Institutions and Political Change: Working-Class Formation in England and the United States, 1820-1896

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THE PUZZLE

For the past century, English and American labor unions have been adopting quite different strategies for advocating workers' interests and as a consequence have played very different roles in their respective political economies. In England, the principal national labor organization, the Trades Union Congress (TUC), generally has looked to party and electoral politics as the cornerstone of its strategy; by forging strong ties with the Labour party in the first two decades of the twentieth century, English unions have infused political debate with work-related issues and have advanced an extensive program of social reform. In contrast, the American Federation of Labor (AFL) pursued a different strategy known as business unionism or voluntarism in which workers' concerns were secured primarily through collective bargaining and industrial action on the shop floor.[1] At the high point of voluntarism, in the early decades of the twentieth century, the AFL largely eschewed political reform and adhered instead to a policy of nonpartisanship and political independence, even to the extent of opposing a wide range of government-sponsored social policies such as old age pensions,

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minimum wage and maximum hours laws, and compulsory health and unemployment insurance.[2]

To be sure, even in the golden era of AFL voluntarism, American labor never withdrew from politics entirely. The AFL always maintained some contact with the Democratic party and continued to play a limited role in electoral politics. What has distinguished the American and English labor strategies was not engagement in politics per se but rather the different terms on which each entered the political arena. After the turn of the century, the AFL both accepted and promoted a marked separation of work and politics in which the AFL participated in electoral politics but with little or no regard for work-based concerns. In England, on the other hand, divisions between work and politics have not been so sharply drawn, as the Labour party and its trade union allies explicitly have tried to infuse British politics with workplace concerns.[3]

The divergent labor movement development on the two sides of the Atlantic appears all the more perplexing when we recognize that for much of the nineteenth century the two labor movements followed a remarkably similar course. Only in the last two decades of the nineteenth century did the English and American labor strategies begin to diverge. The puzzle, then, is to explain why movements that were at first so similar eventually turned to quite different spheres to further workers' interests? Alternatively, why did the AFL break with the West European model and adopt instead the strategy of business unionism at the end of the century?

STATE STRUCTURE, IDEOLOGY, AND LABOR STRATEGY

The argument developed in this article has two interrelated components: one institutional and one interpretative. The institutional argument claims that differences in state structure lead to differences in English and American labor strategy. Particular configurations of institutional power provided very different incentives and constraints for workers in the two countries and eventually channeled labor protest along different paths. Although no government welcomed the increase in workers' power in the early nineteenth century, nations relied on quite distinct institutions to regulate workers' early attempts at organization. In Germany and France, for example, legislatures were responsible for regulating working-class organization through the socialist and Le Chapelier laws.[4] In the United States, however, courts were the principal institution for containing workers' collective action under the common law doctrine of criminal conspiracy.[5] The dominance of the courts over other branches of government played a critical role in shaping labor strategy by providing few rewards for even successful political mobilization.

The English-American comparison is especially instructive because it provides a pair of most similar cases. Among the advanced industrial societies, the English legal tradition and system of labor regulation most closely resembled that of the United States. To be sure, the courts were not the sole regulator of English

labor but shared responsibility with Parliament. Nevertheless, the same common law doctrine of criminal conspiracy along with the Combination Laws provided the two principal components of English labor policy.[6] In other Western democracies, the power of the courts was even more limited, thereby providing greater rewards for working-class mobilization than in either England or the United States. If the more limited role of the English courts can be linked to the formation of a more politically active labor movement there, then the relationship between state structure and labor strategy should be clearer in other countries where the contrast with the United States is more pronounced.

The structural argument, however, only takes us part way in understanding the divergent patterns of labor movement development. After all, differences in the structure of the English and American states existed throughout the nineteenth century but only came to play a decisive role in shaping labor strategy in the last quarter of that century. The second part of the argument, an interpretative component, emphasizes the *changing significance* of state structures for working-class formation both over time and across organizations. Understanding how and why the role of the state changed over the course of the century takes us beyond structural considerations to the meaning and significance imparted to institutions by the working class. We will see that particular ideologies and cultural traditions were themselves constitutive of economic interests and institutional power. By attending more closely to the ideological and social context within which institutions are embedded, we can develop a less static view of institutional power and thereby begin to unravel the changing role of the state in shaping labor movement development in England and the United States.

The article proceeds in three parts. It first compares the English and American labor movements between 1865 and 1896. Here, different configurations of state power are shown to have played a decisive role in the AFL's turn to business unionism. The second section returns to early state-labor relations in the 1820s and 1830s in order to show how ideology and culture mediated the nature and timing of state power. The final section looks beyond the English-American comparison to speculate on implications of the research for institutionalist accounts of politics more generally.

Before beginning my detailed analysis, two alternative explanations of the origins of business unionism are compelling enough to warrant a brief comment without entailing a review of the well-known literature on American exceptionalism.[7] The two alternative explanations focus on the unusual nineteenth-century labor market conditions and on the party system in the United States.

Many scholars have argued that the heterogeneity of the American labor force made it more difficult for American workers to unite as a class. The successive waves of immigration in the periods 1843-57, 1878-93, 1898-1914, and 1919-21 and the more constant division of race undermined working-class consciousness in several different ways. Not only have workers of different ethnic and racial

backgrounds had multiple and competing identities that often cut across class lines, but employers, too, have been able to exploit these differences. Finally, ethnic and racial divisions, regardless of employers' intent, often have intersected labor market competition so as to intensify cultural differences at the expense of a common sense of class.[8]

Although the American labor movement was indeed fragmented both by ethnicity and race, the evidence linking these factors to business unionism remains inconclusive. Much contemporary research on ethnicity, for example, has shown how difficult it is to generalize from one immigrant experience to the next. Particular national identities have acted as a source of labor solidarity and radicalism as often as they have been a spur to voluntarism. Put simply, the impact of immigrant heritage on labor strategy has been indeterminant.[9] Preliminary evidence on the interplay of race and class is more promising, as the primary sources are filled with references to slavery as a counterpoint to workers' experience of wage labor. Here too, however, as with ethnic divisions, racial differences did not always prove to be an insurmountable obstacle to labor unity. Exactly how racial divisions and images shaped labor strategy remains unclear and needs further study.[10]

Recently, Gary Marks has offered an innovative labor market analysis that breaks with dominant research practice in the field.[11] He considers industrial sectors rather than national labor movements to be the appropriate unit of comparison and argues that coal miners' *or* printers' unions in different nations have more in common with each other than they do with unions from other sectors in the same country. Labor strategies, too, vary from sector to sector as unions adapt to the particular incentives and constraints that they face. Although Marks's approach is intriguing, he too is unwilling to abandon national models entirely and is much less convincing when he shifts from sectors back to explanations of national labor movements as a whole.[12]

The second major explanation of American labor strategy has looked to the party system as the critical factor in the AFL's turn to business unionism. Both electoral laws and machine politics have been identified as the principal obstacles to working-class politics. Some scholars have lamented the single member-simple plurality system of electoral laws, which have made it more difficult for third parties to compete effectively with the two parties in power. As a consequence, so the argument runs, American workers have been unable to establish a foothold in the political system from which they might have accumulated political power.[13] Other scholars have argued that the emergence of the political machine and the absence of programmatic political parties have been responsible for the separation of work and politics in the United States. By mobilizing workers into politics through patronage relations rather than through ideology or programs, American workers were provided with few opportunities to mobilize as a class.[14]

Although comparative studies of electoral laws can help distinguish the American party system from many of its West European counterparts where proportional representation has enabled small parties to prevail, the electoral variable cannot discriminate sufficiently for my purposes, as both England and the United States have similar electoral laws and yet quite different labor strategies. The argument for machine politics also has been overdrawn. Although patronage was an important feature of late nineteenth-century politics, the party system and workers' political actions were not always of a nonprogrammatic sort. Indeed, throughout much of the nineteenth century, at least in New York and Pennsylvania, parties advanced quite distinct platforms of a programmatic kind. To the extent that machine politics dominated American elections in the 1890s and early twentieth century, they are best understood as the product rather than the cause of the AFL's turn to voluntarism.[15]

In sum, theories of American labor movement development that focused on labor market conditions and/or on the distinctive features of American party politics have captured some important aspects of American labor politics but have not been well equipped to explain the nature and timing of the shift in AFL strategy. The argument which follows not only accommodates the unresolved question of timing but enables us to reconcile the long tradition of labor politics with the turn to voluntarism at the end of the nineteenth century.[16]

STATE STRUCTURE AND LABOR STRATEGY

Between 1865 and 1896, workers in both England and the United States organized collectively and began to demand state protection of the right to organize and strike. Before state protection could be secured, the common law doctrine of criminal conspiracy had to be repealed. The conspiracy doctrine had long declared many forms of collective action to be a threat to public policy and individual liberty and had been used to regulate working-class organization from its inception. Beginning in the mid-1860s, workingmen's associations on both sides of the Atlantic embarked on an extensive campaign to repeal the conspiracy doctrine or at least to exempt workers from prosecution under its reach.

This campaign was carried out in two stages in both countries. First, workers lobbied extensively for passage of anticonspiracy laws exempting labor from prosecution for criminal conspiracy. Once such legislation passed, legislatures and the courts struggled over who was to interpret the new labor statutes. During the first stage, English and American labor organizations adopted essentially the same strategies with very similar results. In England, the Conference of Amalgamated Trades and later the Parliamentary Committee of the Trades Union Congress were the principal organizations lobbying for legislative reform. In the United States, the campaign began at the state level, with the most extensive

movements appearing in New York and Pennsylvania led by the New York Workingmen's Assembly and the Pennsylvania coal miners' unions. Beginning in 1881, state-level initiatives were joined at the national level by the Federation of Organized Trades and Labor Unions (FOTLU).[17]

Organizations in both countries employed quite sophisticated tactics. Both labor movements displayed a detailed knowledge of their respective political institutions and carefully tailored their strategies to assure passage of favorable legislation. English and American labor organizations followed legislative proceedings on a daily basis, sent deputations to relevant party officials, endorsed prospective candidates, educated the public, and even hired their own legal counsel to draft legislation to be introduced by friendly politicians.[18] In the three decades following the Civil War, New York and Pennsylvania unions, like their English counterparts, considered the state an important ally in their struggle with employers and believed that workers' interests could be effectively protected through an extensive campaign for political reform.

Both the English and American anticonspiracy campaigns were successful, resulting in a series of anticonspiracy statutes in the 1870s and 1880s.[19] Neither country protected workers' right to organize unconditionally. Rather, all the anticonspiracy statutes limited protection to peaceful as opposed to coercive collective action. The English, New York, and Pennsylvania statutes all contained provisions against the use of force, threats, and intimidation, which remained subject to criminal prosecution.[20] Despite these provisions, the English and American legislation delineated a legitimate sphere of workers' collective action and went a considerable distance in checking the courts' power to regulate industrial disputes.

Initially, then, the rewards for political mobilization seemed quite promising. In the 1870s and 1880s, it looked as if both English and American workers could indeed protect their interests through political reform. Government policy toward labor had been effectively influenced through diligent organization and persistent pressure on their respective legislatures. Yet despite similar legislation, the level of state protection enjoyed by labor unions in England and the United States varied considerably. Passage of anticonspiracy laws by no means settled the question of government policy toward labor.

THE COURTS AND LABOR MOVEMENT DIVERGENCE

Implementation of the anticonspiracy statutes followed a very different course in the two countries. The different patterns of implementation depended to a considerable extent on the balance of power between legislatures and the courts. Enforcing the right to organize and strike proved to be an especially elusive task for American labor, which had to contend with a more powerful and interventionist judiciary.

The history of the New York anticonspiracy laws captures in microcosm the underlying dynamics of the institutional struggle over labor regulation in the United States. The New York anticonspiracy laws of 1870, 1881, 1882, and 1887 did not put an end to conspiracy prosecutions altogether.[21] In fact, after the passage of each statute, employers continued to charge striking workers with criminal conspiracy. More important, state courts consistently ignored statutory provisions exempting workers from conspiracy and ruled in favor of the prosecution. Almost all of the postbellum conspiracy cases identified to date resulted in conviction, and many were accompanied by severe penalties and jail terms.[22] Whether or not American workers would be allowed to organize collectively depended on the outcome of this three-cornered struggle between labor, the state legislature, and the state courts. The answer in the United States was resoundingly negative, for courts repeatedly overrode legislative initiatives.

The struggle between legislatures and the courts over which institution was to set the terms of industrial relations in the United States was negotiated repeatedly in the postbellum conspiracy trials. The issue at hand in each of the cases was whether or not the defendants' actions were protected from criminal prosecution under the newly enacted anticonspiracy statutes. The principal task for the prosecution attorneys was to establish that strikers had "intimidated" their fellow workers, employers, or members of the public. The intimidation provisions contained in each of the anticonspiracy laws allowed for considerable judicial discretion. No explicit force or violence need be used; the mere size of a picket line, the number of circulars distributed by union members, or an "attitude of menace" were held to intimidate and as such provided sufficient grounds for conviction under the new statutes.[23]

The case of *People v. Wilzig* provides an excellent illustration of the persistence of conspiracy convictions despite the anticonspiracy laws.[24] The case was formally one of extortion, but as Judge Barrett noted in his charge to the jury, the threat of conspiracy pervaded the case.[25] The dispute took place in spring 1886 with the boycotting of George Theiss's musical club on East 14th Street in New York City. Early in March, Paul Wilzig and the other defendants came to Theiss's club and demanded that he dismiss his orchestra, bartenders, and waiters and hire instead union workers at union wages. Theiss protested that the musicians were already members of the Musical Union and that his brother-in-law was the head bartender and his son head waiter and that he did not want to dismiss them. The defendants refused to negotiate and gave Theiss twenty-four hours in which to comply with their demands. When he refused, his business was boycotted.[26]

The boycott lasted fifteen days during which "a body of men" picketed Theiss's club and distributed a circular condemning Theiss as "a foe to organized labor" and requesting customers to stay away from the club. At one point, the defendants "through their agents" entered the premises and plastered circulars onto the tables,

in the bathrooms, and onto the frescoed walls. They also used "an infernal machine" to create such a stench in the place that the club had to be closed for several hours so as to ventilate the building. Finally, the defendants were said to have set fire to scenery on the stage of the club. At times, as many as five hundred bystanders gathered to watch the activity.

The dispute came to a head when the defendants threatened to establish a secondary boycott on Theiss's mineral water and beer suppliers. In order to head off the crisis, Theiss called a meeting of his employees, the defendants, and his suppliers. After eight hours' discussion, Theiss acceded to the defendants' demands. Before the meeting ended, Beddles of the Central Labor Union demanded that Theiss pay the defendants $1,000 to cover the costs of the boycott. Again, Theiss protested but eventually gave in. The boycott was immediately called off and the dispute ended. Theiss was able to redress his grievance through the courts when the district attorney charged the defendants with extortion under the New York penal code.

The case was heard before Judge Barrett in the court of oyer and terminer.[27] In his charge to the jury, Judge Barrett summed up the current status of the conspiracy doctrine succinctly. Barrett acknowledged that the common law doctrine had been "greatly narrowed" by the recent anticonspiracy statutes but insisted that the prevailing laws by no means licensed all forms of collective action due to the intimidation provisions included in the statutes. The task for the jury was to determine whether the defendants' actions fell within these provisions. Barrett explicitly defined intimidation very broadly for the jury:

> Let us see what is meant by the word intimidation. The defendant's counsel seem to have the idea that if a body of men, however large, operating in the manner suggested, only avoid acts of physical violence, they are within the law; and that the employer's business may be ruined with impunity, so long as no blow is struck, nor actual threat by word of mouth uttered. This is an error. The men who walk up and down in front of a man's shop may be guilty of intimidation, though they never raise a finger or utter a word. Their attitude may, nevertheless, be that of menace. They may intimidate by their numbers, their methods, their placards, their circulars and their devices.[28]

For Judge Barrett, workers' actions were intimidating because of the size of the protest and the workers' attitude of menace, both extremely nebulous attributes for defining criminal action. All five defendants in the Wilzig case were convicted and received sentences ranging from one year and six months to three years and eight months of hard labor in a New York state prison.

Wilzig was by no means an exceptional case, as New York courts convicted striking workers for acting collectively in almost all the postbellum labor conspiracies.[29] Moreover, the same pattern of judicial obstruction can be seen in Pennsylvania as well where a similar struggle to repeal the conspiracy doctrine was under way. There, too, four anticonspiracy laws were passed in 1869, 1872, 1876,

and 1891,[30] all of which were stronger and more comprehensive than the New York laws. They contained fewer limitations on workers' right to organize and strike and tried to restrict judicial intervention in industrial disputes more explicitly than the New York statutes did. But the Pennsylvania courts were as reluctant as their New York counterparts to recognize workers' right to organize and strike under the new statutes.[31]

Perhaps the most notorious interpretation of an anticonspiracy statute was issued by a Pennsylvania county court in 1881.[32] The defendants D. R. Jones and Hugh Anderson (both officers of the National Miners' Association) and approximately fourteen others were charged with conspiracy during a coal miners' strike at the Waverly Coal and Coke Company in Westmoreland County, Pennsylvania. This dispute centered around the payment of lower wages by Waverly compared to other operators in the district. The Waverly miners had signed a contract agreeing not to strike without giving the company sixty days notice. If they broke this agreement, they had to forfeit ten percent of the year's wages. On November 17, the Waverly miners met with two representatives of the National Miners' Association and agreed to go on strike to secure the "district price" if the Association would compensate them for their ten percent forfeiture. The meeting was adjourned for a final decision the following evening. On their way to the second meeting the defendants were arrested and charged with criminal conspiracy. They were charged with inducing workers to break their contract by suggesting that they ignore the sixty-day warning clause. In addition, they were charged with threatening to use a brass band to intimidate strikebreakers during the upcoming dispute.[33] The Westmoreland County court found the principal defendants guilty on both counts and stated that the presence of a brass band constituted "a hindrance within the meaning of the [anticonspiracy] act of 1876."[34] The defendants were sentenced to pay the costs of prosecution, a fine of $100 each, and to be imprisoned for twenty-four hours in the county jail. The total cost of the fine amounted to $355.29, which the Miners' Association paid.[35]

By declaring the mere presence of a brass band to be an act of intimidation, the Pennsylvania court effectively rendered legislative protection of workers' collective action meaningless. The defense counsel appealed the lower court conviction to the Pennsylvania Supreme Court precisely on the grounds that the 1876 statute had legalized the miners' actions. The defense requested that the Supreme Court provide an "authoritative technical definition" of the state's conspiracy laws because "no law is as oppressive as an uncertain one."[36] The decision to hear the appeal was discretionary, and the Pennsylvania Supreme Court determined not to take the case.

The harsher rulings handed down by New York and Pennsylvania courts after the Civil War were not the product of a change in legal doctrine. The second wave of conspiracy prosecutions rested on the same legal principles as those used to

sustain the antebellum trials. To be sure, passage of the revised statutes in New York in 1829 and the successive anticonspiracy laws in both New York and Pennsylvania after the Civil War blurred the boundary between common and statute law. However, no new legal principles were introduced with these reforms. On the contrary, the statutes were intended either to codify the common law or to narrow application of the existing law to organized labor. If anything, on the basis of legal principles alone, we would expect to have seen fewer and less controversial conspiracy cases after the Civil War.

Labors' Response: Judicial Obstruction and the Turn to Voluntarism

New York and Pennsylvania labor leaders were horrified by the postbellum conspiracy convictions and protested vigorously the class bias of the courts. As early as 1870, for example, the New York Workingmen's Assembly objected to the courts' "unequal application of the law" in which employers' combinations were not prosecuted under the conspiracy laws. "Truly, it must be a crime to be a workingman, as it seems they only are amenable to the laws—they only are conspirators."[37] The Wilzig decision seemed especially unjust and was denounced explicitly by John Franey, chairman of the Assembly's Executive Committee, at the annual convention in September 1886:

> This decision was rendered under the direct authority of no statute or legal enactment of any kind: it was made under cover of an artful misconstruction of a clause in the penal code regarding conspiracy. The word conspiracy has long been a facile legal weapon in the hands of capital, and the New York Judge and District Attorney only demonstrate their ability by finding a new definition for it in sending the Theiss boycotters to prison. It was a class decision in the interests of unscrupulous employers, and intended to intimidate and deter organized labor from even peaceably protecting its members.[38]

The following year, the president of the Assembly, Samuel Gompers, protested the postwar conspiracy convictions:

> Such trials, convictions and construction of the laws only tend to bring them [the judges] into discredit and contempt. It had been supposed that long ago the laws of conspiracy were in no way applicable to men in labor organizations having for their object the matter of regulating wages and hours of labor. If, as has now been decided, that the law of conspiracy still obtains in this question, the sooner it is repealed the better. Surely if monarchial England can afford to expunge obnoxious laws from her statutes, the Empire State of the Union can.[39]

By the mid 1880s, Franey, Gompers, and other New York and Pennsylvania labor leaders clearly considered the conspiracy convictions a travesty of justice and a considerable burden on American labor.[40] Their initial remedy for judicial obstruction was to return to the legislature and try to close the loopholes in the anticonspiracy laws through passage of more carefully drafted legislation. Neither

New York nor Pennsylvania workers abandoned politics quickly. Indeed, the successive conspiracy statutes in New York and Pennsylvania between 1869 and 1891 were in many ways a testimony to organized labor's commitment to political change in the three decades following the Civil War.

By the turn of the century, however, the AFL had become disillusioned with the prospects of political reform. Their repeated campaigns to secure state protection of the right to organize were continually undermined by the courts. Thus the postwar conspiracy convictions demonstrated the difficulties of changing government policy toward labor through legislative channels. Moreover, it was not just the anticonspiracy laws that were blocked by the courts. Where the anticonspiracy laws had been eroded through narrow interpretation, legislation establishing the eight-hour day, regular payment of wages, and prohibiting tenement manufacturing were declared unconstitutional.[41] Whether by judicial interpretation or the power of judicial review, the effect was the same; the courts eroded labor's hard won political victories. Not surprisingly, then, by the turn of the century many labor leaders began to articulate a mistrust of politics and to advocate a new strategy that would enable them to circumvent the unusual power of the American judiciary.

The debate over the "political programme" at the AFL's Denver convention captures nicely labor's increasing frustration with political reform. Delegates Beerman, Lloyd, Pomeroy, and Strasser opposed the ten-point platform precisely because the courts posed a major obstacle to effective political change. Although the delegates did not make explicit reference to the conspiracy laws, we can nevertheless see how the repeated pattern of political victory followed by judicial obstruction undermined their faith in the benefits of legislative change.[42] Delegate Pomeroy, for example, objected to plank 4, which called for "sanitary inspection of workshop, mine and home," in the following terms:

> Under the kind of government with which we are infested at the present time everything of a legal nature that will permit the invasion of the people's homes is dangerous. This law could be used to destroy the sacredness that is supposed and did once surround the American home. I believe the home can be made sacred again, can be defended from the *violations of a judiciary that stretches laws at the dictation of their bosses, capital.* . . . Leaving it [the plank] there, you leave a danger and a standing menace that has been already and will be used again against the rights of the citizens of this country.[43]

Delegates Beerman, Lloyd, and Strasser were less concerned with judicial interpretation than with the problems that judicial review created for political reform. Adolph Strasser summed up the frustration with political reform and began to articulate the basic features of the voluntarist strategy during the debate over plank 3, which called for a "legal eight-hour workday." Rather than looking to the government as their savior, workers should direct their energy and resources to trade union organizing and protest on the shop floor. Strasser argued,

There is one fact that cannot be overlooked. You cannot pass a general eight hour day without changing the constitution of the United States and the constitution of every State in the Union. . . . I hold we cannot propose to wait with the eight hour movement until we secure it by law. The cigar makers passed a law, without the government, . . . and they have enforced the law without having policemen in every shop to see its enforcement. . . . I am opposed to wasting our time declaring for legislation being enacted for a time possibly, after we are dead. I want to see something we can secure while we are alive.[44]

Perhaps the clearest account of the turn to voluntarism can be found in Samuel Gompers' autobiography in which he reflected on his "political work" in a chapter entitled "Learning Something of Legislation." Gompers had by no means always been a staunch advocate of business unionism. During the 1870s and 1880s, he campaigned actively to improve the workingmen's lot through political channels. Gompers' account of the New York cigarmakers' struggle to regulate tenement manufacturing provides an uncanny parallel with the Workingmen's Assembly efforts to pass the anticonspiracy laws.[45]

Between 1878 and 1885, New York Cigarmakers Local 144 undertook an intensive campaign to abolish or at least improve the appalling conditions of tenement manufacturing. First, they lobbied for passage of an amendment to the Federal Revenue Act that would have placed a prohibitive tax on cigars manufactured under tenement conditions. The amendment passed the House of Representatives in 1879 but did not make it out of the Senate. Second, the cigarmakers tried to pressure the New York Assembly into prohibiting tenement manufacturing by using its police powers to regulate public health. Union representatives testified regularly before the relevant committees, pledged representatives to support the bill, and endeavored to elect their own representatives to the Assembly. After several abortive efforts, a new state law prohibiting tenement manufacturing was passed in 1883.[46]

However, labor's hard earned political victories for tenement reform, like the anticonspiracy laws, seemed to have little or no real power. Employers successfully challenged the constitutionality of the law in the New York courts on the grounds that the act violated the due process clause. As with the anticonspiracy statutes, New York unions were not easily deterred from their "political work." In May 1884, their renewed efforts were again rewarded with a new more carefully drafted law, but it too was overruled by the New York Supreme Court and Circuit Court of Appeals.[47]

The cigarmakers' unsuccessful struggle for tenement reform, according to Gompers, taught him something about legislation, namely, the ineffectiveness of securing effective change through political channels: "Securing the enactment of a law does not mean the solution of the problem as I learned in my legislative experience. The power of the courts to pass upon constitutionality of law so complicates reform by legislation as to seriously restrict the effectiveness of that method."[48] When three decades of "political work" were continually eroded by the courts, New York and Pennsylvania workers began to look for other "meth-

ods" of protecting workers' interests within the confines of the divided American state.

The cigarmakers' response to the failed tenement legislation might well have served as a blueprint for the shift in labor strategy more generally. According to Gompers,

> After the Appeal Court declared against the principle of the law, we talked over the possibilities of further legislative action and decided to concentrate on organization work. Through our trade unions we harassed the manufacturers by strikes and agitation until they were convinced that we did not intend to stop until we gained our point and that it would be less costly for them to abandon the tenement manufacturing system and carry on the industry in factories under decent conditions. Thus we accomplished through economic power what we had failed to achieve through legislation.[49]

The AFL adopted a strategy of antistatist voluntarism precisely because the power of the courts to set government policy convinced Gompers, Pomeroy, Strasser, and other members of the AFL that it was extremely difficult to secure enduring change through political channels.

To be sure, business unionism was not the only possible response to judicial obstruction. The Socialist party provided a very different way of negotiating the peculiarities of the American state. Eugene Debs and the socialists called for a transformation of capitalist institutions. If the courts would not respond to workers' demands, then workers must mobilize around a radical platform in order to create a more sympathetic regime. The task, from the socialists' perspective, was to change the state rather than refashion labor strategy.[50] William Hayward and the Wobblies represented a second alternative to business unionism: the syndicalist program of direct action and shop-floor militance. In many ways, business unionism and syndicalism were two sides of the same antistatist coin; both strategies enabled workers to avoid the frustrations of pursuing legislative reform within the divided American state by focusing their energies, albeit in very different ways, on the shop floor.[51]

The story told here does not explain why the socialist and syndicalist alternatives remained subordinate to the AFL's business unionism. All three strategies would have enabled workers to circumvent the power of the courts. What the research does explain, however, is why by 1900 the option of pursuing workers' interests through a labor party or its equivalent was no longer viable in the United States. The failure of New York and Pennsylvania campaigns to repeal the conspiracy doctrine laid bare the limitations of conventional party politics for influencing the state. Short of revolutionary transformation, there was little incentive for workers to mobilize politically as hard won political victories were continually obstructed by the courts. As long as the courts remained the primary institution for regulating labor, the antistatist strategy of business unionism seemed to many workers to provide a more promising means of securing workers' interests in the United States.

English Labor and the Courts

Some might argue that the judicial interpretation of the New York and Pennsylvania anticonspiracy statutes reveals more about legislative politics than it does about the power of the courts. The New York and Pennsylvania statutes, so the argument might run, never really intended to exempt workers from criminal prosecution. The legislatures knew full well that the judiciary could exploit the intimidation provisions and continue to convict workers of criminal conspiracy. Fortunately, the limits of this argument can be gauged quickly by turning to the English case.

The English struggle for state recognition closely paralleled the New York and Pennsylvania movements. In the first phase, between 1867 and 1875, the Conference of Amalgamated Trades and the Parliamentary Committee of the Trades Union Congress lobbied Parliament for anticonspiracy legislation. The English campaign resulted in two new anticonspiracy laws in 1871 and 1875.[52] The Trade Union Act of 1871 established two important checks on judicial power: Section 2 granted unions immunity from prosecution under the common law doctrine of conspiracy and restraint of trade; section 4 restored trade unions' right to register as friendly societies, thereby protecting union funds from damage suits. Although the 1871 legislation went a considerable distance in protecting workers' industrial rights, it did not extend state protection unconditionally. Alongside the Trade Union Act of 1871, Parliament also passed the Criminal Law Amendment Act, which codified existing case law. The use of "violence, threats, intimidation, molestation or obstruction" during industrial disputes remained illegal, much as they were in the United States. A new campaign to repeal the Criminal Law Amendment Act was initiated by the Trades Union Congress and led to passage of the second anticonspiracy statute in 1875. The Conspiracy and Protection of Property Act went further than earlier legislation in protecting workers' right to organize by declaring all actions that were not themselves crimes when committed by an individual to be exempt from criminal prosecution if committed collectively. However, the 1875 statute continued to declare the use of violence and intimidation to be criminal actions.

In 1875, then, the English and American labor strategy and legal status were very similar. Workers in both countries sought to secure state protection of the right to organize and strike. To achieve this, they set about repealing the conspiracy doctrine through an extensive campaign of political reform. They won almost identical legislative victories. Governments in both countries took clear steps to protect workers' right to organize but also continued to identify specific actions beyond legislative protection. Implementation of the statutes, however, followed a very different course on the two sides of the Atlantic.

English employers were no more tolerant of working-class organization than were their New York and Pennsylvania counterparts. When faced with a strike, they too were willing to testify as to the intimidating nature of their employees'

behavior, thereby enabling workers to be convicted of criminal conspiracy under section 7 of the 1875 Act.[53] Unlike their American counterparts, however, English courts did not continue to convict workers of conspiracy after 1875. Rather, English courts deferred to parliamentary authority and interpreted the provisions against the use of violence and intimidation more narrowly than did either the New York or the Pennsylvania courts.

Two of the leading English cases brought under the 1875 statute highlight the more limited role of the English courts. Two Queen's Bench cases, decided in 1891, *Curran v. Treleaven* and *Gibson v. Lawson*, like the postwar conspiracy cases in the United States, hinged on the question of how the courts should interpret the provisions against intimidation contained in section 7 of the Conspiracy and Protection of Property Act.[54] In *Curran v. Treleaven*, the Court of Queen's Bench was faced with the question of whether or not "injury to trade" qualified as intimidation.[55] Pete Curran, secretary of the National Union of Gas Workers and General Labourers of Great Britain, had been convicted by the court of petty sessions for "wrongfully and without legal authority intimidating" a Plymouth coal merchant named George Treleaven. The dispute centered on the use of nonunion labor to unload one of Treleaven's coal ships. Union workers threatened to strike if Treleaven continued this practice, and they were charged with conspiracy on the grounds that they had intimidated Treleaven into fearing "injury to his business and consequently loss to himself." A strike to benefit workers, the prosecution argued, might have been legal, but a strike to injure the employer's business was an act of intimidation and as such was a criminal offense under section 7 of the 1875 statute.[56]

The Court of Queen's Bench, however, disagreed with the prosecution and adopted a more limited definition of intimidation. The chief justice delivered the opinion that accepted a much wider range of industrial action as legitimate behavior. He argued that

> where the object [of a strike] is to benefit oneself, it can seldom, perhaps it can never, be effected without some consequent loss or injury to someone else. In trade, in commerce, even in a profession, what is one man's gain is another's loss, and where the object is not malicious, the mere fact that the effect is injurious does not make the agreement either illegal or actionable, and, therefore, is not indictable.[57]

The Queen's Bench reversed the lower court conviction and acquitted the workers, thereby affirming the earlier statutory protection of workers' industrial rights.

The more restrained approach of the English courts can be seen especially clearly in *Gibson v. Lawson*, where the Queen's Bench again faced the issue of whether or not a particular strike action constituted a violation of section 7 of the Conspiracy and Protection of Property Act. In delivering the opinion, Chief Justice Lord Coleridge explicitly deferred to parliamentary policy on the issue and advocated a very limited role for judicial interpretation of statute law. At one point he noted that denying the appeal might appear to conflict with earlier con-

victions under the common law, especially the cases of *R. v. Druitt* and *R. v. Bunn*, but he dismissed the apparent conflict, saying that

> the cases of *Reg. v. Druitt* and *Reg. v. Bunn* in which Lord Bramwell and Lord Esher . . . are both said to have held the statutes on the subject have in no way interfered with or altered the common law, and that strikes and combinations expressly legalized by statute may yet be treated as indictable conspiracies at common law, and may be punished by imprisonment with hard labour. . . . We are well aware of the great authority of the judges by whom the above cases were decided, but we are unable to concur in these dicta, and, speaking with all deference, we think they are not law.[58]

Thus the Queen's Bench rather dramatically repudiated past case law in order to comply with the recent parliamentary statutes. Moreover, Lord Coleridge explicitly acknowledged the supremacy of Parliament in his concluding remarks in the Lawson decision:

> It seems to us that the law concerning combinations in reference to trade disputes is contained in 38 and 39 Vict. c 86, and in the statutes referred to in it, and that acts which are not indictable under that statute are not now, if, indeed, they ever were, indictable at common law.[59]

Gibson lost the appeal when the high court affirmed the lower court ruling and found the defendant not guilty of wrongful intimidation.

The English labor movement was thus more successful in its struggle for state recognition than was its American counterpart. Not only did it secure prolabor legislation through its intensive lobbying campaign, but these statutes actually protected workers from future conspiracy prosecutions. English success was the product of more carefully drafted legislation, as both the American and English statutes contained similar intimidation provisions. Instead, the differences are more readily attributed to the effective division of political power between Parliament and the judiciary that was itself a legacy of past political struggles and social compromises negotiated at the end of the English civil war. By deferring to the nineteenth-century labor statutes, the English courts were adhering to a long-standing tradition of parliamentary supremacy of which labor was now the unintended beneficiary.[60]

If the supremacy of Parliament was indeed the crucial factor in shaping labor strategy in England, then we must account for the resurgence of judicial hostility toward labor at the turn of the century. Why, after affirming the Conspiracy and Protection of Property Act so firmly in the 1890s, did the English courts hand down a series of antilabor decisions in the first decades of the twentieth century?

Taff Vale and Civil Liabilities

Even though the courts had deferred to Parliament when interpreting the Conspiracy and Protection of Property Act, the English struggle over state

recognition of workers' industrial rights was by no means entirely resolved by the turn of the century. In fact, the most infamous antilabor cases—*Quinn v. Leatham*, Taff Vale, and the Osborne judgment—were handed down by the courts in the first two decades of the twentieth century.[61] These later cases, however, did not represent a change in judicial interpretation of the existing labor statutes but, rather, reflected changes in other areas of common law doctrine that opened up entirely new legal issues that had not been covered by earlier legislation. All of these later convictions were brought as civil rather than criminal prosecutions and thus required additional parliamentary protection. The Conspiracy and Protection of Property Act had succeeded in protecting unions from *criminal* prosecution but had not been designed to protect, nor was it capable of protecting, workers from claims for *civil* liabilities.

The renewed attack on organized labor in the first two decades of the twentieth century was made possible both by developments in English corporation law during the 1890s and by the particular form of legislative protection provided by the English state. Prior to 1901, labor unions generally had been considered immune from prosecution for damages inflicted during industrial disputes due to their noncorporate status. Corporate officers had been protected from damage suits through the doctrine of limited liability that restricted damage claims to company property. Unions, fearing suits against their organizations' funds, had chosen to remain unincorporated, thereby forgoing the "privilege" of limited liability but also protecting the union from civil liability claims.[62]

During the 1890s, however, English company law changed. In a series of nonlabor cases, the courts began to allow "representative actions" to be brought against unincorporated companies. This evolution of legal doctrine enabled the growing number of unincorporated companies to be held legally accountable by allowing individuals to be considered representatives of their organizations. In 1893, an enterprising attorney brought a representative action against a number of building trade unions in Hull. The divisional court, however, denied the action and ruled that the defendants could be sued only as individuals and not as representatives of their unions. Although unsuccessful, the *Temperton v. Russell* case laid the legal groundwork for the historic Taff Vale decision of 1901.[63]

The Taff Vale railway company successfully sued the Amalgamated Society of Railway Servants precisely because the court overruled the Temperton decision and held that although not a corporate body, the union itself could be sued just as many *non*labor organizations had been in the previous decade. The court found for Taff Vale and ordered the union to pay damages of £23,000 and expenses, including legal costs of £42,000.[64] The decision was a major defeat for organized labor. The setback, however, was short-lived; within the next five years, Parliament passed the Trades Dispute Act, which established union immunity to civil liabilities as well as criminal conspiracies. Thus the new vulnerability was quickly

foreclosed through further labor lobbying and renewed statutory protection of workers' industrial rights. The Trades Dispute Act reaffirmed the benefits of political action, and the campaign to repeal Taff Vale provided a major impetus to the newly established Labour party, which led the campaign for legislative reform.[65]

Changes in corporation law, however, were only partially responsible for the renewed prosecution of English unions. The particular form of legislative protection granted to English labor under the Conspiracy and Protection of Property Act also contributed to the pattern of successive waves of statutory protection and judicial prosecution. Although clearly extending state protection to workers in the late nineteenth century, Parliament stopped short of enacting general rights for English workers. Instead, a more limited approach was used in which workers' industrial rights were protected against *specific* kinds of legal prosecution.[66] This form of state recognition has been characterized by Lord Wedderburn and others as a "negative" rather than "positive" definition of workers' rights, in that unions were provided with a series of "immunities" from particular legal doctrines rather than being granted a less qualified right to organize and strike.[67] Thus the legislative victories of 1871, 1875, and 1905 established distinct exemptions for labor from particular common law doctrines rather than enacting more wide-ranging industrial rights. Although both the Conspiracy and Protection of Property Act and the Trades Dispute Act were quite effective in shielding unions from criminal and civil liabilities, they left unions vulnerable to new or unanticipated legal actions. The emergence of representative actions in company law is a perfect example of the way in which the English statutes exposed unions to new prosecution strategies. With each legal innovation, labor had to return to Parliament to specify further the precise grounds of state protection.

Although both English and American labor regulation oscillated between periods of judicial hostility and statutory protection, the origins and impact of the pattern of state regulation was quite different in the two nations. In England, once statutory protections were enacted, the courts deferred to parliamentary authority and honored the particular immunities prescribed in successive labor legislation. The alternation between legislative protection and judicial prosecution did not stem from Parliament's inability to check the power of the English courts. Rather, Parliament was quite effective at limiting judicial interpretation but only on the particular issues covered by the statute. In America, on the other hand, state legislatures had little or no success in redirecting judicial regulation of working-class organization and protest. Both the New York and the Pennsylvania courts undermined the successive statutory protections and continued to convict workers of conspiracy on much the same grounds throughout the nineteenth century. Thus the successive waves of legislative protection and judicial prosecution in the United States reflected a different balance of power between the courts and legislature than existed in England in the same period.

An Interpretative Twist: Early Nineteenth-Century Producers and the State

In many ways, it is tempting to end the story of divergent labor movement development here and to attribute different labor strategies exclusively to differences in state structure. Although a state-centered analysis works well for the English-American comparison in the late nineteenth century, it is quite misleading to extrapolate from this particular historical period to other eras as well. In fact, when the field of analysis is extended to include the early nineteenth century, a very different set of state-labor relations is seen to have prevailed.

Prior to 1860, American workers did not find themselves locked in a frustrating struggle with the courts. On the contrary, early workingmen's associations such as the New York and Philadelphia Working Men's parties (1827-31) and the New York Loco-foco or Equal Rights party (1835-37) looked to the state as both the source and potential solution to their economic distress. Indeed, if one steps back to the 1820s and 1830s, one can see intriguing parallels between the Chartist and Working Men's parties in the United States. Moreover, New York and Pennsylvania workers were, if anything, more successful than their English counterparts at securing their political demands from the state. Laws establishing a system of compulsory education, general incorporation, and mechanics' liens, abolishing imprisonment for debt, and creating a more decentralized system of currency and credit were passed in several northeastern states before 1842. The Working Men's parties were by no means the only actors responsible for securing these reforms. But most scholars agree that skilled workers played an important role in placing these issues on the political agenda.[68]

Thus before the Civil War, the unusual power of the American courts over other branches of government did not hamper antebellum efforts at political reform. Working-class protest in England and the United States was not yet channeled along divergent paths. Why, then, did differences in state structure only become salient in the last quarter of the nineteenth century? Why did the role of the American state change so that American courts came to block working-class political action only after the Civil War?

The divergent patterns of state-labor relations after the Civil War cannot be explained by objective conditions alone. State structure and policy remained relatively constant during the nineteenth century; moreover, workers were subject to conspiracy prosecutions both before and after the Civil War. Yet conspiracy convictions did not become the focus of workingmen's ire before the Civil War. Instead of challenging the power of the courts, antebellum workers were engaged in a quite different program of political reform.[69] The more cooperative state-labor relations that prevailed particularly in the first three decades of the nineteenth century can perhaps only be understood by attending more carefully to changes in culture and ideology within which state institutions operated, specifically, how long-standing eighteenth-century assumptions and the quite different cultural

understandings that they entailed continued to shape labor's perception of, and response to, the courts well into the nineteenth century.

Several scholars have begun to investigate the influence of republican ideology on workingmen's protest in the early decades of the nineteenth century.[70] Although not emphasized equally by all scholars, three assumptions seem to have been especially important. First, early nineteenth-century protesters continued to voice the republican belief in the constitutive power of politics, viewing the economic distress and social conflict of the 1820s and 1830s as the result of an inappropriate balance of political institutions and poor legislation rather than the product of some inevitable process of industrialization. Chartists and the New York and Philadelphia Working Men's parties believed their economic plight to have been politically created and in need of political reform.[71] If only the appropriate configuration of political institutions and public policy could be established, then all productive citizens could share in the benefits of economic growth.

Second, in the early decades of the nineteenth century, workingmen continued to assert the importance of propertied independence as the basis of civic participation. Even though wage labor was increasing, skilled workers defended their claims to independence through the labor theory of value and claims of property rights in their trade.[72] Day laborers and the dependent poor might legitimately be excluded from politics, workingmen argued, but skilled artisans should be recognized as worthy members of the republic who were quite capable of remaining "independent at the polls."[73]

Finally, workingmen adhered to the long-standing eighteenth-century fear of dependence and corruption that they believed led to tyranny and the abuse of political power. When faced with the reorganization of work and tremendous changes in production now referred to as industrialization, Chartists and workingmen across the Atlantic extended traditional republican fears from the political to the economic realm. The most urgent problem, the workingmen claimed, lay in the recent concentration of economic rather than political power. The National Bank and the "spurious currency" system were considered particularly dangerous, as they were creating unhealthy monopolies that were making the "rich richer, and the poor poorer" and the "many dependant [sic] on the few."[74]

These republican precepts were sustained by quite different social relations and political alliances. The primary social cleavage in the first three decades of the nineteenth century was not yet between labor and capital, or between the producing and nonproducing classes: skilled artisans, small manufacturers, and yeoman farmers identified as producers and allied against bankers, lawyers, and speculators, the quintessential members of the nonproducing classes. The Chartists and New York and Philadelphia Working Men's parties were not class-consciousness "proto-socialist" movements that mobilized workers as members of a distinct wage-earning class.[75] Instead, they mobilized producers against the

nonproducing classes. Only gradually over the next fifty years would producers be distinguished into the working and middle classes.[76]

When producers mobilized politically in both England and the United States, they called for economic and political power to be distributed more evenly throughout the nation and the conditions for civic participation to be ensured. The specific means of obtaining these goals varied on the two sides of the Atlantic. In New York and Philadelphia, the Working Men's parties and Loco-focos advocated a series of antimonopoly reforms. First and foremost, they staunchly opposed the rechartering of the National Bank and demanded instead more liberal banking laws that would give all productive citizens access to credit. They believed that this would promote decentralized economic growth and avoid the dangers inherent in concentrations of economic and political power.[77]

In addition, they gave considerable attention to education reform and called repeatedly for creation of a system of state-funded schools. No industrious citizens, the producers argued, could hope to fulfill their duties of civic participation unless they had sufficient time and resources to inform themselves on the pressing issues of the day. Finally, New York and Philadelphia producers called for a number of smaller policy changes including abolition of imprisonment for debt, passage of a mechanics' lien law, and abolition of the militia system. Such policies would help maintain the solvency and dignity of small producers in this period of rapid economic change.[78] English producers focused primarily on suffrage reform. Extending the vote, the Chartists claimed, was an essential prerequisite for alleviating the economic distress of skilled workers and small manufacturers. But Chartists also attacked the debilitating effects of speculation and exchange.

This is not to imply that all was harmony and cooperation within the early nineteenth-century producers' organizations. Both the Chartist movement and the Working Men's parties contained minority factions advocating more radical reforms and a break with middle-class reformers, but it is a mistake to view them as the only authentic voices within the producers' ranks.[79] By attending more closely to the eighteenth-century legacy, one can see a much wider range of producers' demands as equally legitimate, albeit different, responses to economic change. Financial reform, education policy, and general incorporation laws, for example, were designed to create the conditions needed for producers to maintain their role as independent and respected citizens in their respective republics. From the 1820s through the 1840s, the dominant factions within both the English and American protest movements remained firmly committed to the producers' program of republican reform and continued to attract both skilled artisans and middle-class allies into their ranks.

Thus when faced with declining wages and diminishing social status, producers were not transformed overnight into a new working class. Established social

divisions and political alliances were not abandoned so lightly. Instead, the first wave of resistance to industrialization from the 1820s through the 1840s was shaped by eighteenth-century ideology and social relations. These early protesters, I have found, were more interested in reaffirming their position in the republic than in transforming nineteenth-century society along new class lines.

When workingmen understood their economic plight in light of eighteenth-century assumptions, they looked to the state for very different reasons than did their late nineteenth-century counterparts. Rather than demanding state protection of the right to organize and strike, antebellum protesters in both England and the United States mobilized collectively to secure the necessary conditions for their dual goals of decentralized economic growth and civic participation. Although not all the producers' demands were adopted immediately and many became the subject of heated political debate, they were not eviscerated by the courts. Unlike workers' postwar demand for state protection of the right to organize, the producers' program for antimonopoly reform and civic participation could be accommodated quite easily within the existing legal order and did not require that the balance of power be renegotiated between legislatures and the courts.

Republican ideology thus entailed a quite different set of labor demands, which, in turn, enabled more cooperative state-labor relations to prevail before the Civil War. But were ideology, culture, and acts of interpretation central to the shift in state-labor relations after the war? Can we not explain the change in labor demands and the judicial obstruction that followed simply as products of industrialization? Were shifts in ideology and culture after the Civil War not largely derivative of changes in economic and social relations?

The limits of a materialist account of changes in state-labor relations after the Civil War can be seen by shifting the field of analysis from a comparison across countries and over time to a comparison across organizations in the same era. Contrasting the two principal labor organizations of the 1870s and 1880s, namely, the Knights of Labor and the New York Workingmen's Assembly, enables one to hold economic and social conditions reasonably constant and as a consequence brings into sharper relief the influence of ideology and culture over labor's platform. As a detailed account of this postwar comparison has been presented elsewhere, only the central findings of that research are referred to here.[80]

The producers' alliance did not break down quickly or in an orderly fashion. During the three decades following the Civil War, there was a proliferation of labor organizations in both England and the United States, each of which put forth its own interpretation and remedy for labor's current distress. Although most workers agreed that economic and social relations had changed in an undesirable fashion in the immediate postwar decades, they understood these changes in varied ways.

The Knights of Labor and the New York Workingmen's Assembly, for example, responded to the postwar conspiracy trials very differently. The Knights of

Labor, unlike their trade union rivals, continued in the producers' tradition and did *not* make collective action and repealing the conspiracy laws a central component of their postwar program. Instead, they continued to advance an extensive program of antimonopoly reform and did not become embroiled in a protracted struggle with the courts.[81] The New York Workingmen's Assembly program, on the other hand, centered on obtaining state protection of the right to organize alongside a campaign to improve hours, wages, and working conditions for labor. Their campaign against the conspiracy laws led them into an unsuccessful struggle with the courts, a struggle that was itself decisive in disillusioning New York and Pennsylvania workers about the prospects of political reform.

Differences in labor demands across postwar labor organizations cannot be accounted for readily by economic conditions and social relations alone because both the Knights of Labor and the New York Workingmen's Assembly were responding to the same conditions. Instead, different ideologies and interpretative frames played a considerable role in shaping workers' demands as workers struggled to make sense of the enormous changes that were taking place in the second half of the nineteenth century.

CONCLUSION

State Structure and Labor Strategy in Historical Perspective

The history of judicial regulation of working-class organization in England and the United States points to three broad conclusions about historical and institutional arguments. First, different institutional arrangements provided very different incentives and constraints for workers and channeled protest along different paths. Indeed, the political terrain on which workers organized played a significant role in shaping working-class interests and strategy in England and the United States.

The contrasting behavior of the courts in the English and American political systems provided very different rewards for working-class political action and ultimately was responsible for the divergent development of the two labor movements at the end of the nineteenth century. In England, where the courts were less powerful and generally allowed Parliament to establish government policy toward labor, working-class political organization was systematically rewarded. In contrast, equivalent legislative successes in New York and Pennsylvania provided very little leverage over government policy, which continued to be dominated by the judiciary with little or no regard for statute law. The inability of New York and Pennsylvania legislatures to check the power of the courts left American workers disillusioned with the prospects of successful political mobilization. The divergent patterns of labor movement development after 1890, then,

can be traced to the very different roles played by the courts during workers' struggle for state protection of industrial rights in the closing decades of the nineteenth century. After almost a century of parallel development, the English and American labor movements began to adopt quite different strategies, largely in response to the pattern of frustrations and rewards that flowed from the political systems within which they organized.

Second, the preceding research suggests that the nature of institutional power needs to be reconsidered. Although American courts played a decisive role in the turn to business unionism, the courts were by no means always so influential. In the first half of the nineteenth century, when producers pursued a very different program of reform, the unusual structure of the American state was of little significance. Producers did not find their programs thwarted by the courts and did not engage in an extensive program of legal reform. However, the courts' role *changed* over the course of the nineteenth century. Once American labor decided that it wanted what the courts had jurisdiction over, namely, the right to collective action, then judicial regulation did shape subsequent labor strategy. Ironically, the courts' power over American labor was dependent to a considerable degree on the substantive aspirations and goals of the very organizations that they sought to regulate.

Questions of state structure and capacity alone cannot account for the changing significance of judicial regulation over the course of the nineteenth century. Instead, we need to adopt a more relational approach to institutional power in which we attend to both institutional structures and the larger social context within which they are embedded. By comparing state-labor relations across countries, eras, and organizations, we have seen that judicial power varied enormously as different ideologies and cultures intersected the same institutional structures in very different ways.

Finally, this study underscores the importance of attending to issues of interpretation in institutional analyses. How workers responded to industrialization and what they understood their interests to be during the nineteenth century did not follow directly from the underlying economic and social relations. Instead, there was considerable play in how workers interpreted the economic changes at hand. The influence of different interpretations was manifest in the distinct demands that different organizations advanced to protect workers' interests in the new economy. The particular visions, or interpretative frames, that dominated in any particular country, period, or organization had a considerable effect on workers' relation to the state and ultimately played a central role in shaping labor strategy. Ignoring questions of meaning and interpretation would likely have prevented deciphering the origins of divergent patterns of labor movement development in England and the United States.

NOTES

1. For two excellent accounts of the American Federation of Labor's business unionism in the early twentieth century, see Michael Rogin, "Voluntarism: The Political Functions of an Anti-political Doctrine," *Industrial and Labor Relations Review* 15 (July 1962): 521-35; and Ruth L. Horowitz, *Political Ideologies of Organized Labor* (New Brunswick, NJ: Transaction Books, 1978), chap. 1. For English labor strategy at the turn of the century, see G.D.H. Cole, *British Working Class Politics, 1832-1914* (London: Routledge & Kegan Paul, 1941), esp. chaps. 8, 11, 12, 14, and 19; Sidney Webb and Beatrice Webb, *The History of Trade Unionism* (New York: Kelley, 1965), esp. chaps. 10 and 11; and Alan Fox, *History and Heritage: The Social Origins of the British Industrial Relations System* (London: Allen & Unwin, 1985). For an extensive list of legislation supported by the English Trade Union Congress at the end of the nineteenth century, see George Howell, *Labour Legislation, Labour Movements, and Labour Leaders* (London: Unwin, 1902), 469-72.

2. See the following editorials by Samuel Gompers: "Economic Organization and the Eight-Hour Day," *American Federationist* 22, no. 1 (January 1915); "Compulsory Arbitration's Latest Evangelist," *American Federationist* 21, no. 9 (September 1914); "Trade Union Health Insurance," *American Federationist* 23, no. 11 (November 1916).

3. See Ira Katznelson, *City Trenches: Urban Politics and the Patterning of Class in the United States* (Chicago: University of Chicago Press, 1981). Although Katznelson identified the separation of work and politics nicely, he locates the origins of the separation early in the nineteenth century with the rise of capitalism. In contrast, I do not see "city trenches" taking hold until the last decade of the 19th century. Indeed, I see the division between work and politics as a product of the AFL's unsuccessful struggle for legal reform in the post-Civil War era. Earlier in the nineteenth century, workers were quite willing and able to advocate their workplace concerns through electoral and party politics. An alternative periodization of class and politics is elaborated in the remainder of the article.

4. For a discussion of government regulation of working-class organization in France, see Julio Samuel Valenzuela, "Labor Movement Formation and Politics: The Chilean and French Cases in Comparative Perspective, 1850-1950" (Ph.D. diss., Columbia University, 1979). For a discussion of government regulation of labor in Germany, see Mary Nolan, "Economic Crisis, State Policy, and Working-Class Formation in Germany, 1870-1900," in *Working-Class Formation: Nineteenth-Century Patterns in Western Europe and the United States*, edited by Ira Katznelson and Aristide Zolberg (Princeton, NJ: Princeton University Press, 1986). For a useful comparison of Britain, Germany, and the United States, see Gary Marks, *Unions and Politics: Britain, Germany, and the United States in the Nineteenth and Early Twentieth Centuries* (Princeton, NJ: Princeton University Press, 1989).

5. For useful discussions of the conspiracy doctrine, see Hampton L. Carson, *The Law of Criminal Conspiracies and Agreements, as Found in the American Cases* (Philadelphia: Blackstone, 1887); Francis B. Sayre, "Criminal Conspiracy," *Harvard Law Review* 35:393; Edwin Witte, "Early American Labor Cases," *Yale Law Journal* 35 (1926): 825; and Alpheus T. Mason, *Organized Labor and the Law* (New York: Arno & *New York Times*, 1969; originally published 1925). Many accounts of American labor law limit the conspiracy doctrine to the period 1806-42. The landmark case of Commonwealth v. Hunt, 4 Metc. 111 (Ma. 1842), is said to have ended the use of conspiracy and to have established the right to organize and strike for American workers. However, limiting conspiracy to the

antebellum era is incorrect. There is considerable evidence of a revival of the doctrine from the 1860s on through the 1890s. For example, see Hyman Kuritz, "Criminal Conspiracy Cases in Post-bellum Pennsylvania," *Pennsylvania History* 18 (October 1950): 292-301; and Witte, "Early American Labor Cases," 828-32. For elaboration of the legal doctrine and cases in both the antebellum and postbellum eras, see Victoria Hattam, *Labor Visions and State Power: The Origins of Business Unionism in the United States, 1806-1896* (Princeton, NJ: Princeton University Press, 1992), chap. 2.

6. For discussion of English labor regulation, see M. Dorothy George, "The Combination Laws," *Economic History Review* 6 (April 1936): 172-78; and John Victor Orth, "Combination and Conspiracy: The Legal Status of English Trade Unions, 1799-1871" (Ph.D. diss., Harvard University, 1977).

7. For extensive reviews of the literature, see Eric Foner, "Why Is There no Socialism in the United States?" *History Workshop* 17 (Spring 1984): 57-80; and Gwendolyn Mink, *Old Labor and New Immigrants in American Political Development: Union, Party, and State, 1875-1920* (Ithaca, NY: Cornell University Press, 1986), chap. 1.

8. For works linking labor market heterogeneity to American labor reformism, see John R. Commons, "Immigration and Labor Problems," in *The Making of America*, edited by Robert M. La Follette (Chicago: The Making of America Co., 1906), vol. 8, 236-61; Melvyn Dubofsky, *We Shall Be All: A History of the Industrial Workers of the World* (New York: Random House, 1969); Alexander Saxton, *The Indispensable Enemy: Labor and the Anti-Chinese Movement in California* (Berkeley: University of California Press, 1971); Gerald Rosenblum, *Immigrant Workers: Their Impact on Labor Radicalism* (1973); Robert Asher, "Union Nativism and the Immigrant Response," *Labor History* 23 (Summer 1982): 325-48; Richard Oestreicher, *Solidarity and Fragmentation: Working People and Class Consciousness in Detroit, 1875-1900* (Urbana: University of Illinois Press, 1986); Gwendolyn Mink, *Old Labor and New Immigrants*; Martin Brown and Peter Philips, "Competition and Racism in Hiring Practices Among California Manufacturers, 1860-1882," *Industrial and Labor Relations Review* 40 (October 1986): 61-74; Elliot J. Gorn, " 'Good-Bye Boys, I Die a True American': Homicide, Nativism, and Working-Class Culture in Antebellum New York City," *Journal of American History* 74 (September 1987): 388-410; and Stanley Nadel, *Little Germany: Ethnicity, Religion, and Class in New York City, 1845-80* (Urbana: University of Illinois Press, 1990). Issues of race and immigration should by no means be kept separate. Indeed, Alexander Saxton, Gwendolyn Mink, and Richard Slotkin have all shown how racism and immigration often were intimately linked in the last quarter of the nineteenth century. See Saxton, *The Indispensable Enemy*; Richard Slotkin, *The Fatal Environment: The Myth of the Frontier in the Age of Industrialization, 1800-1890* (Middletown, CT: Wesleyan University Press, 1985); and Mink, *Old Labor and New Immigrants*.

9. For recent work exploring the diverse legacy of immigrant experience, see John Bodner, *The Transplanted* (Bloomington: Indiana University Press, 1985); David Emmons, *The Butte Irish: Class and Ethnicity in an American Mining Town, 1875-1925* (Urbana: University of Illinois Press, 1989); and Gunther Peck, "Crisis in the Family: Padrones and Radicals in Utah, 1908-1912," in *New Directions in Greek-American Studies*, edited by Dan Georgakas and Charles C. Moskos (New York: Pella Press, 1991), 73-94. Both Mink and Oestreicher also allow for some diversity in immigrant legacy. However, ethnic and racial divisions remain central to each of their explanations of American labor reformism. See Mink, *Old Labor and New Immigrants*, chap. 4; and Oestreicher, *Solidarity and Fragmentation*, chaps. 5, 6, and 7.

10. For a useful review of the literature on race and class, see David Roediger, " 'Labor in White Skin': Race and Working-Class History," in *Reshaping the U.S. Left: Popular*

Struggles in the 1980s, edited by Mike Davis and Michael Sprinker (New York: Verso, 1988). See also Peter Rachleff, *Black Labor in Richmond, 1865-1890* (Urbana: University of Illinois Press, 1989); and Michael Goldfield, "Class, Race, and Politics in the United States: White Supremacy as the Main Explanation for the Peculiarities of American Politics," *Research in Political Economy* 12 (1990): 82-127.

11. See Marks, *Unions in Politics*.

12. Although much of the book is spent distinguishing the labor strategies of different sectors in Great Britain, Germany, and the United States, Marks nevertheless returns to the question of national variation in chapter 6. He argues that one can move from sectors back to national labor movements by attending to the different composition of national trade union federations in each nation. The American labor movement eschewed political reform, he claims, because, unlike Britain, craft unions dominated the AFL. However, his evidence is insufficient to sustain his claim. Moreover, I have trouble accepting Marks's underlying assumption that successful craft unions were inherently opposed to political reform. My own research suggests that even the classic craft unions were not always hostile to political action but only became so after having their earlier political victories continually frustrated by the courts. See Marks, *Unions in Politics*, chap. 6, esp. 210-11.

13. The classic argument concerning electoral laws was made by Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (New York, 1960). Many of Duverger's insights were subsequently confirmed with quantitative analysis by Douglas Rae, *The Political Consequences of Electoral Laws* (New Haven, CT: Yale University Press, 1967). For more specific arguments linking electoral laws to labor strategy, see Richard Oestreicher, "Urban Working-Class Political Behavior and Theories of American Electoral Politics, 1870-1940," *Journal of American History* 74 (March 1988): 1257-86; Seymour Martin Lipset, "Radicalism or Reformism: The Sources of Working-Class Politics," *American Political Science Review* 77 (March 1983): 1-19; and Peter Bruce, "Political Parties and the Evolution of Labor Law in Canada and the United States" (Ph.D. diss., MIT, 1988).

14. See Amy Bridges, *A City in the Republic: Antebellum New York and the Origins of Machine Politics* (Ithaca, NY: Cornell University Press, 1987); Amy Bridges, "Becoming American: The Working Classes in the United States Before the Civil War," in *Working-Class Formation*, edited by Ira Katznelson and Aristide Zolberg, 157-96; Ira Katznelson, *City Trenches*; Martin Shefter, "Trade Unions and Political Machines: The Organization and Disorganization of the American Working Class in the Late Nineteenth Century," in *Working-Class Formation*, edited by Ira Katznelson and Aristide Zolberg, 197-276; and Steven P. Erie, *Rainbow's End: Irish America and the Dilemmas of Urban Machine Politics, 1840-1895* (Berkeley: University of California Press, 1988).

15. Neither England nor the United States had systems of proportional representation that generally have been seen as fostering a multiparty system. For comparison of English and American electoral laws, see Rae, *Political Consequences of Electoral Laws*, 42-44. For critical readings of the literature on political machines, see M. Craig Brown and Charles N. Halaby, "Bosses, Reform, and the Socioeconomic Bases of Urban Expenditure, 1890-1940," in *The Politics of Urban Fiscal Policy*, by Terrence J. McDonald and Sally K. Ward (Beverly Hills, CA: Sage, 1984): 69-99; and Terrence J. McDonald, "The Burdens of Urban History: The Theory of the State in Recent American Social History," *Studies in American Political Development* 3 (1989): 3-29. See also Ira Katznelson's response in the same volume. Several scholars have begun to revise earlier accounts of nineteenth-century party politics and have found that there were, in fact, important substantive and class differences to partisan divisions for much of the nineteenth century. See Marvin Meyers, *The Jacksonian Persuasion: Politics and Belief* (Stanford, CA: Stanford University Press,

1957); Bridges, *City in the Republic*, chap 4; Daniel Walker Howe, *The Political Culture of the American Whigs* (Chicago: University of Chicago Press, 1979); John Ashworth, *'Agrarians' and 'Aristocrats': Party Political Ideology in the United States, 1837-1846* (New York: Cambridge University Press, 1987); and Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War* (New York: Oxford University Press, 1970). Political divisions in the late nineteenth century were considerably more complicated, as the Civil War made it difficult for northern workers to continue supporting the Democratic party. It is a mistake, however, to assume that just because workers backed away from the Democratic party they retreated from substantive politics completely. Instead, third parties took up many workers' concerns in the three decades following the Civil War, and the AFL did not begin its turn to voluntarism until the last decade of the century. This revised view of nineteenth-century party politics, however, can be reconciled with some aspects of the literature on political machines. Patronage politics would have to be limited to the late 1880s and beyond and would be seen, at least in part, as a manifestation of AFL voluntarism.

16. Many scholars, especially the new labor historians, have been calling for an end to debates on American exceptionalism for some time. For example, see Sean Wilentz, "Against Exceptionalism: Class Consciousness and the American Labor Movement," *International Labor and Working Class History* 26 (Fall 1984): 1-24. Moreover, the new labor historians have done a wonderful job of recovering the rich heritage of labor radicalism in the United States. However, the debate on exceptionalism refuses to die precisely because there is something distinctive about labor strategy in the twentieth century. The pressing task, then, is to reconcile the old and the new labor history by explaining what happened to the long tradition of workers' protest with the turn to voluntarism at the end of the century. The literature encompassing the old and new labor history is too extensive to be identified here. For two useful, if somewhat outdated, overviews of the field, see David Brody, "The Old Labor History and the New: In Search of an American Working Class," *Labor History* 20 (Winter 1979): 111-26; and Sean Wilentz, "Artisan Origins of the American Working Class," *International Labor and Working Class History* 19 (Spring 1981): 1-22.

17. Excellent accounts of the English struggle for state recognition can be found in H. W. McCready's "British Labour's Lobby, 1867-75," *Canadian Journal of Economics and Political Science* 22 (May 1956): 141-60; "British Labour and the Royal Commission on Trade Unions, 1867-69," *University of Toronto Quarterly* 24 (July 1955): 390-409; and "The British Election of 1874: Frederic Harrison and the Liberal Labour Dilemma," *Canadian Journal of Economics and Political Science* 20 (May 1954): 166-75; Cole, *British Working Class Politics*, chap. 5, esp. p. 55; and Webb and Webb, *History of Trade Unionism*, chap. 5. For the United States, see Victoria Hattam, "Economic Visions and Political Strategies: American Labor and the State, 1865-1896," *Studies in American Political Development* 4 (1990): 82-129; and Kuritz, "Criminal Conspiracy Cases."

18. See New York Workingmen's Assembly Proceedings 1870-1893; McCready, "British Labour's Lobby," 148-59; and Webb and Webb, *History of Trade Unionism*, 280-91.

19. Four anticonspiracy laws were passed in New York and four in Pennsylvania. See *Laws of the State of New York* chaps. 18 and 19, 1870; Penal Code Secs. 168 and 170, 1881; chap. 384, 1882; and chap. 688, 1887; and Laws of Pennsylvania P.L. 1260, 1869; P.L. 1175, 1872; P.L. 45, 1876; and P.L. 300, 1891. The three English statutes were the Trade Union Act, 35 Vict. c. 31, 1871; the Criminal Law Amendment Act, 35 Vict. c. 32, 1871; and the Conspiracy and Protection of Property Act, 38, 39 Vict. c. 86, 1875.

20. For example, see sec. 168 of the New York Penal Code, 1881; and the Criminal Law Amendment Act, 35 Vict. c. 32, 1871.

21. See New York statutes identified in note 19.

22. Many American conspiracy cases, especially in the lower courts, went unreported. Thus some cases could only be identified through local newspapers and government reports. The following are the major postbellum conspiracy cases in New York and Pennsylvania identified to date: Master Stevedores Association v. Walsh, 2 Daly 1 (1867); People v. Van Nostrand (N.Y. 1867); Cigarmakers' Union No. 66, Kingston, NY, 1868, *NLU Proceedings, Second Session*, 1868: 12; Raybold and Frostevant v. Samuel R. Gaul of Bricklayers' Union No. 2, New York City, *NLU Proceedings, Second Session*, 1868: 12; Iron Moulders' Union No. 22 v. Tuttle & Bailey, Brooklyn, New York, 1869, *Workingmen's Assembly Proceedings*, 1870: 23; Iron Moulders' Union No. 203, Harlem, New York v. United States Iron Works, 1869, *Workingmen's Assembly Proceedings*, 1870: 23; Commonwealth v. Curren, 3 Pitts. 143 (1869); Commonwealth v. Berry et al., 1 *Scranton Law Times* 217 (1874); Xingo Parks and John Siney trial, Clearfield County, PA (1875), *Pennsylvania Bureau of Industrial Statistics* 9:313-15; Commonwealth ex rel. E. Vallette et al. v. Sheriff, 15 Phil. 393 (1881); D. R. Jones trial, Westmoreland County, PA (1881), *Pennsylvania Bureau of Industrial Statistics* 9:378-83; Miles McPadden and Knights of Labor trials, Clearfield County (1882), *Pennsylvania Bureau of Industrial Statistics* 10:161-63; Newman et al. v. the Commonwealth, *Pittsburgh Law Journal* 34 (1886): 313; People v. Wilzig, 4 N.Y. Cr. 403 (1886); People v. Kostka, 4 N.Y. Cr. 429 (1886); People ex rel. Gill v. Smith, 10 N.Y. St. Rptr. 730 (1887); and People ex rel. Gill v. Walsh, 110 N.Y. 633 (1888).

23. For example, see People v. Wilzig, People v. Kostka, and Newman et al. v. the Commonwealth.

24. See People v. Wilzig.

25. Ibid., 415.

26. The account of the dispute is taken from the prosecution arguments in the trial of Hans Holdorf, one of Wilzig's fellow defendants. Each of the defendants requested and was granted a separate trial. The Holdorf prosecution's account is reprinted in the Wilzig case report. See Wilzig, 406-11.

27. In England, special tribunals of oyer and terminer were established to hear some criminal cases. In the United States, some states followed the English tradition and used this same term to refer to their higher criminal courts.

28. Wilzig, 414.

29. See the New York cases in note 22.

30. See Pennsylvania statutes identified in note 19.

31. See Pennsylvania cases in note 22. For useful discussion of some of the postwar Pennsylvania cases, see Kuritz, "Criminal Conspiracy Cases."

32. The Waverly coal miners' case was not reported in the Pennsylvania law reports. Nevertheless, accounts of the trial can be found in the *Pennsylvania Bureau of Industrial Statistics* 9 (1880-1881): 378-82. See also Kuritz, "Criminal Conspiracy Cases," 298-99; and Witte, "Early American Labor Cases," 831.

33. The account here of the Waverly strike is based primarily on the *Pennsylvania Bureau of Industrial Statistics* 9:379-80. However, for reference to the specific counts on the indictment, see Kuritz, "Criminal Conspiracy Cases," 299.

34. Ibid.

35. See *Pennsylvania Bureau of Industrial Statistics* 9:380.

36. Ibid. See also Witte, "Early American Labor Cases," 830-31.

37. Quotations are taken from *New York Workingmen's Assembly Proceedings of Fifth Annual Session of the Political Branch, Syracuse, September 1886*, at 3; and *New York Workingmen's Assembly Proceedings Sixth Annual Session, January 1870*, at 23.

38. Quoted from *New York Workingmen's Assembly Proceedings of the Fifth Annual Session of the Political Branch, Syracuse, September 1886*, at 3.

39. Quoted from the *New York Workingmen's Assembly Proceedings of Twenty-first Annual Session, January 1887*, at 6.

40. For additional complaints against the postwar conspiracy convictions by New York labor leaders, see the Nineteenth Annual Convention of the New York Workingmen's Assembly where a resolution was passed condemning "the action of the Court of Appeals as partial to capital and inimical to labor, by deciding that the Tenement House Cigar Bill is unconstitutional." Quoted from *Proceedings of the Nineteenth Annual Convention of the Workingmen's Assembly of the State of New York. Held in the City of Albany, NY, January 20, 21, and 22, 1885* (New York: Brooklyn Times Print, 1885), at 20. For additional complaints about the unequal application of the conspiracy law, see *Proceedings of the Twenty-Third Annual Convention of the Workingmen's Assembly of the State of New York. Held in the City of Albany, NY, January 15, 16, 17, 1889* (West Troy, NY: Treaner, Book and Job Printer, 1889), at 36; and *Proceedings of the Twenty-Fourth Annual Convention of the Workingmen's Assembly of the State of New York. Held in the City of Albany, NY, December 10th to 12th, 1889* (Binghamton, NY: O. R. Bacon, 1890), at 18. For comment on the dangerous separation of the judiciary from politics, see *Proceedings of the Fifth Annual Session of the Political Branch of the State Workingmen's Assembly Held at Syracuse, September 1886*. Finally, the New York Bureau of Labor Statistics summed up labor's view of the postwar conspiracy trials in 1892 when the annual report claimed that the current effort to "revise" the conspiracy laws "backwards" has led to the current "feeling among our laboring class that the law is the poor man's enemy." Quoted from Howard Lawrence Hurwitz, *Theodore Roosevelt and Labor in New York State, 1880-1990* (New York: Columbia University Press, 1943), at 53. For similar remarks by Pennsylvania labor leaders, see President Wright's address to the Industrial Congress in Indianapolis in 1875, in which he declared, "You should express your hearty disapproval of the species of class legislation now so much resorted to in 'Conspiracy Laws,' 'Intimidation Acts,' and 'Civil Suit Bills,' whereby the laborer is denied the right to dispose of the only commodity of which he is possessed, upon the best terms he can obtain. These are incompatible with the spirit and genius of our free institutions, and should not disgrace our statute books. Surely our workingmen are no less law-abiding than others, that more stringent laws are needed for them than is deemed just to our criminals." From the *Miners' National Record*, May 1875, at 115, quoted in Hyman Kuritz, "The Pennsylvania State Government and Labor Controls From 1865 to 1922" (Ph.D. diss., Columbia University, 1954), at 58. For a remarkable corroboration of the New York case and for parallel developments in Illinois, see Forbath, "Shaping of the American Labor Movement," *Harvard Law Review* 102 (1989): 1109.

41. For a discussion of judicial review of labor legislation on hours, wages, and working conditions, see Fred Rogers Fairchild, *The Factory Legislation of the State of New York* (New York: Macmillan, 1905), chaps. 1-7; J. Lynn Barnard, *Factory Legislation in Pennsylvania: Its History and Administration* (Philadelphia: Winston, 1907); Hurwitz, *Theodore Roosevelt and Labor*, chaps. 2 and 3; Benjamin R. Twiss, *Lawyers and the Constitution: How Laissez Faire Came to the Supreme Court* (New York: Russell & Russell, 1962), chaps. 4-6; and Forbath, "Shaping of the American Labor Movement," pt. 11.

42. Delegates Strasser, Sullivan, and Beerman all suggested that because conspiracy was such a major concern it ought to be added to the program. However, this was opposed

on the grounds that delegates had been instructed to vote on the platform as originally proposed and were not in a position to adjudicate completely new amendments. See *A Verbatum* [sic] *Report of the Discussion on the Political Programme at the Denver Convention of the American Federation of Labor, December 14, 15, 1894* (New York: Freytag, 1895), 15, 17, 62.

43. Ibid., 21-22, emphasis added.

44. Ibid., 19-20.

45. Generally, see Samuel Gompers, *Seventy Years of Life and Labor* (New York: Dutton, 1925), vol. 2, chap. 11. For a more general discussion of Gompers' political activity, see Harold Livesay, *Samuel Gompers and Organized Labor in America* (Boston: Little, Brown, 1978), chap. 4.

46. The account of the cigarmakers' campaign for tenement reform is compiled from the following sources: Gompers, *Seventy Years*, 186-98; Fairchild, *Factory Legislation*, chap. 2; and Bernard Mandel, *Samuel Gompers: A Biography* (Yellow Springs, OH: Antioch Press, 1963), 29-33. For an interesting discussion of these same events from Roosevelt's point of view, see Hurwitz, *Theodore Roosevelt and Labor*, 79-89.

47. See Fairchild, *Factory Legislation*, chap. 2; and In Re Jacobs, 98 N.Y. 98 (1885).

48. Gompers, *Seventy Years*, 194.

49. Ibid., 197.

50. See Debs testimony before the Senate investigation into the Pullman strike in *The Report on the Chicago Strike of June-July, 1894, by the United States Strike Commission* (Washington, DC: Government Printing Office, 1895), 129-80. See also Nick Salvatore, *Eugene V. Debs: Citizen and Socialist* (Urbana: University of Illinois Press, 1982), chap. 5.

51. See Joseph Rayback, *A History of American Labor* (New York: Free Press, 1959), chap. 16.

52. See the Trade Union Act, 35 Vict. c. 31, 1871; and the Conspiracy and Protection of Property Act, 38, 39 Vict. c. 86, 1875.

53. For English cases involving the Conspiracy and Protection of Property Act, see the following: Judge v. Bennett, 1887, 52 J. P. 247; R. v. McKeevit, 1890, Liverpool Assises, December 16 (unreported, discussed in Hedges and Winterbottom, *Legal History of Trade Unionism*, 122); Gibson v. Lawson, 1891, 2 Q. B. 547; Curran v. Treleaven, 1891, 2 Q. B. 553; Pete v. Apperley, 1891, 35 S. J. 792; R. v. McKenzie, 1892, 2 Q. B. 519; Lyons v. Wilkins, 1899, 1 Ch. 255; Walters v. Green, 1899, 2 Ch. 696; Charnock v. Court, 1899, 2 Ch. 35; Smith v. Moody, Div. Ct., 1903, 1 K. B. 56; Ward, Lock & Co. v. Printers' Assistants Society, 1906, 22 T.L.R. 327.

54. See Curran v. Treleaven; and Gibson v. Lawson.

55. Curran v. Treleaven, 536.

56. Ibid., 554-56.

57. Ibid., 563.

58. Ibid., 560.

59. Ibid., 560.

60. For a discussion of the seventeenth-century social compromise, see Christopher Hill, *The Century of Revolution, 1603-1714* (New York: Norton, 1961); and Mauro Cappeletti, *Judicial Review in the Contemporary World* (New York: Bobbs-Merrill, 1971), esp. chaps. 1 and 2.

61. Quinn v. Leathem, 1901, A. C. 495; Taff Vale Railway Co. v. Amalgamated Society of Railway Servants, 1901, A. C. 426; and Osborne v. Amalgamated Society of Railway Servants, 1901, 1. Ch. 163; 1910, A. C. 87.

62. Webb and Webb, *History of Trade Unionism*, 595-96.

63. For a discussion of representative actions, see R. Brown, "The Temperton v. Russell Case (1893): The Beginning of the Legal Offensive Against the Unions," *Bulletin of Economic Research* 23 (May 1971): 55-56, 58-59, 66; and Webb and Webb, *History of Trade Unionism*, 601 and notes.

64. Webb and Webb, *History of Trade Unionism*, 601-2.

65. The Trades Dispute Act, 6 Ed. V11 c. 47 foreclosed the loophole. For discussion of the Act, see Hedges and Winterbottom, *Legal History of Trade Unionism*, pt. 11, chaps. 4 and 5. For a discussion of Taff Vale and the Labour party, see Henry Pelling, *A History of British Trade Unionism* (Suffolk: Penguin, 1963), chap. 7.

66. This argument draws largely on the work of Lord Wedderburn. For example, see Wedderburn, "Industrial Relations and the Courts," *Industrial Law Journal* 9, no. 2 (June 1980): 65-94.

67. Ibid. See also Roy Lewis, "The Historical Development of Labor Law," *British Journal of Industrial Relations* 14, no. 1 (1976); and Brown, "The Temperton v. Russell Case."

68. Compulsory public education was established in New York, New Jersey, New Hampshire, Connecticut, and Massachusetts between 1834 and 1849. Imprisonment for debt was abolished in Connecticut, New Jersey, Pennsylvania, New Hampshire, Massachusetts, and Ohio before 1842. The ten-hour work day was established, at least in theory if not in practice, in 1835 for Philadelphia public employees and in 1840 for all federal employees and all Pennsylvania workers. Two mechanics' lien laws were passed in New York in 1830 and 1841. Finally, President Jackson's veto of the National Bank in 1832, the New York Free Banking Act of 1838, and Van Buren's Independent Treasury Act of 1840 were all considered important victories for the producers' program of financial reform. For arguments linking these political victories to labor, see John R. Commons, *History of Labor in the United States* (New York: Macmillan, 1936), vol. 1, chap. 4; and Rayback, *A History of American Labor*, chaps 6 and 7.

69. For a more extended discussion of workers' rather quiescent response to the conspiracy convictions before the Civil War, see Hattam, *Labor Visions and State Power*, chap. 3.

70. Gareth Stedman Jones, in particular, pioneered work in this area. See Stedman Jones, "Rethinking Chartism," in *Languages of Class: Studies in English Working Class History, 1832-1982*, by Gareth Stedman Jones (Cambridge: Cambridge University Press, 1983). See also John Smail, "New Languages for Labour and Capital: The Transformation of Discourse in the Early Years of the Industrial Revolution," *Social History* 12 (January 1987): 49-71; and Fox, *History and Heritage*, esp. chap. 3. For work along these lines on the United States, see Howard B. Rock, *Artisans of the New Republic: The Tradesmen of New York City in the Age of Jefferson* (New York: New York University Press, 1979); David Montgomery, "Labor and the Republic in Industrial America: 1860-1920," *Le Movement Social* 111 (1980): 201-15; Bruce Laurie, *Working People of Philadelphia, 1800-1815* (Philadelphia: Temple University Press, 1980), chap. 4; Alan Dawley, *Class and Community: The Industrial Revolution in Lynn* (Cambridge, MA: Harvard University Press, 1976); Paul Faler, *Mechanics and Manufacturers in the Early Industrial Revolution: Lynn, Massachusetts, 1780-1850* (Albany: State University of New York Press, 1981); and Sean Wilentz, *Chants Democratic: New York City and the Rise of the American Working Class, 1788-1850* (New York: Oxford University Press, 1984), chaps. 2 and 4. However, these studies stop short of rethinking the concept of class sufficiently. Each of these studies modified but ultimately adhered to the claim that a division between labor and capital was the central social cleavage by the mid-1830s. In contrast, I believe that the social divisions and class consciousness were more strongly influenced by eighteenth-century assumptions

until the postbellum era. For a general account of republican precepts, see J.G.A. Pocock, *Politics, Language and Time: Essays on Political Thought and History* (New York: Atheneum, 1973). In the American context, see Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1967).

71. Although he does not discuss it in terms of the eighteenth-century legacy, Pessen also notes the constitutive role given to politics in the workingmen's platforms. See Edward Pessen, *Most Uncommon Jacksonians: The Radical Leaders of the Early Labor Movement* (Albany: State University of New York Press, 1967), chap. 9.

72. For an excellent discussion of the labor theory of value in the secondary literature, see Laurie, *Working People of Philadelphia,* 76-78; and Wilentz, *Chants Democratic,* 157-58.

73. Quoted from *The Man* [newspaper] 1, no. 29 (March 25, 1834).

74. Quotes are taken from *The Man* 1, no. 38 (April 4, 1834), 149, and no. 39 (April 29, 1834). See also no. 21 (March 15, 1834), 81.

75. Both the Webbs and Tholfsen describe early nineteenth-century movements as "proto-socialist." See Webb and Webb, *History of Trade Unionism,* 161; and Tholfsen, *Working Class Radicalism,* 86.

76. For further evidence of the producers' alliance although presented in a somewhat different analytic caste, see Asa Briggs, "Thomas Atwood and the Economic Background of the Birmingham Political Union," *Cambridge Historical Journal* 9 (1948): 190-216; Trygve R. Tholfsen, "The Artisan and Culture of Early Victorian Birmingham," *University of Birmingham Historical Journal* 3 (1951-52) 146-66.

77. For a general discussion of the New York and Pennsylvania Workingmen's parties and their programs, see Pessen, *Most Uncommon Jacksonians,* chaps. 2, 5, 7-12; Wilentz, *Chants Democratic,* chap. 5; and Laurie, *Working People of Philadelphia,* chap. 4. For examples of opposition to the National Bank and discussion of finance and credit in the primary sources, see Simpson, *Working Man's Manual,* chaps. 7-12, 16, 17; and *The Man* 1, no. 2 (February 20, 1834), 2, no. 8 (February 28, 1834), 1, and no. 27 (March 22, 1834), 105.

78. Three different platforms were developed within the New York Working Men's party. For Skidmore's platform, see the "Report of the Committee of Fifty"; for the John Commerford platform, see the "Proceedings of a Meeting of Mechanics and Other Working Men, held at Military Hall, Wooster Street, New York, on Tuesday evening, Dec. 29, 1829"; and for the Robert Dale Owen position, see the minority report of the subcommittee on education, 1830. All three reports are reprinted in *A Documentary History of American Industrial Society,* edited by John R. Commons et al. (Cleveland: Arthur H. Clark, 1910), vol. 5, 149-68.

79. Fergus O'Connor and the "physical force" Chartists often receive special attention because of their more radical demand for universal manhood suffrage through a break with middle-class reformers and the use of violence if necessary. Similarly, Thomas Skidmore's proposal for the redistribution of property in the initial platform of the New York Working Men's party is considered a decisive sign that working-class consciousness had emerged in New York well before the Civil War. Indeed, factions within both the Chartists' and Working Men's parties that did not support these more radical demands are often dismissed by scholars as the voice of middle-class reformers who had infiltrated the movements and were deflecting workers from their true course. For example, William Cobbett, Richard Carlile, and Thomas Atwood in England and Robert Dale Owen and Noah Cook in the United States are often portrayed by historians as diverting workers from economic issues and property relations toward questions of currency, cooperatives, and education reform. For a discussion of Fergus O'Connor and the "physical force" Chartists, see Trygve

Tholfsen, "The Chartist Crisis in Birmingham," *International Review of Social History* 3 (1958): 461-80; Clive Behagg, "An Alliance with the Middle Class: The Birmingham Political Union and Early Chartism," and Jennifer Bennett, "The London Democratic Association 1837-41: A Study in London Radicalism," both in *The Chartist Experience: Studies in Working Class Radicalism and Culture, 1830-1860*, edited by James Epstein and Dorothy Thompson (London: Macmillan, 1982). For a discussion of Skidmore and his views, see Wilentz, *Chants Democratic*, chap. 5. Wilentz overestimates Skidmore's power and dismisses other factions within the Working Men's party as inauthentic. For a critique of Wilentz's interpretation, see Hattam, *Labor Visions and State Power*, chap. 3.

80. See Victoria Hattam, "Economic Visions and Political Strategies: American Labor and the State, 1865-1896," *Studies in American Political Development* 4 (1990): 82-129.

81. Financial reform, regulation of interstate commerce, and antimonopoly policies were the mainstays of the Knights' political program, and the Knights met with greater political success. To be sure, the Knights' demands were not completely exempt from judicial interpretation; yet their judicial defeats were more readily reversed as courts gave way to renewed legislative initiatives at both the federal and state level. The Knights' political demands met with less judicial obstruction than the Workingmen's demands largely because they did not present a major challenge to existing legal doctrine and practice. For example, rather than calling for repeal of the conspiracy laws, when the Knights actually addressed the question of conspiracy at the general assembly in 1886, the "Special Committee on Conspiracy Laws" recommended that the conspiracy laws be "honestly and impartially applied" with equal vigor to "combinations of aggregated wealth" and "organized greed." Thus the Knights did not require that the courts relinquish their power but, rather, called for extension of the conspiracy laws to employers' combinations as well. See Hattam, "Economic Visions and Political Strategies," 119-24.