

An Economic Analysis of the Norris-LaGuardia Act, the Wagner Act, and the Labor Representation Industry*

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From a state in which little the unions could do was legal if they were not prohibited altogether, we have now reached a state where they have become uniquely privileged institutions to which the general rules of law do not apply. They have become the only important instance in which governments signally fall in their prime function — the prevention of coercion and violence.

F. A. Hayek¹

Economists have been relatively silent about the legislation from the 1930's which supports unionism and collective bargaining in the United States. A failure to apply economic analysis to the Norris-LaGuardia and Wagner acts has allowed a consensus about this legislation to develop among labor writers, basically by default. Expressed in terms of established economic theory, most accounts appear to rest upon two central propositions: (1) employees and employers are natural antagonists and employers have a powerful advantage over employees (labor monopsony), and (2) public policy ought to promote unions and collective bargaining in order to offset this inequality (bilateral monopoly). Even if one accepts proposition 1 as factually correct, which many economists would not, acceptance of policy prescription 2 would not follow because it would have to be compared with alternative measures, for instance, policies intended to encourage more competitive bidding for labor services.

Most labor scholars have approved of the labor legislation of the 1930's, although they differ in detail and sometimes express disappointment at the administrative evolution of the laws.² The questions that labor writers ask and the data which they use have been sharply limited by their implicit acceptance of the monopsony model and their shared conviction that greater involvement by gov-

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ernment and labor unions in determining wage rates and working conditions were favorable departures from the *status quo ante*.

On the other side of the issue, one of the few economists to explicitly comment on the legislation has been W. H. Hutt:

The Norris-LaGuardia and Wagner acts will, I predict, come to be regarded by future historians as economic blunders of the first magnitude. They were worked for and acquiesced to under motivations of almost unparalleled sordidness and cynicism combined with the highest, misguided idealism.³

Professor Hutt's provocative characterization cannot be confidently accepted or rejected presently because we lack a major analysis of the legislation within the framework of accepted economic theory and public choice analysis. The purpose of this paper is to remedy this deficiency. Specifically, my aim is to (1) describe the main features of Norris-LaGuardia and Wagner in terms of standard economic theory and the emerging theory of regulation, (2) analyze the direct effects of the laws, and (3) explain why the legislation passed when it did.

The basic contention, reduced to its core, is that the evidence is consistent with the view that self-interested political activists — unionists, academics, bureaucrats, politicians, and a minority of big businessmen — played major roles in fostering a major expansion in the labor representation industry, an event essentially in their financial and nonfinancial interests. Some proponents genuinely, even altruistically, believed that unionism would raise the standard of living in this country. But the labor literature generally posits political idealism as the sole motive of unionists and their political allies, uncritically accepting their good intentions at face value. The same view is rejected for political opponents of the legislation, who generally are viewed as motivated by self-evident financial gain rather than deep ideological commitment. The asymmetric treatment has left the possible evidence for academic and political profits from the labor representation industry largely untouched. This paper proposes to apply the theory of self-interest and pressure groups in the search for the causes and effects of the Norris-LaGuardia and Wagner Acts.

I. The Background

Labor unions historically were difficult to organize and sustain in the United States. Common obstacles to forming any private combination designed to raise price or restrict supply intruded. The difficulties were especially severe in U. S. markets for labor services, characterized by large numbers of buyers and sellers, ease of entry and exit, high turnover, high mobility, geographic dispersion, active resistance among buyers, and differences of opinion about collectivism and the use of force. The courts also tended to restrict union tactics like threats, violence, and interference with voluntary trade; unionists, therefore, were prominent demanders of governmental privilege, and mounted persistent and intensive political campaigns for favorable legislation.

Prior to World War I, unionists had relatively little to show for their political investments. From 1842 onwards unions had the clear legal right to exist and workers could join such self-help organizations, but employers were under no legal obligation to deal with them. The courts also tended to make little distinction between union and business restraints on competition. For example, the courts ruled that union actions in a boycott organized by the United Hatters of Danbury, Connecticut, against the products of D. E. Loewe and Company (1908) violated the Sherman Anti-Trust Act of 1890. The boycott was held to be in restraint of trade and individual members were held responsible for the union's acts and for assessed damages and costs totaling \$252,000.

In 1912, Congress supplied some union assistance with the Lloyd-LaFollette Act, which encouraged postal workers to unionize and compelled bargaining by the Post Office. Then in 1914 Congress attempted to supply a very broad range of favors for unions by passing the Clayton Act. It exempted unions from the 1890 Sherman Anti-Trust Act, restricted the use of injunctions in labor disputes, and provided that picketing and similar union activities were not unlawful. Samuel Gompers optimistically hailed the Clayton Act as labor's Magna Carta, but subsequent judicial rulings quickly neutralized the prounion provisions.

The national emergency of World War I provided much of the experience and precedent for subsequent labor legislation, as well as other cartel-like economic policies. Historian William E. Leuchtenburg, for instance, points out that:

The panoply of procedures developed by the War Labor Board and the War Labor Policies Board provided the basis in later years for a series of enactments culminating in the Wagner National Labor Relations Act of 1935.⁴

The War Labor Board and the War Labor Policies Board, the latter led by Felix Frankfurter and modeled on a directive by Franklin D. Roosevelt, who represented the Navy on the Board, proclaimed governmental support of unions and enforced prounion measures upon industry.⁵ The Boards, for instance, ordered the establishment of "work councils" composed of employee representatives, seized defiant enterprises, and in one case the government actually created a union, the Loyal Legion of Loggers and Lumbermen, and forced lumbermen to join as part of the battle against the International Workers of the World (IWW). The Loyal Legion collapsed after World War I despite government efforts to keep it alive. Just as the War Industries Board, led by Bernard M. Baruch and General Hugh S. Johnson, was the forerunner to the 1933-35 National Industrial Recovery Act, headed by Hugh S. Johnson, the War Labor Boards were predecessors to Section 7(a) of the NIRA and the National Labor Relations Act of 1935.

Leuchtenburg supports the contention that the war gave new influence and power to professors who, for the first time, swarmed into Washington with something to do.⁶ Leuchtenburg claims that by the 1930's professors and university-trained intellectuals played crucial parts in shaping legislation and manning the new agencies which their legislation developed:

The passage of the Wagner Act in 1935, for example, resulted less from such traditional elements as presidential initiative or the play of "social forces" than from the conjunction of university trained administrators like Lloyd Garrison within the New Deal bureaucracy with their counterparts like Leon Keyserling in Senator Wagner's office. This new class of administrators, and the social theorists who had been advocating a rationally planned economy, found the war an exciting adventure.⁷

The first durable help for unions was the Railway Labor Act of 1926. The labor disputes which periodically erupted on the railroads were highly visible, violent, and politically unpopular. Although the interstate commerce clause of the U. S. Constitution (as interpreted then) restricted the ability of the national government to intervene in most economic affairs, Congress had the unchallenged power to regulate interstate commerce. A sequence of federal laws regulated railway labor beginning in 1888, and the 1926 law was passed by Congress in a form almost identical to that agreed upon by the railroad unions and the major railroads. The Act, with an amendment in 1934, basically mandated collective bargaining for all interstate railroads and set up machinery for governmental intervention in labor disputes.

This was an obvious case of government enforcement of monopoly arrangements in an industry. Already-unionized railroads found it comfortable to impose compulsory collective bargaining on *all* interstate railroads, some of which resisted union pressure better than others. The Interstate Commerce Commission, in turn, fixed freight rates for railroads based on "costs," which were higher due to unions. Thus, railroad wage and price determinations were effectively transferred from the economic marketplace to the political marketplace.

During the confusion of the Great Depression, Congress supplied six major pieces of labor legislation favored by unionists: Davis-Bacon, Norris-LaGuardia, National Industrial Recovery Act, National Labor Relations (Wagner) Act, Walsh-Healey, and Fair Labor Standards Act. Three of the bills authorized direct federal regulation of wages, hours, and working conditions in various sectors of the economy (Davis-Bacon, Walsh-Healey, and Fair Labor), and I say no more about them here.⁸

NIRA was a system of industry codes or cartel agreements sanctioned by the national government in 1933 and was intended to push up prices throughout the economy. The rationale was that falling prices were causing the depression and a reversal of "excessive" competition would hasten recovery. Although short-lived, the Act included Section 7(a) which broke important ground for national labor policy by declaring "the right [of employees] to bargain collectively through representatives of their own choosing without interference, coercion or restraint on the part of the employer."⁹ The favored theory was that falling wage rates caused purchasing power to decline, and powerful unions would reverse this decline. This theory ignores the fact that higher prices for labor services, *ceteris paribus*, reduce employment and thereby reduce output (real income).

In contrast to the wide scope of NIRA, the Norris-LaGuardia and Wagner Acts

were limited to promoting labor cartels and cartel-type bargaining in labor markets. The ability of unionists to interfere with trade or, to adopt the expression of the labor literature, use the weapons of labor, rests largely on immunities from damage suits and equity relief granted by Norris-LaGuardia and, more importantly, on governmental machinery set up by the Wagner Act to impose labor representation and collective bargaining procedures on those employees and enterprises who would otherwise refuse to participate in unionism and collective bargaining. These laws have proven effective and durable, even though falling nominal wages and nominal purchasing power have not been notable problems for many years. It is no exaggeration to assert that American experience with nationwide labor representation is only fifty years old and mostly owes its existence to Norris-LaGuardia and Wagner.¹⁰

II. The Norris-LaGuardia Act

President Hoover signed the Norris-LaGuardia Anti-Injunction Act on March 23, 1932, after it had passed the House by a vote of 363 to 13 and Senate by 75 to 5. It was the culmination of a fifty-year campaign by trade unionists and their allies in the academic community against "government by injunction." The purposes of the Act were threefold:

- (1) to declare nonunion oaths ("yellow-dog contracts") unenforceable in U.S. courts (Section 3);
- (2) to relieve labor organizations from liability for wrongful acts under antitrust law (Sections 4, 5); and
- (3) to nullify the equity powers of federal courts in labor disputes (Sections 7 through 12).¹¹

A yellow-dog contract simply made nonunion status a condition of employment. Unionists labelled nonunion pledges "yellow-dog" because anyone who disagreed with union policies or was willing to pledge nonunion status for other reasons was a cowardly, yellow cur with its tail between its legs, in the divisive idiom of unionists. Norris-LaGuardia neither outlawed the existence of nonunion pledges as a condition of employment nor, indeed, prevented employers from firing employees who joined a union, but it did make the oaths unenforceable in U. S. courts. Aaron claims that there is no record of any legal action by an employer against an employee for breaching a yellow-dog contract.¹² Within three years, however, the Wagner Act went beyond Norris-LaGuardia to make it an unfair labor practice for an employer to dismiss or discriminate against an employee because of union membership or union activity.

Most writers accept the terminology of unionists to describe people who signed nonunion pledges, and also accept union lore about why employees signed pledges. Almost all textbooks and articles that discuss the issue refer to antiunion employers who "exact" and "force" the "infamous" yellow-dog contracts from employees.¹³ The well-known case of *Hitchman Coal & Coke Co. v.*

Mitchell usually is cited as the prime example. The facts do not support the conventional interpretation, however. The cartelized portion of the bituminous coal mining industry, located in western Pennsylvania, Ohio, Indiana, and Illinois, hired only UMW miners under a closed shop regime, although pay was no higher than in the nonunion, competitive part of the industry, located mostly in West Virginia and parts of Pennsylvania.¹⁴ The UMW acted against nonunion mines because nonunion coal was underpricing cartel coal, especially in periods of slack demand.

The Hitchman mine in West Virginia opened in 1902 and operated as a nonunion mine until April 1, 1903, when the owners recognized the UMW because union officials threatened to shut down a unionized mine in Ohio operated by the same owners. A two-month strike, over pay, followed the next day. National officials of the United Mine Workers called a two-month strike again in the spring of 1904, imposing additional financial losses. The company operated on union terms until the UMW called another strike in 1906. When the company could not resolve the strike after two months, Hitchman reopened on a nonunion basis.

The ironic truth is that employees at Hitchman were as anxious to have the "yellow-dog" as company owners. Many nonunion miners were (and are) fiercely antiunion, more antiunion than their employers. Employees at Hitchman agreed to refrain from joining the union in exchange for assurance that the company would refuse to deal with the national union, hoping to avoid the disruptive union tactics which had already cost the employees so dearly in sacrificed wages. The employees accepted nonunion pledges, as did new hires, in order to resume their production and earnings.¹⁵

Why all the political agitation over yellow-dog contracts? They added nothing to the acknowledged legal right of employers to discharge workers for any reason, including union activity. Employment relationships were "at will" and could be terminated by either party at any time in that era, in the absence of agreements to the contrary. The few writers who raise the question conjecture that it gave employers a "psychological" edge, intimidated some workers, deluded workers into believing that they had a moral obligation to abide by a contract, or that the tactic discredited unionists.¹⁶ Although these explanations may be true, they are rather vague, difficult to falsify, assume a continuing failure of workers to learn from experience, and apparently accept a quasi-Marxist belief in a natural antagonism between those two great abstractions, labor and capital. Furthermore, the proposed explanations do not explain the apparent secular pattern of yellow-dog contracts. Although systematic data do not currently exist, waves of nonunion oaths appeared to follow outbreaks of destructive strikes and boycotts, for example, during the widespread violence by railroad, coal miners', and garment workers' unions which triggered antiunion sentiment across the country in the 1920's. As written, signed yellow-dog agreements did not enhance an employer's direct advantages under the law, the explanation for their ebb and flow must lie elsewhere.

A plausible hypothesis is that the agreements were in the mutual interest of employers and employees who accepted them, just as other aspects of an employment relationship are determined by mutual agreement in free markets. More employees would want oaths during periods of union violence because pledges could enhance the attractiveness of working conditions for those fearful of union-related conflict and violence. Effectively, pledges could reduce an employee's probability of becoming involved in a union dispute, by this thesis. From an employer's point of view, they were a form of full disclosure about working conditions and an economical means of improving working conditions for employees who wanted nothing to do with unions; nonunion requirements would reduce a firm's labor costs if they were popular with a substantial number of workers.

The Hitchman decision supports this hypothesis about the gains from non-union oaths. Judge Dayton in a lower court opinion in September 1909, wrote:

there was no controversy between the plaintiff and his employees. . . . there was between them a contract to maintain an 'open shop,' and no strike was desired or threatened by them, [which] removed this case from the field of controversy affecting the rights of members of unions. It is not a case where the labor union has any longer any legitimate interest or concern.¹⁷

In the six-to-three Supreme Court decision (1917), Justice Pitney wrote for the majority:

In short, plaintiff was and is entitled to the good will of its employees. . . . The value of the relation lies in the reasonable probability that by properly treating its employees, and paying them fair wages, and avoiding reasonable grounds of complaint, it will be able to retain them in its employ, and to fill vacancies occurring from time to time by the employment of other men on the same terms. The pecuniary value of such reasonable probabilities is incalculably great, and is recognized by the law in a variety of relations.¹⁸ (Citations omitted)

Conversely, nonunion pledges would make the organizing of workers more difficult for unionists since people who wanted to avoid union conflict and involvement could claim contractual obligations to remain nonunion.¹⁹ Yellow-dog contracts, by this view, were the result of government's frequent failure to protect people from union coercion and violence in labor disputes rather than due to vicious employers.

The second purpose of Norris-LaGuardia was to exempt labor unions from antitrust laws. Norris-LaGuardia effectively repealed the Sherman Act for labor unionists for all practical purposes, even in cases of aggressive violence to obstruct trade. Legitimate or *bona fide* unionists are not only immune from the laws prohibiting combinations and agreements in restraint of trade, they own an effective writ to interfere actively with commerce, immune from the equity injunction.²⁰ Direct and intentional prevention of shipment or delivery of goods in interstate commerce by labor unions was held *not* in restraint of trade in Apex

Hosiery v. Leader. Secondary boycotts by unions in order to keep nonunion goods or goods produced by members of other unions out of the market was held immune from the Sherman Act in *U. S. v. Hutcheson*, provided the union acted in its self-interest and did not conspire with nonlabor groups. In *Hunt v. Crumboch* the Supreme Court adopted total immunity by a five to four vote. In this case an employer had antagonized union officials, and they responded by refusing to supply him with any labor. In dissent Justice Jackson wrote, "The Court now sustains the claim of a union to the right to deny participation in the economic world to any employer simply because the union dislikes him."²¹

This evolution illustrates a double standard which has developed since 1932 in antitrust: nonviolent and relatively ineffective price-fixing by businessmen, based on arguable evidence and economic theories, is vigorously prosecuted by the Department of Justice, the Federal Trade Commission, state agencies, and private plaintiffs, while industry-wide price-fixing by unionists, often accompanied by violence, is exempt, if not encouraged by government policy. Prior to *Norris-LaGuardia* there was little distinction in the legal treatment of union versus business restraints on competition.²² After *Norris-LaGuardia* was passed and its constitutionality confirmed by the Supreme Court, the courts basically were forced to permit worker cartels to fix terms of employment, and then to try to regulate their behavior.

The third purpose and main object of *Norris-LaGuardia* was to eliminate equity relief by U. S. courts in labor disputes. Its importance derived from the fact that unionists use force to pursue their objectives and, consequently, others suffer damage. For example, Professors Cox and Bok write in their prominent textbook on labor law:

counter-attack lay in concerted activities designed to injure the employer's business until he came to terms. If the employer refused to recognize the union, the union had to choose between acquiescence and resort to economic compulsion. Moreover, the employees of some establishments could be organized only by pressure from the outside and in such instances the strike, boycott and picket line were indispensable weapons.²³

Repeated trespass on an individual's land ordinarily can be halted by injunction in courts of equity, an important remedy in the case of picketing and strikes whose purpose is to cut off public access to the business and inflict economic losses on the owner. Until the 1880's there were four legal remedies available to a private plaintiff who claimed to be a victim of union-induced damages: criminal conspiracy, tort law, criminal proceedings, and equity injunctions.

Employers could not expect redress through criminal conspiracy charges unless the unionists' actions involved physical coercion. There were only 18 convictions of unionists on conspiracy charges in the U. S. between 1806 and 1846 when the doctrine was at its peak.²⁴ In addition, relief was not speedy.

Tort law suffered from delays, difficulty in quantifying the monetary value of union damages, and the uncertain legal status of unions. Repeated suits for

damages generally did not provide reasonable protection for owners of businesses because unions never incorporated, with the result that unions in most jurisdictions were private associations without legal standing to sue or be sued for damages. The evidence suggests that unions deliberately avoided incorporation to avoid legal responsibility for their actions.²⁵ Union treasuries and assets also were small relative to damages, further diminishing tort law as a remedy for union-caused damages.

Criminal prosecution had deficiencies as a legal remedy too. Since crimes are offenses committed against the state, private individuals must rely on local public authorities to efficiently investigate and prosecute offenders. The perennial inertia and inefficiency of public employees presented an obvious problem for private parties with a strong interest in the outcome. This problem was heightened in labor cases because officials in many jurisdictions either had a sentimental attitude toward "labor" or were reluctant to intervene in labor brawls because they involved immigrants and other "low characters." These tendencies were sometimes reinforced by mass assemblies of angry union members, mobs which left outnumbered police forces little choice, or by political cooperation secured through campaign money and electioneering for a sheriff or mayor. Even if unionists were convicted under criminal law, victims could expect no compensation.

Under these circumstances, the injunction had obvious advantages as a legal remedy for labor disputes. Equity courts had built a common law tradition, centuries old, for non-labor cases when retroactive money damages did not seem suitable, or where "the remedy at law would be inadequate," as it was expressed. Scholars do not completely agree on the date of the first injunction issued in an American labor dispute, but Edwin Witte counted 28 during the 1880's, 122 during the 1890's, 328 and 446 in the next two decades, and 921 in the 1920's.²⁶ The equity injunction gradually emerged as the primary legal remedy for victims of union violence during this period because it was timely and effective, just as it was in many non-labor disputes. An injunction temporarily restrained union actions pending a trial and this explains the intense union campaign against its use in labor disputes because once violence-ridden strikes were enjoined for a few days, they were difficult to revive, reorganize, and rekindle.

Most labor scholars refer to the "injunction abuse," as did many politicians of the era. Professor Irving Bernstein, for example, refers to "the cancerous mass of procedural abuse that the courts had spread with the labor injunction."²⁷ Sylvester Petro, however, could not find any evidence for "abuse" in the only detailed examination of cases since the fragmentary study by Frankfurter and Greene in 1930.²⁸ Petro's examination shows that the courts were circumspect, careful, and reluctant to issue injunctions in labor disputes. Petro analyzed all 524 reported federal and state injunction cases from the years 1880 to 1932 (a case usually went unreported if there was no subsequent legal action) and found that no primary strike for better terms and conditions of employment was ever enjoined as such; nearly the same was true of primary picketing by employees of the picketed

establishment, except if the picketing was violent; and the same was true of strictly peaceable persuasion, except where it was part of a violent conspiracy.

Academic discussions usually fail to describe the violence, property destruction, and intimidation which prompted the issuance of injunctions by courts of equity in labor disputes in the first place. But in virtually every dispute, unionists were the aggressors: those beaten, bombed, and besieged were nonunion, antiunion, and rival union employees, as well as the productive property of investors. To cite a 1902 example of union aggression from the court transcript:

As Caldwell and Ball approached the point named they saw five or six men. Most of them they recognized as strikers. Ball believed there was to be trouble, but Caldwell thought not. The pickets stopped them, and asked them where they were going. Caldwell said, "To the shops." Then Caldwell said, "I tell you boys, we don't want any trouble. Now, I just come last Thursday, and as soon as I get money enough I will go back to Chicago." Immediately Caldwell was struck in the jaw, knocking him into the ditch. Ball started to assist Caldwell, when two men jumped on him. He got loose, and started to run, and fell down, when he was hit with a club. He finally got away, and threatened to shoot the assailants, but ran away, and then he was stoned. After Caldwell was down, he was either struck or struck at with a club. Caldwell got up, walked inside the gates, and in a few minutes was dead; murdered.²⁹

Unionists do not entirely deny the historic use of violence. In fact, it is a central feature of the legend of "labor's bitter struggle" and its martyrs for the cause. Unionists claim, though, that employers were more guilty than unions. Undoubtedly, many employers were guilty of resistance to the demands of unionists, but if employers were as guilty of unlawful actions as unionists were, both unionists and labor scholars must explain why unions rarely sought, much less gained, equitable relief in the courts against the alleged depredations of employers.³⁰ The common answer is that judges were biased against unions by virtue of education, upper-class background, and cultural association with the "employer class." Such uniformity of temperament and complete absence of fair-minded individuals would be surprising in any occupational group, much less the judiciary, many of whom were schooled in the rule of law and the importance of impartiality. The real answer is that union suits for equitable relief simply could not pass the standard legal criteria for issuance. In virtually all labor disputes, unions, as the aggressors, could hope to demonstrate neither: (1) unlawful conduct by employers, nor (2) threat of irreparable injury, nor (3) lack of alternative, adequate remedies at law. Nor did unions have "clean hands" which parties must have to be granted equity relief.

The association between unionism and violence is clearly accounted for by basic economics. In order to push the prices of their members' services above open market wage rates, labor unions must restrict (cut off) the supply of labor to struck enterprises. The only effective way this can be done is through threats and violence because many U. S. workers are willing to defy picket lines and accept wages and working conditions below those demanded by unionists. As Henry

George wrote in the nineteenth century, "Those who tell you of trades unions bent on raising wages by moral suasion alone are like those who would tell you of tigers that live on oranges."³¹ The employer's (and consumer's) interest, by contrast, is to preserve access to a free labor market and maintain peaceful conditions so that work and production can proceed smoothly and economically.

Labor scholars assert that unions continually faced injunctions to restrain their strikes and gatherings, injunctions supposedly readily granted by complaint judges. The data show otherwise. During the years from 1881 to 1905 and from 1914 to the present, the Bureau of Labor Statistics recorded a number of work stoppages by examining the daily press and trade press, followed up by questioning of the parties involved.³² Between the years 1881 and 1932, excluding 1906–1913 when reporting was discontinued, there were 72,888 reported work stoppages, virtually all of them union-organized strikes. There were 182 reported federal labor injunction cases from 1881 to 1932, or an average of 3.5 per year. Edwin Witte also compiled 508 cases for 1894–1932 of unreported federal labor injunction cases, substantially overlapping reported cases.³³ An equity decision goes unreported if the original order meets no objection and no appeal is filed by either party. Therefore, less than one percent of reported work stoppages (690 divided by 72,888) became federal labor injunction cases between 1881 and 1932. This is an upper estimate because 25 to 50 percent of all federal labor injunctions were issued in the railway shopcraft strike of 1922, which had 1,500 cases of violent assault to kill, 51 cases of dynamiting and burning railroad bridges, 65 reported kidnappings, and so on. The one-percent conclusion ignores injunctions granted by state courts; Witte claimed that 1,364 labor injunctions were issued on application by employers prior to May 1, 1931, in state courts, or less than two percent of all reported work stoppages. Therefore, fewer than three percent of all work stoppages resulted in injunctions by all courts against union actions, probably a modest figure relative to the impression conveyed by labor scholars and the potentially large number of labor disputes where private coercion and mob violence might have justified an injunction.

The Norris-LaGuardia Act also reinforced the one-sided nature of collective bargains by prohibiting injunctions against unions for breach of contract, which commonly means a no-strike pledge. Prior to Taft-Hartley in 1947, a contract between an enterprise and a union was really only binding on the enterprise (if it was binding on anyone) because unions could not be sued for breach of contract (or anything else for that matter), a phenomenon which Taft-Hartley has changed very little. To illustrate the continuing immunities of unions from damage suits, the Supreme Court recently ruled that a union which violates its statutory duty to represent a member fairly in a grievance cannot be required to pay punitive damages.³⁴ A jury had awarded \$75,000 in punitive damages to a member of the International Brotherhood of Electrical Workers because the union had failed to process the employee's unfair dismissal grievance before a crucial deadline, thus depriving him of an opportunity to appeal.³⁵ In reversing the judgment, Justice Marshall wrote for the High Court that any remedy for victims of union miscon-

duct must be consistent with the "overarching legislative goal" of the National Labor Relations Act, namely, "to facilitate collective bargaining and to achieve industrial peace." Punitive damage awards would not "comport with national labor policy" because they could "deplete union treasuries, thereby impairing the effectiveness of unions as collective bargaining agents," might curtail the broad discretion afforded unions in handling grievances, and could "disrupt the responsible decision-making essential to peaceful labor relations." In plainer language, unions are beyond the law which applies to everyone else in damage suits.

III. The Wagner Act

After the N.I.R.A. was struck down by the Supreme Court in the *Schechter Poultry* case of 1935 on the grounds that the Act delegated virtually unlimited legislative power to the President, almost identical labor regulations were adopted by the Congress, piecemeal, in surviving legislation like Walsh-Healey and Fair Labor Standards. But the most famous and important legislation was the Wagner Act, which passed by a 63 to 12 vote in the Senate and by an unrecorded voice vote in the House, and was signed by President Roosevelt on July 5, 1935. Roosevelt gave pens to Senator Wagner and William Green, President of the American Federation of Labor, whereupon Green declared that the legislation would prove to be the "Magna Carta of Labor of the United States," echoing Gompers' ill-fated statement about the Clayton Act twenty-one years earlier. Green, however, proved to be right in the sense that the legislation turned out to be the primary source of economic power for U. S. unionism, indeed of most unions' existence.

The Act declared that the policy of the United States Government is encouragement of the practice and procedure of collective bargaining, as well as protection of worker designation of representatives to negotiate terms and conditions of employment. The Wagner Act supplied six principal services to unionists:

- (1) creation of a political board, the National Labor Relations Board, to enforce the Act,
- (2) limiting buyer resistance to unionization by specifying "unfair labor practices" by employers,
- (3) NLRB enforcement of majority elections for union representation,
- (4) NLRB determination of eligible voters,
- (5) NLRB enforcement of exclusive (monopoly) bargaining rights for certified labor representatives, and
- (6) NLRB enforcement of union pay scales for all represented employees, whether union members or not.

The basic technique of the Wagner Act was to reduce drastically the cost of imposing labor representatives on enterprises and employees. Subsequent federal legislation modifying the Wagner Act (Taft-Hartley in 1947 and Landrum-Griffin in 1959) has not been so favorable to unions, but this can be easily exaggerated.

Neither Taft-Hartley nor Landrum-Griffin tampered with the basic governmental services supplied to labor organizations. These amendments simply added regulations which expand government intervention to deal with effects of union power in the labor market. This is a familiar pattern in regulatory behavior because, once monopoly rents are created and enforced by government intervention, there is a tendency to dissipate rents in response to pressures by other interested groups.

The primary word to characterize the Board is discretion. Its members (expanded from three to five in 1947 by Taft-Hartley) are appointed by the President to five-year terms and approved by the Senate. The Board decides who votes in representation elections, investigates and decides complaints, has exclusive jurisdiction over unfair labor practices, preempts direct access to the courts in labor disputes, makes findings about facts which are conclusive in the event of appeals in the courts, issues cease and desist orders, reinstates employees with backpay, orders periodic reporting to the Board, has power of subpoena for evidence and investigation, and can reverse or modify its previous orders at will. Furthermore, at Board hearings "the rules of evidence prevailing in courts of law or equity shall not be controlling." Such administrative flexibility was desired by union lobbyists who wanted a political board which would be more sensitive to union political pressure than the courts were. The result has been an extraordinary series of reversals and changes in NLRB policies, especially with changes in Republican and Democratic administrations.³⁶

The term "unfair labor practice" means any of five employer activities made unlawful under the Wagner Act (Taft-Hartley added a like number, though not equivalent, of unfair union activities). Essentially it was illegal for employers to resist unionization of their enterprises. The NLRB handles over 10,000 of these complaints per year. The theory is that unfair practices are akin to common law torts — an invasion of publicly declared rights or, more strictly speaking, behavior contrary to declared public policy. The notion is that the Act created rights and duties which were public and, therefore, enforceable by public agencies rather than private parties.

An election in a bargaining unit is normally held under terms of the National Labor Relations Act to determine "collective bargaining representation." If a union organization wins a simple *majority* of the valid votes cast in the final round, the victorious unionists become the exclusive agent for *all* employees in the unit, even if a majority does not vote for the union. The term "bargaining unit" is a misnomer because it is only a voting unit for purposes of "certification" of labor representatives. Actual bargaining units consolidate many such voting units to make monopoly gains feasible for labor representatives and/or members. The NLRB is not very restricted by the vague language of the Act in determining an appropriate unit, and the word "gerrymander" illustrates how important the exact boundaries of election districts can be in political competition. In recent years, managements and unions agreed on voting boundaries (eligible voters) in about 75 percent of cases, and the Board determined the voting unit in the remaining 2,000 cases per year. In earlier years, the NLRB consistently used its

authority to help C.I.O. industrial unions win representation elections, much to the distress of the A.F. of L. NLRB policies continue to favor unionization over no union, in accord with the policy statement of the act. NLRB techniques to favor unionism include overturning union defeats due to "unfair" election tactics by employers, as defined by the NLRB, and disqualifying voters challenged by union officials, for example, part-time employees if a majority of them are known to be antiunion.

There are direct parallels between federal formation of cartels in agricultural and labor markets which illuminate NLRB techniques. In milk markets, for example, federal control was authorized by the Agricultural Adjustment Act of 1937 which, like the Wagner Act, replaced legislation passed in 1933.³⁷ The law allows dairy farmers to force marketing controls on bottlers or dairies, called "handlers" in the industry. Before the legislation, dairy farmers often tried to impose monopoly pricing through cooperatives but independent competition kept breaking out, despite milk strikes and violence among dairy farmers. Like the unionists, they argued that strikes, associated violence, and price instability were the undesirable consequences of competition and resistance by buyers.

Under the 1937 act, a proposed marketing order is presented to relevant handlers for their voluntary signatures. Naturally they refuse to sign because it restricts handlers to a monopoly supplier, but then the order is enforced by government if two-thirds of the milk producers or producers of two-thirds of the output sold within the market area vote for the proposal in a USDA election. Fluid milk prices are estimated to be 7 to 15 percent above competitive levels due to this scheme.³⁸

Federal officials determine monthly price under a market order, in contrast to unionists, who are permitted to privately negotiate virtually any wages and working conditions they wish. Dairy producers, however, are allowed to negotiate prices, called a superpool premium, above those set by the federal administrator. Another difference is that the federal costs of administering a market order are paid by a tax on handlers. Since these costs must be covered by receipts in the long run, consumers of dairy products basically pay the cost of administering dairy cartels. NLRB costs for elections and enforcement, on the other hand, basically are paid by federal taxpayers rather than consumers of union-made goods.

The Wagner Act does not expressly compel employers to reach an agreement with a certified labor representative but the right to refuse is attenuated by the fact that employers are obligated to bargain in "good faith" with union officials, a phrase interpreted by the political appointees of the Board. To illustrate how the statute operates in practice, the Supreme Court recently ruled that in-plant food prices and services were mandatory subjects of bargaining, even if the food operation is operated by a third party. Justice White, writing for the Court, said that even though he anticipated that "disputes over food prices are likely to be frequent and intense," national labor policy supported the conclusion that "more, not less, collective bargaining is the remedy."³⁹

In addition to fixing voting units and conducting elections for unionists, the

NLRB enforces exclusive bargaining rights under the National Labor Relations Act. This is the minimum guarantee of union security because union officials are safe from rival unionists or employee decertification efforts for at least one year after a previous decertification vote. This legal situation is much like the historical meaning of the word "monopoly," a grant from the state of the exclusive right to sell some good. Exclusive bargaining is a legal barrier to entry in the labor representation industry, protecting incumbent unionists by raising the costs to rival unionists interested in competing for greater membership (called "raiding," one of many military terms in the vocabulary of unionism).

Exclusive bargaining delivers another service to unionists because the collective bargaining agreement must apply to all employees in a unit whether they are union members or not. A union's monopoly power would erode rapidly if individuals were free to reach individual agreements with employers which departed from union terms.⁴⁰ Some employees would agree to work for less than union wages or produce more output at union wages and an employer would substitute toward these employees. Unions also discipline the tendency of some employees toward "excessive production" by informal social pressure, as well as formal work rules backed up by the union's disciplinary powers — which, in turn, are effective only against its members, hence the importance of compulsory membership to the union. Government enforcement of collective conditions upon all employees in a bargaining unit relieves unionists of these dangers to their survival. The legislative history of the Railway Labor Act and the National Labor Relations Act shows that union officials favored "exclusive representation" in the law. For instance, William Green, then president of the A.F. of L., offered an accurate analogy between exclusive union representation and the adoption of NIRA codes by majority vote in industry cartels.⁴¹ In 1976 officials of the large postal unions denounced H.R. 5023, a bill designed to relieve postal unions of the obligation to represent nonmembers in grievance proceedings.

IV. The Effects of the Norris-LaGuardia and Wagner Acts

Three general results can occur when government intervenes in economic affairs: (1) no substantive impact, (2) perverse or unintended effects, and (3) intended effects. The effects of Norris-LaGuardia and Wagner basically fall into the last class as extremely effective.

A. Directly Visible Effects (Means)

Direct effects of the legislation are easily established. Norris-LaGuardia passed its constitutionality test as a proper legislative restraint on the federal courts.⁴² Yellow-dog contracts totally disappeared after 1932, although the NLRB continues to handle unfair labor practice complaints about discrimination in employment because of union activity. By 1941, nineteen states also had passed anti-yellow-dog acts. The antitrust exemption of unionists is well established.⁴³ With respect to labor injunctions, Norris-LaGuardia succeeded in making it virtually impossible for private plaintiffs to obtain equity relief from federal

courts in labor disputes, and nearly so in state courts as well.⁴⁴ Scattered data show that the number of injunctions granted by the courts to private plaintiffs fell precipitously after Norris-LaGuardia.⁴⁵ And by 1941 twenty-four states had their own anti-injunction laws to restrict injunctions in state courts.⁴⁶ These courts are not directly bound by Norris-LaGuardia, but an action in state courts, on petition of the party against whom the injunction is sought, may be removed to a federal court which has original jurisdiction and be dismissed there because federal courts lack authority to grant equity relief. The major plaintiff seeking labor injunctions against union actions is now the U. S. government.⁴⁷

The main direct effect of the Wagner Act was to create a regulatory board to enforce the broad mandate of the bill, and there is little doubt about the Board's active existence. In fiscal year 1936, its first year of operation, the NLRB had 140 employees and a budget of \$620,000, and it conducted 31 representation elections with 7,734 voters participating. By fiscal 1980 the numbers had grown to 2,900 employees, a budget of \$108 million, and supervision of 8,531 elections with 458,114 votes cast. On March 2, 1977, the Board celebrated the thirty millionth vote in NLRB elections. Among regular publications of the Board is *Decisions and Orders of the National Labor Relations Board*, a series occupying fifty feet of shelf space. Volume 1 covers a six-month period from December 7, 1935 to July 1, 1936, while a recent volume, number 256, covers a nine-week period from May 14, 1981 to July 20, 1981. The Board has issued over 400,000 pages of decisions and orders in the published series. The NLRB's *Annual Report* for fiscal 1979 modestly understates the situation: "The uninterrupted growth of the NLRB caseload underscores that the field of labor relations in the United States remains controversial and volatile, an area of national importance and concern, 44 years after the labor relations statute was enacted and the Labor Board was established."⁴⁸

B. Other Effects (Ends)

The purpose of Norris-LaGuardia was to give unionists greater freedom to use their tactics, and Wagner's purpose was to spread the practices of collective bargaining and labor representation. Have they succeeded? The time series evidence is consistent with a positive answer, although other hypotheses might also explain the expansion of unionism and collective bargaining during the 1930's and 1940's. I intend to show that the observed expansion of the labor representation industry can *only* be explained by recourse to these two labor laws. Norris-LaGuardia and Wagner sharply reversed an on-going contraction of the labor representation industry by creating abundant profit opportunities, a reliable way to attract new entrants, innovation, and new competition. Here I am *only* concerned with the pattern of expansion in the employee representation industry, as measured by indexes like the amount of strike activity, number of unions, union customers (membership), union revenues, full-time bureaucracy, and number of contracts. Consideration of the larger economic effects of unionism on the level of national income, labor's share of income, unemployment rates, inflation, working conditions, and other variables is ignored in order to limit the analysis.

Strikes. The legislation clearly did not accomplish the announced purpose of ushering in an era of "industrial peace," for Norris-LaGuardia allowed unionists more latitude in their aggressive tactics, while Wagner promoted unionism. Statistics on industrial conflict support this interpretation. Between 1922 and 1932 there was an average of 980 work stoppages per year, as shown in Table 1.

TABLE 1
Reported Work Stoppages in the United States,
Selected Years, 1922-1981

Year	Work Stoppages
1922	1,112
1923	1,553
1924	1,249
1925	1,301
1926	1,035
1927	707
1928	604
1929	921
1930	637
1931	810
1932	841
1933	1,695
1934	1,856
1935	2,014
1936	2,172
1937	4,740
1938	2,772
1939	2,613
1940	2,508
1941	4,288
1942	2,968
1943	3,752
1944	4,956
1945	4,750
1946	4,985
1950	4,843
1960	3,333
1970	5,716
1977	5,506
1978	4,230
1979	4,827
1980	3,885
1981	2,577

Sources: U.S. Bureau of Labor Statistics, *Handbook of Labor Statistics*, USGPO, 1972; *Analysis of Work Stoppages, 1980*, Bulletin 2120, March 1982; *Monthly Labor Review*, March 1982, p. 5.

After Norris-LaGuardia passed in 1932, the number of strikes doubled in 1933 to 1,695 and continued to climb to a peak of 4,740 in 1937, the same year the Supreme Court, by a five-to-four vote in April, declared the Wagner Act constitutional (the stitch in time that saved nine), thereby "certifying" the Wagner Act and the NLRB. During the 1970's strikes averaged 5,300 per year, or 20 new strikes each business day, although strikes fell off sharply in the early 1980's.

Number of Unions. Expanding industries attract new firms and innovators, a characteristic of unionism in the 1930's. Table 2 shows the number of unions founded and dissolved by decade, beginning in 1830. These figures are calculated

TABLE 2
Number of National Unions Originated and Dissolved,
by Decade, 1830-1979

Decade	Number of Unions Originated	Number of Unions Dissolved, Merged, or Terminated	Net Gain or Loss in Unions
1830-39	2	2	0
1840-49	1	1	0
1850-59	3	0	3
1860-69	12	2	10
1870-79	7	7	0
1880-89	26	3	23
1890-99	40	11	29
1900-09	24	6	18
1910-19	24	6	18
1920-29	9	4	5
1930-39	42	8	34
1940-49	18	10	8
1950-59	11	22	-11
1960-69	7	15	-8
1970-79	5	20	-15

Source: Calculated from Chronology, Appendix 2, in *Labor Unions, The Greenwood Encyclopedia of American Institutions*, ed. Gary M. Fink (Westport, Conn.: Greenwood Press, 1977).

from an encyclopedia of trade unions which contains biographical sketches of over 200 national unions. Although not comprehensive, the volume contains information on every national union of any significance and others as well. The 1930's witnessed 42 new unions, the most prolific decade in U. S. unionism, edging out the 1890's, which had 40 new unions. The net gain during the 1930's was 34 unions since 8 failed or merged, while 11 failed in the 1890's for a net gain of 29 organizations. The 1880's to early 1900's was a period when the formula of business unionism along craft lines finally proved successful, after a series of

failed experiments in unionism. Unionism was substantial only in coal mining, contract construction, printing, railroads, local transit, and the postal service. At the turn of the century, only a dozen unions claimed more than 10,000 members.

The 1930's also were characterized by innovation in unionism. In 1931 and 1932 the A.F. of L. appeared to be a moribund group of declining organizations. Morale and funds to organize were lacking, and union leaders basically were concerned about preserving their existing holds on crafts. Most of their time and energy involved jurisdictional feuds with other craft unionists. Mass production, blue collar industries were unorganized and appeared unorganizable by feuding craft unions. Another national federation appeared, the Congress of Industrial Organization (C.I.O.), and C.I.O. unions entered the organizing industry to compete with A.F. of L. unions for membership, successfully organizing much of manufacturing. Some of the major unions formed during this period were the United Auto Workers in 1936, United Steel Workers in 1942 (officially), Communications Workers in 1939, and Rubber Workers in 1934.

Membership. The number of union customers fell throughout the 1920's from a reported peak of 5 million in 1920 to fewer than 3 million in 1933. According to NBER figures, membership rose sharply to 7.2 million by 1940, 13.2 million by 1945, and 14.8 million by 1950. Figure 1 shows the path of membership from 1900 to 1951, which captures the periods of union growth in the twentieth century. The boost in membership is apparent during World War I and World War II when government labor boards operated to advance unionization, but the sharp increase in the 1930's also is apparent.⁴⁹ The erosion in membership which followed World War I did not occur after World War II.

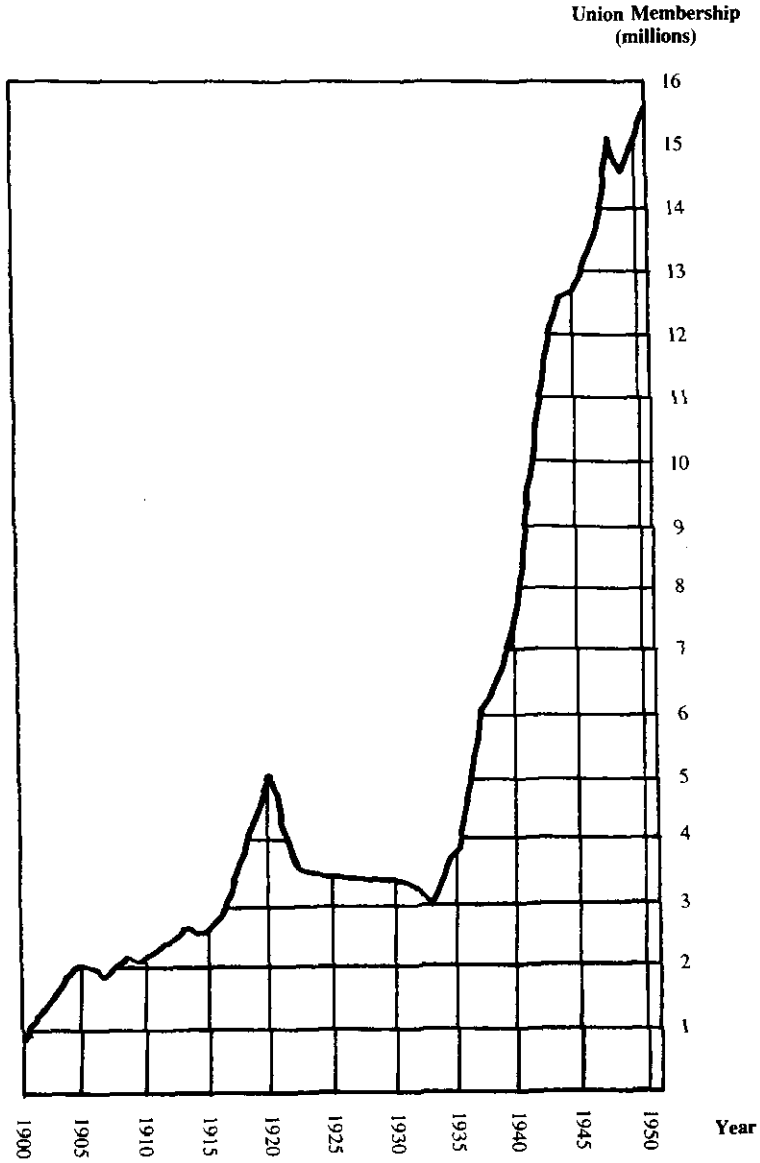
Figure 2 presents the same membership data as a share of the civilian labor force, and the data follow a similar pattern to Figure 1. Between 1933 and 1945, the fraction of the civilian labor force in unions rose four-fold from 5.7 percent to 22.4 percent. The proportion stayed around 25 percent during the 1950's and then gradually receded to its current 20 percent.

Union Revenues, Staff, and Collective Contracts. There are no published estimates of union revenues during the 1930's, but reasonable estimates can be derived. There is substantial anecdotal evidence that a number of labor unions were close to financial collapse in the early 1930's. The 1933 A.F. of L. convention reported that unemployment among members of its affiliated unions rose from 8 percent in 1929 to 25 percent in 1933, and another 20 percent worked part-time. Bernstein reports that the financial position of the United Mine Worker's union was critical and most of the district organizations went under. The Ladies Garment Workers Union was heavily in debt, only skeleton organizations remained in many trades, and contracts were disappearing. Members' earnings in the Typographical Union dropped from \$180 million in 1929 to \$123 million in 1933. Share-the-work devices were used, and employed members were taxed as much as 18 to 20 percent of earnings to pay benefits to unemployed members.⁵⁰

Membership dues are the primary source of prosperity for unionists, although they also collect initiation fees, fines, and assessments. The structure of dues

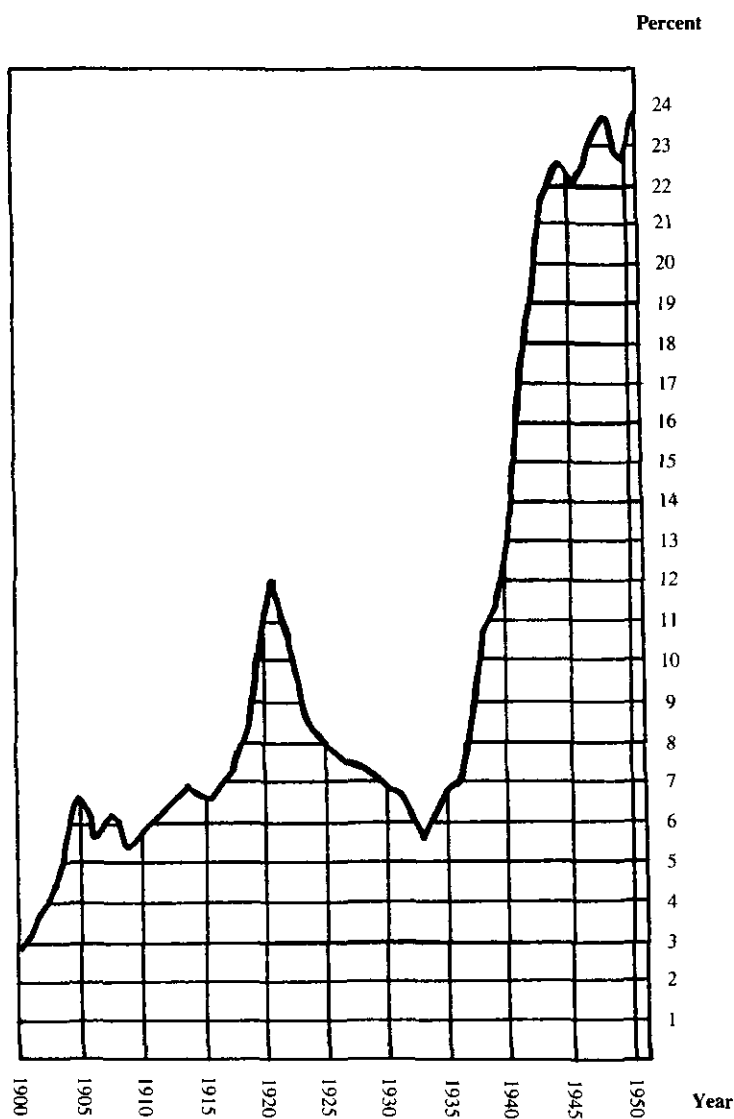
FIGURE 1

Union Membership, 1900–1951, NBER Figures



Figures include Canadian membership. Data source: *Historical Statistics, Colonial Times to 1970*, pp. 176–77.

FIGURE 2

**Union Membership as a Share
of the Civilian Labor Force**

NBER figures; figures prior to 1930 include Canadian membership. Data source: *Historical Statistics, Colonial Times to 1970*, pp. 126-27, 176-77.

varies widely across unions, but one percent of members' earnings is a reasonable estimate of union revenues from dues, that is, between one and two hours of wages per month.⁵¹ Average annual earnings in manufacturing in 1933 were \$1,086. Although many union members certainly enjoyed higher hourly wage rates, in view of heavy unemployment and part-time employment, this is probably an approximate average figure for members' annual earnings. With membership of 3 million and a union tax rate of one percent, union revenue from dues was about \$32 million in 1933, down from \$54 million in 1929. Union membership rose to 7.3 million by 1940 and average annual earnings to \$1,432, which would yield \$104 million in union dues, more than a three-fold increase in the seven-year period from 1933 to 1940. Union revenues tripled again by 1945, rising to \$332 million based on the same calculation, a ten-fold increase in the twelve-year period since 1933.⁵²

The number of full-time paid union officers, staff, and organizers probably increased as membership grew in the 1930's and 1940's, but there are no published estimates. According to Peterson, "In general, the paid organizers and enforcement officers comprise the bulk of the unions' staffs. On average, there is probably one full-time paid representative for each 1,000 members."⁵³ Using this ratio, there were an estimated 3,000 union officials in 1933, 7,300 in 1940, and 13,200 in 1945. The ratio of unionists to members would fluctuate over time and across unions, however. Peterson reported that reduced union funds forced unions to "lay off many of its [sic] organizers" in 1938. She also reported that as members were re-employed, unionists "carried on intensive campaigns to induce former members to resume payment of union dues."⁵⁴

Information about employment in labor unions improved after 1959 because of mandatory reporting under the Landrum-Griffin Act, but there still is no estimate of total employment. Table 3 shows that employment in the national offices of the ten largest unions was 6,800 in 1979. Total membership was over 10 million, or one national staff employee for every 1,600 members. There are 71,000 local unions ranging in size from 5 to 40,000 members, and not all have a full-time union employee, but many do. The Teamsters, for example, reportedly have 7,000 officers and business agents in their 742 locals, far in excess of the 305 employees shown in Table 3 for the national office alone.⁵⁵ A reasonable guess for total employment among union staff and officers in the country is between 30,000 and 40,000, or one staff member for approximately every 800 employees represented by unions.⁵⁶

The Wagner Act "had a simple, unified purpose: it was designed to promote collective bargaining."⁵⁷ Unfortunately there are no published statistics on the number of collective contracts in the United States during the 1930's and 40's, which would be a direct measure of the effect of the Wagner Act. The spread of collective contracts during the 1930's is, however, not in doubt. The Bureau of Labor Statistics reported in 1938, "In less than five years the picture of employer-employee relations has markedly changed. . . . collective bargaining through trade union agreements has grown to the point where it has now become the

TABLE 3

**Membership and National Staff of
Ten Largest Unions, 1979**

	Union Membership^a (thousands)	National Officers and Staff^b	Union Members per Staff Employee^c
Teamsters	1,889	305	6,193
NEA	1,600	553	2,893
Auto Workers	1,358	1,579	860
Steel Workers	1,300	1,630	797
Electrical (IBEW)	924	504	1,833
Machinists*	917	936	980
Carpenters	820	263	3,118
State, County, Municipal	750	417	1,799
Retail Clerks	651	380	1,713
Laborers	650	239	2,720
	<hr/> 10,859	<hr/> 6,806	Avg. = 1,595

Sources: a. Bureau of Labor Statistics, *Directory of National Unions and Employee Associations*, 1977, Bulletin 2044 (December 1979).

b. Excludes officers and staff of local unions. Calculated from U.S. Department of Labor, *Labor Organization Annual Reports*, Form LM-2, filed under the Labor-Management Reporting and Disclosure Act of 1959, as amended.

c. Column 2 divided by column 3.

* Staff data, 1976.

accepted procedure in establishing wages, hours, and working conditions in a considerable part of American industry."⁵⁸ The BLS described the change as "an expansion in collective bargaining unparalleled in the history of the United States."⁵⁹ No complete survey of collective coverage exists, but individual unions claimed new contracts by the score. In 1937, for instance, the Machinists claimed 2,000 new contracts; the Auto Workers claimed all auto manufacturers, except Ford, and 300 auto parts suppliers; the Steel Workers Organizing Committee claimed 431 new contracts; Rubber Workers 100 new contracts; Textile Workers Organizing Committee over 900 new contracts; and the non-operating railroad unions 200 new contracts.⁶⁰ By 1976 there were an estimated 200,000 collective contracts.⁶¹

The number of pages in collective contracts expanded even more rapidly than the number of agreements. As Charles Killingsworth put it, "In one typical relationship, the initial agreement in 1937 was two typewritten pages; the current agreement runs to 186 printed pages plus a separate pension agreement."⁶² The

Labor Relations Reference Manual of 1938 printed nine contracts, which averaged only three pages each.

C. *The Ceteris Paribus Clause*

The expansion of unionism in the 1930's and 1940's is well-known, but was it caused primarily by Norris-LaGuardia and Wagner legislation or were they only contributing factors? More general theories about the growth of union membership suggest a number of other factors, including the degree of "worker discontent," their stock of grievances, the general climate of public opinion, intellectual revulsion against free markets, the business cycle, composition of Congress, percent of industry already unionized, rates of inflation, unemployment, and so forth.⁶³ Although these factors may be important as background, precipitating variables, the permanent gains of unionism can only be attributed to Norris-LaGuardia and Wagner, especially the latter.

The Public Sector. The Wagner Act specifically excluded government employees from its coverage, and there was no spurt in unionism in the public sector comparable to that in the private sector during the 1930's and 1940's. However, since 1960 union membership in the public sector has increased from less than 1 million, mostly in postal unions, to more than 6 million. The unionized percentage increased from 11 to nearly 50 percent, a replay of the experience in the private sector during the Depression and World War II.

The explanation is close at hand. President Kennedy signed Executive Order 10988 in January 1962 to promote unionism in the federal bureaucracy. It was based on the National Labor Relations Act but was less generous, because it prohibited both strikes and compulsory union membership (union shop), established no separate oversight agency similar to the NLRB (the Federal Labor Relations Service was established later), required agreements to conform to civil service regulations, and demanded a statement of management rights in every agreement. The state of Wisconsin had earlier (1959) enacted bargaining legislation to cover employees of local governments, but Kennedy's Executive Order triggered a series of bargaining laws in states like Michigan, New York, Washington, and Pennsylvania, where unions traditionally played a large role in the political process. At last count, only a dozen states, mostly in the South and West, did not have some kind of mandatory bargaining law to promote public sector unions. North Carolina is the only state which has specifically prohibited all public sector bargaining by legislation, although the state Supreme Court in Virginia ruled in 1977 that a public employer cannot be forced to bargain with labor representatives without enabling legislation. Other states have prohibited collective bargaining for some segments of the public sector, especially police and fire protection.

Union lobbyists continue to push for more favorable legislation because the laws vary across states and none, including federal, is as favorable toward unionists as the Wagner Act is. The National Education Association and the American Federation of State, County, and Municipal Employees continue to

pressure Congress for legislation like the Clay bill, which goes beyond the Wagner Act to order every governmental unit in the United States to obey a board, modeled after the NLRB, which would enforce a national bargaining law authorizing a long list of union privileges, including monopoly status for union representatives without secret ballot elections, strikes for public sector employees, and so forth. Constitutionality would be questionable under the general precedent of *National League of Cities v. Usery*,⁶⁴ in which the High Court found that Congress violated the principle of federalism by placing state and municipal government employees under coverage of Fair Labor Standard law. However, the Wagner Act also was widely believed to be unconstitutional until April 1937.

Agriculture. The Wagner Act excluded agriculture from coverage and no burst of unionism occurred. A Southern Tenant Farmers Union formed in July 1934, under the impetus of the Agricultural Adjustment Act, but this labor cartel quickly failed without government machinery to support it. In recent years, however, state boards for labor relations in agriculture were created in California and Arizona, after pressure from Cesar Chavez, his United Farm Workers' Union, and his political allies. There is evidence that the California Board has promoted unionization in agriculture.⁶⁵

Foremen's Union. The short history of the Foreman's Association of America graphically illustrates the importance of NLRB enforcement of unionism. Formed by first-line supervisors at Ford Motor Company in 1941, it quickly grew to a membership of 5,000 and, before its first anniversary, a strike forced Ford to reinstate discharged foremen and sign an agreement. However, in the Maryland Drydock case (1943) the NLRB declared that supervisory personnel were not an appropriate unit for collective bargaining under the NLRA. Ford Motor Company immediately withdrew its recognition of the Foreman's Association. Without certification under NLRA and without the voluntary cooperation of employers in bargaining, the Foreman's Association managed to stay together and stage more than thirty strikes in 1944. Although the National War Labor Board denounced the union and its tactics, it succeeded in gaining some contracts, and Ford signed again in May 1944.

In 1945 the NLRB reversed its previous position in the Packard Motor decision and declared foremen an appropriate bargaining unit. The Foreman's Association grew rapidly to a membership exceeding 28,000, until Taft-Hartley was passed in 1947, and Section 2(3) specifically excluded supervisors from existing bargaining legislation. Employers withdrew recognition from the union, and it disintegrated within a few years.⁶⁶

Plant Guard Workers Union. Automobile plant guards emulated the unionism of automobile workers during the late 1930's. Management put up strong resistance since guards are hired to protect the owners' investment. After considerable indecision, the NLRB, after World War II, ruled favorably on guard locals as an appropriate unit and ordered managements to bargain with them. A series of guard strikes was successful in securing agreements after many unionized production workers honored guard picket lines.

Most plant guard local unions were organized as branches of industrial unions, essentially the UAW, but under Section 9(B)(3) of the Taft-Hartley Act, it became illegal for protective employees to organize in the same unions as production workers. In February 1948 the CIO set up the Plant Guards Organizing Committee, but the NLRB ruled that the new union was indirectly affiliated with production unions in the CIO. The United Plant Guard Workers of America was quickly formed as an independent union, and successfully struck the Briggs Mfg. Company after UAW workers refused to cross picket lines. Today the UPGWA has a membership of some 20,000.⁶⁷

None of this evidence means that unionism would wholly disappear without regulation on its behalf. However, these cases verify the strong correspondence between labor regulations and the success of unionism as well as the form which it has taken.

Despite all the talk and writing which claims that unionization depends on worker resentment, revulsion against capitalism, the rate of inflation, and other economy-wide influences, the *sine qua non* for permanent union gains in the United States has been government intervention. The differential pattern in collectivizing the labor force across industries in the 1930's and 1940's cannot be explained in any other way.

V. Why the Legislation Passed

Every piece of legislation has its unique history, circumstances, and personalities, and these have been described for the Norris-LaGuardia and Wagner Acts.⁶⁸ What has been ignored is an explicit analysis of the beneficiaries of the legislation, including benefits supplied to the academic community.

Individuals invest in legislation if they expect their personal rewards to exceed personal costs.⁶⁹ Rewards can be pecuniary and/or nonpecuniary. Legislation passes if promoters can assemble a majority coalition, which, in turn, depends upon the initial strength of the opposition. In the political market for labor regulation in the 1930's, people from four primary groups maneuvered Norris-LaGuardia and Wagner to passage — unionists, politicians-bureaucrats, academics, and an influential minority of businessmen. Active opposition came from the business community, especially the National Association of Manufacturers, and portions of the legal community. The legislation passed in the 1930's rather than in the 1920's because the cost of voting in its favor had been reduced drastically for Congressmen. Opponents from the business community were discredited by the Great Depression, there was widespread sympathy for unions and the unemployed, and the general urge was to "do something." The Democratic Party rolled up large electoral gains in the 1930, 1932, and 1934 elections, and for all practical purposes opposition from the Republican party was eliminated.

There is a long history of intellectual support of unionism, including some from economists, but mostly from non-economists. These pronunion opinions generally rested on the notion of the helpless individual and never had been widely

shared by American popular opinion before the 1930's. As a result, legislation favored by unionists and their academic supporters, such as anti-injunction bills, got nowhere in Congress, state legislatures, and the courts, despite persistent effort through the 1920's. More ambitious peacetime interventions like the Wagner Act were politically unthinkable prior to the onset of the Great Depression and the precedent-setting NRA. Even in the midst of the depression, the Wagner Act faced significant opposition and was widely believed to be unconstitutional, especially after the Court struck down NRA. Some Senators who voted for the Wagner bill apparently wanted to avoid antagonizing the A.F. of L. at the polls and confidently expected the Court to nullify the Wagner Act. Under pressure of FDR's threat to pack the Court, however, the Act was ratified by a five-to-four vote.⁷⁰ The special nature of political conditions during the 1930's is highlighted by the swing of the political pendulum against additional legislative benefits for unionism beginning in the late 1930's. Many state legislatures began to adopt restrictive measures to control union actions, Congress passed the Hobbs amendment to include labor violence in the Anti-Racketeering Act, and Congress passed Taft-Hartley over a presidential veto only twelve years after the Wagner Act.

Benefits from Norris-LaGuardia and Wagner for unionists in their self-appointed role as public spokesmen for *all labor* are obvious. Section IV of the present essay documents the huge expansion of their labor representation industry produced by legislation. Organized labor agitated for anti-injunction legislation and exemption from antitrust for half a century. The Democratic Party platform had a plank which denounced labor injunctions and supported restrictions on the courts as early as 1896. Edwin Witte described the political efforts of unionists this way: "The virtual partnership of organized labor with the Democratic party continued through the congressional elections of 1910 and the Presidential elections of 1912 and led to the enactment of the Clayton Act in 1914."⁷¹ Not all Democrats were prounion. In House debate Congressman James Beck, a distinguished free-market Democrat and solicitor-general in the Wilson administration, described impending Congressional acceptance of Norris-LaGuardia as a "young lady who, wearied of the importunate solicitations of a suitor, married him to get rid of him."⁷²

Politicians weigh the support to be gained or lost by advancing one cause or another. Politicians who enjoy only marginal support are sensitive to pressure groups like unionists, who are comparatively well-organized with campaign funds, campaign workers, in-kind resources, and members whose votes might be influenced by unionists. These resources can be used for or against candidates. Other politicians are not marginally sensitive to unionists but have discretion to pursue their own ideology on labor affairs or to expand their personal prestige, by promoting particular programs, agencies, new interest groups, budgets, regulations, and interventions. Successful political entrepreneurship involves innovation, the spawning and nourishment of like-minded pressure groups and programs, rather than merely passive response to the votes and money of existing political groups. Although unions seemed to be at their nadir in 1933 as a pressure

group, it is an understatement to say that their growth potential in votes and money was positive, especially for northern Democrats.

The entrepreneurship of Messrs. LaGuardia and Wagner is easily explained. They hailed from New York City. One-half of reported labor injunction cases in state courts were in New York state during the years 1881–1932. New York always has been the leading state in union membership, and has more union members today than the eleven southern states combined, including Florida and Texas. Fiorello LaGuardia worked as an attorney for labor unions, introduced anti-injunction bills in every session of Congress since 1924, had very close Congressional races as a Republican, and in fact was defeated by 1200 votes in the Roosevelt landslide of 1932.⁷³ Senator Wagner has been called the “decisive congressional figure in the formulation of labor policy.”⁷⁴ An eloquent speaker and energetic worker, he was a Tammany Hall loyalist, chairman of the first labor board under NRA, and a strong believer in the purchasing power doctrine of forcing up wage rates to cure the Great Depression. He was narrowly elected to the Senate in 1926 when Republicans split on the wet-dry issue, but was handily re-elected in 1932, 1938, and 1944 by margins of 400,000 votes and more. The Wagner Act, widely believed to be unconstitutional at the time, was a personal triumph for Senator Wagner rather than direct appeasement of well-formulated union demands.

The entrepreneurship of George Norris for unionism is not so easily explained. Nebraska had no substantial union membership, although it should be pointed out that unionists can shift their money and resources across state lines to support or oppose candidates. Norris was a plains states progressive, like Borah and La Follette, who had great latitude to promote his own causes. A *New York Times* editorial of December 1, 1924, claimed that Norris “has a sort of unwritten charter from his State to do what he pleases.” Another *Times* editorial, of November 30, 1930, said he carried Nebraska “in his waistcoat for himself.” Norris was elected to the House in 1904, appointed to the Senate in 1913, and re-elected until defeated in 1942 as an independent candidate at age 81. The personal glory which Senator Norris realized is indicated by the gaudy subtitles of his biographies, which claim that Norris seized on unionism as a cause after being impressed by the harshness of the workingman’s lot during a campaign swing through Pennsylvania.⁷⁵

Governmental labor bureaucrats actively promoted the legislation which subsequently benefited them through formation of larger bureaus, budgets, and interventionist authority. This was particularly true of the NLRB but others also. The U. S. Department of Labor total expenditures were \$13.4 million in fiscal 1933 and expanded to \$28.7 million in fiscal 1940, a slightly larger percentage expansion than occurred in the total U. S. budget. During the same period the number of Commissioners of Conciliation within the Office of the Secretary of Labor went from 38 to 104 positions. Under Taft-Hartley this group became an independent agency, the Federal Mediation and Conciliation Service, which grew to 347 employees by 1960 and 556 by 1978.

Few doubt that unionists are the primary clientele of the U. S. Department of Labor and that the size of the Department depends at least partly on the political effectiveness of unionists. The Department of Labor was founded originally in response to union pressure, as were state departments of labor. Frances Perkins, then U. S. Secretary of Labor, was graphic in closing her address to the 1933 A.F. of L. convention when she asked the delegates to regard the Department of Labor as their own department.⁷⁶ A related pressure group was the International Association of Governmental Labor Officials (IAGLO). At their twenty-third annual meeting in 1937, President A. L. Fletcher, Commissioner of Labor in North Carolina, asserted that the influence of the IAGLO officials was apparent in the nature of the labor legislation introduced into forty-three state legislatures during the year, "as nearly all the principal bills had been sponsored originally by our organization and painstakingly studied, drafted, and redrafted by our committees."⁷⁷

Individuals important in the passage of the Wagner Act either came from the National Labor Board (which preceded the NLRB), like Senator Wagner himself and Calvert Magruder, general counsel of the Board, or else had backgrounds like that of Donald Richberg, an attorney for the railroad unions, co-draftsman of the Norris-LaGuardia Act, and later general counsel of the National Recovery Act. There was no active bureaucratic opposition to labor legislation in the 1930's, with the exception of Frances Perkins, who supported the Wagner bill but wanted the NLRB within the Department of Labor.

Another major group which pushed labor legislation was the academic community. Although labor and law professors may have been motivated primarily by political beliefs about what was best for the nation, the legislation did nothing to *decrease* their personal power and income, either as individuals or as members of an occupational group. Benefits took the form of direct consumption and increased market demand for their services and included drafting and testifying for legislation, jobs for their students, new industrial relations centers under their direction, new journals, more research funds, and consulting income and influence through litigation, mediation, and arbitration.

Four scholars drafted the Norris-LaGuardia Act in addition to Donald Richberg — Felix Frankfurter and Francis Sayre of the Harvard Law School, Herman Oliphant of Columbia, and Edwin Witte of Wisconsin. The four had contributed a great deal to the voluminous anti-injunction literature over the years.⁷⁸ The bill had to be carefully drafted to accomplish its purpose without destroying equity relief in general. In hearings, nearly all academic witnesses testified in favor of the bill, and the same was true with the Wagner bill, although it was drafted by Senator Wagner's office. The American Association for Labor Legislation was organized by Richard Ely (its first president) and other political economists of the American Economic Association (including John R. Commons), as well as prominent business leaders, and was a key pressure group for labor legislation and social security between 1906 and 1945. Closely related at its outset to the National Civic Federation in spirit and practice, the AALL received almost all of its

financing from a few wealthy backers and a handful of foundations. Among those who served on the council of the AALL at one time or another were Louis Brandeis, Bernard Baruch, Gerard Swope of General Electric, John D. Rockefeller, Elbert Gary of U. S. Steel, Anne Morgan (daughter of J. P. Morgan), Mrs. Madeline Astor, Thomas L. Chadbourne (long-time president of the AALL and leading Wall Street lawyer for the Guggenheim and Morgan interests), and other business leaders who supported a more cartelized and centralized economy.⁷⁹

In 1948 Edwin Witte pointed out that John R. Commons had trained many labor economists of the day as well as many top civil servants concerned with labor problems; that members of the American Economic Association listed labor as their major field more frequently than any other area, including economic theory; and that no courses on campuses were more popular than those in labor.⁸⁰ In 1949 N. Arnold Tolles, chairman of the Industrial Relations Research Association committee on teaching, said, "The dominant area of specialization within the social sciences, as taught in American colleges and universities, is now the area of labor problems and industrial relations."⁸¹

The first industrial relations center was the Labor Relations Section founded at Princeton in 1922. It was followed by some thirty additional centers during the 1930's and 1940's. By 1973 *Roberts' Dictionary of Industrial Relations* listed eighty-one such centers. Highly unionized states like Massachusetts, California, Michigan, New York, and Illinois had between five and eight labor relations centers each, while there were only four in the entire South. The announced purpose of the centers is typified by the statement of the center established at the University of Minnesota in 1945, "These [centers] were designed to cope with the pressing problems of management-labor conflict."

To gain an appreciation for the magnitude of the academic expansion in labor relations, consider the associations that grew with unionism. The Industrial Relations Research Association began in 1948 as an offshoot of the American Economic Association with 1,026 members in its first year of operation, expanded to 1,750 by 1952, and currently claims 5,000 members. Another is the American Arbitration Association, founded in 1926 to promote private settlement of business disputes. It launched an Industrial Arbitration Tribunal in 1937 as "an important first step in the development of labor arbitration and to this day the American Arbitration Association plays a large role in this field."⁸² Its panel of labor arbitrators numbered 12,353 persons in 1949 and 26,000 in 1970. One of the ten largest sections of the American Bar Association is its Labor Relations Law Committee, with more than 10,000 members. A small but prestigious group is the National Academy of Arbitrators which was founded in 1947 with a few hundred members and numbered 350 in 1968.⁸³ The Federal Mediation and Conciliation Service lists 1,200 persons on its roster of arbitrators. There are an unknown number of other groups in the field, including the Association of Labor Relations Agencies (ALRA) founded in 1952, and the Society of Professionals in Dispute Resolution founded in 1973.

The arbitration process alone yields a large amount of income to academics in

labor relations, in addition to that from their other services as labor experts. In the 1930's an estimated 8 to 10 percent of collective agreements provided for arbitration as the final step in the grievance procedure, but by 1941 the U.S. Conciliation Service found such clauses in 62 percent of the 1,200 contracts in its files. Currently a standard figure is 96 percent.⁸⁴

A questionnaire in mid-1974 to members of the National Academy of Arbitrators showed that 47.6 percent of respondents were affiliated with universities. The next largest group was practicing lawyers, at 19.5 percent.⁸⁵ Other inventories of arbitrators confirm the preponderance of law, economics, industrial relations, personnel, and business professors, and university officials.⁸⁶ A survey by the Federal Mediation and Conciliation Service in 1978 showed that arbitrators charged an average of 3.09 days per case at \$239 per diem total fees.⁸⁷ No one knows how many arbitration cases are decided in labor disputes each year. One published estimate is at least 20,000 cases in 1960.⁸⁸ The American Arbitration Association reported that a record of 8,655 labor disputes went to arbitration in the first six months of 1980.⁸⁹ These estimates are undoubtedly low because there are an estimated 200,000 collective agreements in the country. If there were one arbitration case per contract per year, there would be \$143 million in income each year for arbitrators at 3 days per case and \$239 per day. Surveys of the National Academy of Arbitration showed that its members averaged 36 arbitration cases in 1952 and 51 in 1969, the latter amounting to 17,500 cases for this small group alone. Two-thirds of members reported waiting lists.⁹⁰

An arbitrator must maintain his acceptability to unionists and managers in order to sustain this source of income; otherwise the parties can settle their differences directly, saving the expense of arbitration, or choose other arbitrators. The situation is analogous to a court system in which each judge derives his income directly from the disputants and who must take their reactions into account in his decisions. Raffaels claims that concepts like "past practice" and "common law of the shop" were introduced so that arbitrators could decide more grievances for unionists.⁹¹ Many employers now have a form of arbitration which they probably never expected to buy. Although arbitrators deny that they are concerned about rendering at least 50 percent of their decisions in favor of union grievances, it is well-known that commercial organizations issue ratings on arbitrators and prospective arbitrators, basically in terms "pro" or "anti" union. These incentives also help to explain the bland nature of the academic literature in industrial relations, where no one is known as "antiunion."

As a point of clarification I should note that my contention is *not* that arbitrators were the crucial interest group behind the Wagner Act who subsequently benefited by institutionalization of the labor conflict system. Arbitrators simply were too few in number and the lag in expansion of the arbitration system too long and uncertain to make this a viable interpretation. My point is similar to that of the Friedmans:

An individual who intends only to serve the public interest by fostering

government intervention is "led by an invisible hand to promote" private interests, "which was no part of his intention."⁹²

Academics did serve as arbitrators and dispute mediators prior to the Wagner Act, and their advocacy of such procedures, perhaps without private financial gain as a motive, fostered a large expansion in the demand for their skills, most of which was eventually supplied by new people. Even if the original proponents of the Wagner Act did not personally profit from the growth spawned by the legislation, their ideological and occupational successors did.

The last group which paved the way for the labor legislation of the 1930's was an important sector of the business community. Although the Wagner Act is often viewed as a complete victory over the business community, this is not quite true because the business community was neither united nor determined in its opposition to unionizing legislation. The lines of influence are impossible to trace precisely. Perhaps the most important figure among those pushing for cartelism was Gerard Swope of General Electric, but he was joined by many others. Many were gathered in the Business Advisory Council of the Commerce Department, including W. Averill Harriman, Thomas W. Lamont of J. P. Morgan & Co., Sidney Weinberg of Goldman, Sachs, Louis E. Kirstein of Filene's and Federated Department Stores, Walter J. Teagle of Standard Oil of New Jersey. In addition there were many others associated with the National Civic Federation and the American Association for Labor Legislation. J. P. Morgan's lawyer, Francis Lynde Stetson captured the general belief among this segment of the business community: "The discontent of the masses . . . is to be allayed not by a policy of stern and unbending toryism, but by flexibility."⁹³ Probably a strong majority of the business community, prominently represented by the National Association of Manufacturers, was adamantly opposed to prounion legislation, yet an increasing number of corporate leaders grew to accept government interference in economic life as a means to solve problems during this century. The precise role of the business community in the passage of the Wagner Act deserves considerably more research, but the general thesis of George Stigler could well serve as a guide:

the larger part of the regulations that businessmen are subjected to must be of their own contriving and acceptance. . . . Most regulatory policies have been sought by producer groups, of whom the business community is the most important and the academic community by no means the least important.⁹⁴

VI. Conclusion

The huge expansion of unionism in the 1930's traditionally has been interpreted as a function of worker discontent, public sympathy for unionism, revulsion against free markets, and, secondarily, enlightened labor legislation. The confusion and despair of the Great Depression dramatically altered prevailing political constraints, and specific individuals with specific ideas seized the resulting political opportunities. This paper argues against the conventional academic assertion that

Norris-LaGuardia and the Wagner Act were government intervention to correct previous market failures, and shows that the sharp increase in the size of the labor representation industry was due to monopoly-producing regulatory legislation. These developments were the result of good intentions, in part, but received major assists from self-interest. Identifiable beneficiaries of the legislation, namely, unionists, politicians, labor bureaucrats, their academic allies, and a minority of businessmen, were largely the same individuals (or their occupational successors) as its supporters. While this observation is consistent with economic theory, it is widely ignored in the literature about the period. Discussion of labor legislation is particularly cluttered with public interest rhetoric. And in view of the available evidence, it is difficult to see why the process of labor legislation should be modeled otherwise than the normal case of intervention on behalf of an industry.

These conclusions do not exclude the possibility that participants in the legislative and regulatory process were well-intentioned. Frequently they were. Some activists had deep convictions. Participants probably had the usual admixture of idealism and narrow self interest. Nor does it mean that political activists had perfect foresight about their prospective gains, any more than market participants do. Nor was there a conspiracy. Legislation always is produced by a relatively small number of people pursuing their own interests. But the mythology of labor legislation apparently is immovable. Taylor and Witney in their textbook, for example, say: "Supporters of the legislation [the Wagner Act] recognized that the modern industrial environment rendered obsolete the concept of individual bargaining as the regulator of industrial relations. Unchecked economic power lodged in a comparatively few corporate giants could lead to some form of despotism. . . . Social legislation was blocked by a Supreme Court which ignored the most obvious facts of economic life."⁹⁵

Today a substantial number of people earn their livelihoods directly from conflicts generated year after year in our system of labor representation. Unionists collect over \$5 billion in dues and fees each year, full-time union officials number more than 30,000 and are paid in excess of \$1.2 billion, there are over 10,000 members of the American Bar Association's Labor Relations Section, more than 5,000 members of the Industrial Relations Research Association, more than 20,000 persons on the labor roster of the American Arbitration Association, almost 3,000 employees of the National Labor Relations Board, and so forth. The redistributive effects of unions exceed \$30 billion each year.⁹⁶ Politicians seeking re-election are subject to the influence of unions, the largest organized political group in terms of both manpower and money. Each bureaucracy seeks to retain and expand its functions. The Federal Mediation and Conciliation Service for instance, whose mandate is to "proffer its services in any labor dispute in any industry affecting commerce . . . whenever in its judgment such dispute threatens to cause a substantial interruption in commerce," has a caseload which includes a retail bakery of six employees and a tile company of eight employees.

European unions never had to spend much effort to organize workers, for they were able to rely instead on class identity for allegiance. Until the 1930's,

American unionists had to organize and use aggressive tactics to establish their organizations because of the diverse opinions of workingmen and employers, and the ultimate willingness of the courts to enforce the law against private coercion. In the 1930's, however, unionists gained more-or-less permanent footholds in the economy based on legislation on their behalf. And the accompanying mediators, conciliators, fact-finders, arbitrators, and "crisis-solving" techniques of the labor representation industry grew in stature and income along with them.

NOTES

1. F. A. Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), p. 267.
2. See, for instance, James A. Gross, *The Reshaping of the National Labor Relations Board* (Albany, N.Y.: State University of New York Press, 1981), and the book review by Morgan Reynolds in *Journal of Economic History* 42 (December 1982): 966-68.
3. W. H. Hutt, *The Strike-Threat System* (New Rochelle, N.Y.: Arlington House, 1973), p. 23.
4. William E. Leuchtenburg, "The New Deal and the Analogue of War," in *Change and Continuity in Twentieth Century America*, ed. John Braeman, Robert H. Bremmer, and Everett Walters (Columbus: Ohio State University Press, 1964), p. 87.
5. The friendship formed between Roosevelt and Frankfurter produced an extraordinary correspondence. Frankfurter's memo to FDR on June 8, 1941, states his version of the common view of labor writers about labor markets: "The day of industrial absolutism is done. All our experience since the industrial revolution demonstrates that employers as a class cannot be relied upon, voluntarily and out of the goodness of their hearts, to give a square deal to unorganized labor; this has been precluded by the pressure of immediate self-interest and the inexorable workings of the competitive system" (Max Freedman, ed., *Roosevelt and Frankfurter: Their Correspondence, 1928-45* [Boston: Atlantic, Little Brown, 1967], p. 604).
6. Leuchtenburg, "The New Deal," pp. 87-90.
7. *Ibid.*, p. 88.
8. See Morgan Reynolds, "Understanding Political Pricing of Labor Services: The Davis-Bacon Act," *Journal of Labor Research* 3 (Summer 1982): 295-309.
9. Section 7(a) was originally interpreted as meaning "proportional" collective bargaining; that is, if a particular union received 55 percent of the votes, it only represented those 55 percent, and so forth, rather than the compulsory majority rule of today. Edwin E. Witte noted that the essential provisions of 7(a) were "but restatements of principles first recognized by the National War Labor Board" ("The Background of the Labor Provisions of the N.I.R.A.," *University of Chicago Law Review* 1 [1934]: 573). For a portrayal of the transition to majority rule, see Kim McQuaid, *Big Business and Presidential Power* (New York: William Morrow, 1982), chap. 1, pp. 39-47. Thanks to Murray Rothbard for this point.
10. Many scholars also argue that the NLRA was a prerequisite to the growth of Big Labor and, ultimately, to the development of the alliance between organized labor and the Democratic Party. See Daniel A. Sipe, "A Moment of the State: The Enactment of the National Labor Relations Act, 1935," (Ph.D. diss., University of Pennsylvania, 1981).
11. Section 2 of the Anti-Injunction Act is noteworthy for its colorful declaration of public policy, borrowed from two sources: Chief Justice Taft's opinion in the American Steel Foundries case and the language of the Railway Labor Act. The public policy statement of the Norris-LaGuardia also served as the forerunner of the policy statement in the Wagner Act. By the turn of the century it was commonplace to write about "the individual unorganized worker who is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor" (Norris-LaGuardia Act, Section 2). "A single employee was helpless in dealing with an employer . . . unable to leave the employ and to resist arbitrary and unfair treatment. . . . Union was essential to give laborers an opportunity to deal on an equality with their employer" (*American Steel Foundries v. Tri-City Cent. Trades Council*, 257 U.S. 184 [1921]).
12. Benjamin Aaron, "The Labor Injunction Reappraised," *UCLA Law Review*, vol. 10:292 (1963), p. 295.

13. For example, see Charles O. Gregory and Harold A. Katz, *Labor and the Law*, 3rd ed. (New York: W. W. Norton & Company, 1979), pp. 174-84; Edwin F. Beal, Edward D. Wickersham, and Philip K. Kienast, *The Practice of Collective Bargaining*, 5th ed. (Homewood, Ill.: R. D. Irwin, 1976), pp. 137-38; Juanita M. Kreps, et al., *Contemporary Labor Economics and Labor Relations*, 2nd ed. (Belmont, Calif.: Wadsworth, 1980), p. 149; Aaron, "The Labor Injunction"; and Lloyd G. Reynolds, *Labor Economics and Labor Relations*, 8th ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1982), pp. 506-507.
14. *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229 (1917). For evidence of similarity in union-nonunion pay, see Albert F. Hinrichs, *The United Mineworkers of America and the Non-Union Coal Fields* (New York: Columbia University, 1923). Also see the evidence from multiple sources that annual wages were twenty percent higher, or more, for unorganized miners than for unionized miners, in *Hitchman Coal & Coke Co. v. Mitchell et al.*, 202 F. 512, 540-42 (1912). For evidence of contemporary superiority of nonunion wages in coal mining, see "Maverick Mine," *Wall Street Journal*, October 23, 1978, p. 1; and "Digging for Dollars," *Wall Street Journal*, November 10, 1978, p. 1.
15. The Federal District Court described the events which had angered the Hitchman employees as follows: "The men did not want to quit work, and tried to get permission from their union officials to continue loading engine coal, for the reason that, if they were not allowed to do so, the Baltimore & Ohio Railroad Company would haul in nonunion coal and have it loaded into their engines from plaintiff's tipples and bins under the terms of plaintiff's contract with the railroad company. . . . The strike was called, coal was hauled from an Ohio union mine with which settlement had been made by the union by the railroad, and loaded on its engines over plaintiff's tipples. . . . This national strike was finally settled in July, 1906, by the adoption of the 1903 [pay] scale, which plaintiff from the start had offered to pay. But in the meantime the Hitchman miners had been promised benefits by the union which were not paid, and they were incensed because the Ohio coal had been allowed to be hauled and loaded on its engines by the railroad over plaintiff's tipples, and because plaintiff *Hitchman's* original proposition to pay the 1903 scale had not been accepted" (*Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229 [1917].) For an extensive treatment of a similar incident, see Sylvester Petro, *The Kingsport Strike* (New Rochelle, N.Y.: Arlington House, 1967).
16. Alvin F. Goldman, *The Supreme Court and Labor-Management Relations Law* (Lexington, Mass.: Lexington Books, D. C. Heath, 1976), pp. 18-19; and Felix Frankfurter and Nathan Greene, *The Labor Injunction* (New York: Macmillan, 1930), pp. 148-49.
17. "Unionizing Employees under Contract Declared Illegal by United States Supreme Court," *Monthly Labor Review* 6 (January 1918): 146-47.
18. *Ibid.*, p. 149.
19. A number of writers classify today's union security provisions compelling union membership and/or dues payment as a condition of continuing employment in the same category as nonunion oaths. For example, Hayek says: "unions should not be permitted to keep non-members out of any employment. This means that closed- and union-shop contracts (including such varieties as the 'maintenance of membership' and 'preferential hiring' clauses) must be treated as contracts in restraint of trade and denied the protection of the law. They differ in no respect from the 'yellow-dog contract' which prohibits the individual worker from joining a union and which is commonly prohibited by the law" (*Constitution of Liberty*, p. 278). Strictly speaking, a yellow-dog contract demands nonunion status only as a condition of continuing in the *same* employment relationship. If nonunion oaths generally were considered as a disadvantage in working conditions and labor markets were competitive, employers would have to pay higher wages in order to compensate workers for insisting on such a disadvantage.

Right-to-work laws are directly related to this issue because they prohibit collective agreements requiring union membership or payment of union dues as a condition of employment. Friedman appears to differ from Hayek in his policy recommendation because Friedman opposes right-to-work laws on the grounds that such laws restrict liberty of contract, that is, the freedom of private parties to agree to union security clauses if they wish. (See Milton Friedman, *Capitalism and Freedom* [Chicago: University of Chicago Press, 1962], pp. 115-17.) Legal versions of the argument are: *Adair v. U.S.*, 208 U.S. 161 (1908) and *Coppage v. Kansas*, 236 U.S. 1 (1915), in which the Supreme Court invalidated federal and state legislation prohibiting nonunion oaths because the legislation denied freedom of contract.

Thomas Haggard makes a libertarian argument for right-to-work laws on somewhat different grounds than Hayek, namely, that collective bargaining agreements are not true contracts in which enforceable promises of something of value are voluntarily exchanged between parties ("Right-to-Work: What Is It? Who Has It?" *Reason*, May 1979, pp. 34-37). According to this view, right-to-work laws properly prevent the state from enforcing unilateral employer promises obtained by coercive methods for which nothing is exchanged in return. Of course, this approach raises the more general question of what provisions, if any, in collective contracts would be enforceable by law. Also see Haggard's *Compulsory Unionism, the NLRB, and the Courts* (Philadelphia: University of Pennsylvania, The Wharton School, 1977).

My view is that as long as there is a reasonably competitive, open market with many employers and potential entrants, they should be free to offer any terms of employment they wish. Similarly, employees should be free to offer (demand) any terms they wish. Employers might require donations to a pension plan, a labor union, the Communist party, a signature on a nonunion oath, and none would interfere with or restrain the freedom of individuals to trade in the labor market. To legally constrain employers from offering particular packages of compensation to employees interferes with freedom. See Morgan Reynolds, "The Free Rider Argument for Compulsory Union Dues," *Journal of Labor Research* 1 (Fall 1980): 295-313.

20. Roscoe Pound, "Legal Immunities of Labor Unions," *Labor Unions and Public Policy* (Washington, D.C.: American Enterprise Association, 1958); reprinted in Reprint No. 1, *Journal of Labor Research*, Fall 1979.
21. *Apex Hosiery v. Leader*, 310 U.S. 469 (1940); *U.S. v. Hutcheson*, 312 U.S. 219 (1941); and *Hunt v. Crumboch*, 325 U.S. 821 (1945).
22. Sylvester Petro, "Injunctions and Labor Disputes: 1880-1932," *Wake Forest Law Review* 14 (June 1978): 341-576; reprinted as Baylor Institute for Labor Policy Research, Reprint No. 1.
23. Archibald Cox and Derek Bok, *Cases and Materials on Labor Law*, 7th ed. (New York: The Foundation Press, 1969), p. 71.
24. Goldman, *The Supreme Court*, p. 7.
25. On June 29, 1886, Congress enacted a law legalizing the incorporation of national trade unions, with "the right to sue and be sued, to implead and be impleaded." The act was passed with the support of organized labor, which believed that it would enhance respectability and end the doctrine of criminal conspiracy which still surrounded unionism. A statement at the A. F. of L. convention in 1886 declared, "The law is not what was desired . . . but it recognizes the principle of the lawful character of trades unions, a principle we have been contending for years." No union made an effort to secure a charter under the law and by 1901 Sam Gompers said at the A. F. of L. convention: "Some years ago the Federal Congress passed a law for the incorporation of our trade unions. Beyond question the advocates of that bill really believed they were doing the organized workers a real service; but at the time, and since, we have repeatedly warned our fellow-unionists to refrain from seeking the so-called protection of that law."

This was the opening round of a concerted effort against incorporation, prompted by the *Taff-Vale* case in England. In this case, a railroad had sued unionists for damages of \$150,000 which it claimed to have suffered during a strike. The House of Lords held that a *registered* trade union was subject to civil suits for damages, was collectively responsible for the acts of its officers as individuals, and its funds could be attached to satisfy claims. The decision was instrumental in producing the 1906 Trades Disputes Act, which provided complete immunity from torts and ordinary contract law for unionists. It was a vote-catching expediency by men in the Liberal Party, who nevertheless failed to forestall the formation of the Labor Party and the gradual demise of their own party.

In America a political movement sprang up to make incorporation of trade unions mandatory. In April 1903, for instance, a member of the National Civic Federation said: "When the suggestion is made to the average labor leader that such incorporation ought to be enforced, we at once meet with the answer that it would be fatal to their methods, which is an open confession that their methods are illegal and wrong." The episode ended when Senator Sheppard of Texas submitted a bill, which later became Public Act 306, to repeal the incorporation act of 1886, and it passed both Houses without discussion on July 22, 1932. (See "Historical Review of Trade-Union Incorporation," *Monthly Labor Review*, January 1935, pp. 38-43, the source for quotations used in this note.)

26. Edwin E. Witte, *The Government in Labor Disputes* (New York: McGraw-Hill, 1932), p. 84; reprinted by Arno, 1969. Frankfurter and Greene report the earliest injunction in "the early 1880's" (*The Labor Injunction*, p. 21). James M. Landis and M. Manoff say that American Labor injunctions "date back to the Railway strike of 1877," when Judge Drummond, Circuit Judge for the Seventh Circuit, found strikers guilty of contempt for interfering with the general orders of the court directing the receivers of the railroads to operate their trains (*Cases on Labor Law*, 2nd ed. [Chicago: The Foundation Press, 1942], pp. 39-40 [citations omitted]).
27. Irving Bernstein, *The Lean Years: A History of the American Workers, 1920-1933* (Boston: Houghton Mifflin, 1960), p. 400.
28. Petro, "Injunctions and Labor Disputes," fn. 22.
29. *Union Pac. Ry. v. Reuf*, 120 F. 102, 120-21 (C.C.C. Neb., 1902), cited by Petro, "Injunctions and Labor Disputes," p. 373. Literature on union violence includes: Graham Adams, *Age of Industrial Violence: 1910-1915* (New York: Columbia University Press, 1966); Hugh D. Graham and Ted R. Gurr, *Violence in America*, rev. ed. (Beverly Hills, Calif.: Sage Publications, 1979); as well as several articles by Charles Stevenson: "The Tyranny of Terrorism in the Building Trades," *Reader's Digest*, June 1973, pp. 89-94; "The Construction Unions Declare War," *Reader's Digest*, July 1973, pp. 79-83; "Labor Violence — A National Scandal," *Reader's Digest*, August 1973, pp. 153-58; and "Yes, Construction Terrorism Is Real," *Reader's Digest*, December 1973, pp. 85-89. Periodicals frequently report incidents of violence and vandalism in labor disputes. For instance: an AP wirephoto in the *Houston Chronicle* (July 22, 1982, p. 1) shows strikers pelting a car with bricks and rocks at the Iowa Beef Processing plant at Dakota City, Nebraska; *Time* (September 28, 1981, p. 16) shows union miners demolishing a fence at Kerr-McGee's nonunion mine in Galatia, Illinois; and a government informant alleged that the Hotel Employees' and Restaurant Employees' Union paid him to bomb two Tahoe, Nevada, casinos during labor disputes (*Wall Street Journal*, September 29, 1982, p. 50). Also see Randolph Boehm, *Organized Crime and Organized Labor* (Washington, D.C.: Foundation for the Advancement of the Public Trust, 1975), and the newly published *Union Violence: The Record and the Response by Courts, Legislatures, and the NLRB*, by Armand J. Thieblot, Jr. and Thomas R. Haggard (Philadelphia, Pa.: Industrial Research Unit, Wharton School, University of Pennsylvania, 1983), for more on this neglected topic.
30. Of 524 reported cases of labor injunction in federal and state courts from 1880 to 1932, unions sought to enjoin employers' actions in 33 and gained a partial injunction in only one case. By comparison, unions sought to enjoin tactics by other *unionists* in 26 cases, nearly as many as they sought to enjoin employers. (Petro, "Injunctions and Labor Disputes," p. 388 and Appendix I.)
31. Henry George, "The Condition of Labor: An Open Letter to Pope Leo XIII," *The Land Question* (1891; New York: Robert Schalkenbach Foundation, 1982), p. 77.
32. U. S. Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970*, pt. 1, p. 1710.
33. Witte, *The Government in Labor Disputes*, p. 84.
34. *Monthly Labor Review* 102 (September 1979): 59.
35. *IBEW v. Fouts*, US 60 L Ed 2d 698 (1979).
36. See John E. Abodeely, *The NLRB and the Appropriate Bargaining Unit* (Philadelphia: University of Pennsylvania Press, 1971); Robert E. Williams, Peter A. Janus, Kenneth C. Huhn, *NLRB Regulation of Election Conduct* (Philadelphia: University of Pennsylvania Press, 1974); A. R. McFarland and W. S. Bishop, *Union Authorization Cards and the NLRB* (Philadelphia: University of Pennsylvania Press, 1969); and W. N. Coke and F. H. Gantschi III, "Political Bias in NLRB Unfair Labor Practice Decisions," *Industrial and Labor Relations Review* 35 (July 1982): 539-49.
37. President Roosevelt named George N. Peek to head the new Agricultural Adjustment Administration in 1933, "a hard bitten farm-belt agitator who had served as 'a sort of generalissimo of industry' under the War Industries Board." (See Leuchtenburg, "The New Deal," pp. 112-13, fn. 3.)
38. John E. Kwoka, "Pricing under Federal Milk Market Regulation," *Economic Inquiry* 15 (July 1977): 357-84.
39. *Ford Motor v. NLRB*, US 60 L Ed 2d 420 (1979). The quote was taken from the *Monthly Labor Review* 102 (September 1979): 58.
40. A few exceptions occur in sports, entertainment, and higher education, in which some collective

contracts specify only wage floors, above which individuals can negotiate (the so-called "star system"). Thanks to Dan Heldman for this point.

41. NLRB, *Legislative History of the National Labor Relations Act* (Washington, D.C.: U.S. Government Printing Office, 1949), vol. 1, pp. 1531, 1570-71, 1574-76.
42. The cases are: *Senn v. Tile Layers' Protective Union*, 301 U.S. 468 (1937); *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323 (1938); *New Negro Alliance v. Sanitary Grocery Co., Inc.*, 303 U.S. 552 (1938); and *Milk Wagon Drivers' Union v. Lake Valley Farm Products*, 311 U.S. 91 (1940).
43. Litigation continues to test the outer limits of the exemption. Some labor organizations fail to qualify for the labor union exemption because members do not have an "employment relationship" with an enterprise, e.g., truckers, painters, or fishermen who attempt to fix product prices rather than hourly wage rates. In *Connell Construction Co. v. Plumbers Local 100*, 421 U.S. 616 (1975), the Supreme Court by a five-to-four vote found the union in violation of the Sherman Act after its picket forced a general contractor, Connell, to subcontract mechanical work to firms with bargaining agreements with the union.
44. An important exception is the Supreme Court's opinion in *Boys Markets, Inc. v. Retail Clerks Local 770*, 398 U.S. 235 (1970) that federal district courts can enjoin strikes which violate the no-strike clause in a union contract when the contract provides for binding arbitration of the dispute over which the strike was called.
45. See Benjamin Aaron, "Labor Injunctions in the State Courts," *Virginia Law Review* 50 (November 1964): 1147-64; John R. Commons and John B. Andrews, *Principles of Labor Legislation*, 4th rev. ed. (1936; reprinted by Augustus M. Kelly, 1967), pp. 415-17.
46. The similarity between labor and agricultural cartels is highlighted by Wisconsin, which enacted a union anti-injunction act in 1929. Bernstein says the act was maneuvered through the legislature by adding a provision that contracts obligating farmers not to join cooperative associations — another kind of yellow-dog contract — would be unenforceable (*The Lean Years*, p. 395). For more on state labor law, see: Charles C. Killingsworth, *State Labor Relations Acts* (Chicago: University of Chicago Press, 1952); and Sanford Cohen, *State Labor Legislation, 1937-1947* (Columbus: Ohio State University, 1948).
47. See, for instance, John E. Abodeely, "Injunctive Powers under the National Labor Relations Act," in *Collective Bargaining: Survival in the 70's?* ed. Richard L. Rowan (Philadelphia: Wharton School, University of Pennsylvania Press, 1972), pp. 106-26.
48. NLRB, *Annual Report* (1979), p. 1.
49. The executive council of the A. F. of L. in its report at the 1937 convention declared that as a consequence of the "impetus to growth, which followed directly upon the decision of the United States Supreme Court upholding the constitutionality of the Wagner Labor Relations Act, the A. F. of L. and its constituent national and international unions had gained nearly a million members" (*Monthly Labor Review*, December 1937, p. 1427).
50. Bernstein, *The Lean Years*, pp. 15-17; and Philip D. Bradley, "Involuntary Participation in Unionism," in Reprint No. 1, *Journal of Labor Research*, Fall 1979, pp. 28-32.
51. Charles W. Hickman, "Labor Organizations' Fees and Dues," *Monthly Labor Review* 100 (May 1977): 19-24; Florence Peterson, *Handbook of Labor Unions* (Washington, D.C.: American Council on Public Affairs, 1944); and Florence Peterson, *American Labor Unions* (New York: Harper & Brothers, 1945 and 1952).
52. Florence Peterson, then Director of Industrial Relations in the Bureau of Labor Statistics, wrote in 1945 that "the total amount of money which passes in and out of all union treasuries currently amounts to several hundred million dollars a year (*American Labor Unions*, p. 113), probably a substantial underestimate. J. B. S. Hardman calculated total income for unions at \$400 million per year during the late 1940's. He also cited a \$400 million figure published in *Life* magazine in 1948 and official estimates of \$390 million in 1943 and \$478 million in 1946 published by the Bureau of Internal Revenue. (Hardman, " 'Dollar Worth' of the Unions," in J. B. S. Hardman and Maurice F. Neufeld, eds., *The House of Labor* [New York: Prentice-Hall, 1951], p. 411.) Also see Philip Taft, "Dues and Initiation Fees in Labor Unions," *Quarterly Journal of Economics* 60 (February 1946): 219-41.
53. Peterson, *Handbook of Labor Unions*, p. 104.
54. Florence Peterson, "Industrial Relations in 1938," *Monthly Labor Review*, March 1939, p. 493.
55. Steven Brill, *The Teamsters* (New York: Harper & Row, 1978), p. 13.

56. National unions and employee associations numbered 210 in 1976 and their collective bargaining coverage was estimated at 26.8 million members and nonmembers, in Bureau of Labor Statistics, *Directory of National Unions and Employee Associations*, 1977, Bulletin 2044, December 1979, pp. 58, 78.
57. *Guidebook to Labor Relations*, 1980, 19th ed. (Chicago: Commerce Clearing House, 1979), p. 9.
58. *Labor Relations Reference Manual*, vol. 1-A (Washington, D.C.: Bureau of National Affairs, Inc., 1938), pp. 818-38.
59. *Ibid.*, p. 780.
60. *Ibid.*, p. 780-81.
61. Bureau of Labor Statistics, *Directory of National Unions and Employee Associations*, 1977, Bulletin 2044, December 1979.
62. Charles C. Killingsworth, "Arbitration Then and Now," *Labor Arbitration at the Quarter-Century Mark* (Washington, D.C.: Bureau of National Affairs, 1973), pp. 21-22.
63. Orley Ashenfelter and John H. Pencavel, "American Trade Union Growth: 1900-1960," *Quarterly Journal of Economics* 83 (August 1969): 434-48.
64. *National League of Cities v. Usery*, 97 S. Ct. 2465 (1976).
65. Rex Cottle, Hugh Macaulay, and Bruce Yandle, *Labor and Property Rights in California Agriculture* (College Station, Tex.: Texas A & M University Press, 1982); Patty Newman, "Who's Bankrolling the UFW?" *Reason*, November 1979, pp. 18-29; and Erik Larson, "Internal Strains Split UFW," *Wall Street Journal*, May 17, 1982, p. 33.
66. J. Carl Cabe, *Foremen's Unions: A New Development in Industrial Relations* (Urbana: University of Illinois Press, 1947); and Charles P. Larrowe, "A Meteor on the Industrial Relations Horizon: The Foreman's Association of America," *Labor History* 2 (Fall 1961): 259-94.
67. Gary M. Fink, ed., *Labor Unions* (Westport, Conn.: Greenwood Press, 1977), pp. 283-85.
68. See Witte, *The Government in Labor Disputes*, pp. 66, 265-84; Bernstein, *The Lean Years*, chap. 11; Paul F. Brissenden, "Campaign Against the Labor Injunction," *American Economic Review* 23 (March 1933): 42-54; Robert F. Koretz, ed., *Statutory History of the United States: Labor Organizations* (New York: Chelsea House Publishers, 1970); Arthur M. Schlesinger, Jr., *The Coming of the New Deal* (Boston: Houghton Mifflin, 1958), chaps. 23-25; James A. Gross, *The Making of the National Labor Relations Board* (Albany, N.Y.: State University of New York Press, 1974); Richard C. Cortner, *The Wagner Act Cases* (Knoxville: University of Tennessee Press, 1964); Philip Ross, *The Government as a Source of Union Power* (Providence, R.I.: Brown University Press, 1963); Irving Bernstein, *The New Deal Collective Bargaining Policy* (Berkeley: University of California Press, 1950); and the references in Gross, *The Reshaping*, p. 268.
69. George Stigler ("The Economic Theory of Regulation," *Bell Journal of Economics and Management Science* 2 [Spring 1971]: 3-21) and Sam Peltzman ("Toward a Theory of Government Regulation," *Journal of Law and Economics* 19 [August 1976]: 211-40) develop the interest-group explanation of politics; Joseph Reid ("Understanding Political Events in the New Economic History," *Journal of Economic History* 37 [June 1977]: 302-28) supports the argument that politicians can and do pursue their own ideology; and James B. Kau and Paul H. Rubin ("The Impact of Labor Unions on the Passage of Economic Legislation," *Journal of Labor Research* 2 [Spring 1981]: 133-45; and "Self Interest, Ideology, and Logrolling in Congressional Voting," *Journal of Law and Economics* 22 [October 1979]: 365-84) provide empirical analysis of the politics of labor unions.
70. *NLRB v. Jones and Laughlin Steel*, 301 U.S. 1 (1937).
71. Witte, *The Government in Labor Disputes*, p. 266.
72. Koretz, *Statutory History*, pp. 240-41.
73. See William Manners, *Patience and Fortitude: A Biography of Fiorello LaGuardia* (New York: Harcourt, Brace, Jovanovich, 1976); Fiorello H. LaGuardia, *The Making of an Insurgent: An Autobiography* (New York: Capricorn Books, 1961); Arthur Mann, *LaGuardia, A Fighter Against His Times, 1882-1933* (Chicago: University of Chicago Press, 1969); Howard Zinn, *LaGuardia in Congress* (Ithaca, N.Y.: Cornell University Press, 1959); and *Guide to U.S. Elections* (Washington, D.C.: Congressional Quarterly, 1975).
74. Bernstein, *The Lean Years*, p. 262.
75. See Norman L. Zucker, *George W. Norris, Gentle Knight of American Democracy* (Urbana: University of Illinois Press, 1966); Richard L. Newberger and Stephen B. Kahn, *Integrity: The*

- Life of George W. Norris* (New York: Vanguard Press, 1937); Richard Lowitt, *George W. Norris: The Making of a Progressive* (Syracuse, N.Y.: Syracuse University Press, 1963), *The Persistence of a Progressive, 1913-1933* (Urbana: University of Illinois Press, 1971), and *The Triumph of a Progressive* (Urbana: University of Illinois Press, 1978); and George W. Norris, *Fighting Liberal* (New York: Macmillan, 1945).
76. *Monthly Labor Review*, November 1933, p. 1121.
 77. *Monthly Labor Review*, October 1937, p. 875.
 78. For example, see the twenty-page bibliography assembled in "Injunctions in Labor Disputes: Select List of Recent References," *Monthly Labor Review*, September 1928, pp. 631-50; or articles in the *American Labor Legislation Review* from vol. 12 (1922) to vol. 20 (1930).
 79. See G. William Domhoff, *The Higher Circles* (New York: Random House, 1970), chap. 6.
 80. Edwin E. Witte, "IRRA Presidential Address," *Industrial Relations Research Association, Proceedings of First Annual Meeting*, December 29-30, 1948, pp. 6-20. Witte also noted the burgeoning literature in industrial relations and remarked, "But I protest against the use made of some of the recent studies by people who have an axe to grind."
 81. *Industrial Relations Research Association, Proceedings of the Second Annual Meeting*, December 30, 1949.
 82. Edwin E. Witte, *Historical Survey of Labor Arbitration* (Philadelphia: Wharton School, University of Pennsylvania Press, 1952), p. 51.
 83. *A Dictionary of Arbitration and Its Terms*, ed. Katherine Seide, (Dobbs Ferry, N.Y.: Oceana Publications, 1970), p. 154.
 84. See R. W. Fleming, *The Labor Arbitration Process* (Urbana: University of Illinois Press, 1965), p. 13; and Walter E. Baer, *The Labor Arbitration Guide* (Homewood, Ill.: Dow-Jones-Irwin, 1974), p. 12. The Bureau of Labor Statistics reports that 98.8 percent of contracts have grievance clauses and 96.1 percent have arbitration clauses (*Characteristics of Major Collective Bargaining Agreements*, Bulletin 1957 [1977], p. 94).
 85. *Labor Relations Yearbook* (Chicago: Commerce Clearing House, 1980), p. 347.
 86. Paul R. Hays, *Labor Arbitration: A Dissenting View* (New Haven: Yale University Press, 1966), pp. 53-54.
 87. Federal Mediation and Conciliation Service, *31st Annual Report*, FY 1978, p. 43.
 88. Paul M. Herzog and Morris Stone, "Voluntary Labor Arbitration in the United States," *International Labor Review* 82 (October 1960): 301-26.
 89. *Wall Street Journal*, July 29, 1980, p. 1.
 90. Killingsworth, "Arbitration Then and Now." Killingsworth reported a revealing anecdote about the original meeting of the National Academy of Arbitrators in 1947: "There was a photographer on hand to take pictures of a group of leading lights, and when the photographer said, 'smile', say 'cheese', a wag in the group said 'No, you must realize you are dealing with arbitrators. You should say 'Fees' " (ibid., p. 29).
 91. J. A. Raffaels, "Needed: A Fourth Party in Industrial Relations," *Labor Law Journal* 13 (March 1962): 230-44.
 92. Milton and Rose Friedman, *Free to Choose* (New York: Harcourt, Brace, Jovanovich, 1979), p. xix.
 93. Domhoff, *The Higher Circles*, p. 219.
 94. George Stigler, "Is American Capitalism at High Noon?" *Competition* 3 (November/December 1982): 3-4.
 95. Benjamin J. Taylor and Fred Witney, *Labor Relations Law*, 2nd ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1975), pp. 157, 580.
 96. See Reynolds, "The Free Rider Argument." See also Dan C. Heldman, *American Labor Unions: Political Values and Financial Structure* (Washington, D.C.: Council on American Affairs, 1977); and Dan C. Heldman, James T. Bennett, and Manuel H. Johnson, *Deregulating Labor Relations* (Dallas, Tex.: The Fisher Institute, 1981).