Rule of Law in Labor Relations, 1898-1940

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When people talk about good government and successful societies, particularly economies, the often talk about "Rule of Law" as an important component. Yet, the definition of rule of law has always been somewhat hazy to me. When I teach about effective rule of law I often talk about enforcement of property rights and individual freedom and ex ante expectations that the courts will arbitrate disputes in an unbiased manner. When starting to write this paper, I decided that was an inadequate definition, so I will use the definition from the American Bar Association's World Justice Project. The project claims four universal principles of the rule of law.

> 1) Accountability: The government as well as private actors are accountable under the law. 2) Just Laws: The laws are clear, publicized, stable, and just, are applied evenly, and protect fundamental rights, including the security of persons and property and certain core human rights. 3) Open Government: The processes by which the laws are enacted, administered, and enforced are accessible, fair, and efficient. 4) Accessible and Impartial Dispute Resolutions: Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve. (https://worldjusticeproject.org/about-us/overview/what-rule-law downloaded on March 21, 2018).

My goal in this paper is to examine labor regulations to see how well they fit this definition of the rule of law. The first half deals with the worker-employer relationship as implicit contracts in which some of the parameters of the contracts are determined by labor regulations. Most of the prescriptive regulations appear to be targeted at safety issues, and the courts appear to have supported them as constitutional. The controversial regulations were

hours maximums and wage minimums. With respect to hours and wage limits, the judges' decisions identified tensions between the freedom to contract and the protection of health and safety of workers. Where the judges drew the line on which regulations were constitutional or not often was determined by their beliefs about the workers' outside options when negotiating with employers and how much health and safety was affected by hours and wages. I admit that I am not sure if the first half really deals with violations of the ABA definition of rule of law. The areas where it might include stability of the laws and also the words "just" and "fair" in the ABA definition. A large number of judges ruled on these issues and the constitutionality of the wage and hours restrictions appeared to be in flux as various state laws were addressed by the courts over four decades. On the Supreme Court there was quite a bit of turnover and many of the decisions in this area were close. As a result, the states continued to pass new laws and apparently enforce older laws even when the most recent Supreme Court rulings seemed to have implied they were unconstitutional. The instability likely imposed costs on employers and workers while the states, judges, and federal government tried to work out the rules on these issues. Some of that instability probably contributed to the problems addressed in the second half of the paper.

There were clear violations of the rule of law, a significant number of violent ones, in the regulations and issues in the second half of the paper, which deals with collective bargaining. The issues centered on the balance between freedom to contract and freedom of association. The employer/worker implicit contract allowed each side to terminate the relationship "at will." Employers were not required to bargain collectively with groups of workers or unions. The courts typically ruled that employers could require workers to sign nonunion pledges, "yellow dog contracts" in union parlance, as a condition of employment and fire workers who joined

unions. Many workers, particularly those who had succeeded in getting employers to bargain collectively, considered these laws unjust and sought to organize non-union areas. A significant number of employers resisted, and a number of the disputes turned heated with petty acts of violence and damage. Some turned into violent conflagrations that led governors to call out the state militia and even the President to call out federal troops to control the area until an agreement could be reached. The states passed roughly 20-25 categories of laws to try to set up rules to keep the labor disputes calm, some were clearly anti-union and others clearly pro-union. The rulings about the nonunion pledges did fluctuate. During World War I, the War Labor Board supported collective bargaining and did not recognize the nonunion pledges. They did not leave behind any legacy of rules and violence exploded during the disputes that developed when employers demanded to return to the pre-War setting. Union strength waned through 1932, even though some courts began to rule against the nonunion pledges. New legislation in 1932 and 1933 explicitly recognized collective bargaining and banned the nonunion pledges but failed to establish consistent processes and strike activity and violence escalated again. The passage of the National Labor Relations Act of 1935 more clearly established the rules, but there was uncertainty about how the Supreme Court would rule on its constitutionality. The turmoil continued, including the famous sit-down strikes, until the court rule it constitutional in spring 1937. A new round of union recognition strikes more firmly established collective bargaining. The shift toward collective bargaining appears to have enhanced the rule of law by mostly eliminating the types of bloody conflagrations in labor disputes that occurred between the Civil War and World War II. The disputes still occasionally engender petty violence and damage, but the disputes rarely escalate to the levels seen in that earlier period.

I need to apologize for this unwieldy draft of this paper. The first half has both a short version that summarizes the argument and a longer version that provides the detail that supports it. I have not yet had time to streamline them.

I. Shifting Restrictions for Labor Contracts: The Short Version

Even in what we consider a stable legal environment there can be uncertainty about the specific types of laws. Circa 1900 the relationship between worker and employer was an "at will contract" in which both sides could end the agreement. Since most of these "contracts" were unwritten as each worker had continuous negotiations with the employer about wages, hours, and working conditions. Nearly all workplace regulation with an exception for railroad workers on inter-state trains were set by state governments. State laws regulating the relationships typically passed constitutional muster if they related to safety and health conditions in the workplace because these areas were considered to fit within the police power of the state government.

There was significant uncertainty about the survival and thus enforceability of laws that set maximum hours, minimum wages, and dealt with workers signing non-union pledges. This uncertainty came from the back and forth of rulings by state courts and ultimately the U.S. Supreme Court. The possibility that interpretations might shift was heightened by the roughly even division of the Justices' attitudes in the high court. The "freedom of contract" Justices (FC Justices) believed that employers and workers both had bargaining power. In economic turns they seem to believe that the worker was mobile and had a choice of employers and could use his outside options effectively to negotiate terms. The "Health and Safety Justices (HS Justices) agreed that freedom of contract was important but believed that workers had few options and employers had such an advantage in bargaining that workers needed regulatory protection or collective bargaining to protect them from accepting wages that were too low and hours that

were too long to be healthy. These views drew increasing strength in the 1930s as the Great Depression deepened.

In hindsight the path of Supreme Court decisions seems clearer than it must have seemed to contemporaries between 1898 and 1940. The most famous early decision was *Lochner v. New York* in 1905 in which the court voted 5-4 to strike down a maximum hours law for bakers to preserve freedom of contract. A key issue in the decision was whether long hours were a safety issue for the bakers and for the public. Although the majority said no in *Lochner* the Court supported hours maximums in other industries in 1898, 1905, and 1917 in settings where the FC Justices agreed that long hours were unsafe. All of the Justices agreed in 1908 in *Muller v. Oregon* that long hours were unsafe for women and their production of children and thus maximum hours for women could be set by the states.

Although six Justices had been replaced after the 2008 *Muller* decision, the court reaffirmed the women's hours maximums in a series of cases in 1914 and 1915. The newly constructed court also included 6 votes in cases in 1915 and 1917 that struck down state regulations blocking the right of workers to sign contracts that they would not join a union. This reaffirmed a 6 vote majority in a 1908 decision that blocked a federal law that prevented railroads from firing of union workers.

The next major issue in the 1910s was minimum wages for women, and the FC and HS Justices disagreed about the impact of wages on health and safety. These disagreements led to a pair of close decisions (6-3 and 5-4) in 1917 that allowed hours limits and requirements of overtime pay for men and women in dangerous work. Further, the initial decision on a women's minimum wage law affirmed the state court's support for the minimum in a split decision with new HS Judge Louis Brandeis recusing himself because he had represented the state in the lower

court decisions. When the women's minimum wage came up again in 1923 in *Adkins v. Children's Hospital,* the regulation was struck down in a 5-3 decision with Brandeis again recusing himself. The majority argued that the minimum wage had a much more indirect effect on the health and safety of women than the maximum hours laws.

After 1923 it might have seemed settled that laws limiting women's hours in general and men's hours in dangerous jobs were constitutional but that hours maximums for most males and minimum wages for men and women were not. Contemporary interest groups and state legislators and governors, however, had seen a series of decisions on each law that had switched back and forth as they move up through the courts. At the Supreme Court level the votes had often been close, and there was turnover on the court. Eight Justices had been appointed after 1920, and three of those had resigned by 1932. Only five of the Judges from the 1923 court that had decided *Adkins* were still on the court in 1933 and they were split. Seeing this history, one can imagine that interest groups on both sides of the issues would be pressuring state governments to pass or oppose new laws. In her dissertation Rebecca Holmes (2003) compiled information on over 130 state labor laws from bulletins put out by the U.S. Department of Labor every few years and then filled in the gaps using the statutes from each state. Her sense and mine from reading the bulletins is that the laws they listed were the ones being enforced in those states. Even after Supreme Court decisions that seemed to strike down laws, a number of the states were still reporting them, and states were passing new versions of the laws that they thought might pass constitutional muster. The 1937 *West Coast Hotels v. Parrish* decision that affirmed the constitutionality of the women's minimum law addressed a Washington law that had been passed in 1913, ten years before the *Adkins* decision had ostensibly determined a minimum wage was unconstitutional.

In response to the Great Depression, states were passing new labor laws, Hoover had signed a new federal law that supported collective bargaining, and the New Deal introduced the National Recovery Administration (NRA), in which industry leaders negotiated wage, hours, and price agreements on codes that had the force of law. In 1933 the FC Justices were Willis Van Devanter, James McReynolds, George Sutherland, and Pierce Butler, while the HS Justices were Louis Brandeis, Harlan Fiske Stone, Benjamin Cardozo, and Chief Justice Charles Evan Hughes. Owen Roberts seems to have been an HS Justice who sometimes sided with the FC Justices in minimum wage cases. All nine judges struck down the NRA codes as an unconstitutional delegation of Congress' regulatory powers. They disagreed, however, on freedom of contract issues, particularly where to draw the line on health and safety issues. In the final analysis Owen Roberts joined the HS Justices in supporting minimum wages on the grounds that wages that were too low created a health and safety risk. When the Court supported the constitutionality of the Fair Labor Standards Act of 1938 that limited hours and set minimum wages and rules for overtime pay for all involved in interstate commerce, the uncertainty surrounding the issue was largely settled.

II Shifting Restrictions for Contracting: Once Again with Details

The goal of the detailed analysis is to go into more depth on which types of regulations set parameters for the worker-employer relationship. State governments were the primary regulators of labor markets until the 1930s. Even with the expansion of federal regulation, they still play a major role today. There was substantial variation in state regulations, which meant that companies that spanned multiple states often faced different regulatory regimes. Another goal is to provide more detail on the arguments made by the FC and HS Justices and to show

how they evolved over the period from 1898 through 1937. Tables 1 and 2 show the changes in the composition of the Supreme Court and how the Justices voted in major cases. Appendix Table 1 shows the evolution of the laws listed by the BLS over time, as well as

II.1 What Were the Rules and How Did They Vary Across States?

In 1900 except for union contracts, the relationship between worker and employer typically involved an unwritten "at will" contract that allowed either side to terminate the relationship at any time. The states and the common law were the primary regulator of these relationships and set rulings or enacted laws that set restrictions on the contracts. For example, they set the parameters for how workers would be compensated when the worker was injured at work. Over the course of the 19th century the common law evolved to a position that called for the employer to compensate injured workers for damages from workplace accidents when the accident was caused by employer negligence, as long as the employer could not invoke one of three defenses. The employer did not have to compensate the injured worker : assumption of risk when the worker had agreed to assume the risk (assumption of risk), when a fellow worker had caused the accident (fellow-servant), or when the worker's own actions had contributed to causing the accident (contributory negligence). By 1900, however, 30 states had enacted laws that eliminated at least one of the defenses for workers in general and another 24 had done so for railroads or street railroads. By 1908 25 states prevented employers from signing contracts that waived suits for negligence damages prior to the accident occurring, often after a number of court decisions had struck them down. Richard Epstein (GA Law Review) described these contracts as private ways of structuring the equivalent of workers' compensation contracts. Between 1911 and 1940, every state except Mississippi had enacted a workers' compensation

law that required employers to cover medical costs and up to two-thirds of wage losses for all workers injured in accidents arising out of or in the course of employment.

Most of the state regulations dealt specifically with safety or health in the workplace. Before the Civil War, the states began establishing restrictions to promote railroad safety, as much to require the railroads to protect passengers as to protect their workers. By 1924 45 states and the federal government had established a series of safety regulations concerning railroad equipment and practices, and 30 had them for street railroads. Between 1869 and 1880, mining states adopted regulations requiring the filing of mine maps and basic ventilation. Nearly all mining states had safety regulations that expanded in scope during the early 20th century (Fishback 1992). Meanwhile, at the behest of the nascent union movement, many states established bureaus to collect labor statistics in the 1880s; 28 had them by 1894 and 44 were in place by 1924.[1] By the 1880s some states had begun to establish specific regulations of workplace conditions, typically with respect to safety, and access to bathrooms and time off for lunch. Between 1895 and 1924 sanitation/bathroom regulations spread from 11 to 35 states, the number of states with ventilation laws rose from 10 to 26, for machine guards from 12 to 35, for fire escape access from 23 to 37 states, and from 5 to 24 states for building regulations. The building, fire escape, and boiler regulations were also established at the city or county levels. By 1924 14 states had regulations banning sweatshops, while 32 states had enacted bakery regulations, 20 of those were enacted after the Lochner decision struck down bakery hours regulations. Teeth were added to these laws by the establishment of inspectors for factories (rising from 15 in 1895 to 41 in 1924), child labor inspectors (13 to 41), mine inspectors (23 to

[1]The information on state laws throughout the paper was compiled by Rebecca Holmes (20??) for her dissertation on the development of state labor legislation. Holmes, Fishback, and Allen (20???), and Fishback, Holmes, and Allen (20??) have developed summary indices and explored a number of correlations with various measures of labor markets during the period.

33, largely matching the number with significant mining), and boiler inspectors (15 to 17). Reporting of accidents for mines was required in 1924 by 32 states, for railroads by 39, and for factories by 23.

II.2 Wage and Hours Restrictions and Freedom to Contract: Were Changes Violations of Rule of Law or Evolutionary Policy Changes

There was much greater uncertainty about what the state governments could do about restrictions on wages and hours. States set regulations that influenced the nature of wage payments. By 1924 30 states required wage payments in cash, and 37 required that wages be paid either fortnightly or monthly, while 12 had put restrictions on repayments of advances made to the worker by the employer.[2] Setting minimum wages and maximum hours was another matter.

II.2.1 Hours Restrictions for Males

Weekly and daily hours were a constant source of negotiation between workers and employers in the early 1900s. Average hours per day in manufacturing fell from 10 around 1890 to around 9.7 by 1905 and 9.2 in 1914, while average weekly hours fell from 60 in 1890 to 57.7 by 1905 to 53.6 during World War I and to 50.3 by 1926 (Carter, et. al., Sundstrom, 2006, series Ba4552, p. 2-302 and Ba4568, p. 2-303). These changes were determined to a limited degree by changes in hours legislation (Whaples 19???). By 1905 7 states had enacted hours limits for textiles, 9 for manufacturing, 16 for railroads, 11 for mines, 11 for street railroads, 22 for public work, and 4 for other types of workers (including a law for New York bakers). In

[2] Cushman (1998, 57-58) cites a series of Supreme Court decisions related to these issues and affirming the legislation.

1898 in *Holden v. Hardy* (169 US 366, 1898) the Supreme Court had upheld a Utah mining law setting a maximum of 8 hours per day for miners and ore smelting and refining as as a valid exercise of police power because their safety was at risk if they worked more than 8 hours. Justices Brewer and Peckham dissented in the 7-2 decision. Seven years later the court reaffirmed the *Holden* decision by upholding a similar Missouri law in *Cantwell v. Missouri* (199 US 385 (1905) on safety grounds (Cushman 1998, 247n58).

In that same year the famous *Lochner* case, which has been said to define the era of the "freedom of contract" doctrine, was decided. In *Lochner v. New York* (198 U.S. 45, 1905) struck down a New York state law limiting the hours of male bakers, who were all male. Justice Rufus Peckham wrote for the 5-4 majority that the law was a violation of freedom of contract. The bakers were able enough "to assert their rights and care for themselves without the protecting arm of the State." He argued that the limits were not related to a public health issue that might have constituted a legitimate exercise of police power. The four justices in the minority argued against this reasoning on the grounds that the legislature was in a better position than the courts to assess whether there were sufficient threats to the bakers' health from long hours that were enough to use the police power to impose a limit to protect the bakers.

The two types of decisions seems to have led to different paths for hours legislation for men. By 1924 the number of states regulating hours for railroads had risen from 16 to 27, and the federal government had passed the Adamson Act in 1916 setting a maximum of 8 hours per day with added pay for overtime for interstate railway workers. The number regulating hours for other types of workers had risen from 4 to 11, and the number regulating hours for public work had risen from 8 to 30. Most of these settings seem to have meet the requirement that the workers' or their customers' safety were at risk. It also either seems likely that the state would

be within its powers to limit the hours of its own or local government employees involved in intra-state activity. On the other path the number of states with hours laws for textiles, manufacturing, and street railroads listed by the BLS as active in 1924 had not changed or had fallen. It might be that these also survived because they promoted safety, they had not been challenged, or they were not enforced. Alternatively, the state regulators may have taken heart in the *Bunting v. Oregon* (243 U.S. 426, 1917) decision to uphold a 10-hour day law for men and women in Oregon, in which Justice McKenna argued that Bunting had not met the burden of proof that there was no safety reason for the law. Later Chief Justice William Howard Taft suggested that the *Bunting* ruling had overruled *Lochner sub silentio* (Cushman 1998, 61). The Adamson Act was upheld in 1917 in *Wilson v. New* (243 US 332, 1917).

II.2.2 Allowing Paternalistic Hours Restrictions for Women and Children

As part of the campaign to limit child labor and protect their safety in workplaces, the states generally imposed restrictions on child labor through minimum ages, as well as hours limits for the child workers above those ages. The number of states imposing minimum ages rose from 17 in 1894 to 42 in 1924. The number imposing general restrictions rose from 20 to 44. The hours restrictions varied on child labor varied across types of employment. The number imposing general restrictions on hours rose from 7 to 35, restrictions on mechanical employments rose from 18 to 28, from 6 to 22 in mercantile jobs, and from 15 to 26 in textiles, where the whole family had often worked in southern mills. A number of studies have found weak effects of these laws on child labor activity. Fishback (1998) argues that many of the Progressive Era labor laws did not pass until after a group of employers joined reformers to pass laws that codified what those employers were already doing. The reformers still saw this as useful because the new laws brought the straggling employers into conformity.

On similar paternalistic grounds states imposed hours restrictions on women's labor. Between 1895 and 1924, the number of states with hours restrictions in general rose from 2 to 28, the number for mechanical female employment rose from 12 to 28, for textiles the rise was from 8 to 27 and for mercantile work the rise was from 3 to 27. The expansion was supported by a series of Supreme Court decisions, starting with *Muller v. Oregon* (208 US 412, 1908). The court argued that women needed more protection than men against long hours of work and that it was important that they maintain their health so that they could have "vigorous" offspring; therefore "the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race" (quoted in Cushman 1998, 54). Goldin (19???) found that the laws had relatively small impacts on the hours worked by women, but the restrictions appear to have lowered the hours of work by men. This might have been why the women's hours laws continued to face challenges in the courts that led to several decisions that relied on the reasoning in *Muller* to uphold the laws in 1914 and 1915.[3]

II.2.3 Minimum Wages

The path for wage regulation in the 1910s and 1920s was more complex. Between 1912 and 1916 11 states adopted minimum wage laws for women. Three Supreme Court rulings in 1917 seemed to support some wage regulation, although Cushman (1998, 60-65) argues that the Justices focused mostly on the hours issues and minimized the wage restrictions in their opinions. The *Bunting v. Oregon* (23 US 426 1917) and *Wilson v. New* (243 US 332, 1917) hours law cases also involved paying overtime wages, and men were among the workers in both settings. In the *Bunting* case the plaintiffs pressed an argument that the laws involved wage

[3]Cushman (1998, 247n59) cites *Bosley v. McLaughlin* (236 US 385 1915), *Miller v. Wilson* (236 US 373, 1915), *Hawley v. Walker* (232 US 718, 1914), and *Riley v. Massachusetts* (232 US 671, 1914).

regulation and that "insufficiency of wage does not justify legislative regulation. The wage had no bearing on health." "The effect is to take money from the employer and give it to the laborer without due process or value in return," and thus was a "taking" that was not "neutral" (Cushman quoting the decision, 1998, 60). The judges treated the case as a case about hours and not about wages. Justice McKenna argued that the overtime pay acted like a fine designed to deter employers from having workers work beyond the hours maximum.

In the *Wilson v. New* case the Adamson Act had included overtime pay and also subject to a commission report was reducing the hours while requiring daily pay to stay the same. The Justice Department argued that the wage minimum was health-related because "physical efficiency is impossible without proper living conditions…which can not be secured without payment of an adequate wage. An adequate wage, therefore, is essential to safe, regular, and efficient service in interstate commerce" (quoted in Cushman 1998, 62). Chief Justice Whaite wrote for the majority stating that railroads were involved in public service and could be regulated in ways not applicable to private business (Cushman 62-64).

The most direct decision about wages related to minimum wage standards to be set by the Oregon Industrial Welfare Commission. After the Oregon Supreme Court supported the minimum in two cases, while relying on the reasoning in *Muller v. Oregon*, the cases were appealed to the Supreme Court. In *Stettler v. O'Hara* (243 US 629 1917) the Court split 4-4 with McKenna, Holmes, Day, and Clarke supporting the statute and White, Van Devanter, Pitney, and McReynolds opposing; Brandeis recused himself because he had been a lawyer for the state in

the litigation. After these apparent affirmations of wage regulation the number of states with minimum wages for females rose from 11 to 14 by 1924.[4]

The constitutionality of minimum wages for women was struck down in *Adkins v. Children's Hospital* (261 US 525, 1923). The decision declared unconstitutional the efforts by Congress to set up minimum wages for women in Washington, DC in 1918. In the ensuing court challenge future Supreme Court Justice Felix Frankfurter defended the minimum as essential to protecting the health of women and their children and to prevent them from requiring poverty relief at the expense of taxpayers. The plaintiffs argued that the minimum was a taking, was similar to price-fixing, the activities did not affect the public interest, and that "wages, unlike hours affected health only 'indirectly or remotely'" (Cushman 1998, 67). Justice Sutherland wrote for the 5-3 majority and accepted the hospital's argument, while also affirming the "freedom of contract" doctrine. Chief Justice William Howard Taft dissented (with Edward Sanford joining) using arguments from dissents in the *Lochner* case and the majority in the *Bunting* case. He argued that it was not clear that wages had a more indirect impact on health than hours, and the legislature was in a better position than the judges to determine the issue (Cushman 1998 69). Oliver Wendell Holmes dissented separately and expressed dissatisfaction with the "liberty of contract" doctrine, while arguing that the legislation had the proper goal of removing conditions that led to "ill health, immorality, and the deterioration of the race" (quoted by Cushman 1998, 69).

II.2.4 Restrictions Imposed by the National Recovery Administration

[4] See Elizabeth Brandeis (1935, 499-539) for discussions of the application of the laws.

After a boom decade in the 1920s, the U.S. sunk into the Great Depression with unemployment rise to 10 percent at the end of 1930, above 14 percent in 1931 and over 20 percent in 1933 through 1936. President Hoover had tried "jawboning" leading manufacturers into volunteering for work-sharing arrangements in which they would reduce hours per week, increase the number employed, and hold hourly earnings roughly the same (Rose 2010; Neumann, Taylor and Fishback 2013). The New Dealers promoted a similar idea as part of the National Industrial Recovery Act of June 16, 1933. In addition to allotting money to hire even more workers to build large public works through the Public Works Administration, they called for employers, workers, and consumers to meet together and negotiate "Fair Codes of Competition." The Codes were to include agreements to set minimum wages and maximum hours in the industry and set prices and quality of goods and the codes were to be enforced through prosecutions by U.S. district attorneys in U.S. district court.[5]

Section 7a of the NIRA stated that every code gave employees collective bargaining rights, again banned yellow dog contracts, and required that employers shall comply with maximum hours of labor, minimum rates of pay, and other conditions of employment "approved or *prescribed* by the President." The Codes were to include agreements to set minimum wages

[5] Section 3d of the NIRA gave the president the authority to hold hearings and set up codes of fair competition "if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President." Violations were misdemeanors with fines of up to $500 for each day an offense occurred. Section 3e gave the right to impose trade restrictions on foreign imports that violated the codes.

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In the absence of a code Section 7c gave the President, after hearings and investigations, the "authority to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment...as he finds to be necessary," and the codes were to be enforced like a regular code.

Only a handful of industries had created codes by late July of 1933. As a stopgap measure the Roosevelt issued an Executive Order on July 27 allowing firms to display the Blue Eagle if they voluntarily signed President's Reemployment Agreements (PRAs). The stated goal was to "raise wages, create employment, and thus increase purchasing power and restore business" in a plan that "depends wholly on united action by all employers." The conditions of the PRAs including maximum hours of 40 per week for office workers and 35 per week for factory workers and minimum weekly earnings of $15 per week in cities with more than 500,000 people, $14.50 per week where population was between 250,000 and 500,000, and $14 hours per week in cities with 2500 to 250,000 people. In smaller towns the firms were to increase all wages by not more than 20 percent up to a maximum of $12 per week. The minimum hourly wage was set at 40 cents per hour unless the wage rate for the same class of work in 1929 was

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less than 40 cents, and then the minimum was to be the larger of $30 cents per hour or the prevailing hourly rate in July 1919. No compensation that was currently above the minimum was to be lowered. No children below 14 years of age were to be employed and those 14 to 16 were to work no more than 3 hours per day, and these were required to be between 7 a.m. and 7 p.m. Implicit was the expectation of an increase in employment, as employers were "not to use any subterfuge to frustrate the spirit and intent of this agreement which is, among other things, to increase employment by a universal covenant, to remove obstructions to commerce and to shorten hours and to raise wages for the shorter week to a living basis." Price increases were allowed only based on actual costs, and firms were "to support and patronize establishments" that were also National Recovery Administration (NRA) members. Finally, they were "to cooperate to the fullest extent in having a Code of Fair Competition submitted by his industry at the earliest possible date" with an expectation that the Codes would be created by September 1, a date that few industries met.

The government sweetened the pot by developed a massive advertising campaign to get consumers to buy from firms that displayed the Blue Eagle symbol associated with the NRA. The campaign included parades in every major city as well as 20,000 canvassers going door-to-door to 20 million households to get people to sign pledges to support the NRA by buying only from firms displaying the Blue Eagle. A large number of firms signed the pledges and average hours worked in manufacturing dropped from around 41 hours per week in 1933 to 35 hours in September or October of 1933??????. Taylor, Neumann, and Fishback 2013. Codes were created in hundreds of industries, although the enforcement of the codes was relatively weak, and violations were not uncommon. The problems with violations followed the typical patterns

found in settings related to cartel enforcement with more heterogeneous sectors and codes that were less precise being violated more often (Taylor forthcoming, 2011).

The NRA legislation was set to expire in June 1935, and Vittoz (1987) describes that there were a number of Congressmen who were inclined to allow them to expire. The issue became moot in May 1935 when the Supreme Court unanimously struck down the NRA codes on May 27, 1935 in *L. A. Schechter Poultry Corp. v. United States* (295 U.S. 495, 1935). Chief Justice Hughes argued that the codes were not "voluntary" but had become the equivalent of regulations created by market participants although approved by the President and that the delegation of this power was unconstitutional. In his own words:

> Section 3 of the Recovery Act is without precedent. It supplies no standards for any trade, industry or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead, it authorizes the making of codes to prescribe them. For that legislative undertaking, it sets up no standards, aside from the statement of the general aims of rehabilitation, correction and expansion found in § 1. In view of the broad scope of that declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. The code-making authority thus sought to be conferred is an unconstitutional delegation of legislative power.

II.2.5 The Path to Constitutional Minimum Wages

Although the *Shechter* ruling could be seen to be supporting freedom of contract, the decision was more about the improper delegation of regulatory authority by the legislature. A similar statement might be made about the 5-4 Supreme Court ruling in *Carter v. Carter Coal Co.* (298 US 238 1936) to strike down the attempt in the Bituminous Coal Conservation Act of 1935 to reestablish a version of the NRA bituminous coal code that set prices, wages, and hours. The majority ruled that the excise tax in the act was a "penalty" designed to coerce compliance, Congress did not have the power to control wages, hours, and working conditions because it has "no general power to regulate for the promotion of the general welfare" and cannot control production within a state before the coal is sold in interstate commerce (Cushman .

Cushman (1998, 71-83) argues that shifts in the composition of the court in the late 1920s and early 1930s led to a series of decisions that expanded the scope for public interest to be used to support the police power of the state and thus weaken the "freedom of contract" doctrine. Justice Brandeis in *Tagg Brothers & Moorhead v. United States* (280 US 420, 1930) argued for an unanimous court that the Secretary of Agriculture could fix the commission rates charged in stockyards because the brokers were involved in an interstate business involved in the public interest, "the rates were set to prevent their services from becoming an undue burden upon, or obstruction of, interstate commerce," and "such regulation is not an attempt to fix wages or limit anyone's net income, and does not violate the due process clause." I have to admit I don't understand this last one.

In 1931 Justice Brandeis wrote for the majority in a 5-4 decision on *O'Gorman & Young, Inc. v. Hartford Fire Ins. Co.*, 282 U.S. 251 (1931), which dealt with a New Jersey Statute that set fire insurance rates and made it unlawful for the company to pay excessive commissions to their agents. In earlier cases the court had already ruled that insurance rates could be regulated in

the public interest. In this case the majority concluded that the rates paid agents accounted for a significant share of the rate charged to customers and could be regulated by the state because they influenced the financial stability of the insurance company and its ability to provide public service. Justice Van Devanter's dissent joined by McReynolds, Sutherland, and Butler argued that the right to regulate the business but "it may not say what shall be paid to employees or interfere with the freedom of the parties to contract in respect of wages." He did acknowledge that there might be special circumstances that would allow the freedom of contract to be abridged, but they had not occurred in the *O'Gorman* setting (Cushman 1998, 77).

Cushman (1998 78-83) argues that "a bevy of contemporary Court watchers" anticipated that minimum wages would eventually be declared constitutional after the 5-4 Supreme Court decision on *Nebbia v. New York* (291 US 502 1934). A number of contemporaries thought that cutthroat price competition was driving firms out of business during the Depression. New York enacted a minimum price in the milk industry. Justice Roberts writing for the majority that the law was constitutional because the minimum price law insured that the public had adequate access to milk, which was necessary for the health of the population. He argued that "the use of private property and the making of private contracts are, as a general rule free from government interference; but they are subject to public regulation when the public need requires (p. 291)."

When the court struck down a New York minimum wage law with a 5-4 vote in *Morehead v. New York ex. Rel. Tipaldo* (298 US 587, 1936) their predictions looked less accurate. New York state's lawyers went to great pains to identify differences between the D.C. law in *Adkins* and their own law to try to avoid asking the justices to overturn *Adkins*. Justice Butler wrote the majority opinion and still applied the freedom of contract doctrine in *Adkins.* Yet Chief Justice Hughes dissented said he could not agree that *Adkins* was a controlling case

because the construction of the statutes in the two cases was different. "I can find nothing in the Federal Constitution which denies to the state the power to protect women from being exploited by overreaching employers through the refusal of a fair wage as defined in the New York statute and ascertained in a reasonable manner by competent authority." In his dissent Justice Harlan Fiske Stone, joined by Brandeis and Cardozo, argued that since the *Adkins* decision "we have had opportunity to learn that a wage is not always the result of free bargaining between employers and employees; that it may be one forced upon employees by their economic necessities and upon employers by the most ruthless of their competitors," further that insufficient wages place burdens on society as a whole. "We should follow our decision in the *Nebbia* cases and leave…the solution of the problems to which the statute is addressed where it seems to me the Constitution has left them, to the legislative branch."

The minimum wage became constitutional when Owen Roberts switched sides and voted to uphold the Washington state minimum wage law for women in *West Coast Hotel v. Parrish* (300 US 379, 1937). The situation illustrates some of the uncertainties about the interactions between court decisions and statutes. The Washington state minimum wage law had been passed in 1913, long before the *Adkins* decision in 1923. I don't know yet how binding the law was over time, but a challenge to it did not reach the Supreme Court until 1936. In a later memorandum Roberts claimed that he had joined the majority in the *Morehead* decision that struck down the New York minimum wage because New York had specifically not asked the court to overrule *Adkins* on the grounds that the law in the two laws were very different. When Roberts could find no real difference in the laws, he decided to stick with the *Adkins* precedent and declare the New York law unconstitutional. In *West Coast Hotel* the Court was asked directly to overrule *Adkins*; therefore, he applied his reasoning from the *Nebbia* case and agreed

with the majority that the Washington minimum wage law was constitutional because women are "especially liable to be overreached and exploited by unscrupulous employers," which in turn "is not only detrimental to the health and wellbeing of the women affected, but casts a direct burden for their support upon the community."

A common story about this process is that President Roosevelt tried to pack the Supreme Court with new justices after the 1936 election because of he was dissatisfied with the court striking down the AAA and the NRA and worried about them continuing to find the other laws unconstitutional. Therefore, in 1937 he declared his court-packing plans to add a new justice for each justice over the age of 70 on the Supreme Courts and in lower courts. Seeing the 1937 dates on decisions to support the minimum wage, the National Labor Relations Act, and the Social Security Act, people have claimed that the Justices supported the decisions to prevent the court-packing plan. A popular phrase is a "switch in time, saves nine" justices. Cushman (1998) and others since have argued that this is inaccurate. Roberts voted to support the minimum wage in December well before the court packing plan was announced and Congress offered stiff opposition to the attempts to pack the court and many members of Congress talked with and corresponded with the Justices to let them know that there was little chance the court packing plan would go through.

The decision opened the door for Congress to pass the Fair Labor Standards Act of 1938, which established a minimum wage, maximum hours, overtime pay, and federal regulation of child labor. By the time a challenge to the Act reached the Court in *United States v. Darby Lumber* (312 US 100, 1941), none of the FC Judges who had ruled against the minimum wage in *West Coast Hotel* in 1937 were still on the bench. Harlan Fiske Stone wrote the unanimous

opinion supporting the constitutionality of the regulations for firms involved in interstate commerce.

III. Labor Disputes

From the Civil War through the late 1930s disputes related to collective bargaining were among the three areas of American society most marred by violations of the rule of law. The others were race relations and criminal activity. Philip Taft and Philip Ross (1969 281) claim that the United States "has had the bloodiest and most violent labor history of any industrial nation in the world" in a Report to the National Commission on the Causes and Prevention of Violence. The violence was typically precipitated when workers sought to negotiate as a group with their employer or a group of employers. The "at will" nature of the implicit labor contracts meant that employers was not required to negotiate with groups of workers. In fact, the courts had ruled that they could require workers to sign nonunion pledges, what unions referred to as "yellow-dog contracts," and fire workers who decided to join unions. Thus, the court had given more weight to freedom of contract and the employers' freedom of association than to the workers' freedom of association. Rule of law violations tended to occur when the employer refused to accede to the workers' demands and the workers continued to press for their demands. They occurred in all industries and throughout the country with waves of activity occurring throughout the time period. Both employers and workers violated the rule of law at various times and in some cases the state militia or federal troops were called out and in some cases proceeded to violate the rule of law as well. Among the key features of the ABA's rule of law definition are the requirements of "just" laws and "fair" processes. Both sides believed or at

least argued that their causes were just and the workers organizations often described the processes as "unfair."[7]

Most of my discussion of the violations will focus on coal mining because I have collected large amounts of evidence on violence in strikes between 1890 and 1930.[8] The mining industry was probably the industry most marred by a disproportionate share of rule of law violations for several reasons. Mining was a dangerous industry that attracted men willing to accept more risks. Many mines were melting pots of men from a broad range of racial and ethnic groups, increasing the risks of disagreement. A large share of mines were in more isolated areas where the coal company was the only or primary supplier of housing, store goods, churches, medical care, and other services. Government law enforcement in many of these settings was typically a county sheriff with a handful of deputies covering a territory with thousands of men in dozens of mines. As a result, employers hired their own local police. As a result, dissatisfaction that would have been spread across multiple contacts in a typical town would be focused on the employer. Finally, union strength varied across the country, which meant that nonunion districts were tending to expand production relative to the unionized district. To insure their survival the United Mine Workers of America (UMWA) and fringe unions sought to organize the nonunion fields throughout the period.

[7] Unions in Europe were generally directly involved in the political process with their own political parties. In contrast, the labor movement in the United States largely followed a path of "business unionism" that focused on workplace issues and not on the broader arena. As a result, the vast majority of unions operated as interest groups that negotiated separately with employers at the plant or industry level. Unions and organizations of unions, like the American Federation of Labor, then participated in the political process through the lobbying process and their support of political candidates who were favorable to their positions on labor issues (Taft 1964, xv-xxi; Friedman 20??). "Radical unions," like the Industrial Workers of the World (IWW) and various unions that espoused communist or socialist ideologies were generally fringe groups that represented only a small share of workers.

[8] For those interested, I have attached a series of chronologies of violent episodes. The appendix does not fully describe some of the more grisly episodes and cannot adequately describe the horrific events in some of these disputes

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It is very important to note that the vast majority of these negotiations ended without violations of the rule of law. Negotiations that broke down and turned into strikes or lockouts most often were settled within a couple of weeks, as shown in Table 3 for all industries from 1927 to 1936. In paper on violence in coal strikes, I argued that the vast majority of workers and employers saw violence and property damage as a factor that would extend the strike, which imposed increasing losses on both sides (Fishback 1995). After the 1880s there had been enough violence witnessed that people were ready to defend themselves but not willing to foment violence in future strikes. They were willing, however, to stand on picket lines and shout at non-strikers to dissuade them from working during the period. These types of confrontations could turn violent through bad luck, say when a car backfired and people thought someone was shooting. In other settings, there were also subsets of the strikers or the police who were willing to foment violence or when the subset willing to foment violence threw rocks or fired shots. These events led to melees that in a few cases led to eye-for-an-eye responses that could escalate into months long strikes (see Fishback 1995 and attached violent episodes chronologies).

The potential for violations of rule of law in strikes was quite large. As a strike extended over time, the probability of violations worsened. On the workers side they could damage machinery and set up picket lines. The picket lines might block entry into the mines. They trespassed and blocked production in the sit-down strikes of the 1930s. Strikers at time threatened and beat up people who continued to work during the strike and were more likely to threaten strikebreakers, "scabs" in worker parlance. Some vandalized the work site. People were shot accidentally and others were murdered. In Matewan, West Virginia in May 1920 a group of miners and the Matewan sheriff Sid Hatfield had a shoot out with Baldwin-Felts detectives that led to several deaths. The repercussions that followed lasted through June of

1921 and included multiple "battles" between miners and special deputies and multiple declarations of martial law (see Fishback 1995, 454 and sources cited there). The employers often hired their own guards to protect their property and workers who wish to continue working. Most employers were adamant about not wanting to deal with a union. Some were willing to hire Pinkertons and Baldwin-Felts detectives as spies to prevent union organizing. The police in some company towns had reputations for blocking entry into the town by nonworkers and for beating up union organizers. Some men hired as strikebreakers were more than willing to mix it up with the strikers on picket lines. During strikes private policeman or regular policeman broke up peaceful meetings of strikers. In company towns the atmosphere of strife worsened when employers started to evict people from their homes to make way for new workers. In those cases the evictions were typically legal but at the same time likely to elevate the probability of a violent response, particularly when the evictors damaged personal property. In some mining communities out west the employers' guards rounded up strikers, forced them onto railroad cars, and then abandoned them in the desert.

Once the tit-for-tat violence started, some governors called in the state militia and established martial law to maintain the peace. A number of labor histories that tell the stories of strikes from the strikers' point of view describe these episodes as attempts to use the power of the state to prevent the strikers from getting their due. Across the extensive number of coal mining episodes that I have read about, my sense has been that the Governors often made this move when they were seriously trying to stopping serious threats to life and limb and public order. In fact, some explicitly did not send in the militia because they thought the situation might worsen. In most cases the militia ended up protecting the mine's property and providing protection for those who continued working and new strikebreakers, so it is understandable why

the strikers would see the militia as on the side of the employer. Further, most of the impact of martial law and the militia's attempts to stop violence through arrests were targeted at strikers because there were often hundreds or thousands of strikers to be controlled compared with a couple of dozen mine guards or police. The antipathy towards calling out the militia was worsened by events when the militia violated the rule of law. The saddest case involved an attack by mine guards and the state militia on a miner's tent colony near Ludlow Colorado in 1913-1914 that led to the deaths of several women and children who were suffocated when hiding in a pit under a tent that was lit on fire (McGovern and Guttridge 1972).

III.1. State Laws Related to Labor Disputes

Except for a few strikes in which Theodore Roosevelt and Woodrow Wilson got involved, attempts to stop the violations of the rule of nearly all of this activity was controlled by state governments and the common law. The states tried to reduce strife by setting up boards of arbitration, 20 by 1894 and 33 by 1924. The federal government set up the Federal Mediation and Conciliation service inside the Labor Department in 1918. The Railway Labor Act of 1926 established a National Mediation Board for the railway industry, and airlines were added to its purview in 1934 (https://www.fmcs.gov/aboutus/our-history/ on March 26, 2018.

A number of states tried to prevent the violence by passing laws designed to limit certain types of activity. In 1900 16 states had laws making it illegal to interfere with a business or the employment of others and the number rose to 21 by 1924. A similar rise from 19 to 27 states occurred for a separate law banning intimidation, as well as a rise from 13 to 17 states for laws against conspiring to prevent someone from working. By 1924 19 states had introduced a new criminal syndicalism law targeted at those advocating violence or sabotage for political reasons. The states with all four laws included Kansas, Minnesota, Nebraska, South Dakota, Nevada, and

Washington. To show the regions the orderings are by Northeast, Midwest, South, and West in these lists. The states with three of the four laws included Vermont, New York, Wisconsin, North Dakota, Alabama, Georgia, Mississippi, and Texas. A number of these states, particularly, New York, Wisconsin, Minnesota, Nebraska, North Dakota, South Dakota, and Washington have long been considered progressive labor-oriented states. Massachusetts, New Hampshire, Rhode Island, Missouri, Oklahoma, and Utah had both the illegal interference with business and the anti-intimidation laws. Illinois had both the anti-intimidation law and the anti-conspiracy law, while Florida and Hawaii had only the anti-conspiracy law. Meanwhile, 6 states (Kansas, Alabama, Nebraska, Utah, Hawaii, and Colorado) had anti-picketing laws, and 5 states (Illinois, Indiana, Alabama, Texas, and Colorado) had anti-boycott laws. .

The states paid particular attention to railroads and mines. In 1900 21 states had laws against interference or intimidation of railroad workers and preventing workers from obstructing tracks another 13 blocked interference with railroad workers. But these did not last, and by 1924 there were only 7 states with both laws on the books (ME, DE, NJ, PA, IL, KS, and TX), while RI, KY, CT, and OH had one of the two laws. In contrast, the number of laws against intimidating miners rose from 4 in 1900 to 7 (VT, IL, ND, SD, OK, WV, and WA) in 1924.

The hiring of industrial police was one of the most controversial features of labor relations. By 1924 22 states had decided it necessary to pass laws making industrial police legal. These included CT, MA, RI, VT, NJ, NY, PA, IN, OH, ND, SD, VA, AL, FL, NC, SC, MD, NV, NM, CA, OR, and WA.

Fishback, Allen, and Holmes (2009) identified 12 labor laws that could be considered anti-union. Kansas, Alabama, and Texas had the most with 7 laws; states with 6 included Vermont, Illinois, South Dakota, and Washington; state with 5 included Nebraska, North Dakota,

and Nevada. States with 4 included Rhode Island, New York, Minnesota, Georgia, Mississippi, Oklahoma, Utah, Oregon, and Hawaii

A number of states, including several with many laws above, tried to resolve the violence issue by doing more to recognize unions and stop practices that had drawn controversy. In contrast to the 22 states making industrial police legal, 15 states as of 1914 had laws prohibiting the hiring of armed guards, although the number listed by the BLS was only 9 in 1924. The presence of strikebreakers typically raised tensions in the disputes and the strikebreakers themselves as well as striking workers argued that the new recruits had not been told that there was a strike; therefore, 13 outlawed misrepresentation to workers about a strike or other job characteristics. A significant number of employers and groups of employers had followed a policy of black listing workers who were of low quality or "caused trouble," including attempts to organize a union at the firm. Such black listing was blocked in 25 states, although Edwin Witte (1969, 215), a leading contemporary scholar of the government's role in labor disputes, could find only a few cases where employers faced criminal charges or workers recovered damages.

After the Sherman Act was enacted in 1890, unions were targeted as combinations that violated the Act in a number of the early cases. In response, 14 states exempted labor unions from antitrust regulations and 11 allowed for incorporation of labor unions. In 1914 section 6 of the Clayton Act stated: "Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organization…nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws" (quoted in Witte 1969, 67). Although Samuel Gompers of the American Federation of Labor (AFL) originally touted the Act as

Labor's Magna Carta, unions were disappointed in the court decisions that followed. They were now legal when seeking improved wages and working conditions, as long as any restraint of trade was incidental. However, they still could be charged under the antitrust law if the court found that the combination sought "primarily" to restrain trade. Witte (1969 68-72) argued that in some ways the Clayton Act made the situation worse for unons with respect to injunctions based on restraint of trade violations. Prior to the Act only the U.S. could secure injunctions, but section 16 of the Act allowed "injured" private parties to seek injunctions. After the Act there was an increase in injunctions applied to unions. More than half involved criminal convictions with long prison sentences and two involved large settlements. Coronado Coal and Coke settled for $27,000 with the UMWA after a judgment of $600,000 in damages had been set at one point in the case. District 12 of the UMWA also settled with the Southern Illinois Coal Co. by paying "an exorbitant price" for its property after a horrific outburst of violence (Angle, 1952; Witte 1969, 70n2).

Witte (1969, 46-7) found that until the 1880s nearly all legal action related to labor disputes were criminal prosecutions for "conspiracy." After the 1880s the conspiracy issue often appeared in injunctions against union activity. Charges of conspiracy tightly restricted union activity. "If the purpose (of organization) is one which the law condemns, the very combination is illegal. The crime of conspiracy is complete when a group of men agree to do something, unlawful, before they have done anything to carry out their purpose…the intent to do wrong is of itself criminal….Further, once a combination to effect some unlawful purpose has been formed, every act done in pursuance thereof is illegal, although such act is of itself innocent. All who combine to accomplish an illegal purpose, moreover, are responsible for the acts of any of their number which are done to carry out the common object" Witte (1969, 47). To block the

conspiracy issue, 10 states enacted laws stating that strikes and agreements were not unlawful, while 10 more stated that a labor agreement was not a conspiracy. Another 8 states imposed limits on the use of injunctions in labor disputes.

III.2. Yellow-Dog Contracts

One issue related to freedom of contract was the "yellow dog" contract that required workers to not join unions as a condition of employment. Economists would predict that employers offered better terms in exchange for the agreement to avoid unions. For example, in 1908 the workers at the Hitchman Coal and Coke Company, previously a unionized mine that had been hit by several strikes over wages over several years, signed nonunion pledges in return for paying the same wages as in nearby unionized mines (see *Hitchman Coal and Coke Co. v. Mitchell* 245 US 299, 1917). Union supporters, in contrast, argued that the willingness to sign showed how weak the worker's hand was in negotiating individual contracts with employers. In that same year the Supreme Court struck down the portion of the 1898 Erdman Act that prohibited railroad employers from firing workers for becoming union members in *Adair v. United States* (208 US 161, 1908) as a violation of freedom of contract for firms involved in interstate commerce under the Fifth Amendment. Even so, the BLS lists 18 states as having outlawed yellow dog contracts in 1914, although the *Adair* ruling might have implied that these were only applicable to employers not involved in interstate commerce. The ruling was reaffirmed for other settings when the Supreme Court declared unconstitutional a Kansas law blocking such contracts in *Coppage v. Kansas (236 US 1, 195).* It was strengthened further when the Supreme Court ruled in favor of the employer in the *Hitchman* case of 1917 by

affirming a 1907 injunction that the UMWA could not try to get the workers to break their yellow dog contracts.

The War Labor Board (WLB) in 1918 directed employers to abandon the contracts during World War I, as part of its campaign to allow collective bargaining and avoid internal strife during the War. When the WLB ceased operations, employers increased their usage of the contracts, typically in nonunion coal fields in the east, the boot and shoe industry in New England, in the hosiery industry, and a number of large street-car systems. The courts' treatment of the contracts remained somewhat unsettled. In 1924 the BLS still listed 12 states as having laws banning the contracts. In a number of state courts the contracts were reaffirmed in decisions about injunctions. In the late 1920s, on the other hand, the Ohio Supreme Court ruled that the contracts did not prevent unions from asking employers who signed them to join a strike. The New York Court of Appeals ruled that contracts that had no term limit with consideration only related to employment should not be considered contracts because they lacked mutuality. In *Texas & New Orleans Railroad Co. v. Brotherhood of Railway and Steamship Clerks* (281 US 548 1930) the Supreme Court unanimously upheld a section (2) of the Railway Labor Act of 1926 that essentially allowed workers to choose their own representatives and not the company union (Cushman 1998, 122-128). However, this may have only applied to railroads and firms directly involved in interstate commerce and not employment relationships within the states. Meanwhile, Wisconsin in 1929 and Arizona, Colorado, Ohio, and Oregon in 1931 passed new laws stating that the contracts were unenforceable and should not be used as a basis for an injunction (Witte 1969, 221-30).

As a summary of the pro-union legislation, it is clear that there was substantial variation in the states use of laws. Most of the prounion laws are found in midwestern, northeastern, and

western states. Wisconsin led the way with 8 out of 10 laws that Fishback, Allen, and Holmes (20??) identified as prounion laws, followed by Minnesota and Oregon with 7, Massachusetts and Texas with 6, New York, Nevada, Utah, California, and Washington with 5, and Pennsylvania, Oklahoma, Colorado, and Montana with 4.

III.3. The Shift in Federal Laws.

In the 1930s federal law shifted more in favor of allowing union activity with the Norris-LaGuardia Act of 1932 (Act of March 23, 1932 (Ch. 90, 47 Stat. 70; also 29 USC ch. 6 starting at 101). The Act explicitly argued against the freedom to contract logic of the earlier majority Supreme Court decisions in the yellow dog contract cases. Section 2 states that "the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

The act declared the following types of laws were unenforceable in U.S. courts and could "shall not afford any basis for the granting of legal or equitable relief:" promises not to join or remain a member of any labor organization or employer organization; promises to quit if the worker joined a labor or employer organization. Courts would not have jurisdiction to issue restraining orders or temporary or permanent injunctions in labor disputes related to 1) refusing to perform work; joining a labor organization or employer organization; paying or withholding

benefits to a person in a labor dispute; lawfully aiding other persons in labor disputes even if suit pending; publicizing facts about labor dispute; assembling peaceably; telling people about the plans above; agreeing with people to undertake the plans; and urging people without fraud or violence to participate in the plans. Courts could not issue injunctions in labor disputes without hearings that showed the unlawful acts have been threatened and were likely to come about without restraint; substantial and irreparable damage will occur; that the complainant has no adequate remedy of law and that public officials were unable or unwilling to provide protection. Temporary restraining orders were to be effective for no more than 5 days and the complainant had to post security to cover damages in case of erroneous issuance of the order. Finally, the restraining order had to be specific as to the actions to be barred.

Faced with high unemployment rates in the early 1930s, President Hoover and Congress tried to reduce strife by authorizing $300 million dollars in Reconstruction Finance Corporation loans to cities to expand their relief efforts. In the first 100 days after Franklin Roosevelt was inaugurated, he and the Democratic Congress expanded federal spending and provided relief grants to the states through the Federal Emergency Relief Administration (FERA), which used them to provide direct relief and work relief opportunities.[9] November 1933 the administration took more control by hiring nearly 4 million workers on work relief with the Civil Works Administration. Under the National Industrial Recovery Act (NIRA), they allotted new funds for emergency public works for an agency that became the Public Works Administration, and set up new funds and new rules for public highway grants.

[9]One issue that popped up with work relief was whether strikers were eligible for relief. The Works Progress Administration took a "neutral" stance on whether strikers were eligible. This seems to have been handled on a strike by strike basis and whether they got benefits depended on the nature of the strike and the identity of the decision maker (Howard 1941, 473-476).

As part of the Fair Codes of Competition Section 7a of the NIRA under the NRA Section 7a of the NIRA stated that every code gave employees collective bargaining rights, and banned yellow dog contracts for Code participants, in addition to setting restrictions on employment conditions for Code participants. The President had the power to establish codes in sectors where investigations showed the public interest was being abused, but at this point I do not believe this power was ever used.

Since large numbers of firms participated in the Codes this appeared to be a major change in the legal standing of unions. Workers soon began to press for collective bargaining, but many employers refused to participate or forced workers to join company-sponsored unions, which led to a surge in strike activity. In August of 1933 the NRA advisory boards created a National Labor Board (NLB) with 7 members widely known for their expertise on labor issues. Senator Robert Wagner was the public representative, the three labor representatives were AFL president William Green, union scholar Leo Troy, and UMWA President John L. Lewis and the industry representatives were Walter Teagle of Jersey Standard, Gerald Swope of General Electric, and Louis Kirstein from Filenes' Department store. The NLB had no coercive power and had no statutory guidance as to what the rules for collective bargaining would be, and leading employer groups led a backlash against their rulings. In the process of mediating strikes they developed a process, known as the Redding Formula, to set up secret-ballot majority rule votes on representation, but a number of employers refused to cooperate. Roosevelt issued executive orders on December 16, 1933 and February 1, 1934 that confirmed the authority of the NLB to hold elections and investigate violations of NIRA section 7a (Vittoz 1987, 137-145).

On February 4, NRA head Hugh Johnson and NRA general counsel Donald Richberg issued a "clarification," however, that muddied the waters by stating that majority rule was not

the exclusive voting method for determining representation and allowed for proportional representative of worker groups in the bargaining process. Unhappy with the process Senator Wagner introduced a new Labor Disputes bill designed to clarify the processes surrounding section 7a on March 1 into the Senate, but it faced substantial opposition and went nowhere (Vittoz 1987, 137-145).

Roosevelt asked for an enabling statute from Congress, Public Resolution No. 44 on June 19 1933, that allowed Roosevelt to use an executive order to set up a new structure. On June 29, 1934 Roosevelt issued Executive Order 6763 that closed the NLB and created the National Labor Relations Board (NLRB) "to conduct investigations, order and hold shop elections, subpoena evidence and witnesses, and invoke the jurisdiction of circuit courts to secure enforcement of its ruling. The NRA leaders became unhappy with the new NLRB's powers and decisions and actively opposed them. After the board strongly endorsed majority rule in the ballots for representation, Roosevelt and the administration moved to weaken their impact. The uncertainty about proper voting rules and the enforcement powers of these boards contributed to continued labor strife during the period (Vittoz 1987, 137-145).

Seeing the uncertainty Senator Wagner introduced an entirely new labor relations bill on February 21, 1935 that upgraded the National Labor Relations Board power to enforce workers' rights to independent representation. The NLRB could go beyond just overseeing elections to certifying any organization that won a majority voted as the exclusive bargaining agent for all employees in the bargaining unit. Wagner was able to get Roosevelt to agree not to oppose the bill. Roosevelt's agreement may have stemmed from his worries that the NRA would not be renewed. When the NRA was declared unconstitutional on May 27. 1935 by the Supreme Court

in *Schechter Poultry Corp. v. United States* (295 U.S. 495, 1935), the Wagner Act received Roosevelt's support and he signed it on July 5, 1935 (Vittoz 1987, 145-152).

The philosophy underlying the new act was laid out in its opening section. It clearly challenged the notion that labor agreements between individual workers and employers were contracts that should be protected by law. The Act states that denial of workers' rights to organize and the refusal to collective bargain led to strikes and industrial unrest that obstructed economic activity. Further bargaining power was unequal between workers who did not possess "full freedom of association or actual liberty of contract and employers who are organized in the corporate or of other forms of ownership association." "Experience has proved that protection of the law of the right of employees to organize and bargain collectively safeguards commerce…by removing recognized sources of industrial strife and unrest, by encouraging…friendly adjustments of industrial dispute…and by restoring equality of bargaining power between employers and employees." "Experience has further demonstrated that certain practices by some labor organizations" harmed economic activity. "The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed." The goal of the Act was "to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self- organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

The essential features of the Act gave workers the right to collective bargain with their employer when more than 50 percent of the workers at the firm had voted to join together as a

bargaining unit. The NLRB would run the elections and certify the bargaining representative, who would represent all members in the bargaining unit. Company unions were banned.

Yet, the stability of labor relations still faced challenges. A large share of employers were opposed to the act and were willing to test it in court. The Supreme Court had declared the NRA and the AAA unconstitutional in May 1935 and January 1936, respectively; therefore, there was great uncertainty as to whether the Act would be declared unconstitutional. The uncertainty increased after the Jones & Laughlin Steel Corporation of Aliquippa, Pennsylvania fired 10 workers for seeking to join the union. The Beaver Valley Lodge No. 200 of the Almagamated Association of Iron, Steel, and Tin Workers of America filed a complete with the NLRB, which ruled that the firm was engaging in an unfair labor practice. When the company did not comply, the NLRB petitioned the Circuit Court of Appeals to enforce the order. The court denied the petition, holding that the "order lay beyond the range of federal power."

The NLRB appealed to the Supreme Court, which finally eliminated the uncertainty with its ruling on April 12, 1937 that the Act was constitutional (*NLRB v. Jones & Laughlin Steel Corp.* 301 US 1 (1937).[10] Chief Justice Charles Evan Hughes wrote the majority opinion in a 5-4 decision that stated that the steel company was involved in interstate commerce and thus subject to federal law. Citing the *American Steel Foundries v. Tri-City Central Trades Council*, (257 U. S. 184, 257 U. S. 209) case from 1921, Hughes claimed

"Employees have as clear a right to organize and select their representatives for

[10] The judges decided 5 cases related to the NLRB on April 12 simultaneously, and the identity of who dissented in each of the 5 is somewhat difficult to discern.

> lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. "

The 4 dissenters signed an opinion by James Clark McReynolds that agreed with the Circuit Court decision that the Act was too broadly construed. They cite *Schechter Poultry Corp. v. United States,* 295 U. S. 495 (May, 1935), and *Carter v. Carter Coal Co.,* 298 U. S. 238 (May, 1936) that "the power of Congress under the commerce clause does not extend to relations between employers and their employees engaged in manufacture," leaving no authority for the NLRB.

III.4. Strikes, Violence, Union Membership, and Uncertainty About Collective Bargaining Rights

Generally, labor historians agree that the shift to specific rules for determining representation for collective bargaining and the rules structure for bargaining and arbitration established by the National Labor Relations Act led to a marked long run reduction in violence in labor disputes. The logic was that a specific peaceful process had been established for union

recognition. The balance between freedom of contract and freedom of association among workers eliminated much of the tension involved when situations were uncertain. Further, once unions and employers had started negotiations, they established longer term relationships. Studies by Rhodri Jeffreys-Jones (1978) and Philip Taft and Philip Ross (1969) reported extensively on the violent episodes across all industries prior to the 1935 Wagner Act, as did Fishback (1995) for the coal industry. Each searched through newspapers and a variety of sources for discussions of episodes. All document a large number of episodes in which state militia or the national guard were called out to help resolve labor disputes. Jeffreys-Jones found an average of 14.5 deaths per year in labor disputes between 1890 and 1909. Between 1909 and 1927 Fishback (1995) an average of 5 per year were killed in coal mining alone. Taft and Ross (1969, 344-352) identified somewhere between 22 and 32 deaths in coal mining disputes, including inter-union struggle in Kentucky between 1932 and 1937. After the union recognition strikes that sharply increased unionization in the late 1930s, Taft and Ross (1969, 363-367) found marked declines in the number of disputes involving state militias and the number of deaths in strikes. After the Taft-Hartley Act of 1947 limited some forms of union activity, the NLRB found only 3 occasions between 1947 and 1962 when the state militia was called out, and the number of deaths per year in strikes averaged about 1.9. There were still a number of incidences of fistfights and minor damage, but nothing like the lineups of large numbers of strikers and guards in armed camps seen before 1940.

Uncertainty about collective bargaining rights likely played a significant role in driving union membership, strike activity, and violence in strikes. Figure 1 shows time series for workers on strike as a percentage of the labor force and the percentage of workers in unions between 1900 and 1960, as well as the number of deaths and number of times the militia were

called out in bituminous coal mining strikes. Figure 1 shows some sharp rises in coal mining strike deaths around 1909-10 and 1913-14 when the UMWA mounted large-scale drives to organize the nonunion coal fields. Part of this drive likely occurred because of a slow recovery in per capita incomes following the recession of 1907-08. Per capita income did not return to pre-recession levels until 1914. Unfortunately, there is a gap in the series on the number of workers involved in strikes between 1906 and 1915, which is why no strikes are seen during this period. As the U.S. economy boomed after World War I started in the rest of the world between 1914 and 1917 there was an increase in strike activity as workers sought a higher share of the rents from the war boom. Good times made it easier for employers to share rents, which meant hardly and meant no strike deaths in coal mining.

The most extreme violence in coal mining and many other industry followed World War I. A War Labor Board was established when the U.S. entered the war. Their goal was to ensure labor peace, and their method was to provide rights to collective bargaining to workers. The number of union members as a share of the labor force consequently rose above 10 percent for the first time and peaked in 1920 at 12 percent of the labor force. While fighting the War no one was going to brook the types of armed insurrections seen in earlier years. However, the War Labor Board was eliminated after the War and it left behind no set rules for collective bargaining and the treatment of unions. Employers presumed a return to the pre-war rules. The 1917 *Hitchman* decision meant that they could ask miners to sign nonunion pledges and could obtain court injunctions to limit union efforts. Having tasted a world where collective bargaining had been more routine, unionized workers were unwilling to give up their new rights of association. The outcome was a large number of strikes over union recognition. Roughly 10 percent of the labor force participated in a strike in 1919. When employers continued their intransigence in the

face of the larger union share of membership, the share of workers on strike ranged from 2.6 to 3.8 percent between 1920 and 1922. Worse, many of the strikes turned violent. In coal mining strikes in multiple states Fishback (1995 and sources there) describe armed insurrections with thousands of armed miners marching to close down mines protected by hundreds of private mine guards.

By 1925 labor peace reigned alongside a booming economy, while the unions had lost much of their strength. The share of workers in unions had declined by roughly one-third and strike activity had fallen to post-Civil War lows. Strike activity did not rise again until the Norris-LaGuardia Act of 1932, followed by the PRA and NRA codes gave unions *de jure* rights to collective bargain. As noted above, the administration of these rights was uncertain. Essentially, the government promised workers the unionization rights that they had offered during World War I without a set of consistent rules to the guide the process, the share of strikers in the labor force jumped from less than one to 2.8 by 1934 and Taft and Ross (1969) describe a substantial rise in violence and militia callouts across many industries. Most of the violence in coal mining occurred in the Kentucky mines between 1932 and 1937 when somewhere between 24 and 34 miners died, in part because of a battle between the UMWA and the Progressive Miners of America to become the bargaining agent with employers there.

After the NRA was declared unconstitutional and the National Labor Relations Act was passed in June 1935, the share of workers on strike abated while union membership from around 6 percent in 1934 to nearly 8 percent in 1936, but there was still violence because of uncertainty about whether the NRLA of 1935 would be found constitutional. When the Supreme Court affirmed the Act, there was another explosion of strike activity from April through the end of the year, as workers struck for union recognition. The share of unionized workers jumped sharply to

13 percent. Strike rates fell while the union share continue to rise through 1940. During World War II strike activity rose to around 3-6 percent of the civilian labor force while union membership rose to 27.5 percent, in part because so many men were in the military. Taft and Ross report, however, that the number of violent events fell sharply and most of the violence that did occur was minor. In some settings the unions overplayed their hands, and the Taft-Hartley Act was passed in 1947 to reign in their worst bargaining practices. Strike activity then diminished and union membership as a share of the labor force peaked around 28 percent during the Korean War and has diminished since.

IV. Concluding Remarks

Over four decades the nature of labor contracts and the regulation of wages and hours shifted away from freedom of contract in favor of regulation based on health and safety concerns. Meanwhile, the workers' rights of freedom of association gained ground relative to those of employers. At the national level the latter seems to have calmed down much of the violence that had been associated with labor disputes.

One of the features of the labor regulation during this period is that it varied extensively by states, which were the primary governments regulating labor markets at the time. Samuel Allen, Rebecca Holmes and I (2008, 2009) have developed indices of the labor regulation climate, and we have done some preliminary analysis of the impact of the regulatory climate on annual earnings and employment during the period 1899 to 1919. One question we would like to address is the relationship between strike activity and the state laws directly related to collective bargaining that we have identified. The issue is data collection. We know we can obtain data after 1927 by state on strike activity and possibly earlier. This will take some time, however, because we need to extend our state law series into the 1930s. Another possible route is to look

at strikes by industry as well because we can measure the state coverage of the regulations by industry using employment weights from the censuses and more directly examine the impact of the NRA codes and their collective bargaining rules at the industry level. Hopefully, such ambitious plans will bear fruit in the future.

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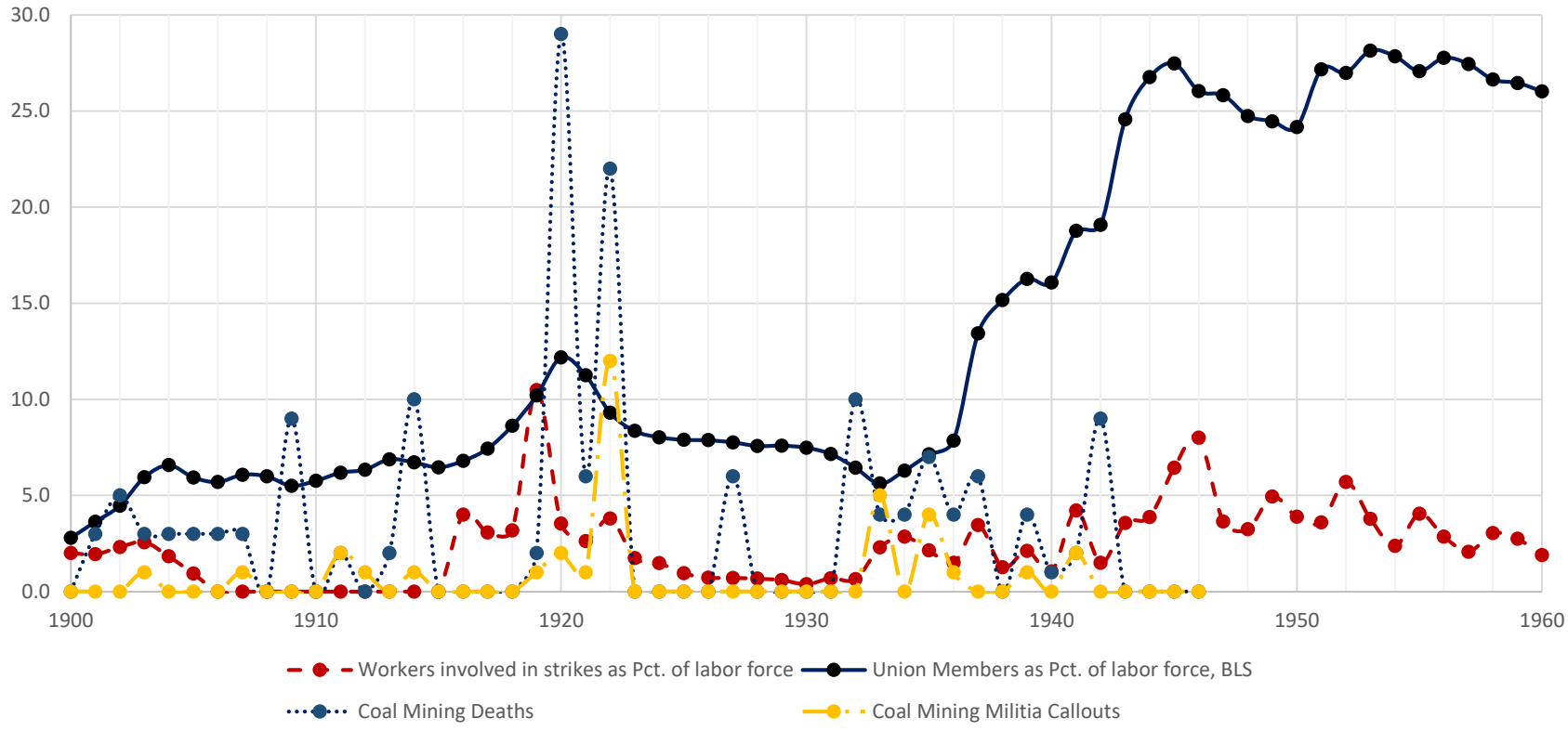
Figure 1: Percentages of Labor Force on Strike or in Unions, 1900-1960and Number of Coal Mining Deaths and Militia Call-outs in Bituminous Coal Mining, 1900-1946



Sources: Workers involved in strikes is series Ba4955, number of union members is Ba4783, and civilian labor force is series Ba470 from Carter, et.al. (2006, volume II). The numbers of bituminous coal mining strikes and militia callouts between 1900 and 1946 are compiled from Fishback (1995, 446-456) and Taft and Ross (1969, pp. 337-366).

Table 1: Supreme Court Votes to Uphold Constitutionaliy of the Law, 1898-1923

Case	1898 Holden v. Hardy	1905 Cantwell v. Missouri	1905 Lochner v. New York	1908 Adair v. U.S.	1908 Muller v. Oregon	1915 Coppage v. Kansas	1917 Bunting v. Oregon	1917 Wilson v. New	1917 Stettler v. O'Hara	1917 Hitchman Coal & Coke v. Mitchell	1923 Adkins v. Children's Hospital	Start	End
Issue	Men Hours	Mens Hours	Men's Hours	Prevent Firing of RR Union Workers	Women's Hours	Stop Yellow Dog Contracts	Men/ Women Hours Over-time Pay	RR Men Hours, Wages, Over-time	Women's Wage	Stop Yellow Dog Contract	Women's Wage		
Vote (Support Act - Not Support)	7-2	?-?	4-5	2-6	9-0	3-6	6-3	5-4	4-4 affirmed	3-6	3-5		
John Marshall Harlan	Yes		Yes	No-op	Yes							1877	1911
Horace Gray	Yes											1882	1902
Melville Fuller	Yes		No	No	Yes							1888	1910
David Brewer	No		No	No	Yes							1890	1910
Henry Billings Brown	Yes		No									1891	1906
George Shiras	Yes		Yes									1892	1903
Edward Douglas White	Yes			No	Yes	No						1894	1910
Rufus Peckham	No		No-op	No	Yes							1896	1909
Joseph McKenna	Yes		No	Yes	Yes	No	Yes	Yes	Yes	No	No	1898	1925
Oliver Wendell Holmes				Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	1902	1932
William Day			Yes		Yes	Yes	Yes	No	Yes	No		1903	1922
William Moody				not. Part	Yes							1906	1910
Charles Evan Hughes						Yes						1910	1916
Edward Douglas White							No	Yes-op	No	No		1910	1921
Willis Van Devanter						No	No	No	No	No	No	1911	1937
Joseph Lamar						No						1911	1916
Mahlon Pitney						No-op	Yes	No	No	No-op		1912	1922
James McReynolds						No	No	No	No	No	No	1914	1941
Louis Brandeis							Recused	Yes	Recused	Yes	Recused	1916	1939
John Clarke							Yes	Yes	Yes	Yes		1916	1922
Horace Lurton												1910	1914

Table 2: Supreme Court Votes to Uphold Constitutionality of the Law, 1915-1937

	1915 Bunting v. Oregon	1917 Wilson v. New	1917 Stettler v. O'Hara	1917 Hitchman Coal & Coke v. Mitchell	1917 Adkins v. Children's Hospital	1923 Tagg Bros & Moorhead v. U.S.	1930 O'Gorman & Young v. Hartford Fire Ins.	1931 Nebbia v. New York	1934 Shecter Poultry	1935 Carter v. Carter Coal Co.	1936 Morehead v. New York ex. Rel. Tipaldo	1936 West Coast Hotel v. Parrish	1937 Jones & Laughlin Steel v. U.S.
	Men/ Women Hours Over-time Pay	RR Men Hours, Wages, Over-time	Women's Wage	Stop Yellow Dog Contract	Women's Wage	Ag Interstate Reg. of Commission Rates	Regulate Insurance Broker Commission Rates	Milk Min. Price	NRA	Code like NRA in Coal	Women's Minimum Wage	Women's Min. Wage	Nat'l Labor Relations Act
	6-3	5-4	4-4 affirmed	3-6	3-5	9-0			0-9	4-5	4-5	5-4	5-4
Willis Van Devanter	No	No	No	No	No	Yes	No	No	No	No	No	No	No
Mahlon Pitney	Yes	No	No	No-op									
James McReynolds	No	No	No	No	No	Yes	No	No	No	No	No	No	No
Louis Brandeis	Recused	Yes	Recused	Yes	Recused	Yes-op	Yes-op	Yes	No	Yes	Yes	Yes	Yes
John Clarke	Yes	Yes	Yes	Yes									
William Howard Taft					Yes								
George Sutherland					No-op	Yes	No	No	No	No-op	No	No	No
Pierce Butler					No	Yes	No	No	No	No	No-op	No-op	No
Edward Sanford					Yes								
Harlan Fiske Stone						Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Charles Evan Hughes						Yes	Yes	Yes	No-op	Yes	Yes	Yes	Yes-op
Owen Roberts						Yes	Yes	Yes-op	No	No	No	Yes	Yes
Benjamin Cardozo						Yes	Yes	Yes	No	Yes	Yes	Yes	Yes

Table 3

Share of Strikes of Different Durations

Year	Less than 1 week	1 week to less than 1/2 month	1/2 month to less than 1 month	1 and less than 2 months	2 and less than 3 months	3 months and over
1927	27.2	22.8	20.7	17.7	7.1	4.5
1928	38.0	21.1	15.8	12.1	4.8	8.2
1929	38.9	23.6	15.5	13.7	3.6	4.7
1930	36.5	24.1	17.1	12.3	6.3	3.7
1931	40.1	21.2	17.1	14.6	4.9	2.1
1932	39.2	19.4	17.5	17.1	4.1	2.7
1933	41.8	21.7	18.4	13.3	3.4	1.4
1934	38.7	19.8	18.5	15.9	4.8	2.3
1935	35.5	21.8	17.3	14.2	6.3	4.9
1936	35.0	23.7	17.7	13.5	4.9	5.2

(Peterson 1937, 52)

Appendix Table 1

Number of States with Each Type of Law, 1895, 1908, 1918, and 1924

Law	1895	1908	1918	1924
Employer Liability Law				
Restates Common Law	15	28	23	21
General	21	47	48	47
Railroads	16	31	32	32
Street Railroads	1	8	7	7
Mines	1	4	4	4
Can't require employees to sign contracts waiving damages	14	25	28	28
Social Insurance				
Workers' Compensation Law	0	0	37	42
Mother's pension	0	4	30	43
Factory Safety				
Rehabilitation commission	0	0	0	4
Industrial safety commission	0	0	9	17
Sanitation/bathroom regulations	11	22	34	35
Ventilation	10	22	25	26
Guards required on machines	12	22	34	35
Electrical Regulations	0	0	6	8
Building Regulations	5	13	23	24
Other	1	3	10	11
Bakery Regulations	7	14	27	32
Sweatshop Regulations	9	11	14	14
Fire escapes	23	30	36	37
Factory Inspector	15	29	39	41
Occupational disease reporting	1	1	16	17
Steam boiler inspector/violation of safety laws.	15	17	15	17
Reporting of Accidents				
Mine accidents	19	26	33	32
Railroad accidents	3	21	36	39
Factory accidents	10	14	22	23
Railroad Regulations				
Safety Regulations	20	32	45	45
Street Railroad safety regulations	7	28	30	30
Railroad Inspectors	4	7	6	6
Mining Regulations				
Mine inspectors	23	30	33	33
Mine Safety Regulations: Employees/Individuals	18	23	30	32
Mine Safety Regulations: Companies	22	30	33	35
Fine for failure to weigh coal-no screening	14	21	22	23
Fine for mine inspector failing to do his job	9	13	17	18
Miners' Hospital and or Home	4	5	5	5

No Women and Children in Mines	25	31	35	35
Law	**1894**	**1908**	**1918**	**1924**
Child Labor				
Child safety commission	0	1	10	14
Child labor inspector	13	30	40	41
Children in manufacture/mercantile/mechanical jobs	20	42	42	44
Minimum Age	17	33	40	42
Penalty for false certificate of age	16	36	38	38
Certificates of Age required for employment	19	38	45	46
Fine for children working to support idle parents.	1	7	7	7
No children cleaning or handling moving parts	10	20	36	39
No children in immoral jobs (acrobat) Is this street jobs?	25	30	34	34
No women and children in bars	6	23	5	6
Child hours law				
General	7	18	30	35
Mercantile	6	15	22	22
Mechanical	18	30	30	28
Textile	15	27	27	26
Other	2	8	10	10
Minimum Age for night labor for children	7	29	42	45
Women's Regulation				
Special accommodations (seats)	23	33	44	44
Earnings of married women belong to her	31	43	46	46
Women's Hours				
Night labor	3	4	11	13
General/All Employment	2	6	24	28
Mercantile	3	8	24	27
Mechanical	12	16	25	28
Textiles	8	13	25	27
Holidays				
No work on legal holidays	0	0	3	3
Labor Day a holiday	29	48	51	51
Sunday labor fines	43	48	49	50
Hours Laws				
Textiles	6	6	6	6
Mines	5	13	15	15
Manufacture	7	7	8	9
Railroads	8	26	27	27
Street Railroads	8	10	10	10
Public Employment	14	22	29	30
Other	5	5	11	11
General Hours Law	13	12	11	11
Public Roads	2	23	16	16
1 hr for meals	6	9	17	19

Law	1894	1908	1918	1924
Unionization and Bargaining				
False use of union cards or employers' certificates	1	10	12	13
Incorporation of labor unions.	9	9	10	11
Labor organizations exempt from antitrust	5	5	10	14
Enticement fines	11	11	11	11
Interfere with or intimidate in railroads or workers abandoning trains or obstructing track	25	11	9	9
Interference with railroad employees	14	9	9	9
Interference with street railroad employees	4	1	1	2
No intimidation of miners	4	6	7	7
Illegal to interfere with a business or the employment of others	15	16	19	21
Anti-picketing	0	2	2	6
Anti-boycott	3	7	5	5
Strikes: Agreements not to work allowed	3	5	7	10
Conspiracy vs. workmen (conspiring to prevent someone from working	11	14	15	17
Labor agreement is not a conspiracy	6	8	8	10
Anti-intimidation	19	23	26	27
No blacklisting	14	23	25	25
Yellow dog contract (Not allowed to join a union as a condition of employment) (illegal for anyone to coerce to join or not to join a union)	11	16	12	12
Prohibition on hiring armed guards	17	12	9	9
Industrial police are legal	1	9	19	22
Misrepresentation about a strike or other job characteristics	2	7	12	13
Limits on injunctions	0	1	4	8
Criminal Syndicalism (advocating violence or sabotage for political or industrial ends)	0	0	7	19
Labor organizations--embezzlement of funds by officers	2	2	3	3
Combinations of employers to fix wages illegal	0	1	0	0
Trespass on mines, factories, without consent of owner	1	1	0	0
Union trademark fine	25	42	43	44
Convict Labor				
Convict Labor Regulations	22	27	32	33
Bribery, Coercion, or Gouging				
Foreman accepting fees for employment illegal	1	4	12	14
Bribing Employees	0	13	17	17
Coercion of Employees is illegal	10	13	19	19
Company Stores Cannot Gouge	6	8	8	8
Political Protections				
Coercing the votes of employees illegal	30	33	38	38

Time off to Vote	18	22	24	24
Law	**1894**	**1908**	**1918**	**1924**
Administrative				
Bureau of labor Statistics or Department of Labor	28	34	43	44
State board of arbitration	20	26	32	33
Free employment offices	0	14	23	32
Alien Labor				
Importing alien labor illegal	2	1	0	0
No aliens in public employment	5	12	14	17
Chinese labor illegal	3	3	3	3
Employment Agents				
Emigrant agent license	3	6	11	12
Regulation of Employment Agencies	11	25	35	42
Occupational Licensing				
Railroad telegraph operators (also minimum age)	3	1	1	2
Plumbers	9	19	22	23
Horseshoers	2	5	6	6
Chauffers	0	1	27	36
Aviators	0	0	2	6
Other	0	0	2	2
Motion Picture Operator	0	0	8	8
Barbers	1	13	16	16
Steam engineers (firemen)	11	16	17	17
Mine manager	7	11	13	16
Elevator operators	1	2	2	2
Railroad employees	1	1	1	1
Electricians	0	1	2	4
Stevedores	2	2	2	2
Anti-discrimination				
Cannot fire due to age only	0	1	1	1
Sex discrimination	3	3	4	6
Antidiscrimination	1	1	1	1
Wage Payments				
Nonpayment	1	1	3	4
Wages in cash	19	29	28	30
Wage payment frequency	20	26	32	37
Repayment of advance made by employer	1	9	9	12
No forced contributions by employers	5	6	7	8
Railroad workers: Notice of reduction of wages required	1	2	2	2
Fine for no notice of discharge if employee has to give notice too	6	9	10	10
Minimum Wages				
Minimum wage for public work	1	4	9	10
Minimum wage for women/children (<18)	0	0	12	14
Minimum Wage Commission	0	0	9	10

Miscellaneous

illegal to desert a ship	5	1	0	0

Source: Holmes (2003, chapter 3). Includes all states as of 1912, Alaska, Hawaii, and the District of Columbia**.**