STRIKING A BLOW AGAINST LABOR:

The Wagner Act, Market Fundamentalism, and the Limits of the New Deal

Joseph Landry
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Dr. Molly Michelmore
Dr. Ted DeLaney
Dr. Holt Merchant
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Introduction

Workers at Industrial Rayon in Covington, Virginia, looked forward to a new era of labor relations in March of 1937. National headlines were optimistic about Labor’s progress in other parts of the country. In February, following a long and violent conflict, General Motors officially recognized the United Auto Workers (UAW), ending Michigan’s Flint Sit-down Strike. This seemed to confirm the promise that Congress made two years earlier in the National Labor Relations Act (NLRA). Labor leaders had hailed that legislation, which outlined collective bargaining rights and prohibited anti-union employer tactics, as Labor’s “Magna Carta.” Aspiring union members throughout the country knew that their task remained difficult, but if these workers could simply outlast and outsmart their bosses, Flint provided hope that their numbers might allow them to prevail. The employees of Industrial Rayon wagered their fortunes on this hope.

By most accounts, the small, isolated mountain city of Covington seemed an unlikely location for a sit-down strike. The 2,000-employee Industrial Rayon plant served as the life-blood of the small, close-knit community. It was the center of local commerce, providing paychecks to most of the city’s families and indirectly supplying Covington’s other employers – mainly small shops – with consumers. Nonetheless, the work conditions at Industrial Rayon frustrated employees. Facing what many described in 1937 as low pay, increased workloads, and potential termination for any minor infraction, committed or alleged, Industrial Rayon employees lacked any say in the operations of their workplace.1 Even worse, management refused to negotiate on any of these matters. After months of attempting to negotiate, Industrial Rayon’s workforce initiated its own version of the sit-down strike that delivered success to its Michigan peers. They hoped that the NLRA would protect them, just as it seemed to protect the rights of the men in Flint.

From March through July, Industrial Rayon employees implemented a work stoppage that infuriated company officials and political leaders alike. Almost immediately, the Roanoke Chamber of Commerce called on Governor George Peery to take action against the strikers who so defiantly interrupted Virginia’s industrial growth. Peery capitulated and called on workers at Industrial Rayon to end their strike, which he considered an unlawful affront to property rights. More locally, Alleghany County Circuit Court Judge Benjamin Haden issued a ninety-day injunction against the striking workers in April. In a later injunction issued in June, Haden prohibited striking workers from assembling in the front parking lot, where they had gathered daily since the start of the strike. News of Covington’s work stoppage spread throughout the region, evoking outcry from politicians wanting to avoid similar situations in their areas. The news prompted Texas Governor James Allred to declare, “We are not going to permit the transfer of disgraceful episodes in other States to Texas. In other words, we are not going to play ‘Michigan’ … We’ve been getting along very nicely down here without any such lawlessness. I really wish ‘sit-down’ organizers would seek more fertile soil.” From state officials to judges to politicians, the South responded to Covington with a clear rebuke.

In early July, Industrial Rayon began a back-to-work movement, a move that led to a confrontation at the company gate on July 7th. Striking workers attempted to block a bus and two cars, filled with strikebreakers, trying to enter company premises. Two cars were overturned in the process. In a trial over which Judge Haden presided, a jury issued sixteen indictments against striking workers for inciting mob violence – invoking a law that the General Assembly drafted in 1928 to prohibit lynching. Jurors later convicted four strikers – all union leaders – under this statute. Textile Workers Organizing Committee (TWOC) field representative Robert Gaffney, who

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2 Ibid., 9.
3 Ibid., 10.
5 Fry, 11.
6 Ibid., 13.
helped direct the strike, faced a sentence of twelve months in jail, even though he and the other union leaders convicted presented a strong case that they were not present at the incident in front of the gate. Judicial action targeted those with the most influence in the local labor movement. The strike ended with many of the union’s most active and influential leaders behind bars.

Prior to the July trial, the National Labor Relations Board (NLRB) conducted an election at Industrial Rayon. In this election, 639 out of 1,070 participants voted for the union. Formally, the union achieved recognition; however, the judicial and political efforts to end the strike had already succeeded in effectively nullifying the strikers’ action. Industrial Rayon continued its obstinate refusal to bargain with employees despite the NLRA. After returning to normal levels of production, it continued to discriminate against union members, now with an even greater devotion to preventing future work stoppages and similar disruptions. Although the union had won the election, the company won the strike. Industrial Rayon continued in the same manner that it had before the strike, refusing to deal with employee representatives. The NLRA, it seemed, had not restructured Labor’s station in all regions. Virginia, like Texas, was not going to play Michigan.

In the aftermath of the Industrial Rayon strike, political leaders attempted to quietly reverse the questionable means by which they had returned Covington to order. Peery’s successor, James Price, pardoned Gaffney and local Synthetic Yarn Federation leader Lloyd Mays in July of 1938; however, this pardon, which arrived a full year after Judge Haden first convicted the union leaders, did little to reverse the anti-union thrust of the Covington establishment. The strike was over. Employees failed to secure a collective bargaining agreement with the company. The union remained effectively debilitated.

8 Fry, 12.
The Covington strike revealed local political leaders’ commitment to industrial peace over worker rights. The Chamber of Commerce, Governor, Judge, and other officials wanted to end the strike and quiet the union to ensure that commerce in Covington and the rest of the region could continue without interruption. The question that they asked was not what rights workers had in dealing with their employer, but rather, what approach would most quickly and easily return peaceful commerce to the city. In appealing to Governor Price for a pardon, even Gaffney and Mays referred to the importance of industrial peace. As the *New York Times* reported, “industrial peace now reigns in Covington… to force [the convicted strikers] to serve their sentences would disturb that industrial accord.” Industrial accord was paramount. No one debated what right workers had to organize, to bargain collectively, or to strike when a company refused to negotiate. Union leaders asserted that they had the right to a pardon because Covington was again quiet.

These arguments around industrial peace emerged from the political economy of the 1935 Wagner Act. Many Southern businessmen and politicians interpreted arguments made in favor of the legislation – claims based primarily on the need to promote and maintain peaceful economic activity – as more effectively executed through stifling Labor’s power than through recognizing collective bargaining rights. Insisting that industrial peace was their chief aim, they set about stopping Labor’s advance. While Labor’s strength coalesced on the national scene and in Northern urban centers, workers in the Old Dominion faced a vastly different state of affairs. Events in Covington exemplified this difference. In theory, Virginians had equal legal rights under Wagner to their northern peers. Industrial Rayon’s employees soon discovered, however, that Labor’s newfound political support was not applicable to their mountainside city. There, the efforts against union organizing activity on the part of local businessmen, judges, and politicians would prove far more effective than a federal promise to protect their collective bargaining rights.

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During the early to mid-twentieth century, industry moved to Southern soil. Plant-by-plant, businesses that looked southward discovered a home in Dixie’s rural towns. Unions did not. Mills sprang up throughout the region—building towns, improving infrastructure, and generating income. But even in the face of relatively low wages, workers failed to organize like their peers in the North. The virtually union-free industrialized region that emerged became an attractive business alternative to organized industrial areas throughout the Northeast and Midwest. The results of Southern development are clear. Sunbelt businesses flourished, generating exceptional industrial expansion and population growth. In this economic advance, business-driven political conservatism stood firm, building an industrialized region free from Labor’s influence.

The causes of the South’s unique economic development are not as straightforward as its results. Although unions are undeniably weak in the South and have remained weak throughout several stages of Labor’s national development, there is considerable debate as to why Labor failed in securing a foothold in the industrializing South. The topic of union weakness in the region attracts the attention of scholars studying New Deal policy, labor history, and the trajectory of American business and economic development. This paper will draw on scholarship related to each of these fields of study as they apply to unique regional characteristics of Virginia’s and the South’s economic development. It draws a connection between arguments advanced at the national level to justify passage of new labor law in 1935 and this legislation’s effectiveness at local levels.

Early New Deal historians tended to emphasize developments in national politics and policy as driving changes in program effectiveness throughout the South. They told a story of a national political agenda that brought development to the region while neglecting to challenge its persistent social structure. These historians, such as Harry Millis and Emily Clark Brown of the University of Chicago, focused on substantive weaknesses in federal legislation. Nearly all failed to carry this forward with in-depth assessment of local level application. This ignored the degree to which the
federal government failed to fully carry out legislation as written. In reality, enforcement remained weak and local actors maintained control over the implementation of New Deal programs. This applied to the NLRA as well. Arguments justifying the legislation proved just as important as substantive provisions themselves in determining how officials would perceive and implement the law throughout the country. Thus, to fully understand the NLRA’s strengths and weaknesses, scholarship must move beyond New Deal historians’ narrow focus on national-level developments, combining these interpretations with local-level analysis.

A generation of labor historians responded to New Deal historians with an effort to move beyond a top-down approach to studying union weakness in the South. Historians like F. Ray Marshall of the University of Texas highlighted micro-level narratives of organizing difficulties. In accounts of the CIO’s postwar organizing drive, for example, they focused troubling anecdotes about Southern workers’ skepticism toward unions. They contended that organizers’ difficulties came more from discrimination on the part of local police chiefs than from federal failures. These were valuable perspectives, but they offered a narrow framework for assessing NLRA weaknesses. In failing to move beyond individual-level anecdotes of organizing obstacles in the South, these accounts provided an insufficient answer as to why unions experienced such difficulty in the region.

Through the “New South Synthesis,” historians attempting to explain Southern resistance argued that successful opposition to federal legislation originated in a deliberate local alliance between politicians and businessmen. They contended that local governments, determined to attract industry, offered enticing incentives: tax-free property, minimal regulation, and most importantly, an abundant and docile supply of cheap labor, in order to achieve their aim of regional economic development. At the same time that they supported New Deal programs providing aid to their poverty-stricken region, these boosters opposed programs, like the NLRA, that attempted to

10 Other labor historians in this group include Barbara Griffith and Nelson Lichtenstein.
restructure social and economic systems. Much of this opposition, after failing at the federal level, succeeded at the state and local levels. Historians focusing on these aspects of economic development in the South, such as Bruce J. Schulman of Boston University and James C. Cobb of the University of Georgia, have contributed a new explanation for the general weakness of federal initiatives and labor organizations in the region.

This paper builds on the New South Synthesis by combining national- and local-level analyses of the NLRA. Promoted as a commercial necessity at the national level, the Wagner Act promised to reduce harmful industrial disputes through enforcement of collective bargaining rights. Rather than wait to solve future disputes that could arise through union presence, however, Southern elites hoped to halt organized labor’s advance at the front-end. Recognizing that Labor could constitute a significant threat to continued commercial attractiveness of their region, businessmen and local officials prevented unions from following industry southward. Typically, this antagonism toward labor was implicit, apparent through allusions to “cheap labor” and “favorable conditions.” In some cases, however, politicians, hand-in-hand with local industrialists, explicitly endorsed anti-union platforms and provided the manpower to enforce them.

Historians have examined this phenomenon through studies of the New Deal, the labor movement, and economic development. There is a need, however, for an assessment of how national-level narratives about economic development and industrial peace specifically affected local-level labor organizing. This paper extends current literature by showing how local elites turned national-level arguments about collective bargaining on their head. Scholars have focused on the weaknesses of NLRA foundations and the struggle of union organizing in the South before, but few have attempted to draw connections between these two phenomena. This is essential to understanding the consequences of federal labor law during the mid-1930s as well as some of the causes of unions’ failure to extend southward in the following decades.
Chapter One: A Labor Policy Based on Strikes

“Is it not time to act upon the ominous industrial disturbances of last summer, when blood ran freely in the streets and martial law was in the offing?”

*Senator Robert F. Wagner in committee debates on the National Labor Relations Act*

“The measure can be construed as nothing more than an incitement to agitate and keep industry and business in a turmoil until the unions have obtained their objective,” decried Harvey J. Kelly of the American Newspaper Association in 1935. Like many business leaders, Kelly viewed the National Labor Relations Act currently under debate in Congress as a dangerous bill. Management believed that passage of the law would force it to surrender its power to maintain control in commerce. Ultimately, Kelly and other opponents of the Act failed to convince Congress to defend their interests. Legislators agreed that labor unrest was a bad thing but disagreed that it was likely to result from the NLRA. The source of their optimism was clear. From February through July, NLRA author and New York Democrat Sen. Robert F. Wagner and other proponents of the new labor law convinced the House and the Senate that the legislation would *prevent* rather than *promote* industrial unrest. During these debates, growth emerged as the primary economic and political foundation of America’s most important labor legislation.

The Wagner Act became law without much fanfare. Most major sponsors and proponents were absent. As he signed the law, President Roosevelt referred to the administration’s basis for protecting workers’ rights: “By providing an orderly procedure for determining who is entitled to represent the employees, [the NLRA] aims to remove one of the chief causes of wasteful economic

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1 Congress, Senate, Committee on Education and Labor, *Hearings on A Bill to Promote the Equality of Bargaining Power Between Employers and Employees, to Diminish the Causes of Labor Disputes, to Create a National Labor Relations Board, and for Other Purposes*, 74th Cong., 1st sess., 11-14 March 1935, 36-37.

strife.” The previous summer’s violent labor unrest weighed on Roosevelt’s mind. From Toledo to San Francisco to Minneapolis, striking workers had generated damaging economic strife during 1934. To quiet the spotlighted fears of Harvey Kelly and the rest of America’s business leaders, the President presented Washington’s answer to the current strife. The NLRA, Roosevelt implied, would end labor turmoil and allow the country to continue its all-important economic recovery.

Fear about consequences of continued commercial interruption served as the backdrop for debates on the need for increased government intervention in labor-management relations. This is unsurprising considering the background of violent labor strife that erupted in 1934. This wave of unrest gave a new urgency to some New Dealers’ interest in reviving national labor laws. As these progressive Democrats were quick to point out, work stoppages represented a severe threat to economic recovery and required immediate policy intervention.

The country was not immune to labor disputes before 1934, but tension between Labor and management in that year caused exceptional alarm because states from coast to coast seemed unable to maintain order. In April, an AFL-originated and Communist-supported strike erupted at the Electric Auto-Lite automobile parts factory in Toledo. Large crowds of workers and picketers took over the factory. The National Guard arrived to restore order but killed two protestors in the process. Chaos continued in Minneapolis beginning in May, when a Teamsters-led and Communist-supported strike against several major employers resulted in deaths of a police officer, a prominent anti-union protestor, and two strikers. More than seventy were wounded in a firefight. Throughout the summer, the International Longshoremen’s Association, with support from local Teamsters, organized a massive strike at docks all along the West Coast. Once again, when National Guard

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4 Philip Dray, There is Power in a Union (New York: Doubleday, 2010), 429.
5 Dray, 437.
6 Ibid., 438.
troops arrived to restore order, they killed two strikers.\(^7\) The strike attracted even more anxious attention when Socialist party leaders revealed that plans were now in the works for “wide cooperation throughout the nation with all who realize that the reactionary forces that have precipitated this struggle must be defeated and that the working masses of California must be assured of the right of organization to protect the interests of themselves and their families.”\(^8\) The country saw its industrial order crumbling, an ominous sign for future recovery.

This round of labor strife was also exceptional in the workers’ success in securing political and public support. Even as they clashed with business and police, unions exploited developing social and political support systems that gave them the opportunity to exert a larger effect on everyday commerce. Political leaders in many of these cities simultaneously supported strikers’ aims even while working to restore law and order and promote commerce. Democratic Farmer-Labor Governor Floyd B. Olson of Minnesota dispatched the National Guard to Minneapolis, but he had already donated $500 to the Teamsters’ strike fund and expressed sympathy for workers denied the right to organize and bargain collectively.\(^9\) Even as governors and mayors dispatched police to suppress disturbances, they stressed that protecting workers’ rights was vital.

Rising support for Labor did not help all workers in 1934, however. At the same time that manufacturing workers in Toledo and longshoremen in San Francisco went on strike, their peers in Southern textile factories struck for better working conditions and union recognition. Initially, these workers hoped to achieve the same recognition their peers had won in other regions. Joseph Shapler of the New York Times published an optimistic report about strikers’ chances of success on September 19\(^{th}\). “The textile strike lines in the South,” he wrote, “appeared to have held firm at nearly all points today as anti-strike forces, backed by an unprecedented display of armament and

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\(^7\) Ibid., 431.
\(^9\) Ibid., 437.
mobile troops, and by martial law in Georgia, pressed their offensive for reopening of the mills.”

Strikers faced the threat of internment by the National Guard for participating in the strike yet, as Shapler wrote, it seemed as though not even this threat would deter them. Several days after Shapler’s initial report, however, the strike came to an abrupt end.

The textile strike did not generate much political support in the South and fell apart before forcing real concessions from Southern mill owners. This failure pointed to an essential regional difference. Northern industry and government had to recognize Labor’s demands to facilitate peaceful commerce. Labor had built its power in the region over several decades and would not allow political leaders to ignore its demands. Southern businessmen and politicians, however, could attain the same industrial peace by suppressing unions rather than recognizing labor rights. Shapler wrote a more informed report on the strike just four days after his initial optimistic article from Georgia. “Most of those concerned,” he wrote on September 23, “appeared to be eager to facilitate the restoration of peace and wipe out as quickly as possible all traces of the conflict, which cost thirteen lives in the South, brought injury of scores and involved a loss of millions in wages.”

The textile strike showed that even in the nearly union-free South, workers were showing their discontent with the established economic order. It also showed, however, that rather than recognizing unions and meeting some workers’ demands, Southern business and political leaders would proceed by ending the strike, burying its memory, and ensuring that workers would not cause similar disruptions in the future.

The public became increasingly disturbed about unrest throughout the country. In May, the New York Times reported that 1934 would be “likely to break all records” for its number of strikes.

“From the Atlantic to the Pacific, from Maine to the Gulf of Mexico,” the Times reported, “major

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strikes are now in effect covering longshoremen, iron ore and copper miners, coal miners, textile workers, shoe workers and automobile mechanics.”

Throughout the summer, headlines like “Business Slowed by Labor Unrest” and “Uncertainties Delay Planning for Business: Labor Unrest and Profit Outlook Blamed” graced the front pages of the New York Times and The Washington Post. Most questioned how America could avoid these disturbances and allow business to continue. As the Post wrote in July, “Minneapolis, Toledo, San Francisco, Milwaukee, Cleveland – the roll of bloody industrial disturbances throughout the country grows apace. What significant causes underlie this labor unrest? By what reasonable machinery can continuation and repetition of the disorders be averted? These are among the most fundamental questions which confront the Administration today.” Newspapers articulated a national worry about prospects for economic recovery and industrial peace in light of continuing unrest. The Roosevelt administration was under pressure to address these increasingly frequent and bloody disturbances through adopting new policy.

In the midst of this discord, Sen. Robert Wagner attempted to formulate new labor policy and give workers a meaningful right to collective bargaining. Prior efforts had produced only limited success. The 1933 National Industrial Recovery Act (NIRA) provided for a labor relations board, for example, but the body lacked sufficient power to protect workers’ so-called right to collective bargaining. Wagner wanted to correct this failure. He saw an opportunity in the growing public concern about labor unrest. Promotion of collective bargaining, he argued, was an emergency measure, limiting labor strife by providing a peaceful alternative. In the context of the volatile industrial climate, this argument emerged as the justification for new labor policy.

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13 Ibid.
Senator Wagner was well acquainted with the problems that labor organizations faced in bargaining with employers. He had built a political career representing Labor's interests. Born in Germany, Wagner immigrated to the United States as a child and entered politics by winning election to the New York State Assembly, where he established the State’s workmen’s compensation system in 1910 and later sponsored legislation to protect trade union organizing in New York.¹⁷ Later, as chair of the New York’s Factory Investigating Commission, Wagner pioneered regulations improving workplace conditions following the devastating Triangle Shirtwaist fire of 1911.¹⁸ Then, as a member of the New York Supreme Court, he protected union organizing by denying company requests for injunctions against strikers.¹⁹ By the time New Yorkers elected Wagner to the United States Senate in 1927, he had a reputation as a reformer for Labor. In Washington, he tapped into an existing progressive network of economists, attorneys, and activists that supported extension of his cause to the national level.²⁰

Franklin D. Roosevelt’s election in 1932 provided Wagner an opportunity to enact meaningful legislation. Wagner believed that government could boost economic recovery most effectively by protecting the right of workers to unionize and bargain collectively. He thought that this tactic would raise wages and allow workers to spend their increased income, ultimately enabling the country to pull itself from the depths of the Depression. His first attempt at furthering this aim was as co-author of the 1933 National Industrial Recovery Act (NIRA). That sweeping legislation aimed to promote economic recovery by using codes and regulations to facilitate business stability. The NIRA included one section of particular importance to American Labor. Section 7(a) protected employees’ right to bargain collectively with employers. As Secretary of Labor Frances Perkins wrote

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¹⁸ Ibid.
¹⁹ Ibid.
in her memoir years later, “[Section 7(a)] was a set of words to suit labor leaders, William Green in particular.” Although Labor, including Green, President of the American Federation of Labor, viewed the provision as fundamental, Section 7(a) was really an afterthought. Inadequate enforcement measures would soon prove the section was flawed.

Senator Wagner assumed chairmanship of the board established to oversee Section 7(a), known as the National Labor Relations Board. He grew increasingly frustrated as the Board heard cases throughout 1933 and 1934. Wagner saw that, although Section 7(a) affirmed workers’ right to bargain collectively, the law had no teeth. The only punitive measure the NIRA provided was removal of a company’s Blue Eagle insignia, symbolizing non-compliance with NIRA objectives. Perkins later commented, Wagner “became angry with resistance to what he thought, out of his New York experience, was simple fairness. Something must be done to protect a man from being ‘fired’ for union activity or membership and to insist on the right of workers to collective bargaining through representatives of their own choosing.” The NIRA provided this protection in writing, but that was not enough. Government remained powerless to compel unwilling companies to recognize employee-chosen representatives. To protect collective bargaining, Wagner now understood, the country needed a more robust enforcement mechanism.

Even as chairman of the National Recovery Administration’s (NRA) National Labor Relations Board, Wagner felt helpless to protect what he viewed as Labor’s fundamental rights. In 1933, he asked advisor Leon Keyserling to begin drafting legislation to create a stronger enforcement body. Keyserling, only twenty-five years old, had already proven himself a committed

22 Despite the same name, this is not the NLRB that existed under the 1935 National Labor Relations Act. Other original members of the Board included economist Leo Wolman, former Standard Oil president Walter C. Teagle, American Federation of Labor (AFL) president William Green, United Mine Workers of America (UMWA) President John L. Lewis, General Electric president Gerard Swope, and Filene & Company president Louis E. Kirstein. For more information, see: Frances Perkins, *The Roosevelt I Knew* (New York: The Viking Press, 1946), 238.
and talented New Deal reformer while assisting Wagner with drafting the NIRA.\textsuperscript{24} In the process of writing the new labor-relations act, Wagner and Keyserling consulted with key Labor players, including AFL President Green, United Mine Workers President John L. Lewis, and AFL Counsel Henry Warrum.\textsuperscript{25} The working group drafted new legislation that outlawed unfair labor practices that impeded union activity, provided a new labor board to enforce these provisions, and inserted Section 303, declaring that nothing in the Act would prohibit strikes where they were otherwise legal. Protection of the right to strike was essential, according to the group, because through strikes, unions asserted their power and could bring meaningful enforcement of the proposed legislation.\textsuperscript{26} Although they framed their legislation as an antidote to strikes, Wagner and Keyserling understood that only the ability to take industrial action guaranteed workers power to assert themselves against employers. Without threat of strikes, neither government nor business would need to deal with Labor, leaving it too weak to achieve its goals.

The proposed legislation crafted a new means of determining workplace representation. Previously, workers who wanted representation chose representatives and then sent them to bargain with managers without first determining how many employees those agents actually represented. Wagner’s legislation provided for majority representation to be determined through a secret ballot of all non-supervisory employees. The basis for this novel method of determining representation, according to Perkins, was an interaction between a hosiery mill owner and Gerard Swope, the president of General Electric and a member of the NRA’s National Labor Relations Board.\textsuperscript{27} Despite the Board’s urging, the mill owner refused to recognize or negotiate with his employees’}

\textsuperscript{26} Ibid.
\textsuperscript{27} Frances Perkins, \textit{The Roosevelt I Knew} (New York: The Viking Press, 1946), 238.
union. The owner claimed that his employees would never willingly choose to unionize.\textsuperscript{28} According to him, they were being coerced by outside radicals. In a private meeting, the frustrated Swope suggested that the owner hold a vote to determine whether this was truly the case. The owner did not consent to the vote, but the Conciliation Board of the Department of Labor held an election. The results revealed that a large majority of workers desired union representation.\textsuperscript{29} This election set a new precedent. Through supervised elections, governmental bodies could determine whether the majority of workers in a factory or other workplace wanted to join a union.

In contrast to Swope’s pragmatic solution, the traditional NIRA process consisted of a patchwork system of labor-management relations that did not provide specific means to determine workplace representatives, proscribe particular anti-union employer practices, or offer a method of enforcing board decisions other than removal of the Blue Eagle insignia. Determined to create a permanent means of facilitating elections like the one Swope proposed and to protect workers from unfair employment practices, Wagner introduced the Labor Disputes Act to the Senate Committee on Education and Labor in February 1934. It was an attempt to protect workers’ rights at the national level and to extend Wagner’s state-level efforts of previous years. This draft met serious opposition. A competing bill drafted by the Department of Labor, a rebuff by an administration afraid of risking political capital on a bill that it viewed as inessential to economic recovery, and general lack of interest led Congress to refuse to take action on Wagner’s bill. In June, the Senator reluctantly withdrew the bill, citing the committee’s lack of support.\textsuperscript{30}

Industrial unrest again erupted during the spring and summer, capturing national attention. Wagner recognized that it also provided fodder for legislative action and began a new push for the creation of an improved labor-management body in the winter of 1935. On February 21, he

\textsuperscript{28} Ibid.
\textsuperscript{29} Ibid., 239.
\textsuperscript{30} Casebeer, 75.
introduced the National Labor Relations Act into the Senate. In his argument for the NLRA, Wagner emphasized that it would protect peaceful national commerce. In his introductory statement, the New York Democrat referred to the weaknesses of Section 7(a) that he intended to repair through this new legislation. Wagner stated, “The break-down of section 7(a) brings results equally disastrous to industry and to labor. Last summer it led to a procession of bloody and costly strikes, which in some cases swelled almost to the magnitude of national emergencies.”31 This time, he would rely on this argument about strikes to push through new labor legislation and connect the rights of workers to these pro-growth aims in framing his new legislation.

In addition to outlining his primary argument in favor of a new labor bill, Wagner sought to preempt the opposition’s arguments. He had learned from failure of the National Labor Disputes Act that it was necessary to rebut serious criticism before it began. In his introduction on the floor, he assured fellow Senators that the new legislation “is novel neither in philosophy nor in content. It creates no new substantive rights. It merely provides that employees, if they desire to do so, shall be free to organize for their mutual protection or benefit.”32 In his closing remarks, Wagner stated, “the enactment of this measure will clarify the industrial atmosphere and reduce the likelihood of another conflagration of strife such as we witnessed last summer. It will stabilize and improve business by laying the foundations for the amity and fair dealing upon which permanent progress must reset.”33 As Wagner introduced the legislation that would guide twentieth century labor law, he insisted that it would create no new substantive rights and would simply fall into line with precedent.

Hearings before the Senate Committee on Education and Labor further revealed NLRA supporters’ primary reliance on arguments that it would protect peaceful commerce. Wagner, Perkins, Green, and others testified that the Act was necessary to prevent future labor strife. Many

32 Ibid.
33 Ibid.
business leaders, especially those from the South, opposed the bill and promoted an alternative approach to limiting labor strife: the prohibition of strikes. In January of 1935, anticipating Wagner's proposed legislation, the National Association of Manufacturers (NAM) announced an alternative to the NLRA that would prohibit many strikes in use at the time. To business leaders, the NLRA's explicit protection of the right to strike encouraged violence between workers and management. The NLRA debates would not resolve this problem. Conflicting ideas about how to promote industrial peace ultimately weakened the Act's local-level enforcement and application.

Wagner drew attention to increasing worker involvement in strikes, evident in data from 1933 and 1934, to encourage the committee to support the NLRA. “Within a span of 24 months, over 32,000,000 man-days were lost because of labor controversies,” Wagner noted. “No one can examine the facts without concluding that the overwhelming preponderance of this tragic waste of man power was engendered by the failure to observe the basic principles of section 7(a) of the Recovery Act.” He argued that workers struck because government failed to enforce rights promised them. Lacking means of ensuring workplace representation through NRA channels, workers used their economic strength to force management to recognize their demands. These strikes, Wagner reasoned, reduced national productivity. The NLRA would provide means to enforce rights workers demanded before they attempted to achieve these demands through work stoppages. This protection, he argued, would safeguard manpower and promote economic growth.

35 Congress, Senate, Committee on Education and Labor, Hearings on A Bill to Promote the Equality of Bargaining Power Between Employers and Employees, to Diminish the Causes of Labor Disputes, to Create a National Labor Relations Board, and for Other Purposes, 74th Cong., 1st sess., 11-14 March 1935, 36-37.
36 As the Brookings Institution had pointed out in a New York Times special, man-days lost were not even the most striking statistic for 1933 and 1934, however, as the years’ strikes had been much shorter in duration than work stoppages of the mid-1920s, for example. The strikes of 1934, on the other hand, were unusually frequent. Although man-days lost in 1933 were only 37.8% of those lost in 1927, two times as many strikes occurred in 1933 than in 1927. For more, see: Lewis L. Lorwin, “Industrial Truce or Strife? The Labor Problem Analyzed,” New York Times (Nov. 4, 1934), 3.
37 Congress, Senate, Committee on Education and Labor, Hearings on A Bill to Promote the Equality of Bargaining Power Between Employers and Employees, to Diminish the Causes of Labor Disputes, to Create a National Labor Relations Board, and for Other Purposes, 74th Cong., 1st sess., 11-14 March 1935, 36-37.
Wagner believed government was responsible for managing the relationship between Labor and management, one of the most essential components of the economy. Failure to manage this relationship effectively, he argued, endangered commerce. Wagner contended, “A vast number of strikes have arisen in protestation against the denial of the rights guaranteed by section 7(a) of the Recovery Act and reaffirmed by the present bill. Certainly many of these outbreaks would be prevented if these rights were secured. And that strikes burden commerce cannot be denied.” Wagner believed that denial of collective bargaining rights was a direct cause of industrial strife. Thus, he viewed protection of those rights as essential to the promotion of commerce. Recent Supreme Court decisions encouraged his innovative legal thinking. “In Appalachian Coal v. United States,” Wagner argued, “the present Chief Justice recognized in dramatic language the relationship between general business conditions and the flow of commerce…. This language is no less applicable when Congress has declared that the lack of enforcement of the right to bargain collectively is having an adverse effect upon the maintenance of sound economic conditions.”

Wagner warned that failure to adopt new legislation would jeopardize economic recovery. “If we allow section 7(a) to languish,” he argued, “we shall be confronted by intermittent periods of peace at the price of economic liberty, dangerous industrial warfare, and dire depressions.” Concluding his testimony, he asked, “Is it not time to act upon the ominous industrial disturbances of last summer, when blood ran freely in the streets and martial law was in the offing?” Memories of devastation caused by recent strikes remained fresh in the American psyche. Wagner attempted to capitalize on this widespread aversion to industrial violence and concern about continued economic downturn. “The Congressional duty to help industry solve its difficulties is coincident with the duty

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38 Ibid., 54.
39 Ibid., 55.
40 Ibid.
41 Congress, Senate, Committee on Education and Labor, Hearings on A Bill to Promote the Equality of Bargaining Power Between Employers and Employees, to Diminish the Causes of Labor Disputes, to Create a National Labor Relations Board, and for Other Purposes, 74th Cong., 1st sess., 11-14 March 1935, 56.
to help workers or consumers,” he declared. “Is not economic strife a curse to every group? Is not industrial peace beneficial to all? With this forceful warning, Wagner left a clear picture of the consequences of continued neglect of Labor’s demand for recognition.

Wagner spoke from the perspective of a public servant intent on promoting the public good; the next man to testify spoke as the representative of an organization that had economic power to disrupt the American economy. AFL President William Green echoed Wagner’s warnings of continued industrial strife. Speaking about his hopes for implementation of the Wagner Act, the nation’s most prominent labor leader argued that “strikes and industrial warfare are the only possible answer of the workers to the course of action the employers have apparently elected to follow.”

Throughout his testimony, Green provided direct support for Wagner’s warnings that the relationship of Labor and management would deteriorate if Congress refused to pass the legislation.

The AFL considered strikes a necessary form of retaliation against employers who refused to listen to workers’ demands. Green emphasized that creation of a stronger labor board would provide a viable alternative to strikes by allowing an orderly way of deciding labor-management issues before work stoppages became necessary. The alternative to this plan, Green suggested, would provoke a colossal fight. “Now, the other plan is to abandon it all, to deny industry and workers of the country the benefit of a bill such as the proposed Wagner bill, and go back to the old method of the survival of the fittest. The workers still have their economic strength; they can strike and fight; but that is not what the people of the United States want.”

He warned that unless Congress passed the NLRA, “we must face the fact that we are only at the beginning of a series of strikes which will upset the entire industrial life of our Nation…. We have had isolated instances

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42 Ibid.
43 Congress, Senate, Committee on Education and Labor, Hearings on A Bill to Promote the Equality of Bargaining Power Between Employers and Employees, to Diminish the Causes of Labor Disputes, to Create a National Labor Relations Board, and for Other Purposes, 74th Cong., 1st sess., 11-14 March 1935, 103.
44 Congress, Senate, Committee on Education and Labor, Hearings on A Bill to Promote the Equality of Bargaining Power Between Employers and Employees, to Diminish the Causes of Labor Disputes, to Create a National Labor Relations Board, and for Other Purposes, 74th Cong., 1st sess., 11-14 March 1935, 114.
within the past year of very real armed industrial warfare…. There is only one way to avoid a recurrence of such events. That is by an assurance to the workers that their rights will be observed by employers.” Green affirmed that workers would make themselves heard, either through peaceful negotiation or assertive industrial action. If Americans preferred the former to the latter, he suggested, they should support passage of the Wagner Act.

Green’s message was more than a warning. It was a threat – straight from the head of the nation’s largest labor organization. Labor, he insisted, would not accept continued governmental indifference to its right to bargain. As AFL president, Green could speak with an authority that had meaning for the rest of the country. The AFL, he stressed, would not “continue to urge workers to have patience, unless the Wagner bill is made law, and unless it is enforced, once it becomes law. There is growing in the masses of American people a bitter resentment at the position in which they find themselves and a deep conviction that only their own economic strength will avail them in their struggle against the injustices and inequalities under which they work.” Green warned of class warfare if government refused to take an active role in protecting workers’ collective bargaining rights. Green’s argument for the NLRA assumed that workers would seek unionization one way or another. Passage of the Act provided systematic, democratic, and fair means of organizing. In reducing the threat of industrial warfare, it would benefit all Americans.

Labor leaders and proponents of industrial democracy submitted additional statements in favor of the testimonies of Wagner and Green. Walter Davis, Chairman of the New Haven Labor College, wrote that unless the Wagner bill were passed, an “impending wave of labor strife” would ensue. J.W.R. MaGuire, member of the Chicago Regional Labor Board, drafted a letter in support

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45 Ibid., 56.
46 Ibid., 123.
47 Congress, Senate, Committee on Education and Labor, Hearings on A Bill to Promote the Equality of Bargaining Power Between Employers and Employees, to Diminish the Causes of Labor Disputes, to Create a National Labor Relations Board, and for Other Purposes, 74th Cong., 1st sess., 15-19 March 1935, 183.
of the bill on a similar basis. MaGuire argued that, “If the Wagner Labor Disputes Bill failed of enactment, I fear very much that the country will be thrown into the chaos of uncontrolled strikes and labor disputes, which will be doubly disastrous because such disputes give Communists and other radicals unlimited opportunity for effective spread of their subversive propaganda.”

Fear of strikes, class warfare, and extremist responses to the conditions that had caused the 1934 unrest increased support for the Wagner Act.

Using these arguments, Wagner secured support from several business leaders. Wood F. Axton, President of Axton-Fisher Tobacco Company, offered a surprising take on the Act. He argued that stability and peace secured through unionization of his workforce was a beneficial alternative to the tension characteristic of non-union workplaces. Axton argued that through unionization, “vast benefits can accrue to the employer, [and] that it develops character, fosters justice and tolerance, and makes for better economic conditions in the Nation.”

H. M. Robertson, General Counsel of Brown and Williamson Tobacco Corporation in Louisville, Kentucky, expressed a similar idea: “We have found that the labor organizations have been at all times reasonable and helpful; that they have made every attempt to understand our point of view…. It is our sincere belief that a provision in the law such as that contained in the proposed bill will facilitate the organization of labor, to the ultimate benefit not only of the workers but also of industry itself.”

Axton and Robertson expressed optimism that management might work peacefully and willingly with a unionized workforce. Although a small minority, pro-Wagner business leaders supplemented the legislation’s overall macroeconomic framing.

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49 Congress, Senate, Committee on Education and Labor, Hearings on A Bill to Promote the Equality of Bargaining Power Between Employers and Employees, to Diminish the Causes of Labor Disputes, to Create a National Labor Relations Board, and for Other Purposes, 74th Cong., 1st sess., 15-19 March 1935, 215.
50 Ibid., 218.
Wagner, Green, Davis, Axton, Robertson, and other NLRA supporters presented a clear economic message. They looked to the past as evidence that workers were dissatisfied with their condition. Violent and disruptive industrial warfare showed the painful consequence of this dissatisfaction for all. These men argued convincingly that warfare would continue unless government took meaningful action to enforce workers’ right to bargain collectively. NLRA proponents expressed an optimistic view of the future under the new legislation. By enforcing workers’ rights, they believed, the legislation would promote a peaceful and mutually beneficial exchange between Labor and management. In addition to benefiting workers and businesses, it would benefit society at large by ensuring greater economic stability and growth.

Of course, most businessmen disagreed with these assessments. No doubt, business representatives, like the labor leaders who spoke initially, also hoped to reduce labor strife. Their commitment to ending industrial unrest, however, rested on a conservative interpretation of government’s role in regulating commerce. Like Harvey Kelly, they viewed the NLRA as neither a necessary nor an effective means of reducing strikes. They believed that the Act appeased only Labor by allowing for growth of organizations antagonistic to business. The NLRA would only embolden and empower organized labor to continue to disrupt commerce. Business leaders’ preferred alternative was simply to outlaw mass strikes.

James A. Emery, General Counsel of NAM, for example, argued that providing a government body the ability to regulate labor-management relations on the basis that failing to do so led to strikes was nonsensical. He told the committee that if it followed this line of argument, “you are asserting at the same time the right to lead, control, or prohibit the strike itself, because it will actually interrupt commerce…. I think the United States can control any combination that undertakes to directly prevent commerce between the states.” In other words, Emery argued, there

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51 Ibid., 263.
was a better means of preventing industrial unrest than the one Wagner suggested. Instead of appeasing Labor, government should directly prohibit strikes that imperiled the public interest. This was a common theme. If NLRA supporters wished to promote commerce by limiting strikes, opponents argued, they should provide government with power to reduce those strikes by force.

Other opponents claimed that businesses, not unions, were the best agents for promoting industrial peace. Guy L. Harrington of the National Publishers’ Association proposed this position to the Committee. “One of the stated purposes of this bill,” he testified, “is ‘to diminish the causes of labor disputes.’ If an employer can, by encouraging his employees to organize a works council or some other form of employee association, secure a greater measure of cooperation and better understanding on their part, promote their welfare, and facilitate settling disputes, should he be prohibited from doing so?”

Harrington expressed the common paternalistic view that company mechanisms for promoting employee welfare and settling labor-management disputes were superior to the negotiations between Labor and management that the Wagner Act encouraged.

Other business owners and attorneys echoed these reasons for rejecting the Wagner Act. In the end, however, Wagner’s argument proved more convincing. In May, the Senate approved the bill. At the end of the month, the Supreme Court issued a ringing rejection of labor rights in another piece of legislation. On May 27, it overturned the NIRA, ruling in *Schechter Poultry Corporation v. United States* that Congress had overstepped its power to regulate commerce through the industrial codes included in the legislation. The Court simultaneously rejected the Roosevelt administration’s New Deal policies and swept away Section 7(a), the only federal provision affirming collective bargaining rights. In June, the House approved the NLRA, which now would become law.

Only after the Senate voted and the Supreme Court overturned the NIRA did Roosevelt, who had been withholding his support of the NLRA, finally issue a public statement in support of

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52 Ibid., 278.
the legislation. In its defense of the new law, the Roosevelt administration dismissed arguments that the NLRA represented a revolutionary new conception of the relationship between Labor and management. Instead, it claimed, the Act provided stronger enforcement of rights that labor law already granted workers. This denial of the Act’s groundbreaking nature was unsurprising to men close to the President. Secretary of Labor Perkins later wrote, “The President did not take part in developing the National Labor Relations Act and, in fact, was hardly consulted about it. It was not a part of the President’s program. It did not particularly appeal to him when it was described to him. All the credit for it belongs to Wagner.”53 Following this late pledge of support, the administration set out to convince the nation that it was a necessary, standard measure. It needed only to look to the text of the Act to ground these arguments. Titled “An Act to Diminish the Causes of Labor Disputes Burdening or Obstructing Commerce, to Create a National Labor Relations Board, and for Other Purposes,” the NLRA stated that its aim was “to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining.”54

The administration convinced the country that the NLRA was intended, above all else, to reduce industrial strife. J. Warren Madden, the NLRB’s first chairman, wrote about this objective in 1935: “[The Wagner Act] seeks to relieve the public of costly labor disturbances through eliminating the deep-rooted unrest brought on by employers who set their wills against the organization of their workers.”55 Dr. John A. Lapp, political scientist at the University of Chicago, echoed this in 1937: “The [Wagner] Act proceeds on a simple theory based upon long known and well established facts. These facts demonstrate that strikes interfere with commerce; that the failure to bargain collectively is one of the major causes of strikes; and that the elimination or reduction of this cause will reduce

53 Perkins, 239.
the number of strikes and, thereby, protect commerce from interference.” The NLRA broke new ground by identifying collective bargaining as an antidote to industrial unrest and advancing a procedure for protecting collective bargaining. As Wagner wrote in 1937, “While democracy must preserve the right to strike, there is much a democratic government can do to reduce the frequency of strikes by narrowing their causes.” The NLRA’s purpose was to narrow such causes.

The protection of commerce from disruption formed the foundation of government’s promise to enforce employees’ “right” to collective bargaining. The NLRA preamble states, “Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest.” The Act simultaneously identifies employees’ ability to organize and bargain collectively as a “right” and then justifies government protection of the right by arguing that it protects peaceful commerce. Protecting the right to bargain collectively was grounded in larger economic goals. Wagner hoped that workers’ rights would embed themselves within these larger goals; in making the rights contingent on other economic factors, however, he made them vulnerable to arguments about the destructive effects of union power on commerce.

Chapter Two: An Alternative Justification

“The difference between a slave and a free man is that the slave must work when his master or owner directs and wills. The free man may stop his work, the free man may stop work whatever consequences or suffering may be involved.”

AFL President Samuel Gompers in 1920

The basis for the “right” to collective bargaining inspired debate among progressives years before the Wagner Act. Labor leaders, legislators and lawyers who supported workers’ claims to collective bargaining rights disagreed about how to justify this claim. Congressional architects of the NLRA marketed it as an economic tool to promote industrial peace. Collective bargaining rights were important because of the relationship between union membership and industrial unrest. Some people within the labor movement pointed out that this argument made employees’ claims to bargaining rights conditional on the overall economic effects of unions. If Wagner and others could justify collective bargaining and organizing rights by citing their ability to ensure economic stability, opponents also could attack them as a threat to economic stability. Another group of progressives argued that a justification for new labor law based on rights would provide a foundation strong enough to weather economic changes in years ahead. These labor leaders and progressives offered an alternative to the pro-growth justification of the NLRA that Wagner adopted.

As Robert Wagner and Leon Keyserling drafted the NLRA, they confronted arguments for labor rights from varying intellectual traditions. One of the most significant arguments from within the labor community itself spoke of freeing workers from employment that, according to them,

constituted wage slavery. This group wanted new labor legislation to outlaw oppressive anti-union tactics by employers – a task that they believed only the constitutional prohibition of involuntary servitude could effectively accomplish.

More than an isolated alternative to justification based on the Commerce Clause, an argument based on freedom and slavery received support from labor organizations and many progressive reformers. Wagner himself did not wholly ignore this approach. He believed that the “freedom and dignity” of the American worker were at stake.² He soon realized, however, that rights-based arguments were too radical to convince the Congress, the President, and most importantly, the courts, to support stronger labor legislation. Prominent proponents of the New Deal, including legal scholar Felix Frankfurter, saw Labor’s freedom and slavery argument as outlandish. In response, Wagner framed his 1935 legislation in the context of promoting industrial peace. In his attempts to prove the NLRA had achieved success in subsequent years, Wagner relied on data showing a significant reduction in the number of strikes, the number of workers involved in strikes, and work hours lost to strikes, rather than resting solely on the expansion of worker rights.³ He knew that the NLRA’s survival depended on its contribution to peaceful commerce.

A longstanding discussion comparing forms of industrial employment to slavery provided a potential alternative for drafting new labor legislation in 1935. This argument, which had its roots in antebellum notions about “wage slavery,” claimed that the 13th Amendment prohibition of involuntary servitude provided a legal foundation on which to assert collective bargaining rights in the American workplace. Legal historian James Gray Pope calls union leaders’ use of this argument part of Labor’s “language of freedom and slavery.”⁴ To these advocates, the 13th Amendment went

⁴ Rutgers law professor James Gray Pope writes extensively on the relationship between Thirteenth Amendment arguments and labor rights in the early twentieth century. For a more detailed analysis of the Thirteenth Amendment
beyond providing freedom from slavery. Its language, they argued, provided a foundation on which to protect workers exploited by industrialization and capitalism. Their argument rested on the understanding that, under industrial capitalism, a severe imbalance of power had developed between workers and management. This imbalance made Labor dependent on capital and created innumerable opportunities for employers to manipulate workers. Advocates of labor freedom believed that this industrial relationship, if left unregulated, could allow exploitation to continue in the twentieth century in new forms.

Some elements of this argument appeared in antebellum free soil ideology. Founded in 1848, the Free Soil Party sought to preserve “free soil, free speech, free labor, and free men.” The Party extolled the virtues of free labor as well as the opportunities that a free labor system provided for economic advancement. It opposed slavery as an institution that threatened Northern territorial and economic interests. Free Soilers understood that, as slavery expanded, competitiveness of Northern labor decreased. Consequently, they conceded that the federal government must allow slavery to continue in the South but must prohibit its westward expansion. This way, white settlers in the West could avoid competition with slave labor.

By the mid-1850s, the Free Soil Party had been absorbed into the newly formed Republican Party. Historian Eric Foner shows that the Republican Party was home to several competing ideologies about the way the Northern labor system should operate. Former Whigs who entered the Republican Party praised the freedom of mobility that the region's economic system provided. Drawing from Jacksonian tradition, however, another group of Republicans emphasized class

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6 Foner, 19.
antagonism, glorified manual labor and remained skeptical of influence of wealthy elites. This group sought to protect laborers’ economic interests. These Republicans saw problems in the capitalist Northern economy but believed that slavery, through its degradation of manual labor, was the source of many of these problems. Slavery, they argued, undermined the rights of labor; in places free from slavery, on the other hand, labor retained its dignity.

Southern legislators countered with their alternative definitions of freedom and slavery. Slavery apologists argued that the reality of wage labor was far from the opportunity-filled and prosperity-driven arrangement that pro-business Northerners advertised. Defenders of slavery seized on the injustices of Northern “wage slavery” to answer abolitionist attacks on their institution. In 1858, South Carolina Sen. James Henry Hammond spoke about similarities between wage labor and slavery: “The difference between us is that our slaves are hired for life and well compensated; there is no starvation, no begging, no want of employment among our people, and not too much unemployment either. Yours are hired by the day, not cared for, and scantily compensated, which may be proved in the most painful manner, at any hour, in any street in any of your large towns.”

Every society necessarily contained a “mudsill” class of laborers. Slavery cared for the South’s mudsill class. Hammond’s attempt to justify slavery by condemning industrial life struck directly at arguments for Northern moral superiority.

In response, class-conscious defenders of free labor argued that degradation of free labor was a result of slavery. Whig Sen. Henry Wilson of Massachusetts responded to Hammond. A cobbler, Wilson called himself a laborer and member of the class that Hammond disparaged as “mudsills.” Throughout his career in Massachusetts and in Washington, he pushed for legislation that supported the rights of the poor and laboring classes. He scoffed at descriptions of Northern

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7 Foner, 18.
laborers as slaves. Wilson acknowledged that institutions in free states were imperfect, but he insisted that in those states, the key to the laborer’s freedom from oppression was his equality to his employer. Wilson lambasted Hammond’s argument that the slave system provided for its workers better than the free labor system. A system that kept its people in shackles could not be just. In his attack, he incorporated his belief that prohibition of slavery would improve free wage labor. “If you have no sympathy for your African bondmen, in whose veins flows so much of your own blood,” Wilson continued, “you should at least sympathize with the millions of your own race, whose labor you have dishonored and degraded by slavery.” Once slavery, the most egregious form of oppression, came to an end, Wilson argued, Congress could protect each laborer’s dignity and freedom from oppression at the hands of his workplace superiors. This was a cause Wilson already championed in the North.

Following the Civil War, this ideology inspired an alternative interpretation of emancipation. According to some labor radicals, in addition to proscribing race-based slavery, the 1865 amendment would ban oppression of wage laborers regardless of race. When Congress debated the language of the 13th Amendment in 1865, Wilson and several other Congressmen tried to extend it to forms of involuntary servitude beyond chattel slavery. In these debates, Senator Wilson argued, “[W]e have advocated the rights of the black man because the black man was the most oppressed type of the toiling men of this country… The same influences that go to keep down and rush down the rights of the poor black man bear down and oppress the poor white laboring man.” Congressman John Bingham of Ohio joined Wilson in arguing that the new amendment must prohibit all instances of

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worker oppression.\textsuperscript{12} To legislators like Wilson, Bingham, Senator Charles Sumner of Massachusetts, and Senator Timothy Howe of Wisconsin, there was an inherent connection between oppression of slaves and oppression of all workers. Men like Wilson conceded that slavery, in its brutality and permanence, represented a more direct violation of American values, but insisted that free laborers nevertheless deserved freedom from workplace oppression.\textsuperscript{13} Despite, or perhaps because of, the boldness of these arguments, Congress did not adopt on this expansive argument. Following the lead of Pennsylvania Senator Edgar Cowan, the majority argued that Congress should restrict the amendment to a prohibition on racial slavery.\textsuperscript{14}

Despite this outcome, Congress had debated workers’ rights in 1865, providing hope and inspiration to the developing American labor movement. From its beginnings in the first half of the nineteenth century, the movement used the language of freedom and slavery to advance its agenda. In the process, it looked back to Reconstruction debates. As industry developed and factory workforces expanded, labor leaders attempted to apply free labor arguments to evolving economic structures. Terrence Powderly’s first annual address to the General Assembly of the Knights of Labor in 1880 provides a clear example of this effort. Powderly, who led the organization for thirteen years, opposed the use of strikes, which he viewed as an ineffective tool for freeing workers from exploitation. Referring to obstacles that the new movement would face in years to come, he expressed optimism it could achieve its goal. He also compared industrial wage labor to slavery. “Every attempt at shaking off the fetters, by resorting to a strike, only makes it easier for the master to say to his slave, you must work for lower wages,” Powderly argued. Continuing this attack, he stated, “Without organization we cannot accomplish anything; through it we hope to forever banish

\textsuperscript{13} VanderVelde, 469.
\textsuperscript{14} Ibid., 445.
that curse of modern civilization – wage slavery.”15 Organization, Powderly proclaimed, would free workers from the new slavery under which they labored.

This language persisted well into the twentieth century. Led by Samuel Gompers, the AFL turned to “business unionism,” which emphasized wage gains over the economic restructuring its predecessors demanded. Top AFL leaders still fell back on the promise of freedom from industrial slavery to promote wage gains and employees’ right to bargain with employers. In a 1920 debate at Carnegie Hall with Governor Henry J. Allen of Kansas, Gompers used the language of freedom and slavery to defend labor action as a necessary protection against “degraded manhood.”16 He relied on the 13th Amendment to demand freedom for labor: “The difference between a slave and a free man is that the slave must work when his master or owner directs and wills. The free man may stop his work, the free man may stop work whatever consequences or suffering may be involved.”17 He continued with an analysis of contemporary jurisprudence, referring to the 1911 Supreme Court case, *Bailey v. Alabama*. In this case, the Court ruled that peonage violated the 13th Amendment’s prohibition on involuntary servitude. This ruling proved, Gompers argued, that “involuntary servitude is any control by which the personal services of a human being are disposed of or coerced for any other benefit.”18 Infringement of workers’ ability to exert power through labor action, Gompers claimed, also violated this principle.

Between the fall of the Knights of Labor and the rise of the AFL, the labor movement abandoned its initial opposition to labor action, but nonetheless remained reliant on labor freedom language to justify its aims. The movement’s leaders argued that Labor existed to protect workers from all forms of involuntary servitude. Both Powderly and Gompers, the notably conservative

17 Gompers, 9.
18 Gompers, 10.
founders of America’s labor movement, expressed a clear belief that protections against involuntary servitude in the 13th Amendment must extend to wage laborers.

These arguments carried on into the Progressive and then New Deal eras. Labor leaders built on the intellectual pathways leaders like Powderly and Gompers established. When labor leaders encountered New Deal arguments for progress through orderly economic cooperation, however, they capitulated to ensure both legislative support and judicial approval. Through this process, freedom and slavery language was absorbed into the more pressing and universally applicable objective of protecting commerce from costly industrial unrest.

One of the most outspoken proponents of the language of freedom and slavery during this period was Andrew Furuseth, the Norwegian-born President of the Sailors’ Union of the Pacific. In his life-long political battles, Furuseth, like Powderly and Gompers, argued that the 13th Amendment, in its prohibition of involuntary servitude, guaranteed labor freedom, not only black freedom. During debates on new labor legislation during the 1920s and 1930s, Furuseth led the campaign to carry these ideas into modern practice. In the early years of the Progressive Era, Furuseth waged a campaign to extend the prohibition of involuntary servitude to end the practice of prosecuting sailors who quit their jobs as deserters. In 1915, he succeeded in convincing Congress to pass the Seamen’s Act, which protected sailors’ right to quit their jobs.19 The Act provided that the practice violated essential freedoms of sailors. Furuseth proved that employer prohibitions on quitting were modern versions of involuntary servitude. He tried to extend this claim to other areas of employment and to use it to enact a more robust labor law.

Furuseth faced greater challenges in his efforts to extend freedom from involuntary servitude to other areas of employment. He next applied this theory to anti-injunction legislation.\textsuperscript{20} By persuading courts to issue injunctions against striking workers, business maintained a stranglehold on Labor into the early twentieth century. When they issued injunctions, courts compelled workers to return to work and to refrain from labor action. The basis for these orders was the argument that strikes violated employers’ property rights. Common law banned any action in restraint of trade. In \textit{Coppage v. Kansas} (1915), the Court found that state prohibitions on “yellow-dog” contracts, contracts that forbade employees from joining labor organizations, infringed employers’ protected property interests – in this case, unorganized labor.\textsuperscript{21} The Court again endorsed this in \textit{Duplex Printing Press Co. v. Deering} (1921), in which it permitted injunctions against labor unions even when those unions were engaged in strikes over wages rather than in class-based labor action, which it had already banned.\textsuperscript{22} Throughout the 1920s, courts continued to prevent strikes by issuing injunctions. To Furuseth, this protected property rights at workers’ expense.

AFL leaders were also pursuing strengthened labor law during the mid-1920s. The organization’s Executive Council hired lawyers to draft legislation to limit injunctions.\textsuperscript{23} According to AFL leaders, strikes were not a threat to employer property. The Supreme Court’s consideration of employees’ labor as property, the AFL argued, was an overly expansive interpretation of property interests.\textsuperscript{24} In 1927, the organization persuaded Senator Henrik Shipstead, a member of Minnesota’s Farmer-Labor Party, to sponsor a bill to limit the use of injunctions against striking workers by

\begin{thebibliography}{99}
\bibitem{21} Christopher Tomlins, \textit{The United States Supreme Court: The Pursuit of Justice} (Boston: Houghton Mifflin Company, 2005), 185.
\bibitem{22} Ibid., 188.
\bibitem{23} O’Brien, 152.
\end{thebibliography}
redefining employer property. The Shipstead Bill asserted that the 13th Amendment provided every American with “an inalienable right to the disposal of his labor free from interference, restraint or coercion by or in behalf of employers of labor.” The amendment, the bill claimed, guaranteed “the right to associate with other human beings for the protection and advancement of their common interests as workers, and in such association to negotiate through representatives of their own choosing concerning the terms of employment and conditions of labor, and to take concerted action for their own protection in labor disputes.”

The Shipstead Bill represented an attempt to frame worker rights as constitutional rights. Rather than relying on pro-growth arguments, as Wagner would later do, the Shipstead proposal relied on an understanding that labor rights were independently evident and justified. Felix Frankfurter, the Harvard Law School professor, New Deal planner, and later Supreme Court Justice, was determined to throw out arguments based on the 13th Amendment. Frankfurter, an advocate of judicial restraint, did not believe that these arguments for worker freedom had legitimacy. Like many New Dealers, Frankfurter hoped to use the Commerce Clause to expand Congressional power over the relationship between capital and labor. Relying on the 13th Amendment would diminish the need for increased Congressional power, making the right to organize a matter of constitutionality and not a new justification for state management of economic affairs. The labor movement wanted to push forward with its rights-based arguments for reform. Leading New Dealers, however, preferred to justify political change as necessary for economic recovery.

The Shipstead Bill failed to attract support. Instead, Congress passed the Norris-LaGuardia Federal Anti-Injunction Act in 1932, which limited the power of federal courts to issue injunctions to stop strikes, boycotts, and other labor action. The AFL ultimately backed Norris-LaGuardia, an

Pope, 34.
26 Ibid., 35.
27 AFL Bill, as quoted in Pope, 40.
28 Pope, 40.
important step in transforming the public response to labor disputes. Federal courts could no longer end disputes by issuing injunctions against striking workers. The Act shied away from Furuseth’s bold language connecting labor rights to freedom from involuntary servitude, but it did protect each worker’s right “to exercise actual liberty of contract and to protect his freedom of labor,” and did assert that government had a responsibility to protect each worker’s “full freedom of association, self-organization, and designation of representatives of his own choosing.” Shying away from 13th Amendment justifications but alluding to labor rights as part of a more comprehensive reform, Norris-LaGuardia foreshadowed the middle-road approach that Wagner adopted in 1935.

In the mid-1930s, as he began to develop a legislative plan for strengthening federal protection of collective bargaining rights, Senator Wagner confronted slavery and freedom arguments for worker rights. He had dedicated his professional career to improving workplace standards and advocating on behalf of workers, and sympathized with the labor movement and its aims. In 1934, the Senator introduced his Labor Disputes Bill to Congress, arguing that, “the right to bargain collectively, guaranteed to labor by section 7(a) of the Recovery Act, is a veritable charter of freedom of contract; without it there would be slavery by contract.” By linking the absence of collective bargaining rights to “slavery by contract,” Wagner initially carried the language of slavery and freedom into New Deal labor reform. The 1934 legislation, however, came to an abrupt end.

In the wake of this defeat, Wagner questioned the 13th Amendment rights-focused strategy. Throughout his efforts to craft new legislation, Furuseth advised the New York senator to focus exclusively on the rights of labor, as he had done in the past. Wagner understood the need, however,
to attract support from members of Congress and the administration who were not as intimately tied to Labor’s interests and concerns as he was. The political context of 1935 provided a new opportunity and an even more pressing and universally salient motivation: industrial unrest. Pragmatism prevailed. Wagner embedded the protection of labor rights in a larger argument for protecting the economy from unnecessary and wasteful industrial strife.

When Wagner and Keyserling drafted a bill appealing to fears of continued industrial unrest, the AFL supported the tactic. The organization’s support came as a surprise, considering differences between the proposed legislation and language that AFL leaders preferred. Frances Perkins initially expected AFL President William Green and General Counsel Matthew Woll to oppose the NLRA. They told her, however, “Times have changed and we must change with them.”

In the past, unions had pushed for labor legislation based on “the glorious labor amendment” (as they referred to the 13th Amendment), but the AFL recognized that it was in a vulnerable place in 1935. The Court had struck down the NRA, Section 7(a) along with it, and unions faced an environment in which no legislation clearly promised to protect their right to collective bargaining. As a result, the organization decided to capitalize on public fears of industrial unrest. Wagner showed that legislation could win protection of bargaining rights as a conduit for industrial stability and peace. By the time of the Senate subcommittee hearings on new legislation, Green’s comments on the Act followed Wagner’s script. The AFL president called the NLRA a necessary but relatively conventional law that would prevent strikes. The protection of collective bargaining rights was imperative, Green argued, because peaceful negotiations between employers and employees would enhance economic progress. Green even added that Labor would cause more unrest if Congress did not pass the NLRA.

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33 Perkins, 244.
Use of industrial unrest to promote passage of the Wagner Act did not preclude protection of rights. For Wagner, and certainly for Green, the purpose of the legislation was to provide workers an enforceable right to remain free from unfair employer impediments to organizing activity. The “right to collective bargaining” appears throughout the Wagner Act, and Green and other labor leaders touted the legislation as the “Magna Carta” of American labor. Their goal was protecting workers. Two years after passage of the Act, Wagner wrote in a *New York Times* editorial, “Let men become the servile pawns of their masters in the factories of the land and there will be destroyed the bone and sinew of resistance to political dictatorship.”34 The Senator espoused a vision of labor rights that extended beyond the NLRA. Wagner’s means of reaching this goal, however, became the argument that protecting collective bargaining rights could alleviate growing industrial unrest.

Wagner’s, and later, the administration’s, efforts to frame the new legislation in public and before Congress were far from a rights-based approach. A rights-based approach depended upon the assumption that protection of collective bargaining rights was necessary because they were rights that employees possessed, regardless of the economic result of enforcing such rights. Labor leaders, lawyers, and even a few legislators had proclaimed this view for seventy years. They had waged an uphill battle against prevailing understandings of worker freedom and in the courts. Here was an attempt to frame these rights in the context of a pro-business, pro-commerce measure with which those forces, facing a national industrial emergency, might agree.

The labor movement in the United States did not espouse a rights-based approach, as it did in other countries. The labor movement used rights-based arguments for new labor law, but Americans did not agree. Kurt Braun’s 1950 comparative study of American and European Organizing laws for the Brookings Institution suggests this American resistance to “collective

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bargaining rights” was a product of timing. In the United States, the First Amendment protects the right to assembly. For more than a century after the drafting of this amendment, however, courts treated most union activity as illegal and took action to punish union agitators.\(^\text{35}\) Constitutional freedom of assembly failed to lead to freedom of labor organization. In contrast, France granted constitutional freedom of association following legalization of French trade unions in the late nineteenth century under the Third Republic.\(^\text{36}\) In drafting the 1901 Law of Associations, French statesmen already believed labor organizations were legitimate forms of worker representation and included workers’ right to assembly. This difference between the granting of the right of assembly and the right of organization exposes an essential cause of American focus on economic justifications rather than constitutional guarantees of freedom of association in establishing federal protection of the “right” to collective bargaining.

The election of representatives is a unique feature of American collective bargaining that emerged from this international distinction. European focus on the freedom to belong to a union of one’s own choosing allowed any group of workers, even if they were only a minority within a plant, to choose their representative union.\(^\text{37}\) Using majority rule to determine workplace representation necessarily ignores the choices of workers who vote against a union or for an alternative to the majority’s union. Because they considered workers’ freedom of association to be paramount, European countries often avoided majority rule. New Deal attention to worker rights valued uniformity in labor contracts over individual freedom to join an organization of one’s own choosing.\(^\text{38}\) Majoritarian elections for union representation constituted a pragmatic, democratic, and reasonable means of determining appropriate bargaining agents for an entire workplace prevailed,

\(^{36}\) Ibid., 69.
\(^{37}\) Ibid., 233.
\(^{38}\) O’Brien, 194.
because they offered the most straightforward path to industrial peace. Senator Wagner explained majority rule elections to the Senate Committee on Education and Labor in 1934. A workforce could elect several unions, but that “gives the unscrupulous employer an opportunity to play one group against another constantly. It foments in the ranks of the workers discord, suspicion, and rivalry at all times.”

Majoritarian elections produced order out of what could otherwise devolve into chaos.

Wagner and other pro-Labor New Dealers most likely correctly viewed using the 13th Amendment to justify new labor law as a nonstarter. Their primary aim was enacting the quickest and least controversial means of protecting workers’ rights to organize, strike, and bargain collectively – rights that employers consistently ignored, even in areas in which unions were popular. To convince Congress and the Courts of the legitimacy of the new labor legislation, Wagner reasonably believed, he had to assert workers’ rights in the context of immediate economic concerns. This approach succeeded in turning Wagner’s ideas into law, but it also delayed conversations about the actual rights of workers. In framing workers’ rights as tools for economic growth, Wagner provided fodder to an opposition that ultimately seized on the legislation’s limited ability to prevent strikes. The Senator’s idea of strengthening worker rights by embedding them within pro-growth legislation ultimately subjugated workers’ rights to overall economic prosperity.

The Wagner Act did not work flawlessly anywhere. Business and Labor are unnatural colleagues. Even in Chicago and New York, workers had to fight to assert their rights against obstinate employers and police forces. By the mid-1930s, however, some political leaders in Northern cities and states were willing to help. The NLRA was most successful where local officials helped reinforce its provisions. They provided support workers needed to counter continuing

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obstruction of union activities. During the 1937 sit-down strike at General Motors’ Flint factory, for example, Michigan Governor Frank Murphy used the National Guard to protect UAW members. Murphy and many other Northern leaders, mainly out of political necessity, began to recognize and support Labor’s rights.

The Wagner Act did not create conflict. The strikes of 1934, which preceded passage of the NLRA, revealed local political support for unions. Minnesota Governor Floyd Olson contributed to union strike funds. During the early decades of the twentieth century, labor organizations had been building social and political support throughout Northern industrial centers. Unions successfully tapped into a “culture of unity” in cities like Chicago through the mid-1930s. Uniting workers of different races, ethnicities, and genders, industrial unions created a cohesive working-class identity. Collective bargaining relied on more than a federal promise to protect worker rights. It required an environment in which union activity could succeed. The North did not always welcome union activity, but this “culture of unity” was able to develop in many cities, allowing workers to overcome employers’ unwillingness to recognize labor organizations.

This culture of unity fueled a partnership between government and Labor. As workers began to form a distinct voting bloc and as voters proved their power in local elections, politicians recognized the need to win their votes. They also grew in national significance, and were victorious over conservative Republicans in the 1934 midterm elections. Unions learned, however, that government was slow to enforce promised rights until it faced pressure from voters. In regions where unions had been active for decades, they were able to exert pressure, both through strikes and subtler means of slowing and stopping work. As Wagner and Keyserling predicted, these tactics would prove essential to unionization under the Act. They had to prod government to follow

41 Ibid., 304.
42 Ibid., 305.
through on its promise to protect labor rights. Combined with a more sympathetic political environment, strong union movements could win contracts and fight employer discrimination.

The champions of the Wagner Act failed to address geographic differences in Labor’s threat to peaceful commerce. First, the NLRA relied on a culture of unity to force compliance by threatening work stoppages. Second, it required local political support for, or at least recognition of, these labor rights. Even Alexander Feller and Jacob Hurwitz, two corporate attorneys who introduced businesses to the new legislation, acknowledged this fundamental weakness. They wrote, “in practice, a policy purporting to correct unequal bargaining power, tended to favor labor, organized nationally. For organization on a National scale was the most likely way in which to bring about effective bargaining. It may well be that the policy of the Act was in anticipation of energetic drives by organized labor in craft or industrial form.”\textsuperscript{43} Drives were successful only in areas where organized labor had developed roots before passage of the Wagner Act.

Conservative politicians and businessmen pointed out that appeasing Labor was not the sole way to achieve economic stability and industrial peace. This was particularly true in regions where Labor did not pose a significant threat to commerce, regions that were immune to industrial unrest by their own assessments. Consequently, government and business leaders turned Wagner’s language against Labor. They agreed that prevention of industrial unrest was important, but contended that their industries would grow most rapidly by fighting rather than appeasing Labor. They could grow by becoming havens for companies that sought to escape the threat of labor strife that plagued Northern industrial centers. This encouraged many Southern localities to ignore NLRA provisions.

Justifying the NLRA on a purely rights-based argument would not have converted these politicians and businessmen into labor sympathizers. Andrew Furuseth’s brand of unionism might have intensified repression of labor activity by arousing a reactionary response from Labor’s

opponents; that debate would have united workers on the basis of their own claims to collective bargaining rights – rights in which Wagner, Green, and other architects of the NLRA strongly believed. Instead, using the macroeconomic arguments of the NLRA, politicians and business leaders in many areas were able to stifle labor activity without acquiring reputations as violators of workers’ constitutional rights. These businesses had an alternative to the way New Dealers proposed as the best path for regional growth. The NLRA helped unions force many Northern businesses to come to terms with organized labor's demands, but it did not produce the same results in the South. There, Labor failed to represent a significant political or economic force, and business did not need to recognize collective bargaining rights to protect commerce. To protect economic growth and industrial peace, economic developers, businessmen, and politicians organized local campaigns to keep unions out and prevent the Wagner Act from changing the region’s economic structure.
Chapter Three: Local Limits of NLRA Enforcement

“It was when labor sought to exercise its ‘right’ to organize or strike that the most fruitful soil was prepared for the wholesale violation of our civil liberties.”

NLRB Senior Attorney Joseph Rosenfarb, commenting on the NLRA in 1945

The union experience in Virginia demonstrates the limits imposed by the NLRA’s pro-growth framing. In Virginia and much of the South, Labor represented a potential, rather than an actual, threat to employers. State and regional economic planners emphasized the South’s “good business climate” in promotional pamphlets to Northern businesses. They viewed keeping unions away, rather than giving them what they wanted, as the most effective means of increasing productivity and promoting commerce. These developers sought to work around the NLRA’s provisions in any way possible. In many rural areas, their efforts succeeded in effectively nullifying the legislation, showing that the NLRA could not protect workers’ rights to collective bargaining and organization in regions where it relied on the federal government alone to force stubborn businesses to comply.

Businesses’ approach to unionization required ignoring NLRA provisions. By forming alliances, industrialists and local officials kept unions at bay, even during one of organized labor’s most promising periods. Legislative, judicial, and financial forces united to preserve low-wage regional economies and stimulate future development. The attempt to unionize Industrial Rayon in Covington in 1937 was one of the earliest instances of local defiance. Challenges to organizing in Virginia continued long after Covington, protected the region’s status as nearly union-free, cleared

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the political path for a state-level “right to work” law in 1947 and, several months later, allowed passage of national restrictions on the NLRA through the Taft-Hartley Amendments. Long before these restrictions on union organizing and collective bargaining agreements took effect, Southern elites had successfully stalemated the NLRA and protected the economic conditions they perceived as vital to regional development.

The union experience in the South is made up of the actions of small town politicians, businessmen, and law enforcement officers. It would eventually prove essential to the success of union organizing on a national level. Political leaders in the Old Dominion knew that protecting commerce required proscription, rather than promotion, of worker organization. Through local, often veiled, efforts, many of which avoided censure from national laws and leaders, Virginia’s economic establishment evaded the NLRA’s intended protection of worker rights. In this movement, Virginia localities followed efforts of regional counterparts. Their success exposed the institutional weaknesses of the labor law created in 1935. It also showed the importance of crafting watertight legislation. In its efforts to evade NLRA provisions, the anti-labor coalition used the same free market arguments for growth through industrial peace that labor unions and liberal Democrats had used to defend the Act.

Southern antipathy toward unions appeared long before the NLRA. The industrializing Southern economy of the late nineteenth century posed a difficult challenge for Labor. The growth of mill towns did not create an environment conducive to worker organization. Factory owners created a paternalistic industrial structure. Historian Broadus Mitchell in 1931 gave Southern industrialists credit for improving the region – feeding, housing, and clothing its people. NLRB attorney Joseph Rosenfarb reported, “Because of the economic dependence of the community,

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particularly the smaller ones, upon the payroll of frequently a single enterprise, the employer was able to dragoon, directly or indirectly, the leading elements of the community against labor.\textsuperscript{4} Local business and political leaders perceived the NLRA, and potential of unionization, as a grave threat that required their active resistance. Through injunctions, police intimidation, and other pressures, they smothered union activity as soon as it began to develop.

Despite this regional hostility, not all attempts at collective action in the South before 1935 failed. Encouraged by the Southern Farmers’ Alliance, an organization promoting economic reforms and agrarian values, the late nineteenth century Populist Movement spread throughout the region.\textsuperscript{5} The United Mine Workers successfully organized integrated workforces in the South during the early twentieth century. The successes that these and other labor organizations attained were rare. Some succeeded in their efforts despite the actions of anti-union coalitions, but the majority of local unions were unable to overcome this resistance.

Much of this antipathy stemmed from Labor’s increasingly radical reputation. During 1936 and 1937, the United Automobile Workers (UAW) staged a violent, public, and revolutionary sit-down strike against General Motors (GM) at its Flint plant. The union successfully earned recognition as GM employees’ collective bargaining representative and helped clear the way for a more labor-friendly auto industry in the decades ahead. The event also gave Labor an aggressive and radical reputation. Union critics seized on the strike as a prime example of the dangerous unrest that industrial democracy could create in American workplaces. According to an AFL-CIO report on Southern organizing in the 1930s and 1940s, the radicalism of CIO drives in the North motivated Southern management to wage war on Labor. Southern management, the AFL-CIO reported, “Rallied for a new concerted onslaught on organized labor. Afraid that the new spirit of unionism


that had caught hold of America would bring ‘too much’ industrial democracy, employers undertook to knock the props out from under labor.’

Labor’s major attempts to move southward during the late 1930s came at a time when Northern unions were attempting to reshape their relations with the political establishment, particularly the Democratic Party, and were abandoning the more aggressive and radical tactics of earlier years. Nonetheless, Labor had acquired a reputation as a direct challenge to the existing economic and political order, which hurt its chances in the South.

Southern elites considered Labor’s entry into the region a critical threat, and were determined to protect the established order. Politicians promoted policies that boosted regional economic activity by suppressing labor activity, and protected business interests by limiting taxation and regulation. Industrialists organized on a regional level to prevent union advances into the South. In 1933, they formed the Southern States Industrial Council (SSIC) to carry out this task. The Council’s first president, John E. Edgerton, described his organization as a defender of the Southern way of life against Northern radicals’ threats: “Flying squadrons of discord bearing torches of hate and distrust have come among us while some of our own executive authorities have sat spineless and acquiescent in planned procedure of lawlessness wherein the right of free men to work for their living has been effectively challenged. These are some of the things to which the best intelligence and the heart of the South do not and will never assent.”

Over the next three decades, the SSIC waged a united business attack on union organizing in the South, serving as a source of funds, information, and collaboration for the region’s emerging anti-labor coalition.

Virginia cities attempted to attract new industry by reducing taxes and regulations and keeping unions away. In 1936, the Virginia State Department of Labor and Industry outlined the

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8 Schulman, 8.
ways Northern companies had exploited the State’s communities. Desperate for business and willing to remove nearly all taxes and regulations, communities had fallen victim to transitory low-wage businesses. They provided businesses rent-free buildings, subsidies, and a host of regulatory concessions. These businesses, the Department argued, were unstable and relied on short-term, low-wage labor. They did not remain in town long. According to the Department, “when the period for which the community agreed to subsidize them nears an end or the time approaches when they must begin paying taxes into the community coffers, they move on to other communities offering enticing subsidies. Concerns of this type are an economic and social liability to the community and the State.” These businesses, according to the report, were harmful to the communities that housed them. They showed little concern for the fate of their workers or their community. Nonetheless, Virginia localities continued to try to attract industries. To attract industry, they engaged in a race to the bottom – lowering regulations and taxes and keeping union activity away.

Northern employers read reports from Southern city, county, and state planning commissions that highlighted the advantages of the region’s labor supply. Governors and mayors sent advertisements and personal pleas to businesses that emphasized their areas’ cheap, docile, and easy-to-teach laborers. These ads implied that Southern workers, unlike their Northern peers, would not disrupt operations or demand higher wages. A University of North Carolina report on “Southern Industry and Regional Development” characterized the South’s labor supply: “In quality, at least theoretically, its virtues have become axiomatic: Anglo-Saxon, homogeneous, intelligent, willing to learn and easy to teach, tractable, satisfied with moderate, even low, wages. These claims may have been exaggerated, but their relative truth is proved by the movement to the South of

11 Ibid.
industries for which this type of labor is an important asset.” As the report warned, Southern workers did not live up to these characterizations. Businesses, however, headed south in search of the “good business climate” that the ads promoted. When workers in these regions eventually sought to organize, the same leaders who first attracted industry mobilized to keep unions away.

Wagner’s explanation of the chief causes of strikes did not resonate with Southern political leaders. In 1935, he had asked the country whether it was not “time to act upon the ominous industrial disturbances of last summer, when blood ran freely in the streets and martial law was in the offing?” He convinced many that the country could avert strikes by protecting collective bargaining rights, but most Southern politicians saw the NLRA as an instigator more than an antidote. At the same time that Wagner presented his pro-growth argument for the Act, Democratic Congressman John Rankin of Mississippi predicted that “if [the NLRA] became law, the streets of southern towns would run red with blood.” Both sides blamed their opponents for labor unrest. Each stood by their prescription for peace and prosperity.

The Virginia Chamber of Commerce and its regional subsidiaries mobilized business interests to maintain access to cheap labor. Their primary aim was to prevent unions south of the Mason-Dixon. The Chamber of Commerce cooperated with the American Farm Bureau, the Southern States Industrial Council, and numerous other business alliances and economic development associations. These lobbies wielded a great deal of power, and workers recognized the obstacles to unionization that they represented. In 1941, responding to the hysteria caused by the attack on Pearl Harbor, a textile worker in Danville, Virginia sarcastically remarked, “I’m not worried at all about the Japs movin’ in on us; the chamber of commerce has kept the unions out,

13 Congress, Senate, Committee on Education and Labor, Hearings on A Bill to Promote the Equality of Bargaining Power Between Employers and Employees, to Diminish the Causes of Labor Disputes, to Create a National Labor Relations Board, and for Other Purposes, 74th Cong., 1st sess., 11-14 March 1935, 56.
and I reckon as how they can keep the Japs out too.”

To Southern workers sympathetic to labor, chambers of commerce represented an impenetrable political and economic force – the flagships of the anti-union movement.

Opposition of local business manifested itself in a variety of ways. Initially, employers were not afraid to violate the NLRA. Some used spies to observe union activity. Others fired union employees or those attempting to organize unions, supported the growth of company unions, refused to bargain with representative labor organizations, attempted to intimidate employees through threats and violence, or appealed to racial tension to stifle union growth. Unions had overcome similar obstacles in the North, but business opposition presented a more severe threat in the South where single companies often dominated entire communities, making their anti-union campaigns especially effective. In their study of the NLRA, economists Millis and Brown reported that employers’ anti-union campaigns were much more effective in cities than in ‘the hinterlands,’ as they called rural areas, where employees were isolated and unfamiliar with organized labor. There, workers lacked the support of the “culture of unity” that Lizabeth Cohen showed to be so instrumental in Northern organizing.

One of the most informative narratives of the struggles of union organizers in the South comes from Lucy Randolph Mason. A native Virginian, Lucy was a descendant of George Mason and a daughter of an Episcopal minister in Alexandria. In 1952, she wrote To Win These Rights: A Personal Story of the CIO in the South, which described her difficult, often dangerous efforts to organize

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10 Stetson Kennedy, Southern Exposure: Making the South Safe for Democracy (Tuscaloosa, AL: The University of Alabama Press, 1941), 289.
12 Ibid.
13 Ibid., 186-187.
14 Ibid.
Southern workers. Mason’s account reveals her grasp of local politics and customs – a quality unique among CIO organizers in the region. Mason encountered the full extent of elite opposition to unionization while attempting to organize the Friedman-Harry Marks factory in Richmond in 1935. The president of the local bank, not trying to conceal his lack of respect for federal labor legislation, informed Mason that, “If the government in Washington under this crazy New Deal passes laws that this town disapproves, the thing for us and other towns to do is to ignore them…. We don’t know anything about civil rights but we know how to protect our own rights. The Labor Board is unfair and should be disregarded until Congress wipes it out.” Mason got no support from a local judge, who informed her, “I’m not going to talk to anybody about this damned CIO. I am against it and am going to do all I can to get it out of here.” Mason’s visit to the mayor’s office also accomplished nothing. The city had offered a subsidy to the garment factory, enticing it to move to the region. There was little hope that these men would help the CIO, which threatened their investment.

To prevent the growth of support for unions in an area, anti-union campaigners needed only to delay organization, not defeat it. Organizing drives depended on mass mobilization. By impeding union activity even temporarily, businesses and politicians could permanently damage the union cause. Stetson Kennedy, a longtime labor and civil rights activist in the South, wrote about the problems that delays in NLRA enforcement caused unions in the region. “One reason why some employers still do not hesitate to fire workers in an attempt to discourage union organizing,” Stetson explained, “is that they have relatively little to lose. Although the employer may be reasonably certain that the NLRB will eventually order him to reinstate and reimburse workers discharged for union activity, the cost is generally small in comparison to the amount saved by the resultant

23 Mason, 66.
24 Ibid.
25 Ibid., 67.
intimidation of the other workers, and the consequent setback or breakup of union organization.”

Employers could gain significantly from illegal efforts to block unionization. They might have to pay small fines years later but in exchange, they could continue to pay their employees low wages.

Even when the Wagner Act limited the activities of employers, anti-union activists, posing as independent from the businesses they worked for, often avoided legal repercussions. In East Radford, Virginia in 1936, J. Freezer & Sons, Inc., a men’s shirt manufacturer, fired three sisters who joined the Amalgamated Clothing Workers of the CIO. Prominent members of the community intimidated workers at the factory to force them to vote against the union. The Washington Post reported, “After the Amalgamated started an organization drive… J.L. Kirkwood, ‘referred to by a witness for the company as a one-man chamber of commerce,’ enlisted the support of R.S. Hopkins, city councilman; H. Tyler, city attorney, and C.H. Howell, chief of police. The three told a meeting of several hundred employees that ‘a union would not be beneficial to the welfare of the employees but would be harmful.’”

Despite the unofficial connection between J. Freezer & Sons and these anti-union authorities, none of the men the Board accused of intimidation were company representatives. At the time, they were beyond the Board’s reach.

Relying on external advocates to intimidate employees and stifle union growth enabled employers to maintain union-free workplaces without violating the Wagner Act. In Smithfield, Virginia in 1946, employees of the P.D. Gwaltney Jr. and Co. ham company in Smithfield cast 85 of 112 votes against the union. The NLRB later found that opponents of unionization in the small town had created a “hostile and threatening atmosphere.”

They organized a mass meeting, threatened violence the return of the Klan to town – a serious threat to the majority black

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26 Kennedy, 300.
28 Millis and Brown, 168.
workforce. The leaders of this campaign were not representatives of the company, and the NLRB could find no evidence that they were directly connected to the company. Instead, the local newspaper publisher and an insurance salesman led the group. The NLRB discovered these conditions and ultimately set the election aside, but its actions proved to be of little assistance to union organizers. More than a year passed between the initial election and the Board’s ruling, and support for the union in Smithfield completely died out before the Board overturned the election. Community leaders’ attempt to protect the town from the union had succeeded. They used illegal methods, but the limited repercussions came too late to rescue the union.

The NLRB realized belatedly that anti-union campaigns were community, rather than only company, affairs. The Board understood that, in theory, opposition from a community’s most influential members often infringed on the freedom of workplace elections. In cases that involved physical threats against workers, as at P.D. Gwaltney, the Board sometimes overturned the election, although almost always too late to save the union. In general, however, the NLRB struggled to determine what constituted reasonableness in anti-union campaigning. Not until the mid-1960s did the Board draft a clear definition of what constituted “third-party interference” in NLRB elections. In the 1930s and 1940s, many employers were able to evade NLRA prohibitions by turning to others in the community. Community efforts could destroy union organizing drives through intimidation and delay.

Anti-union campaigners recruited preachers, often the most prominent members of rural communities, to repel organizers. In its 1940 Annual Report, the National Labor Relations Board cautioned, “Appeals to religious prejudice have constituted an effective means of combating

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29 Ibid.
30 Ibid.
31 Ibid.
32 For the Board’s definition of “third party interference,” see Utica-Herbrand Tool Division of Kelsey Hayes Company (1963) and Universal Manufacturing Corporation of Mississippi (1966) cases.
unionism in southern textile mills." At a textile mill in Georgia, the Board reported, an employer, "by promises to contribute money to build churches and by other activity, supported 'preachers' who conducted active religious campaigns preaching that C.I.O. meant 'Christ is Out,' and that the union was the 'mark of the beast.'" Preachers who ostracized union supporters in their congregations or spoke out against union membership could persuade workers to support the company over organizers.

Those rare occurrences in which Southern organizing drives ended in union recognition almost always resulted from irregularities among the area's political, commercial, or religious elite. The Reverend Charles W. Webber, a Methodist minister from Richmond, worked with the Amalgamated Clothing Workers of America and served as president of the Virginia Industrial Union Council. Webber successfully organized workers at the Friedman-Harry Marks garment factory. He persuaded workers that unions offered the best option for upward mobility and increased income. He convinced fellow ministers that unionization was important and that collective bargaining was consistent with church teaching. Local churches established relief funds for striking families, pressured management, and ultimately helped workers win a collective bargaining agreement, despite the opposition of business and political leaders. One minister was willing to risk his reputation in order to support a controversial cause. Such behavior was uncommon. Often, even when ministers wanted to support Labor's cause, they were tied to business interests through economic and political pressure. Most organizers in the South lacked sympathizers like Charles Webber who could give them the legitimacy of church support.

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34 Ibid.
35 Mason, 182.
36 Ibid.
37 Ibid.
Newspaper editors also assisted efforts to impede unionization. Publishers founded newspapers to supplement anti-union campaigns. The *Christian American*, founded in Texas in 1936, promoted passage of “right to work” legislation throughout the South, as well as other measures to prevent strikes and limit union power. Its editors insisted that they believed in the right of workers to bargain with their bosses, but “read the Holy Bible and fail to find a provision that tribute must be first paid for this God-given right and duty to Lewis, Green, or Murray.” God desired neither the AFL nor the CIO to represent Southern workers. Magazines like the *Christian American*, *Militant Truth*, and *The Trumpet*, were not delivered to individual subscribers. Instead, firms facing the threat of unionization enlisted their assistance. When they tried to organize, employees could find *Christian American* or *Militant Truth* in their mailboxes, unsolicited, instructing them on the dangers that unions posed to their jobs, their towns, and their way of life.

Elites’ pro-business understanding of economic growth viewed desirable development as anything that advanced their firms’ profit, regardless of workers’ welfare. Regional leaders hoped to attract businesses from more costly and more heavily regulated regions in the North. Southern politicians, attempting to entice industry, appealed to firms’ desire to remain free from demands that organized labor imposed on Northern businesses. They advertised their towns’ “good business climates” and insisted that the threat of unionization was slim and that local governments were willing to help repel unions. They rarely tried to mask the implications of these appeals. Mayor Watkins Overton of Memphis, Tennessee, openly revealed his hatred of union organizers. In September of 1937, after the Supreme Court upheld the constitutionality of the NLRA, Overton wrote to businesses considering moving to the region. “We have started today and will free Memphis of these unwanted people,” he promised. “Imported CIO agitators, Communists, and

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39 Ibid.
40 *The Trumpet* “devoted 90% of its space between June 1946 and March 1947 to attacks upon the CIO,” according to Millis and Brown, 125.
highly paid professional organizers are not wanted in Memphis.” Overton’s guarantee was typical of the kind Southern politicians presented to Northern businessmen: come southward to avoid antagonistic and unruly employees.

In localities throughout the South, politicians approved ordinances that explicitly and implicitly impeded union growth. They included statutes prohibiting distribution of literature in Macon, Georgia; requiring payment of hefty licensing fees for organizations in Star City, Arkansas; mandating disclosure of internal union records in Baxley, Georgia; and in Grenada, Mississippi promising that regions would remain free of union activity. This tactic also occurred at the state level. Texas, for example, required organizers to register and provide financial reports to the state government. Some towns refused to allow NLRB administrative law judges to hold hearings within their limits. A web of independent ordinances and regulations trapped organizers throughout the region. Many found these difficult to keep track of and, consequently, difficult to obey.

Judges opposed to unions applied unrelated laws to organizers. Covington’s Judge Benjamin Haden was a close friend of local business leaders who opposed unionization. In 1937, he convicted union organizers under Virginia’s anti-lynching law. Similar legal maneuvers occurred throughout the South. A court in Atlanta convicted an organizer of unemployed workers who led a march to city hall of “inciting an insurrection” under an 1861 act and sentenced him to eighteen to twenty years in jail. After three appeals, a higher court set the sentence aside, but his case demonstrated that some judges were willing to employ creativity in devising ways to suppress union activity. Judges opposed to unionization had the power to thwart organizing activity at least temporarily. These delays and disruptions often stifled organizers’ aims permanently.

43 Millis and Brown, 325.
46 Ibid.
The anti-labor coalition enlisted law enforcement agencies in enforcing, and sometimes distorting, existing laws. Law enforcement often used general laws to control union affairs. Virginia law, for example, allowed sheriffs to regulate local picketing.\textsuperscript{47} Failure to comply with authorities’ commands constituted a misdemeanor. This law gave police officers power to determine who could picket in a town, how large the event could be, and where it could be held. Authorities could deny requests that threatened local companies. Often this meant officers were protecting their own jobs, as separation between police departments and local companies was only nominal in many areas. Mason wrote, “In some towns the dominant industry paid the greater part of the police chief’s salary, or made a subsidy to the sheriff, or both. Vigilant officers of the law arrested union representatives and ordered them to leave town.”\textsuperscript{48} This behavior went undetected when arrests did not lead to trials. Mason described the Lumberton, North Carolina police department’s use of this tactic during a peaceful strike. “The fact that sixty-five union people were arrested in Lumberton, on company complaints, while not one union member received a jail sentence,” Mason argued, “is evidence that there was no real disorder or violence on the part of union members.”\textsuperscript{49} The Southern labor movement’s fragility meant that even temporary police obstacles could have far-reaching consequences.

Police officers also discouraged organizing through physical intimidation. Mason alleged that one local police chief arrested union representatives whenever he discovered a meeting was in progress. Within three hours, he released the representatives, who almost always returned to find their meetings dissolved and the attendees, now fully aware of their vulnerability, no longer supporting the organizing drive.\textsuperscript{50} Ultimately, the Justice Department pressured the chief to end his

\textsuperscript{48} Mason, 30.
\textsuperscript{49} Ibid., 48.
\textsuperscript{50} Ibid., 97.
unlawful tactics, but he was only one of many officials throughout the region who used their power to further businesses’ goals. Stetson Kennedy also described the close relationship of law enforcement and enemies of the unions: “Horace White, while handing out CIO literature in Georgia in 1937, was attacked by thirteen men, including the chief of police, who struck him four times with a blackjack while he was down. White was then given a drink of whisky – and jailed for being drunk!” The influence of law enforcement agencies in small, rural towns provided them with power to regulate or end organizing drives. Groups could threaten union organizers with the approval, and even the occasional assistance of, local police.

In situations outside the purview of the NLRA, the right to bargain collectively and to organize seemed a distant dream. Organizers could not prevent local efforts to stop union growth. Despite the NLRA’s revolutionary promise that the federal government would protect collective bargaining rights of all workers, local traditions and loyalties continued to exert more power. Local officials applied a wide variety of laws against union agitators in order to halt their real and potential progress, creating dangerous conditions for those who dared to work to organize unions.

The NLRA commonly failed to protect employees from the South’s alliance of business and politics. The tactics that businessmen, politicians, law enforcement, preachers, and economic development advocates employed to suppress organizing activity prevented the Act from initiating a new era of labor-management relations. The legislation promised that bolstering the right to collective bargaining would promote commerce by quelling employee-employer hostility. Businessmen and politicians in the Old Dominion made clear that they had an alternative means of promoting commerce and encouraging regional growth. Like Mississippi’s John Rankin, they believed the NLRA would cause, rather than prevent, blood from running down their quiet streets.

51 Kennedy, 295.
The anti-labor alliance’s method of protecting peaceful commerce involved stopping Labor before it gained any power in the region, not appeasing unions after they established themselves.

As a consequence of efforts to stifle Labor, standards of living remained low even as industry expanded. In 1938, the President’s Committee on the Economic Conditions of the South reported that industrial earnings for Southern workers were frequently thirty to fifty percent below national averages, and that the cost of living in Southern cities was only five percent below national averages.  

“Differences in costs of living between the southern cities and cities in the Nation as a whole are not great enough to justify the differentials in wages that exist,” the committee reported. These federal concerns about worker wellbeing were not mirrored at the region’s ground level. In fact, Southern business responded bitterly to New Deal attempts at regulating their affairs. At the 1938 meeting of the Southern States Industrial Council in Birmingham, Alabama, the Council’s secretary, Charles Gilbert, expressed his resentment. He proposed an all-out political attack on congressmen who acquiesced in New Deal policies. Responding to the passage of the NLRA the previous summer, Gilbert advocated a unified business campaign to thwart New Deal attempts at reform in the region. “It is a great compliment to Southern industry that it has been able to survive the ordeal of the New Deal,” he declared.

Gilbert and his fellow industrialists pledged to continue to thwart New Deal attempts at reform.

Regional economic development boards stressed the value of cheap labor in their efforts to entice businesses. Labor’s exclusion from these boards encouraged business domination of strategies for economic growth. A representative from Virginia, at a conference on “Labor Laws and their Administration,” criticized the state’s Planning Board for neglecting to include a labor

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53 Ibid.

representative: “We have an educational member and Chambers of Commerce and various other business organization representatives, but for some unknown reason the State Planning Board, which I helped to inaugurate some years ago, is now without a labor representative.”55 At the same conference, Marion Hedges of the International Brotherhood of Electrical Workers (IBEW) described Labor’s role in decisions about regional and national economic development. He argued, “If we can go ahead in this country and do the business of this great country on a private-enterprise basis, okay; but we are not going to do business on a private-enterprise basis if private enterprise is not the community, meaning that it takes in all elements of the community, including labor.”56 Hedges criticized states like Virginia for persisting in economic strategies that treated Labor as a menace, rather than a component of industrial life.

In their campaigns against unionization, businesses and industrial associations put forward a distinctly pro-growth economic message. This tactic helped to justify their anti-union tactics, not only to company managers and community elites but also to most workers. One aim was to distinguish between the needs of Northern and Southern industry. The anti-labor alliance drew this distinction in all federal legislation that interfered with the region’s social and economic structure. Their objections to the 1938 Fair Labor Standards Act, which established a national minimum wage, relied on this argument. Businessmen at a meeting of the Virginia Chamber of Commerce and the Virginia Manufacturers’ Association in June of 1939 argued that the FLSA wage minimums “forced industries to discontinue contemplated expansion in this area and in a few instances to come near to a complete shutdown.”57 Businessmen and politicians warned that the Southern economy would stop growing if restrictive federal laws continued to equalize the playing field for North and South.

56 Ibid., 47.
In the years immediately following the passage of the Wagner Act, even after the Supreme Court’s 1937 decision upholding the constitutionality of the legislation, members of the Southern legal community encouraged even flagrant violations of the Act. At a local bar association conference, one attorney advised companies on disobeying various NLRA regulations. The attorney told local employers, “Risk violation of Section 8(1) if efforts have reasonable chance of success – same as to Sections 8(2) and 8(5)... Do not ever... violate or even threaten to violate Sections 8(3) or 8(4).”58 59 The attorney warned that if the union succeeded in organizing a company’s workforce, “Better learn to live with it... Chances of getting rid of union do not warrant trouble incident to getting rid of it.”60 This attorney cautioned his audience about the danger of violating some NLRA provisions, but simultaneously advised that they could evade punishment, and might even profit from infringing on several of these provisions. He confirmed their fears that once a union established itself in a factory, it became an unstoppable force, implying that management should heighten its resistance to initial union activity. The attorney’s approval of prohibited anti-union activity reveals the hostile political environment the Wagner Act attempted to regulate. Millis and Brown reported of lawyers in the region, “Many became known as masters of obstruction, delay, and subtle violations of the spirit of the Act.”61

Speaking before a Senate subcommittee in 1938, NLRB Chairman J. Warren Madden supported this claim: “The sanctions provided by the National Labor Relations Act in many cases afford little incentive to the employer to comply with orders of the Board. The consequence of these dilatory tactics,” Madden continued, “may be that the employer has succeeded in destroying the union by the time that a court order is made against him. He may then comply with the court’s order

58 Millis and Brown, 127.
59 Section 8 of the NLRA prohibits certain unfair labor practices. 8(1) prohibits interference; 8(2) prohibits employer control of labor organizations; 8(3) prohibits discrimination in hiring; 8(4) prohibits discrimination against unionized employees; and 8(5) prohibits employer refusals to bargain collectively. From National Labor Relations Act, 29 U.S.C. §§ 151-169 <http://www.nlrb.gov/national-labor-relations-act> (accessed Mar 24, 2013).
60 Millis and Brown, 127.
61 Ibid., 295-296.
to ‘cease and desist’ from his unfair practices, and still the victims of those practices may not obtain the benefits of the law. It is merely another illustration of the ancient truth that ‘Justice delayed is justice denied.’

This was the problem that Stetson Kennedy and other organizers described: it was irrational, in many cases, for employers to comply with the legislation. To seek enforcement of its orders, the NLRB had to appear before a Circuit Court of Appeals. The Board lacked resources. Between 1935 and 1947, it never had more than $4.5 million to enforce NLRA provisions throughout the country. Enforcement of Board orders did not come until years after initial violations, and there was a slim chance of initial claims making their way through the entire process.

The NLRA had no teeth. Employers who violated the law were liable for small fines, and few people viewed employers’ actions as criminal. In 1945, Malcolm Ross, who headed the Fair Employment Practices Committee, wrote about this defiance of the national law: “The ultimate test of a law is its acceptance by those whom it controls.” Using the Interstate Commerce Act as an example, Ross argued that even railroad presidents respected the aims of that legislation and would oppose its repeal. Support for the Wagner Act, however, had “not yet reached a comparable stage of maturity.”

Ross pointed to the NLRA’s inability to compel employers to obey. There were still many employers “to whom a violation of this law involved no ‘sense of sin.’”

National debates about the Act resulted in local consequences. Businessmen viewed the NLRA as a bothersome restriction on their profits rather than an outline of legitimate labor rights. Believing the legislation was only a temporary New Deal obstruction and lacking the “sense of sin” that a successful law must inspire, the anti-labor coalition held out against reform. It promoted commerce by sidestepping the new regulation – continuing to engage in illegal anti-union activity.

63 Millis and Brown, 243.
65 Millis and Brown, 127.
The coalition saw its defiance not as infringing on workers’ rights but as advancing a pro-growth alternative to the NLRA. Businesses were most likely going to attempt to evade union organizing anyway. After all, even proponents of unions conceded that they raised the employer’s cost of production. The national justification of the NLRA as an emergency pro-growth measure undermined other significant defenses of the Act. Under Powderly and Gompers, the labor movement had argued that employer anti-union tactics were akin to wage slavery. The labor movement of the 1930s, however, coalesced around Wagner’s framing of organizing and bargaining rights as instruments in a larger program of economic growth. This forced Labor to defend collective bargaining by citing its benefits for overall growth – an argument that business opponents easily and successfully countered.

The reasons legislation is drafted and the way its proponents justify the new regulations can be as important as the legislation itself. The NLRB was substantively a boon for American labor unions. It banned nearly all of the most detrimental employer anti-union tactics. It guaranteed a right to organize and, for unions that secured majority support of employees through a workplace-wide election, the right to bargain with employers. It protected the right to strike. Enforcement was feeble, however. For labor organizations to secure collective bargaining rights through the Act, they first had to win elections. The anti-labor alliance killed support for unions before it could emerge. These employer and community practices were illegal, but it took years for the NLRB to punish violations. Without powerful support, the NLRA could do little for workers. The legislation failed to work where nothing forced it to work.

Employees in regions that lacked even minimal political support for Labor did not benefit from the protections of the legislation. Many companies retaliated against disloyal workers by closing and relocating factories. Others intimidated employees who expressed support for unions. The Wagner Act prohibited retaliation and discrimination against union activity, but employers
promoted these activities as essential to economic growth. Legislative error was not the only cause of Labor’s failure in the South. Companies exploited employees’ racial prejudices to deter white workers from joining the “integrationist” unions and black workers from cooperating with “racist” union organizers. Further, workers who took industrial jobs after generations of agricultural labor were less likely to see a need to organize to achieve higher wages or better conditions. Unions failed to organize the region by dedicating too few resources to the effort and failing to understand the region’s unique cultural, political and racial characteristics. All of these factors played a part in the Southern failure, and the anti-labor coalition capitalized on all of them. The coalition contended that the South would prosper by violating regulations imposed by the federal government. The ultimate success of this coalition was a result of badly crafted, badly justified law.

Supported by local governments opposed to Labor, businessmen and developers continued to nullify the Wagner Act. Weaknesses in the legislation surfaced when labor organizers asserted their rights in a region hostile to unions. In clearly outlining the benefits of collective bargaining to commerce and providing an administrative agency to oversee labor-management relations, the NLRA accomplished a necessary task. Economic justifications for the NLRA caused it to fail to be “Labor’s Magna Carta” where authorities did not already recognize social benefits of unionization. In these regions, no right to collective bargaining existed before the legislative reform and few existed after it became law.

66 Dray, 506.
On December 10, 1946, Virginia Governor William H. Tuck called the General Assembly to Richmond for a special session. He labeled education reform the focus of the session, but sources close to Tuck knew that the Governor actually envisioned large-scale reform of the state’s labor law. After less than a year in office, Tuck already had faced off with Labor. Following a national trend, Virginia workers were beginning to organize strikes – most notably at the Virginia Electric and Power Company (Vepco) in the spring of 1946. The Governor wanted to set the state, and even the country, on a path toward increased, uninterrupted production in the years ahead. To do so, he believed he needed to push unions out of the picture.

Organized labor was beginning to cause a storm in the Commonwealth. In the spring, the Governor ordered Virginia’s unorganized militia to draft 1,600 Vepco employees if they proceeded with a planned strike. The workers threatened to walk out after negotiations dissolved between Vepco and the International Brotherhood of Electrical Workers (IBEW) over the extent of a proposed wage increase. As the New York Times reported, “A strike would paralyze milk production, cold storage plants, street railways, elevators and factories and shut off street lighting.” As the date of the strike approached, Virginians worried that it would quickly disrupt statewide commerce.

Tuck would not allow this disruption. He threatened to employ a 1930 law granting the governor power to draft any able-bodied male between the ages of 16 and 55 into the state militia. William Green’s response evoked a return to freedom and slavery language. He argued that Tuck’s

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2 Ibid.
action violated “the prohibition of involuntary servitude in that it compels workers to work against their will and we will never acquiesce to that.” Concern for economic stability drowned out Green’s protestations. Although the IBEW called off the strike days after Tuck issued his threat, the union had alerted the Governor to the potentially devastating effect of Labor on commerce, even in Virginia. Tuck had proved that the concern for protecting peaceful commerce would remain at the core of political response.

Tuck began planning how to avoid future disruption. In the 1947 special session, he had an opportunity to counteract the damaging effects of closed shops on Virginia’s economy. On December 16, he asked the Virginia Advisory Legislative Council (VALC) to assess public utility strikes in relation to employees’ right to work. In reforming the Commonwealth’s labor law, the Governor wanted Virginia to set a precedent for the country to follow. He proposed two bills. The first provided for operating public utilities in the case of a strike, directly addressing the Vepco concern. The second bill provided Virginia workers with an enforceable “right-to-work.” It banned closed shop agreements through which unions secured full membership within workplaces. This second bill extended the provision to all industries in the state. Both of Tuck’s measures passed the General Assembly by wide margins. The right-to-work bill won 77 to 20 in the House and 32 to 6 in the Senate. The public utilities bill won 90 to 6 in the House and 37 to 1 in the Senate. Virginia was eager to rid itself of labor strife, and of unions.

The General Assembly’s vote on the right-to-work law added momentum to an already building movement for nationwide reform of NLRA provisions. By 1946, Alabama, Arizona, Arkansas, Florida, and Texas had passed similar restrictions on closed shop agreements. Virginia’s

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4 Ibid.
7 Crawley, 120.
8 Ibid., 121.
decision signaled its determination to act against the NLRA. The Wall Street Journal forecast, “Virginia is the only [state] which has passed a bold anti-labor law thus far in 1947. The commonwealth’s legislature has just approved a bill outlawing the closed shop. But C.I.O. and A.F.L. lawyers fear it will be only a matter of time before other states push through similar restrictive laws….”9 Across the country, 1946 had been a turbulent year for the American economy. Time lost to work stoppages was the highest the country had seen since 1919.10 It seemed to many that appeasing Labor had failed to promote industrial peace and further economic growth.

John G. Forrest, Financial Editor of the New York Times, reflected on the national political implications of this unrest. Major strikes in steel, coal, automobiles, railroads, and meatpackers had impeded growth and placed the economy in a vulnerable position. Forrest saw hope for change in the Republican takeover of Congress during the 1946 midterm elections and in the administration’s increasingly tense relationship with Labor. “Let us have at least a year of continued and uninterrupted industrial production,” Forrest pleaded.11 His fear of a return to turbulent labor-management relations and a search for new ways to limit work stoppages allowed conservatives to rally around legislation that restricted Labor’s rights. They looked to business leaders who highlighted the costliness of industrial disputes. The Wall Street Journal published article after article in 1946 and 1947 highlighting business leaders’ complaints about destructive effects of work stoppages on production. General Electric President Charles Wilson commented in September of 1946 that “small, sound gains are being made throughout the country, but these are obscured by the difficulties and setbacks which followed the greatest wave of costly strikes in our history.”12 Industry wanted changes to the NLRA, changes that were necessary to encourage economic recovery.

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11 Ibid.
In response to calls for change, the newly elected Republican Congress followed Virginia’s example and met in Washington for a special session in 1947. In his State of the Union Address, President Harry S Truman had called for new labor legislation to curb industrial unrest, proposals that were much milder than the bill Congress produced, and he vetoed.\textsuperscript{13} New proposals flooded Congress during the early months of the session.\textsuperscript{14} Industry pressed Congress to repeal the NLRA. The NAM distributed a pamphlet, “Now…Let’s Build America,” to every member of the 80\textsuperscript{th} Congress. It conceded that economic indicators were improving, but argued that “prompt, intelligent, courageous action is needed to prevent this nation from entering a disastrous economic tailspin.”\textsuperscript{15} The NAM indicted Labor as the primary impediment to economic growth. It reminded legislators that unions had caused unprecedented numbers of strikes in recent years.\textsuperscript{16} Labor had accumulated this power, the NAM contended, as a consequence of the NLRA and its misguided economic premises.\textsuperscript{17} Commerce suffered as a result. The only way to put the nation back on a path toward “sustained prosperity,” the document asserted, was through reform that eliminated the special privileges that recent laws granted Labor.\textsuperscript{18} Those special privileges that the NAM referred to were the “rights” granted by the NLRA.

Congress gave the NAM and other business leaders what they asked for in the 1947 Labor-Management Relations Act, the Taft-Hartley Amendments to the NLRA. Taft-Hartley aimed to curb industrial unrest. The first clause states, “Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize

\begin{itemize}
\item \textsuperscript{13} Millis and Brown, 364.
\item \textsuperscript{14} Ibid., 363.
\item \textsuperscript{15} “Now… Let’s Build America: Industry’s Recommendations to the 80\textsuperscript{th} Congress,” (New York: National Association of Manufacturers, 1947), 25.
\item \textsuperscript{16} Ibid., 30.
\item \textsuperscript{17} Ibid.
\item \textsuperscript{18} Ibid., 73.
\end{itemize}
under law one another’s legitimate rights in their relations with each other.” The Act repealed many of Wagner’s central provisions. Most notably, it permitted states to pass “right-to-work” laws like Virginia’s that banned the closed shop, provided employers more control over the timing of union elections, allowed anti-union campaigning during elections, and prohibited secondary boycotts.

When he heard the news that Congress had passed Taft-Hartley, William Green warned that the legislation would “endanger our national economy” by provoking “chaotic conditions” for Labor and management. But Labor had lost this argument long before Taft-Hartley. Instead, the majority in Congress had agreed with Sen. Robert Taft, chairman of the Senate Labor Committee, who argued that the new law would “go far toward restoring peace to the industrial relations field.”

Following passage of Taft-Hartley, more states continued to pass right-to-work laws, touting them as essential to their states’ commercial and industrial development. This version of economic recovery became the foundation of the pro-market fundamentalism that would come to dominate labor relations in the later decades of the twentieth century. Today, twenty-four states have right-to-work laws.

The blatant attempts on the part of businessmen and political leaders to prevent union expansion in the South following 1935 should not have existed. These activities were the impediments to organizing that Wagner intended to tear down when he started drafting new legislation to protect worker rights. His NLRA prohibited them; however, as Malcolm Ross stated, “the ultimate test of a law is its acceptance by those whom it controls.”

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the South never accepted the Wagner Act. Instead, it continued to view the law as a flawed prescription for industrial peace, based on an attempt to appease Labor over the proven success of suppression of organizing activity. Southern industry simply ignored the legislation’s provisions. This allowed the region to stall Labor’s advance long enough to debilitate the new reform. In the turbulent years following the Act’s passage, opponents of the NLRA seized control of this debate on a national level. The Republican Congress in 1947 appealed to arguments that had initially supported the Wagner Act in its attempt to dismantle the legislation. Those arguments focused on economic efficiency and encouraged pro-business narratives that portrayed unions as inefficient and disruptive to commerce. The best way to achieve the NLRA’s declared intention of promoting recovery, Republicans argued, was by improving the climate for business. Thus, Wagner’s defense of labor rights led Congress to a labor policy good for business.
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