusive labor strategy comparable to those abroad. The erosion of the Knights' influence left the field of labor advocacy to the more resilient, but more narrow and conservative, AFL.[97] Martin Shefter also argues that the ascendance of voluntarism constituted the turning point in American labor development. In Shefter's view, the emergence of craft unions and political machines defused American working-class radicalism by channeling worker action into the pursuit of pure and simple material benefits (through unions representing white craftsmen) and political patronage (through urban political machines).[98] Historian Julie Greene attributes labor conservatism to the leadership of Gompers, who consolidated control of the AFL as the Knights of Labor retreated. In her view Gompers's leadership ensured a conservative labor strategy geared to white, male-dominated crafts unions. Gompers steered the AFL down a path that benefited its members at the expense of women, blacks, new immigrants, socialists, and industrial workers.[99]



This chapter and the preceding one argue that the ascendance of the AFL did not mark the turning point in American labor exceptionalism. The AFL's strategy of a union shop economy, forged in part by frustration with American political institutions, posed a militant, sweeping, and credible challenge to employers' prerogatives. AFL leaders sought to place unions in control of the terms of employment and worker security in the United States, and redoubled their efforts to achieve worker protection by unionizing the American economy. Given the growth of unionization at the turn of the century, and employers' response to that growth, this strategy seemed credible.

Substantial limitations on employers' labor market power now depended on one of two events, however. Either labor had to win the battle and substantially extend the union shop in the American economy, or it had to change its mind about the government establishment of worker protection and successfully lobby for comprehensive labor market policy. For over thirty years, neither event occurred. During that time, employers came to dominate American labor markets.

## NOTES

1. U.S. Senate Committee on Education and Labor, *Report of the Committee of the Senate on the Relations between Labor and Capital*, 4 vols. (Washington, D.C.: Government Printing Office, 1885), 1: 340. McGuire later served as AFL secretary, second vice president, and first vice president.

2. Victoria C. Hattam, *Labor Visions and State Power: The Origins of Business Unionism in the United States* (Princeton: Princeton University Press, 1993), 3; Michael Rogin, "Volunteerism: The Political Functions of an Antipolitical Doctrine," *Industrial and Labor Relations Review* 15 (July 1962): 521–35; Ruth L. Horowitz, *Political Ideologies of Organized Labor* (New Brunswick, N.J.: Transaction, 1978); Derek C. Bok, "Reflections on the Distinctive Character of American Labor Laws," *Harvard Law Review* 84 (April 1971): 1394–463; Seymour Martin Lipset, "North American Labor Movements: A Comparative Perspective," in *Unions in Transition: Entering the Second Century*, ed. Seymour Martin Lipset (San Francisco: Institute for Contemporary Studies, 1986), 421–52.

3. Kim Voss, *The Making of American Exceptionalism: The Knights of Labor and Class Formation in the Nineteenth Century* (Ithaca, N.Y.: Cornell University Press, 1993).

4. Conventionally, a closed shop is one in which hiring is closed to those who are not union members. A union shop refers to a shop in which one must join a union as a condition of retaining employment. Gompers in 1902 carefully emphasized that the AFL sought union shops rather than closed shops; American Federation of Labor, *Proceedings* of the Twenty-second Annual Convention, 1902: 20; hereafter, cited as *AFL Proceedings* [date].

5. Minutes of the Executive Council of the American Federation of Labor, in *American Federation of Labor Records: The Samuel Gompers Era* (Microfilm Corporation of America, 1979; hereafter *AFL Executive Council Minutes*), Reel 2, July 21, 1900.

6. *AFL Proceedings*, 1901: 9.

7. Samuel Gompers, *Seventy Years of Life and Labour*, 2 vols. (New York: Dutton, 1925), 1: 338. For Christopher Tomlins, Gompers's earlier assertions of militant autonomy resembled syndicalism; see Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America, 1880–1960* (Cambridge: Cambridge University Press, 1985), 56.

8. By arguing that the AFL espoused a fully unionized workforce as a strategic premise, I am not claiming that it follows that the AFL placed a priority on organizing African American and female workers. Far from it. The degree to which the federation actually backed up its goal of inclusiveness with organizational resources, and the degree to which it tolerated racial segregation of organized workers, will attract continuing research. See Julie Greene, *Pure and Simple Politics: The American Federation of Labor and Political Activism, 1881–1917* (New York: Cambridge University Press, 1998), 36–47.

9. James Duncan, "The Law's Delay," *American Federationist* 7 (September 1900): 270–72. Duncan was the Granite Cutters' general secretary, second vice president of the AFL from 1894 to 1899, and first vice president from 1900 to 1928. *The Carpenter* made a similar argument in 1891: "Eight-Hour Laws made by politicians will never be observed by the employers. The only eight-hour law that will ever have binding force in this country will be made and enforced by the workingmen." Quoted in *Our Own Time: A History of American Labor and the Working Day*, David R. Roediger and Philip S. Foner (Westport, Conn.: Greenwood, 1989), 154.

10. As is the conclusion of Horowitz, *Political Ideologies of Organized Labor*, 42. This is also the thrust of Greene's argument in *Pure and Simple Politics*. Richard Schneirov describes the drive for control of employment in Chicago in this period in *Labor and Urban Politics: Class Conflict and the Origins of Modern Liberalism in Chicago, 1864–1897* (Urbana: University of Illinois Press, 1998), esp. 311–12. On the importance of the union shop in the United States relative to Great Britain, see John R. Commons, *Labor and Administration* (New York: Macmillan, 1913), 85–105.

11. *AFL Proceedings*, 1901: 232–35, 240.

12. For a generation, AFL leaders invoked the Scranton resolution as the authoritative AFL position that the crafts should be the basis of the organization. *AFL Proceedings*, 1922: 337–38.

13. Horowitz, *Political Ideologies of Organized Labor*, 32; *The Samuel Gompers Papers, Vol. 6: The American Federation of Labor and the Rise of Progressivism, 1902–6*, ed. Stuart B. Kaufman, Peter J. Albert, and Grace Palladino (Urbana: University of Illinois Press, 1997), 58–60; Daniel Nelson, *Unemployment Insurance: The American Experience, 1915–1935* (Madison: University of Wisconsin Press, 1969), 65–67, 77.



14. David Montgomery, *The Fall of the House of Labor: The Workplace, the State, and American Labor Activism, 1865–1925* (New York: Cambridge University Press, 1987), 269.

15. In 1898, the AFL clearly ranked the eight-hour law at the top of unions' legislative agenda, with injunction and seamen's bills ranked second, immigration restriction third, and convict labor limitation fourth. See *AFL Executive Council Minutes*, April 21, 1897, and December 21, 1897. Just as clearly, the rising tide of injunctions and Gompers's own potential liability in the case of *Loewe v. Lawler* was making injunctions a top priority by mid-1902; see *AFL Executive Council Minutes*, April 19, 1902; January 21, 1903; and on *Loewe*, September 21, 1903.

16. *AFL Executive Council Minutes*, March 21, 1900; September 20, 1901.

17. See reports of such meetings in *AFL Executive Council Minutes*, April 20, 1897; February 22, 1898; February 13, 1899; October 16, 1899; December 20, 1899; February 18, 1901. On the injunction bill vote, see *Congressional Record*, February 18, 1901: 2589–98.

18. Theodore Roosevelt to Joseph Cannon, letter, September 16, 1906, in Joseph G. Cannon Papers, Illinois State Historical Library.

19. Daniel J. Keefe to the editor of the *Buffalo Republic*, letter, October 5, 1908, in Oscar Straus Papers, U.S. Library of Congress, Box 10.

20. Daniel T. Rogers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, Mass.: Belknap, 1998), 18.

21. Gary Marks, *Unions in Politics: Britain, Germany, and the United States in the Nineteenth and Early Twentieth Centuries* (Princeton: Princeton University Press, 1989), 120–94.

22. Keith Burgess, "New Unionism for Old? The Amalgamated Society of Engineers in Britain," in *The Development of Trade Unionism in Great Britain and Germany, 1880–1914*, ed. Wolfgang J. Mommsen and Hans-Gerhard Husung (London: Allen and Unwin, 1985), 176; U.S. Commissioner of Labor, *Regulation and Restriction of Output*, Eleventh Special Report (Washington, D.C.: GPO, 1904), 751; Henry Pelling, *A History of British Trade Unionism* (London: Penguin, 1963), 123–27; H. A. Clegg, Alan Fox, and A. F. Thompson, *A History of British Trade Unions since 1889*, 2 vols. (Oxford: Clarendon, 1964), 1: 374.

23. John A. Moses, *Trade Unionism in Germany from Bismarck to Hitler, 1869–1933*, 2 vols. (Totowa, N.J.: Barnes & Noble, 1982), 1: 133–37.

24. From U.S. House of Representatives hearings on *Hours of Labor for Workmen . . .*, 1900, quoted in Kaufman, Albert, and Palladino, eds., *The Samuel Gompers Papers, Vol. 5: An Expanding Movement at the Turn of the Century, 1898–1902* (Urbana: University of Illinois Press, 1995), 227–28.

25. John Mitchell, *Organized Labor: Its Problems, Purposes and Ideals and the Present and Future of American Wage Earners* (Philadelphia: American Book and Bible House, 1903), 219–20.

26. John R. Commons, "Introduction," in *History of Labour in the United States*, 4 vols., John R. Commons et al. (New York: Macmillan, 1918 and 1935), 1: 17.

27. Schneirov, *Labor and Urban Politics*.

28. David Montgomery, *Beyond Equality: Labor and the Radical Republicans* (New York: Knopf, 1967), 326.

29. William E. Forbath, *Law and the Shaping of the American Labor Movement* (Cambridge: Harvard University Press, 1991), 168–69.

30. *The Samuel Gompers Papers*, 5: 37–38.

31. Clyde Summers, "Admission Policies of Labor Unions," *Quarterly Journal of Economics* 61 (1946): 66–107.

32. Eric Arnesen, "Up from Exclusion: Black and White Workers, Race, and the State of Labor History," *Reviews in American History* 26 (1998): 146–74.

33. Mark Perlman, *The Machinists: A New Study in American Trade Unionism* (Cambridge: Harvard University Press, 1962), 16.

34. Montgomery, *The Fall of the House of Labor*, 200–201; Samuel Gompers to William Smith, letter, September 12, 1900, in *The Samuel Gompers Papers*, 5: 261–62; Summers, "Admission Policies of Labor Unions." See also Herbert Hill, "The Problem of Race in American History," *Reviews in American History* 24 (June 1996): 189–207.

35. Daniel Letwin, *The Challenge of Interracial Unionism: Alabama Coal Miners, 1878–1921* (Chapel Hill: University of North Carolina Press, 1998).

36. *Commonwealth of Massachusetts v. Hunt*, 4 Metcalf 3 (1842).

37. The two most important British laws were the Trade Union Act (1871) and Employers and Workmen Act (1875); Pelling, *A History of British Trade Unionism*, 72–76.

38. States that modified the common law conspiracy doctrine included Illinois (1873), Maine (1883), Maryland (1886), Minnesota, New Jersey (1883), New York (1870, 1881, 1882), and Pennsylvania (1869, 1872, 1876). Felix Frankfurter and Nathan Greene, *The Labor Injunction* (New York: Macmillan, 1930), 137; Hattam, *Labor Visions and State Power*, 144–49. F. J. Stimson held that New York, Minnesota, Mississippi, North and South Dakota, Montana, and Oklahoma had repealed the common law doctrine of conspiracy by statute; in U.S. Industrial Commission, *Labor Legislation*, vol. 5 (Washington, D.C.: GPO, 1900): 129–33.

39. Frankfurter and Greene, *The Labor Injunction*, 137. The states were Illinois, Maine, Maryland, Minnesota, New Jersey, New York, and Pennsylvania.

40. John R. Commons and John B. Andrews, *Principles of Labor Legislation*, (New York: Harper and Brothers, 1916), 95.

41. George Gorham Groat, *Trade Unions and the Law in New York: A Study of Some Legal Phases of Labor Organizations* (New York: Columbia University Press, 1903), 89; Melvyn Dubofsky, *The State and Labor in Modern America* (Chapel Hill: University of North Carolina, 1994), 5.

42. Senate Committee on Education and Labor, *Relations between Labor and Capital*, 1: 340, 378–81, 402–3.

43. *Congressional Record*, June 9, 1886: 5447; and June 11, 1886: 5565–66. States with incorporation laws were Massachusetts (1888), Louisiana (1890), Michigan (1897), and Kansas (1899); *Second Special Report of the Commissioner of Labor, Labor Laws of the United States*, 2nd ed. (Washington, D.C.: GPO, 1896), passim; and U.S. Industrial Commission, *Labor Legislation*, vol. 5 (Washington, D.C.: GPO, 1900), 148–50.



44. Massachusetts Bureau of Statistics of Labor, *The Incorporation of Trade Unions*, part 3 of the *Annual Report* for 1906 (Boston: Wright and Potter, State Printers, 1906), 147, 149, 156, 160–161, 190. Edwin Witte, in *The Government in Labor Disputes* (New York: McGraw-Hill, 1932), 149, states that unions also came to fear lawsuits against them by their own members if they incorporated.

45. U.S. Industrial Commission, *Final Report*, vol. 19 (Washington, D.C.: GPO, 1902), 951.

46. New York Bureau of Labor Statistics, *Third Annual Report*, 1885 (Albany: The Argus Company, 1886), 365–66, 439, 450; Gompers quoted in Senate Committee on Education and Labor, *Relations between Labor and Capital*, 1: 377, 404.

47. "Notes and Memoranda," *Quarterly Journal of Economics* 6 (October 1886): 86–91 and (July 1887): 487–98.

48. *Quarterly Journal of Economics* 6 (July 1887): 487–98; Robert F. Koretz, ed., *Statutory History of the United States: Labor Organization* (New York: Chelsea House, 1970), 12.

49. Illinois State Board of Arbitration, *First Annual Report* (Springfield: Ed. F. Hartman, 1896), 16–17; *Labor Laws of the United States*, passim; U.S. Industrial Commission, *Labor Legislation*, 148–50.

50. Though arbitration became the normal way to resolve disputes in the building trades, private arbitration of building trade disputes rarely involved any public official; Robert Max Jackson, *The Formation of Craft Labor Markets* (Orlando: Academic, 1984), 228–32.

51. U.S. House of Representatives, "Carriers Engaged in Interstate Commerce," House Report 1754, 53rd Cong., 3rd sess., February 2, 1895 (Washington, D.C.: GPO, 1895).

52. Koretz, ed., *Statutory History of the United States: Labor Organization*, 13.

53. Karen Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States* (Cambridge: Cambridge University Press, 1992), 185–88.

54. Hattam, *Labor Visions and State Power*, 162. Still, in 1894, federal judge John Harlan of the Seventh Circuit Court of Appeals upheld the legality of unions and strikes in *Arthur et al. v. Oakes et al.* (63 *Federal Reporter*, 1894), 310–29.

55. Gompers, *Seventy Years of Life and Labour*, 2: 195.

56. Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920* (Cambridge: Cambridge University Press, 1982), 103–7.

57. Senate Committee on Education and Labor, *Relations between Labor and Capital*, 1: 322; Jerry M. Cooper, *The Army and Civil Disorder: Federal Military Intervention in Labor Disputes, 1870–1900* (Westport, Conn.: Greenwood, 1980).

58. *Congressional Globe*, March 20, 1867: 225.

59. Quoted in Mary O. Furner, "The Republican Tradition and the New Liberalism: Social Investigation, State Building, and Social Learning in the Gilded Age," in *The State*

*and Social Investigation in Britain and the United States*, ed. Michael J. Lacey and Mary O. Furner (Washington, D.C.: Woodrow Wilson Center Press, 1993), 201; for original quote, see *Congressional Record*, 1883: 194–95.

60. Furner, "The Republican Tradition and the New Liberalism," 210. Examples of these reports include "Labor Troubles in the Anthracite Regions of Pennsylvania, 1887–1888," House Report 4147, 50th Cong., 2nd sess. (Washington, D.C.: GPO, 1889); "Investigation of Labor Troubles in Missouri, Arkansas, Kansas, Texas, and Illinois," House Report 4174, 49th Cong., 2nd sess. (Washington, D.C.: GPO, 1887); "Investigation of the Employment of Pinkerton Detectives," Senate Report 1280, 52nd Cong., 2nd sess. (Washington, D.C.: GPO, 1893); "Employment of Pinkerton Detectives," House Report 2447, 52nd Cong., 2nd sess. (Washington, D.C.: GPO, 1893).

61. Clarence E. Wunderlin Jr., *Visions of a New Industrial Order: Social Science and Labor Theory in America's Progressive Era* (New York: Columbia University Press, 1992).

62. Montgomery, *Beyond Equality*, 262–68; Jonathan Grossman and Judson MacLaury, "The Creation of the Bureau of Labor Statistics," *Monthly Labor Review* 98 (February 1975): 27. See also William R. Brock, *Investigation and Responsibility: Public Responsibility in the United States, 1865–1900* (Cambridge: Cambridge University Press, 1984), 148–84.

63. James Leiby, *Carroll Wright and Labor Reform: The Origins of Labor Statistics* (Cambridge: Harvard University Press, 1960), 48–61; Montgomery, *Beyond Equality*, 306; Susan M. Kingsbury, ed., *Labor Laws and Their Enforcement, with Special Reference to Massachusetts* (New York: Longmans, Green, 1911), 109; Brock, *Investigation and Responsibility*, 148–84.

64. Senate Committee on Education and Labor, *Relations between Labor and Capital*, 3: 280.

65. On New York, see Fred Rogers Fairchild, *The Factory Legislation of the State of New York* (New York: American Economic Association, 1905), 24–25; Gompers, *Seventy Years of Life and Labour*, 1: 194. On Ohio, see Ohio Bureau of Labor Statistics, *Second Annual Report* (Columbus, Ohio: Nevins and Myers, State Printers, 1879), 37–41. On the labor role generally, see U.S. Bureau of Labor, *Bureaus of Labor in the United States*, Bulletin 54 (Washington, D.C.: GPO, 1904): 994–99.

66. On McGuire, see Walter Galenson, *The United Brotherhood of Carpenters: The First Hundred Years* (Cambridge: Harvard University Press, 1983), 24–25. On New York, see Jeremy P. Felt, *Hostages of Fortune: Child Labor Reform in New York State* (Syracuse, N.Y.: Syracuse University Press, 1965), 13–14.

67. *Congressional Record*, March 7, 1884: 1676.

68. Leiby, *Carroll Wright and Labor Reform*, 70; Jonathan Grossman and Judson MacLaury, "The Creation of the Bureau of Labor Statistics, *Monthly Labor Review* 98 (February 1975): 25–31; Judson MacLaury, "The Selection of the First U.S. Commissioner of Labor," *Monthly Labor Review* 98 (April 1975): 16–19; Joseph P. Goldberg and William T. Moye, "The AFL and a National BLS: Labor's Role Crystallized," *Monthly Labor Review* 105 (March 1982): 21–29.

69. Senate Committee on Education and Labor, *Relations between Labor and Capital*, 1: 791; Fairchild, *The Factory Legislation of the State of New York*, 26; Missouri Bureau of Labor Statistics and Inspection, *Twenty-first Annual Report* (Jefferson City: Tribune Company, 1899), 117.



70. Senate Committee on Education and Labor, *Relations between Labor and Capital*, 1: 363–64, 1142.

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