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RULE OF LAW IN LABOR RELATIONS, 1898-1940

Price V. Fishback

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1050 Massachusetts Avenue

Cambridge, MA 02138

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ABSTRACT

The paper examines changes in labor regulation between 1898 and 1940 in the context of issues related to rule of law in two areas. 1) Many see the 1905 *Lochner* Supreme Court decision on men's hours laws as the beginning of 30 years in which labor regulation was stymied by the doctrine of "freedom of contract." Seeing close votes and substantial turnover of judges on the Supreme Court, the de facto situation was more complex as some states maintained their laws or passed new ones. 2) Labor disputes led to some of the greatest threats to rule of law. To limit descents into violence, states passed arbitration laws, pro-union laws, and anti-union laws. Uncertainty about the rules led to a sharp rise in strikes and violence after World War I and again when Congress and the states sought to establish the rules for collective bargaining between 1932 and 1937. A panel analysis of the impact of state laws in bituminous coal mining from 1902 to 1941 shows that the arbitration and pro-union laws were associated with less violence during periods of uncertainty. During several periods state pro-union laws were associated with more strikes and state anti-union laws with fewer strikes.

Price V. Fishback
Department of Economics
University of Arizona
Tucson, AZ 85721
and TIAA-CREF Institute
and also NBER
pfishback@eller.arizona.edu

When people talk about good government and successful societies, particularly economies, they often talk about “Rule of Law” as an important component. There are many definitions of rule of law. Here I will use the definition from the American Bar Association’s World Justice Project. The project claims four universal principles of the rule of law.

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

My goal in this paper is to examine labor regulations during the early twentieth century to see how well they fit this definition of the rule of law. The first half deals with the worker-employer relationship as implicit contracts in which some of the parameters of the contracts are determined by labor regulations. Most of the prescriptive regulations appear to be targeted at safety issues, and the courts appear to have supported them as constitutional. The controversial regulations were hours maximums for men and wage minimums for women. With respect to hours and wage limits, the judges’ decisions identified tensions between the freedom to contract and the protection of health and safety of workers. Where the judges drew the line on which regulations were constitutional or not often was determined by their beliefs about the workers’

outside options when negotiating with employers and how much health and safety was affected by hours and wages. The areas where the first half might deal with rule of law involves the stability of the laws and also the words “just” and “fair” in the ABA definition. A large number of judges ruled on these issues and the constitutionality of the wage and hours restrictions appeared to be in flux as various state laws were addressed by the courts over four decades. On the U.S. Supreme Court there was quite a bit of turnover and many of the decisions in this area were close. As a result, the states continued to pass new laws and apparently enforce older laws even when the most recent Supreme Court rulings seemed to have implied they were unconstitutional. The instability likely imposed costs on employers and workers while the states, judges, and federal government tried to work out the rules on these issues. Some of that instability probably contributed to the problems addressed in the second half of the paper.

There were clear violations of the rule of law, a significant number of violent ones, related to the collective bargaining issues discussed in the second half of the paper. During some strikes and lockouts the authorities in place could not prevent intimidation, violence, or vandalism against workers, strikers, and employers. Private guards, state police, and even militia imported into the area at times overstepped their own authority and participated in the very activities they were supposed to prevent.

The issues that arose concerning collective bargaining centered on the balance between freedom to contract and freedom of association. The employer/worker implicit contract allowed each side to terminate the relationship “at will.” Employers were not required to bargain collectively with groups of workers or unions. The courts typically ruled that employers could require workers to sign nonunion pledges, “yellow dog contracts” in union parlance, as a condition of employment, and employers could fire workers who joined unions. Many workers,

particularly those who had succeeded in getting employers to bargain collectively, considered these laws unjust and sought to organize non-union areas. A significant number of employers resisted, and a number of the disputes turned heated with petty acts of violence and damage. Some turned into violent conflagrations that led governors to call out the state militia and even the President to call out federal troops to control the area until an agreement could be reached.

The states dealt with collective bargaining by setting up arbitration and mediation boards and passing roughly 25 types of laws related to collective bargaining and strike activities. Some were clearly anti-union and others clearly pro-union and a number of states passed mixtures of both. During World War I, the War Labor Board supported collective bargaining and did not recognize the nonunion pledges. When the War Labor Board shut operations in May 1919 the national government support for collective bargaining rights did not continue. The result was a sharp increase in strikes and lockouts, as many employers sought to return to the pre-War setting while unions sought to maintain their gains in membership during the war. A number of these disputes turned into large-scale violent conflagrations. State law determined the collective bargaining climate, and union strength waned through 1932, even though some states passed laws banning nonunion pledges and some courts began to rule against them.

New federal legislation in 1932 and 1933 explicitly recognized collective bargaining and banned the nonunion pledges but failed to establish consistent processes and strike activity and violence escalated again. The passage of the National Labor Relations Act of 1935 more clearly established the rules, but there was uncertainty about how the Supreme Court would rule on its constitutionality. The turmoil continued, including the famous sit-down strikes, until the U.S. Supreme Court ruled it constitutional in spring 1937. A new round of union recognition strikes that year more firmly established collective bargaining.

Scholars have often claimed that the transition to collective bargaining with the passage of the National Labor Relations Act of 1935 enhanced the rule of law by eliminating the types of bloody conflagrations in labor disputes that occurred between the Civil War and World War II. The disputes still can engender petty violence and damage, but the disputes have not escalated to the levels seen in that earlier period (Thiebolt and Haggard 1983). To examine the impact of the state laws in general and under different federal regimes, I performed a panel data analysis on the relationship between strikes and violence in the bituminous coal mining industry between 1901 and 1940. States with more anti-union laws had fewer men on strike and lost fewer days to strikes, particularly during the period between World War I and the New Deal. States with more pro-union laws had more strikes, particularly during the period prior to World War I and during the period of uncertainty surrounding the changes in collective bargaining rules during the New Deal era. Despite the larger number of strikes during that uncertain era, pro-union laws were associated with less labor violence. Meanwhile, states with arbitration and mediation procedures experienced significantly less violence.

I. Shifting Restrictions for Labor Contracts

Even in what we consider a stable legal environment there can be uncertainty about the specific types of laws. Circa 1900 the relationship between worker and employer was an “at will contract” in which both sides could end the agreement. Most of these “contracts” were unwritten, as each worker had continuous negotiations with the employer about wages, hours, and working conditions. State governments enacted nearly all workplace regulations with an exception for railroad workers on inter-state trains. The state laws typically passed constitutional

muster if they related to safety and health conditions in the workplace because these areas were thought to fit within the police power of the state government.

There was significant uncertainty about the survival and thus enforceability of laws that set maximum hours and minimum wages or and dealt with workers signing non-union pledges. This uncertainty came from the back and forth of rulings by state courts and ultimately the U.S. Supreme Court. Legal scholars often argue that the 5-4 decision by the Supreme Court in *Lochner v. New York* in 1905, which struck down a maximum hours law for bakers, was the beginning of a 30-year period in which judges routinely made decisions to preserve “freedom of contract” for employers.

A closer study of the interactions between state laws and court decisions suggests that the situation was more complex. The Supreme Court decisions often involved close votes, there was significant turnover of judge during the period, and the court sometimes ruled in favor of maximum hours for men and minimum wages for women, as seen in Tables 1 and 2. When a Supreme Court decision struck down a law, a number of states passed new laws that they thought might avoid the feature found unconstitutional. Meanwhile, a number of states just continued enforcing their existing laws. As one example, the 1937 *West Coast Hotels v. Parrish* decision that affirmed the constitutionality of the women’s minimum law addressed a Washington law that had been in place since 1913, ten years before the Supreme Court’s *Adkins* decision that had ostensibly determined a minimum wage was unconstitutional.

The possibility that interpretations might shift was heightened by the roughly even division of Justices with different attitudes on the highest court. “Freedom of contract” Justices (FC Justices) believed that employers and workers both had bargaining power. In economic terms they seemed to believe that workers were mobile and had a choice of employers and could

use their outside options effectively when negotiating. “Health and Safety Justices (HS Justices) often agreed that freedom of contract was important but believed that workers had few options and employers had such an advantage in bargaining that workers needed regulatory protection or collective bargaining to protect them from accepting wages that were too low and hours that were too long to be healthy. These views drew increasing strength in the 1930s as the Great Depression deepened.

1.1 The Rules and How They Varied Across States?

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

court decisions had struck them down. Richard Epstein (1982) described these contracts as private ways of structuring the equivalent of workers' compensation contracts. Between 1911 and 1940, every state except Mississippi had enacted a workers' compensation law that required employers to cover medical costs and up to two-thirds of wage losses for all workers injured in accidents arising out of or in the course of employment.

Most of the state regulations dealt specifically with safety or health in the workplace. Before the Civil War, the states began establishing restrictions to promote railroad safety, as much to require the railroads to protect passengers as to protect their workers. By 1924 45 states and the federal government had established a series of safety regulations concerning railroad equipment and practices, and 30 had them for street railroads. Between 1869 and 1880, mining states adopted regulations requiring the filing of mine maps and basic ventilation. Nearly all mining states had safety regulations that expanded in scope during the early 20th century (Fishback 1992, 2006). Meanwhile, at the behest of the nascent union movement, many states established bureaus to collect labor statistics in the 1880s; 28 had them by 1894 and 44 were in place by 1924.² By the 1880s some states had begun to establish specific regulations of workplace conditions, typically with respect to safety, and access to bathrooms and time off for lunch. Between 1895 and 1924 sanitation/bathroom regulations spread from 11 to 35 states, the number of states with ventilation laws rose from 10 to 26, for machine guards from 12 to 35, for fire escape access from 23 to 37 states, and from 5 to 24 states for building regulations. The building, fire escape, and boiler regulations were also established at the city or county levels. By 1924 14 states had regulations banning sweatshops, while 32 states had enacted bakery

²The information on state laws throughout the paper was compiled by Rebecca Holmes (2003, 2005) for her award-winning dissertation on the development of state labor legislation. Holmes, Fishback, and Allen (2008), and Fishback, Holmes, and Allen (2009) have developed summary indices and explored a number of correlations with various measures of labor markets during the period.

regulations, 20 of those were enacted after the *Lochner* decision struck down bakery hours regulations. Teeth were added to these laws by the establishment of inspectors for factories (rising from 15 in 1895 to 41 in 1924), child labor inspectors (13 to 41), mine inspectors (23 to 33, largely matching the number with significant mining), and boiler inspectors (15 to 17). Reporting of accidents for mines was required in 1924 by 32 states, for railroads by 39, and for factories by 23.

I.2 Hours Restrictions and Freedom to Contract

There was much greater uncertainty about what the state governments could do about restrictions on wages and hours. States set regulations that influenced the nature of wage payments. By 1924 30 states required wage payments in cash, and 37 required that wages be paid either fortnightly or monthly, while 12 put restrictions on repayments of advances made to the worker by the employer.³ Setting minimum wages and maximum hours was another matter.

I.2.1 Hours Restrictions for Males

Weekly and daily hours were a constant source of negotiation between workers and employers in the early 1900s. Average hours per day in manufacturing fell from 10 around 1890 to around 9.7 by 1905 and 9.2 in 1914, while average weekly hours fell from 60 in 1890 to 57.7 by 1905 to 53.6 during World War I and to 50.3 by 1926 (Carter, et. al., 2006, series Ba4552, p. 2-302 and Ba4568, p. 2-303). These changes were determined to a limited degree by changes in hours legislation (Whaples 1990). By 1905 7 states had enacted hours limits for

³ Cushman (1998, 57-58) cites a series of Supreme Court decisions related to these issues and affirming the legislation.

textiles, 9 for manufacturing, 16 for railroads, 11 for mines, 11 for street railroads, 22 for public work, and 4 for other types of workers (including a law for New York bakers).

The key to the constitutionality of hours regulations for males was whether judges considered the hours limits to be necessary to protect the health and safety of workers. In 1898 in *Holden v. Hardy* (169 US 366, 1898) the Supreme Court upheld a Utah mining law setting a maximum of 8 hours per day for miners and ore smelting and refining as a valid exercise of police power because their safety was at risk if they worked more than 8 hours. Seven years later the court reaffirmed the *Holden* decision by upholding a similar Missouri law in *Cantwell v. Missouri* (199 US 385, 1905) on safety grounds (Cushman 1998, 247n58). Table 1 shows that only Rufus Peckham and David Brewer dissented in the *Holden* case, while I have been unable to find votes for the *Cantwell* case.

In contrast, the Supreme Court struck down a New York state law limiting the hours of male bakers in *Lochner v. New York* (198 U.S. 45, 1905). Justice Rufus Peckham wrote for the 5-4 majority that the law was a violation of freedom of contract. The bakers were able enough “to assert their rights and care for themselves without the protecting arm of the State.” He argued that the limits were not related to a public health issue that might have constituted a legitimate exercise of police power. The four dissenting justices made a health and safety argument in favor of the laws. They argued that the legislature was in a better position than the courts to assess whether there were sufficient threats to the bakers’ health from long hours to use the police power to impose a limit to protect the bakers.

The two types of decisions seems to have led to two different paths for hours legislation for men. In 1916 the federal government enacted the Adamson Act in 1916 setting a maximum of 8 hours per day with added pay for overtime for interstate railway workers. It was upheld in

another 5-4 Supreme Court decision in 1917 in *Wilson v. New* (243 US 332, 1917). By 1924 the number of states regulating hours for intra-state railroads had risen from 16 to 27. The number regulating hours for other types of workers had risen from 4 to 11. Most of these settings seem to have met the requirement that the workers' or their customers' safety were at risk. Meanwhile, the states were active in limiting hours when they were the employer, as the number of states regulating hours for public work rose from 8 in 1900 to 30 in 1924.

On the other path the number of states with hours laws for textiles, manufacturing, and street railroads listed by the BLS as active in 1924 had not changed or had fallen. It might be that these also survived because they promoted safety, they had not been challenged, or they were not enforced. Alternatively, the state regulators may have taken heart in the Supreme Court's decision in *Bunting v. Oregon* (243 U.S. 426, 1917) to uphold a 10-hour day law for men and women in Oregon. As seen in Table 1, Justice McKenna had supported the hours limits in 1898 in *Holden* and in *Wilson* in 1917 for the Adamson Act but voted against the 1905 baker's law in *Lochner* (see Table 1). In *Bunting* he argued that the plaintiff had *not* met the burden of proof that there was *no* safety reason for the law.⁴ Later, Chief Justice William Howard Taft suggested that the *Bunting* decision had implicitly overruled *Lochner* (Cushman 1998, 61).

I.2.2 Allowing Paternalistic Hours Restrictions for Women and Children

As part of the campaign to limit child labor and protect their safety in workplaces, the states generally imposed restrictions on child labor through minimum ages, as well as hours limits for the child workers above those ages. The number of states imposing minimum ages rose from 17 in 1894 to 42 in 1924. The number imposing general restrictions rose from 20 to

⁴ In an odd contrast in Table 1, Justice William Day voted against the railroad hours limits in *Wilson* even though he had supported the hours limits in *Lochner*, *Muller*, and *Bunting*, as well as the minimum wage in *Stettler*.

44. The hours restrictions varied on child labor varied across types of employment. The number imposing general restrictions on hours rose from 7 to 35, restrictions on mechanical employments rose from 18 to 28, from 6 to 22 in mercantile jobs, and from 15 to 26 in textiles, where the whole family had often worked in southern mills. A number of studies have found weak effects of these laws on child labor activity. Fishback (1998) argues that many of the Progressive Era labor laws did not pass until after a group of employers joined reformers to pass laws that codified what those employers were already doing. The reformers still saw this as useful because the new laws brought the straggling employers into conformity.

On similar paternalistic grounds states imposed hours restrictions on women's labor. Between 1895 and 1924, the number of states with hours restrictions in general rose from 2 to 28, the number for mechanical female employment rose from 12 to 28, for textiles the rise was from 8 to 27 and for mercantile work the rise was from 3 to 27. The expansion was supported by a series of Supreme Court decisions, starting with *Muller v. Oregon* (208 US 412, 1908).⁵ The court argued that women needed more protection than men against long hours of work and that it was important that they maintain their health so that they could have "vigorous" offspring; therefore "the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race" (quoted in Cushman 1998, 54). Goldin (1988) found that the laws had relatively small impacts on the hours worked by women, but the restrictions appear to have lowered the hours of work by men. This might have been why the

⁵Prior to *Muller*, state courts in Massachusetts, Nebraska, Oregon, and Washington had supported the constitutionality of the limits on women's hours, while in Illinois it was declared unconstitutional. See *Commonwealth v. Hamilton Mfg. Co.*, 120 Massachusetts 383; *Wenham v. State*, 65 Nebraska 394, 400, 406; *State v. Buchanan*, 29 Washington 602; *Commonwealth v. Beatty*, 15 Pa.Sup.Ct. 5, 17; against them is the case of *Ritchie v. People*, 155 Illinois 98.

women's hours laws continued to face challenges in the courts. Although six Justices had been replaced after the 2008 *Muller* decision, the U.S. Supreme Court reaffirmed the women's hours maximums in a series of cases in 1914 and 1915.⁶

1.3 Minimum Wage Laws

The next major issue in the 1910s was minimum wages for women, and the FC and HS Justices disagreed about the impact of wages on health and safety. These disagreements led to a pair of close decisions in 1917 that allowed hours limits and requirements of overtime pay for *men and women* in dangerous work. Further, the initial decision on a women's minimum wage law affirmed the state court's support for the minimum in a split decision with new HS Judge Louis Brandeis recusing himself because he had represented the state in the lower court decisions. When the women's minimum wage came up again in 1923 in *Adkins v. Children's Hospital*, the regulation was struck down in a 5-3 decision with Brandeis again recusing himself. The majority argued that the minimum wage had a much more indirect effect on the health and safety of women than the maximum hours laws. During the Great Depression attitudes toward minimum wages began to shift. A number of states passed new minimum wage laws. Hoover jawboned industry to maintain wage rates and the New Deal introduced the National Recovery Administration (NRA), in which industry leaders negotiated wage, hours, and price agreements on codes that had the force of law. As seen in Table 2, four FC Justices who had voted against the minimum wage law in *Adkins* in Willis Van Devanter, James McReynolds, George Sutherland, and Pierce Butler maintained their stance against minimum wages before retiring in the late 1930s. Meanwhile, HS Justice Louis Brandeis, who had recused himself from *Adkins*,

⁶Cushman (1998, 247n59) cites *Bosley v. McLaughlin* (236 US 385 1915), *Miller v. Wilson* (236 US 373, 1915), *Hawley v. Walker* (232 US 718, 1914), and *Riley v. Massachusetts* (232 US 671, 1914).

was joined by new HS Justices Harlan Fiske Stone, Benjamin Cardozo, and Chief Justice Charles Evan Hughes. In 1936 Justice Owen Roberts opposed one version of the minimum wage that sought to circumvent the *Adkins* decision and then in 1937 supported a version that asked to overturn it on the grounds that wages that were too low created a health and safety risk. When the Court supported the constitutionality of the Fair Labor Standards Act of 1938 that limited hours and set minimum wages and rules for overtime pay for women and men in interstate commerce, the uncertainty surrounding the issue was largely settled.

I.3.1 *The Initial Laws and Court Decisions*

Between 1912 and 1919 15 states and Washington, D.C. adopted minimum wage laws for women.⁷ The laws were found to be constitutional in the state supreme courts in Arkansas, Massachusetts, Minnesota, and Oregon, and Washington (Clark 1921, 33), but there remained uncertainty until the Supreme Court ruled on minimum wages. At the national level three Supreme Court rulings in 1917 seemed to support some wage regulation, although Cushman (1998, 60-65) argues that the Justices focused mostly on the hours issues and minimized the wage restrictions in their opinions. The *Bunting v. Oregon* (23 US 426 1917) and *Wilson v. New* (243 US 332, 1917) hours law cases also involved paying overtime wages, and men were among the workers in both settings. In the *Bunting* case the plaintiffs pressed an argument that the laws involved wage regulation and that “insufficiency of wage does not justify legislative regulation. The wage had no bearing on health.” “The effect is to take money from the employer and give it

⁷ The states were Massachusetts and Ohio in 1912; California, Colorado, Minnesota, Nebraska, North Dakota, Oregon, Utah, Washington, and Wisconsin in 1913; Arkansas in 1915, Arizona in 1917; D.C. in 1918, and Texas in 1919. Ohio passed a constitutional amendment but never enforced the law and Nebraska never put it into operation. All of the rest except Colorado set specific rates, generally through commissions. Violations were treated as misdemeanors in which the court could award back wages in most states. Massachusetts differed in that it reported the names of violators in newspapers instead. Nebraska in 1919 repealed the law but then adopted a constitutional amendment in 1920 that authorized legislation, while Texas in 1921 repealed its law. See Clark (1921, 10-12) and Smith (1932) for descriptions of the laws at various times.

to the laborer without due process or value in return,” and thus was a “taking” that was not “neutral” (Cushman quoting the decision, 1998, 60). The judges treated the case as a case about hours and not about wages. FC Justice McKenna argued that the overtime pay acted like a fine designed to deter employers from having workers work beyond the hours maximum.

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

The most direct decision about minimum wages for adult women wage standards came when the Oregon Supreme Court ruling on the Oregon law was appealed to the Supreme Court. The Oregon court had used the same reasoning as in *Muller v. Oregon*. In *Stettler v. O'Hara* (243 US 629 1917) the Court split 4-4 with HS Justices McKenna, Holmes, Day, and Clarke supporting the statute and FC Justices White, Van Devanter, Pitney, and McReynolds opposing. HS Justice Brandeis recused himself because he had been a lawyer for the state in the litigation. These apparent affirmations of wage regulation made it easier for Arizona in 1917, D.C. in 1918, and Texas in 1919 to adopt minimum wage laws for women. However, Texas in 1921 later repealed its law (Clark 1921).⁸

⁸ See Elizabeth Brandeis (1935, 499-539) for discussions of the application of the laws.

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

II.3.2. *State Responses to the Adkins' Decision Over the Next Decade*

After the 1923 decision it might have seemed settled that laws limiting women’s hours in general and men’s hours in dangerous jobs were constitutional but that hours maximums for most males and minimum wages for men and women were not. Certainly, the initial decisions that followed appeared to confirm that belief. Over the next few years the Supreme Court ruled the Arizona and Arkansas laws void in *Murphy v. Sardell* (169 U.S. 366, 1925) and *Donham v.*

West-Nelson Mfg. Co. (273 U.S. 657, 1927). State Supreme Courts in Kansas in 1925 and Minnesota in 1925 declared their minimum wage laws unconstitutional. The Minnesota decision reversed several of their earlier decisions declaring the law constitutional.⁹

Contemporary interest groups and state legislators and governors, however, had seen a series of decisions on each law that had switched back and forth as they move up through the courts. At the Supreme Court level the votes had often been close, and there was turnover on the court. Eight Justices had been appointed after 1920, and three of those had resigned by 1932. Only five of the Judges from the 1923 court that had decided *Adkins* were still on the court in 1933. Seeing this history, one can imagine that interest groups on both sides of the issues would be pressuring state governments to pass or oppose new laws.

Despite the *Adkins* ruling, a number of states continued to maintain minimum wage laws. In North Dakota, Massachusetts, and Washington the commissions seem to have carried on as before because their state supreme courts had declared their laws constitutional.¹⁰ Wisconsin rewrote its law in 1925 and changed the basis of its legislation from requiring the “necessary cost of proper living” to a more negative idea that “no wage shall be oppressive, and it passed muster in federal court.”¹¹ A Women’s Bureau Study in 1932 reported that California, Colorado, Massachusetts, Minnesota, North Dakota, Oregon, South Dakota, Washington, and Wisconsin were still listed as having minimum wage laws. North Dakota set specific rates in the statutes,

⁹See U.S. Bureau of Labor Statistics, “Minimum Wage Legislation in the United States.” *Monthly Labor Review* 37 (1933): 1344-1354. The Kansas case was *Topeka Laundry Col v. Court of Industrial Relations* (119 Kans. 13) and the Minnesota case was *Stevenson v. St. Clair* (161 Minn. 444).

¹⁰ See U.S. Bureau of Labor Statistics, “Minimum Wage Legislation in the United States.” *Monthly Labor Review* 37 (1933): 1344-1354. In Washington see *Larsen v. Rice* (100 Wash. 642 in 1918;; *Spokane Hotel v. Younger* (113 Wash. 359 in 1920; *Sports. v. Moritz* (141 Wash. 417). In North Dakota it was *Northwestern T.E. Co. v. Workmen’s Compensation Bureau* (47 N.D. 397). In Massachusetts the case was *Holcombe v. Creamer* (231, Mass 99) in 1918.

¹¹ See U.S. Bureau of Labor Statistics. *Handbook of Labor Statistics, 1931, Edition. Bulletin No. 541, 1931, p. 448.* The ruling is *Folding Furniture Works v. Industrial Commission* (300 Fed. 991, 1924, U.S. District Court, W.D., Wisconsin).

while commissions or agencies within the other states established rates, although Colorado had no appropriations to operate the law. Violations were generally treated as misdemeanors in which back underpayments could be collected. Massachusetts had no fines, and instead published the names of violators in the newspaper (Smith 1932, 11 and supplemental charts), although a Massachusetts court ruling in 1924 stated that the Minimum Wage Commission *could not require* a newspaper to publish the list.¹² It is not clear from the study how well the laws were being enforced. The BLS (1931, 449) suggested that it was understood in California and Washington and likely also in North Dakota, Oregon, and South Dakota that public opinion would help enforce the rates they set.

In many ways the situation for women's minimum wage laws was similar to the situation for most laws at the time period. For example, the fines for violating mine safety regulations were generally low and enforcement was costly because inspectors in many states had to go to court to enforce the law in many states (see Fishback 2006 and Graebner 1976, 97-100). Thus, enforcement largely relied on public opinion and the mine owners' respect for the law.

The wage declines during the Depression and the election of Roosevelt appear to have emboldened seven states to pass new minimum wage laws for adult women between 1933 and 1935, including Connecticut, Illinois (1933), New Hampshire (1933), New Jersey (1933), New York (1933), Ohio (1933), and Utah (1933 after 1929 repeal).¹³ Several of the laws were based on a standard bill sponsored by the National Consumers' League. The BLS (1933b, 1346) stated they were "drawn by the legislatures in view of the objections raised in the *Adkins* case and it is evident that the laws were so worded as to overcome the major difficulties. During the recent

¹²"Legislative Notes." *American Labor Legislation Review* 14 (1924), p. 203.

¹³ U.S. Bureau of Labor Statistics (1933a, 1933b).

period of economic depression it has become apparent that unfair wage standards not only undermine the health and well-being of the workers but threaten the stability of industry itself.” “The experience of the past few years should add much force and weight to the reasoning in the opinion in *Stettler v. O’Hara* holding that the enactment of such laws is a valid exercise of the police power and that they are not only a valid but necessary means of protecting the public health, morals and welfare.”

I.3.3 Restrictions Imposed by the National Recovery Administration

Worries about industry stability and declining wages led both the Hoover and Roosevelt administrations to try several ways to maintain higher wages during the Depression. President Hoover had tried “jawboning” leading manufacturers into volunteering for work-sharing arrangements in which they would reduce hours per week, increase the number employed, and hold hourly earnings roughly the same (Rose 2010; Neumann, Taylor and Fishback 2013). The New Dealers promoted a similar idea as part of the National Industrial Recovery Act of June 16, 1933. In addition to allotting money to hire workers to build large public works through the Public Works Administration, they called for employers, workers, and consumers to meet together and negotiate “Fair Codes of Competition.” The Codes were to include agreements to set minimum wages and maximum hours in the industry and set prices and quality of goods and the codes were to be enforced through prosecutions by U.S. district attorneys in U.S. district court.¹⁴

¹⁴ Section 3d of the NIRA gave the president the authority to hold hearings and set up codes of fair competition “if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President.” Violations were misdemeanors with fines of up to \$500 for each day

Section 7a of the NIRA stated that every code gave employees collective bargaining rights, banned yellow dog contracts, and required that employers shall comply with maximum hours of labor, minimum rates of pay, and other conditions of employment “approved or *prescribed* by the President.” The Codes were to include agreements to set minimum wages in the industry and set prices and quality of goods and the codes were to be enforced through prosecutions by U.S. district attorneys in U.S. district court.¹⁵

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

Only a handful of industries had created codes by late July of 1933. As a stopgap measure Roosevelt issued an Executive Order on July 27 allowing firms to display the Blue Eagle if they voluntarily signed President’s Reemployment Agreements (PRAs). The stated goal was to “raise wages, create employment, and thus increase purchasing power and restore business” in a plan that “depends wholly on united action by all employers.” The conditions of the PRAs including maximum hours of 40 per week for office workers and 35 per week for factory workers and minimum weekly earnings of \$15 per week in cities with more than 500,000

an offense occurred. Section 3e gave the right to impose trade restrictions on foreign imports that violated the codes.

¹⁵ Section 3d of the NIRA gave the president the authority to hold hearings and set up codes of fair competition “if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President.” Violations were misdemeanors with fines of up to \$500 for each day an offense occurred. Section 3e gave the right to impose trade restrictions on foreign imports that violated the codes.

people, \$14.50 per week where population was between 250,000 and 500,000, and \$14 hours per week in cities with 2500 to 250,000 people. In smaller towns the firms were to increase all wages by not more than 20 percent with a target of \$12 per week. The minimum hourly wage was set at 40 cents per hour unless the wage rate for the same class of work in 1929 was less than 40 cents, and then the minimum was to be the larger of \$30 cents per hour or the prevailing hourly rate in July 1919. No compensation that was currently above the minimum was to be lowered. No children below 14 years of age were to be employed and those 14 to 16 were to work no more than 3 hours per day, and these were required to be between 7 a.m. and 7 p.m. Implicit was the expectation of an increase in employment, as employers were “not to use any subterfuge to frustrate the spirit and intent of this agreement which is, among other things, to increase employment by a universal covenant, to remove obstructions to commerce and to shorten hours and to raise wages for the shorter week to a living basis.” Price increases were allowed only based on actual costs, and firms were “to support and patronize establishments” that were also National Recovery Administration (NRA) members. Finally, they were “to cooperate to the fullest extent in having a Code of Fair Competition submitted by his industry at the earliest possible date” with an expectation that the Codes would be created by September 1, a date that few industries met.

The government made signing the PRAs attractive by developing a massive advertising campaign to get consumers to buy from firms that displayed the Blue Eagle symbol associated with the NRA. The campaign included parades in every major city as well as 20,000 canvassers going door-to-door to 20 million households to get people to sign pledges to support the NRA by buying only from firms displaying the Blue Eagle. A large number of firms signed the pledges and average hours worked in manufacturing dropped from around 41 hours per week in July

1933 to 33.8 hours in November 1933 (Taylor, Neumann, and Fishback 2013, 108). Codes were created in hundreds of industries, although the enforcement of the codes was relatively weak, and violations were not uncommon. The problems with violations followed the typical patterns found in settings related to cartel enforcement with more heterogeneous sectors and codes that were less precise being violated more often (Taylor 2011 and forthcoming).

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

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

ountry, is virtually unfettered. The code-making authority thus sought to be conferred is an unconstitutional delegation of legislative power.

II.3.4 The Path to a Constitutional Minimum Wages

Although the *Schechter* ruling seemed to support freedom of contract, the decision was more about the improper delegation of regulatory authority by the legislature.¹⁶ Cushman (1998, 71-83) argues that shifts in the composition of the court in the late 1920s and early 1930s led to a series of decisions that expanded the scope for public interest to be used to support the police power of the state and thus weaken the “freedom of contract” doctrine.¹⁷ Further, he argued that “a bevy of contemporary Court watchers” anticipated that minimum wages would eventually be declared constitutional after the 5-4 Supreme Court decision on *Nebbia v. New York* (291 US 502 1934). A number of contemporaries thought cutthroat price competition was driving firms out of business during the Depression. When New York law establishing a minimum price for milk reached the Supreme Court, Justice Roberts wrote for the majority that the law was constitutional because the minimum price law insured that the public had adequate access to milk, which was necessary for the health of the population. He argued that “the use of private property and the

¹⁶ Cushman (1998) suggests that a similar statement might be made about the 5-4 Supreme Court ruling in *Carter v. Carter Coal Co.* (298 US 238 1936), which struck down the attempt in the Bituminous Coal Conservation Act of 1935 to reestablish a version of the NRA bituminous coal code that set prices, wages, and hours. The majority ruled that the excise tax in the act was a “penalty” designed to coerce compliance, Congress did not have the power to control wages, hours, and working conditions because it has “no general power to regulate for the promotion of the general welfare” and cannot control production within a state before the coal is sold in interstate commerce (p. 298).

¹⁷ Cushman (1998, 77) states that these included a unanimous decisions in *Tagg Brothers & Moorhead v. United States* (280 US 420, 1930) to allow the Secretary of Agriculture to set commissions for brokers in stockyards and a 5-4 majority decision on *O’Gorman & Young, Inc. v. Hartford Fire Ins. Co.*, 282 U.S. 251 (1931), written by Brandeis to limit commissions for agents selling fire insurance in New Jersey. In the insurance case the claim was that insurance rates were already regulated and that the commissions were a large enough share of insurance rates that they could be regulated as well to prevent insurers from being driven out of their public service business. Justice Van Devanter’s dissent joined by McReynolds, Sutherland, and Butler argued that the state had the right to regulate the business but “it may not say what shall be paid to employees or interfere with the freedom of the parties to contract in respect of wages” (Cushman 1998, 77). Van Devanter did acknowledge that there might be special circumstances that would allow the freedom of contract to be abridged, but they had not occurred in the *O’Gorman* setting (Cushman 1998, 77).

making of private contracts are, as a general rule free from government interference; but they are subject to public regulation when the public need requires (p. 291).”

When the court struck down a New York minimum wage law with a 5-4 vote in *Morehead v. New York ex. Rel. Tipaldo* (298 US 587, 1936) their predictions looked less accurate. The lawyers representing the state of New York went to great pains to identify differences between the D.C. law in *Adkins* and their own law to try to avoid asking the justices to overturn *Adkins*. Justice Butler wrote the majority opinion and still applied the freedom of contract doctrine in *Adkins*. Yet Chief Justice Hughes dissented saying that he could not agree that *Adkins* was a controlling case because the construction of the statutes in the two cases was different. “I can find nothing in the Federal Constitution which denies to the state the power to protect women from being exploited by overreaching employers through the refusal of a fair wage as defined in the New York statute and ascertained in a reasonable manner by competent authority” (p. 619). In his dissent Justice Harlan Fiske Stone, joined by Brandeis and Cardozo, argued that since the *Adkins* decision “we have had opportunity to learn that a wage is not always the result of free bargaining between employers and employees; that it may be one forced upon employees by their economic necessities and upon employers by the most ruthless of their competitors,” further that insufficient wages place burdens on society as a whole (p. 635). “We should follow our decision in the *Nebbia* cases and leave...the solution of the problems to which the statute is addressed where it seems to me the Constitution has left them, to the legislative branch” (p. 636).

The minimum wage became constitutional when Owen Roberts switched sides and voted to uphold the Washington state minimum wage law for women in *West Coast Hotel v. Parrish* (300 US 379, 1937). The situation illustrates some of the uncertainties about the interactions

between court decisions and statutes. Remember that the Washington state minimum wage law had been passed in 1913, long before the *Adkins* decision in 1923. The Washington Supreme Court had ruled it constitutional in three earlier cases and supported it again in the case appealed to the U.S. Supreme Court. In a later memorandum Roberts claimed that he had joined the majority in the *Morehead* decision that struck down the New York minimum wage because New York had specifically *not* asked the court to overrule *Adkins* on the grounds that the law in the two laws were very different. When Roberts could find no real difference in the laws, he decided to stick with the *Adkins* precedent and declare the New York law unconstitutional. In *West Coast Hotel* he claimed he was asked directly to overrule *Adkins*; therefore, he applied his reasoning from the *Nebbia* case and agreed with the majority that the Washington minimum wage law was constitutional. Roberts believed that women were “especially liable to be overreached and exploited by unscrupulous employers,” which, in turn, was “not only detrimental to the health and wellbeing of the women affected, but casts a direct burden for their support upon the community.”¹⁸ One can easily imagine how distraught the New York state lawyers who had worked so hard to avoid *Adkins* in their *Morehead* briefs were when they discovered Roberts’ reasoning.

A common story about this process is that President Roosevelt tried to pack the Supreme Court with new justices after the 1936 election because of he was dissatisfied with the court striking down the AAA and the NRA and worried about them continuing to find the other laws unconstitutional. Therefore, in 1937 he declared his court-packing plans to add a new justice for each justice over the age of 70 on the Supreme Courts and in lower courts. Seeing the 1937

¹⁸See Cushman 1998, 94-95. When reading Cushman about the New York case, it can be confusing because he refers to the case as *Morehead* and as *Tipaldo*.

dates on decisions to support the minimum wage, the National Labor Relations Act, and the Social Security Act, people have claimed that the Justices supported the decisions to prevent the court-packing plan. A popular phrase describing the change has become a “switch in time, saves nine” justices. Cushman (1998) and others since have argued that this is inaccurate. Roberts voted to support the minimum wage in December well before the court packing plan was announced and Congress offered stiff opposition to the attempts to pack the court and many members of Congress talked with and corresponded with the Justices to let them know that there was little chance the court packing plan would go through.

Soon after the ruling Arizona, Nevada, New York, and Washington D.C. passed new laws and Colorado, Connecticut, Minnesota, and Wisconsin strengthened existing laws (Trafton 1937, 1938). The decision also opened the door for Congress to pass the Fair Labor Standards Act of 1938, which established a minimum wage, maximum hours, and overtime pay *for men* as well as for women, while establishing federal regulation of child labor. By the time a challenge to the Act reached the Court in *United States v. Darby Lumber* (312 US 100, 1941), none of the FC Judges who had ruled against the minimum wage in *West Coast Hotel* in 1937 were still on the bench. Harlan Fiske Stone wrote the unanimous opinion supporting the constitutionality of the regulations for firms involved in interstate commerce.

II. Laws Related to Collective Bargaining and Labor Disputes

From the Civil War through the late 1930s disputes related to collective bargaining were among the three areas of American society most marred by violations of the rule of law. The others were race relations and criminal activity. Philip Taft and Philip Ross (1969 281) claim that the United States “has had the bloodiest and most violent labor history of any industrial nation in the world” in a Report to the National Commission on the Causes and Prevention of

Violence. The violence was typically precipitated when workers sought to negotiate as a group with their employer or a group of employers. The “at will” nature of the implicit labor contracts meant that employers was not required to negotiate with groups of workers. In fact, the courts had ruled that they could require workers to sign nonunion pledges, what unions referred to as “yellow-dog contracts,” and fire workers who decided to join unions. Thus, the court had given more weight to freedom of contract and the employers’ freedom of association than to the workers’ freedom of association. Rule of law violations tended to occur when the employer refused to accede to the workers’ demands and the workers continued to press for their demands. Local officials were sometimes unable to protect persons and property. They occurred in all industries and throughout the country. Both employers and workers committed acts of violence and vandalism and in some cases the state militia or federal troops. The situation worsened when the militia got caught up in taking sides in the disputes. Among the key features of the ABA’s rule of law definition are the requirements of “just” laws and “fair” processes. Both sides believed or at least argued that their causes were just and the workers organizations often described the processes as “unfair.”¹⁹

Most of my discussion of the violations will focus on coal mining because I have collected large amounts of evidence on violence in strikes in that industry between 1890 and 1940.²⁰ The mining industry was probably the industry most marred by a disproportionate share

¹⁹ Unions in Europe were generally directly involved in the political process with their own political parties. In contrast, the labor movement in the United States largely followed a path of “business unionism” that focused on workplace issues and not on the broader arena. As a result, the vast majority of unions operated as interest groups that negotiated separately with employers at the plant or industry level. Unions and organizations of unions, like the American Federation of Labor, then participated in the political process through the lobbying process and their support of political candidates who were favorable to their positions on labor issues (Taft 1964, xv-xxi; Friedman 1998, 2000). “Radical unions,” like the Industrial Workers of the World (IWW) and various unions that espoused communist or socialist ideologies were generally fringe groups that represented only a small share of workers.

²⁰I have compiled a series of chronologies of violent episodes in bituminous coal mining strikes that I can make available.

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

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

foment violence threw rocks or fired shots. These events led to melees that in a few cases led to eye-for-an-eye responses that could escalate into months long strikes (see the violence chronologies in Fishback 1995).

The potential for violations of rule of law in strikes was quite large. As a strike extended over time, the probability of violations worsened. Workers set up picket lines through which the employer and workers seeking to work had to pass. In some cases they trespassed and blocked production in the sit-down strikes of the 1930s. Strikers at time threatened and assaulted people who continued to work during the strike and were even more likely to perform violence on the “scabs” who continued to work or were brought in to work in the mines from elsewhere. Some vandalized the work site. People were shot accidentally and others were murdered. In Matewan, West Virginia in May 1920 a group of miners and the Matewan sheriff Sid Hatfield had a shoot out with Baldwin-Felts detectives that led to several deaths. The repercussions that followed lasted through June of 1921 and included multiple “battles” between miners and special deputies and multiple declarations of martial law (see Shogan 2004; Fishback 1995, 454 and sources cited there). The employers often hired their own guards to protect their property and workers who wish to continue working. Most employers were adamant about not wanting to deal with a union. Some were willing to hire Pinkerton and Baldwin-Felts detectives as spies to prevent union organizing. The police in some company towns had reputations for blocking entry into the town by nonworkers and for beating up union organizers. Some men hired as strikebreakers were more than willing to mix it up with the strikers on picket lines. During strikes private policeman or regular policeman broke up peaceful meetings of strikers. In company towns the atmosphere of strife worsened when employers started to evict people from their homes to make way for new workers. In those cases the evictions were typically legal but at the same time

likely to elevate the probability of a violent response, particularly when the evictors damaged personal property. In some mining communities out west the employers' guards rounded up strikers, forced them onto railroad cars, and then abandoned them in the desert.

Once the tit-for-tat violence started, some governors called in the state militia and established martial law to maintain the peace. A number of labor histories that tell the stories of strikes from the strikers' point of view describe these episodes as attempts to use the power of the state to prevent the strikers from getting their due. Across the extensive number of coal mining episodes that I have read about, my sense has been that the Governors often made this move when they were trying to stopping serious threats to life and limb and public order. In fact, some explicitly did not send in the militia because they thought the militia's presence might make the situation worse. In most cases the militia ended up protecting the mine's property and providing protection for those who continued working and new strikebreakers, so it is understandable why the strikers would see the militia as on the side of the employer. Further, most of the impact of martial law and the militia's attempts to stop violence through arrests were targeted at strikers because there were often hundreds or thousands of strikers to be controlled compared with a few dozen mine guards or police. The antipathy towards calling out the militia was worsened by events when the militia violated the rule of law. The saddest case involved a conflagration between mine guards and the state militia and the miners at a tent colony near Ludlow Colorado in 1913-1914. The attack led to the deaths of 5 men and a boy caught in the crossfire and 13 women and children who were suffocated when hiding in a pit under a tent that caught fire (McGovern and Guttridge 1972).

II.1. State Laws Related to Labor Disputes

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

A number of states tried to prevent the violence by passing laws designed to limit certain types of activity. In 1900 16 states had laws making it illegal to interfere with a business or the employment of others and the number rose to 21 by 1924. A similar rise from 19 to 27 states occurred for a separate law banning intimidation, as well as a rise from 13 to 17 states for laws against conspiring to prevent someone from working. By 1924 19 states had introduced a new criminal syndicalism law targeted at those advocating violence or sabotage for political reasons. The states with all four laws included Kansas, Minnesota, Nebraska, South Dakota, Nevada, and Washington. To show the regions the orderings are by Northeast, Midwest, South, and West in these lists. The states with three of the four laws included Vermont, New York, Wisconsin, North Dakota, Alabama, Georgia, Mississippi, and Texas. A number of these states, particularly, New York, Wisconsin, Minnesota, Nebraska, North Dakota, South Dakota, and Washington have long been considered progressive labor-oriented states. Massachusetts, New Hampshire, Rhode Island, Missouri, Oklahoma, and Utah had both the illegal interference with business and the anti-intimidation laws. Illinois had both the anti-intimidation law and the anti-conspiracy law, while Florida and Hawaii had only the anti-conspiracy law. Meanwhile, 6 states (Kansas,

Alabama, Nebraska, Utah, Hawaii, and Colorado) had anti-picketing laws, and 5 states (Illinois, Indiana, Alabama, Texas, and Colorado) had anti-boycott laws. .

The states paid particular attention to railroads and mines. In 1900 21 states had laws against interference or intimidation of railroad workers and preventing workers from obstructing tracks; another 13 blocked interference with railroad workers. But these did not last, and by 1924 there were only 7 states with both laws on the books (Maine, Delaware, New Jersey, Pennsylvania, Illinois, Kansas, and Texas), while Rhode Island, Kentucky, Connecticut, and Ohio had one of the two laws. In contrast, the number of laws against intimidating miners rose from 4 in 1900 to 7 (Vermont, Illinois, North Dakota, South Dakota, Oklahoma, West Virginia, and Washington) in 1924.

The hiring of industrial police was one of the most controversial features of labor relations. By 1924 22 states had decided it necessary to pass laws making industrial police legal. These included Connecticut, Massachusetts, Rhode Island, Vermont, New Jersey, New York, Pennsylvania, Indiana, Ohio, North Dakota, South Dakota, Virginia, Alabama, Florida, North Carolina, South Carolina, Maryland, Nevada, New Mexico, California, Oregon, and Washington. Between 1937 and 1938 7 states passed laws designed to impose more limits on armed guards, including Massachusetts, Rhode Island, New York, Pennsylvania, Illinois, Kentucky, and Utah.

Fishback, Allen, and Holmes (2009) identified 12 labor laws that could be considered anti-union. Kansas, Alabama, and Texas had the most with 7 laws; states with 6 included Vermont, Illinois, South Dakota, and Washington; states with 5 included Nebraska, North Dakota, and Nevada. States with 4 included Rhode Island, New York, Minnesota, Georgia, Mississippi, Oklahoma, Utah, Oregon, and Hawaii

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

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

conspiracy issue, by 1924 10 states had enacted laws stating that strikes and agreements were not unlawful, while 10 more stated that a labor agreement was not a conspiracy.

After the Sherman Act was enacted in 1890, unions were targeted as combinations that violated the Act in a number of the early cases. In response, 14 states exempted labor unions from antitrust regulations and 11 allowed for incorporation of labor unions. In 1914 section 6 of the Clayton Act stated: “Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organization...nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws” (quoted in Witte 1969, 67). Although Samuel Gompers of the American Federation of Labor (AFL) originally touted the Act as Labor’s Magna Carta, unions were disappointed in the court decisions that followed. They were now legal when seeking improved wages and working conditions, as long as any restraint of trade was incidental. However, they still could be charged under the antitrust law if the court found that the combination sought “primarily” to restrain trade. Witte (1969 68-72) argued that in some ways the Clayton Act made the situation worse for unions with respect to injunctions based on restraint of trade violations. Prior to the Act only the U.S. could secure injunctions, but section 16 of the Act allowed “injured” private parties to seek injunctions. After the Act there was an increase in injunctions applied to unions. More than half involved criminal convictions with long prison sentences and two involved large settlements. Coronado Coal and Coke settled for \$27,000 with the UMWA after a judgment of \$600,000 in damages had been set at one point in the case. District 12 of the UMWA also settled with the Southern Illinois Coal Co. by paying “an exorbitant price” for its property after a horrific outburst of in which strikers killed over 20 men in Herrin, IL (Angle, 1952; Witte 1969, 70n2).

After the passage of the Clayton Act a number of states began to impose limits on injunctions. In 1914 injunction limits were found in three states: Kansas, Oklahoma and Montana. By 1926 they had been joined by New Jersey, Illinois, Wisconsin, Minnesota, North Dakota, Utah, Oregon, and Washington. As the Depression deepened and attitudes became more favorable towards collective bargaining, New York and Pennsylvania added laws in 1930 and 1931. As described below, Congress limited injunctions in disputes involving interstate commerce in the Norris-LaGuardia Act of 1932. To insure that injunctions were limited in intra-state commerce as well, new laws were added in Connecticut Massachusetts, New Hampshire, Indiana, Louisiana, Maryland, Colorado, Idaho, New Mexico, and Wyoming during the 1930s. Meanwhile, New York, Pennsylvania, Minnesota, North Dakota, Utah, Oregon, and Washington added more bite to their existing laws.

II.2. Yellow-Dog Contracts

One issue related to freedom of contract was the “yellow dog” contract that required workers to not join unions as a condition of employment. Economists would predict that employers offered better terms in exchange for the agreement to avoid unions. For example, in 1908 the workers at the Hitchman Coal and Coke Company, previously a unionized mine that had been hit by several strikes over wages over several years, signed nonunion pledges in return for paying the same wages as in nearby unionized mines (see *Hitchman Coal and Coke Co. v. Mitchell* 245 US 299, 1917). Union supporters, in contrast, argued that the willingness to sign showed how weak the worker’s hand was in negotiating individual contracts with employers. In that same year the Supreme Court struck down the portion of the 1898 Erdman Act that prohibited railroad employers from firing workers for becoming union members in *Adair v.*

United States (208 US 161, 1908) as a violation of freedom of contract for firms involved in interstate commerce under the Fifth Amendment. Even so, the BLS lists 18 states as having outlawed yellow dog contracts in 1914, although the *Adair* ruling might have implied that these were only applicable to employers not involved in interstate commerce. The ruling was reaffirmed for other settings when the Supreme Court declared unconstitutional a Kansas law blocking such contracts in *Coppage v. Kansas* (236 US 1, 195).²¹ It was strengthened further when the Supreme Court ruled in favor of the employer in the *Hitchman* case of 1917 by affirming a 1907 injunction that the UMWA could not try to get the workers to break their yellow dog contracts.

The War Labor Board (WLB) in 1918 directed employers to abandon the contracts during World War I, as part of its campaign to allow collective bargaining and avoid internal strife during the War. When the WLB ceased operations, employers increased their usage of the contracts, typically in nonunion coal fields in the east, the boot and shoe industry in New England, in the hosiery industry, and a number of large street-car systems. The courts' treatment of the contracts remained somewhat unsettled. In 1924 the BLS still listed 12 states as having laws banning the contracts. In a number of state courts the contracts were reaffirmed in decisions about injunctions. In the late 1920s, on the other hand, the Ohio Supreme Court ruled that the contracts did not prevent unions from asking employers who signed them to join a strike. The New York Court of Appeals ruled that contracts that had no term limit with consideration only related to employment should not be considered contracts because they lacked mutuality. In *Texas & New Orleans Railroad Co. v. Brotherhood of Railway and Steamship Clerks* (281 US

²¹ Justice Pitney (*Coppage v. Kansas* 236 US 2015, pp. 21-26) in the majority opinion noted that several state courts had ruled the ant-yellow dog statutes unconstitutional.

548 1930) the Supreme Court unanimously upheld a section (2) of the Railway Labor Act of 1926 that essentially allowed workers to choose their own representatives and not the company union (Cushman 1998, 122-128). However, this may have only applied to railroads and firms directly involved in interstate commerce and not employment relationships within the states. Meanwhile, between 1929 and 1935 18 states passed new laws stating that the contracts were unenforceable and should not be used as a basis for an injunction.²²

As a summary of the pro-union legislation, it is clear that there was substantial variation in the states use of laws. Most of the prounion laws are found in midwestern, northeastern, and western states. Wisconsin led the way with 8 out of 10 laws that Fishback, Allen, and Holmes (2009) identified as prounion laws, followed by Minnesota and Oregon with 7, Massachusetts and Texas with 6, New York, Nevada, Utah, California, and Washington with 5, and Pennsylvania, Oklahoma, Colorado, and Montana with 4.

II.3. The Shift in Federal Laws.

In the 1930s federal law shifted more in favor of allowing union activity with the Norris-LaGuardia Act of 1932 (Act of March 23, 1932 (Ch. 90, 47 [Stat. 70](#); also 29 USC ch. 6 starting at 101). The Act explicitly argued against the contract freedom logic of the earlier majority Supreme Court decisions in the yellow dog contract cases. Section 2 states that “the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that

²²The states were Wisconsin in 1929; Arizona, Colorado, Ohio, and Oregon in 1931; New Jersey in 1932; California, Colorado, Idaho, Illinois, Indiana, Massachusetts, Minnesota, Oregon, Pennsylvania, and Utah in 1933, Louisiana in 1934; and New York in 1935. See Witte 1969, 221-30; U.S. Bureau of Labor Statistics (1934).”

he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.”

The act declared that the following types of laws were unenforceable in U.S. courts and “shall not afford any basis for the granting of legal or equitable relief;” promises not to join or remain a member of any labor organization or employer organization; promises to quit if the worker joined a labor or employer organization. Courts would not have jurisdiction to issue restraining orders or temporary or permanent injunctions in labor disputes related to 1) refusing to perform work; joining a labor organization or employer organization; paying or withholding benefits to a person in a labor dispute; lawfully aiding other persons in labor disputes even if suit pending; publicizing facts about labor dispute; assembling peaceably; telling people about the plans above; agreeing with people to undertake the plans; and urging people without fraud or violence to participate in the plans. Courts could not issue injunctions in labor disputes without hearings that showed the unlawful acts have been threatened and were likely to come about without restraint; substantial and irreparable damage will occur; that the complainant has no adequate remedy of law and that public officials were unable or unwilling to provide protection. Temporary restraining orders were to be effective for no more than 5 days and the complainant had to post security to cover damages in case of erroneous issuance of the order. Finally, the restraining order had to be specific as to the actions to be barred.

Faced with high unemployment rates in the early 1930s, President Hoover and Congress tried to reduce strife by authorizing \$300 million dollars in Reconstruction Finance Corporation

loans to cities to expand their relief efforts. In the first 100 days after Franklin Roosevelt was inaugurated, he and the Democratic Congress expanded federal spending and provided relief grants to the states through the Federal Emergency Relief Administration (FERA), which used them to provide direct relief and work relief opportunities.²³ In November 1933 the administration took more control by hiring nearly 4 million workers on work relief with the Civil Works Administration. Under the National Industrial Recovery Act (NIRA), they allotted new funds for emergency public works for an agency that became the Public Works Administration, and set up new funds and new rules for public highway grants.

As part of the Fair Codes of Competition Section 7a of the NIRA under the NRA Section 7a of the NIRA stated that every code gave employees collective bargaining rights, and banned yellow dog contracts for Code participants, in addition to setting restrictions on employment conditions for Code participants. The President had the power to establish codes in sectors where investigations showed the public interest was being abused, but I have seen no indications that this power was used. By 1935 23 states had passed NRA supplemental legislation to insure the law could be used for commerce within the same state, while some provided for enforcement mechanisms.²⁴

Since large numbers of firms participated in the Codes this appeared to be a major change in the legal standing of unions. Workers soon began to press for collective bargaining, but many employers refused to participate or forced workers to join company-sponsored unions. A surge

²³One issue that popped up with work relief was whether strikers were eligible for relief. The Works Progress Administration took a “neutral” stance on whether strikers were eligible. This seems to have been handled on a strike by strike basis and whether they got benefits depended on the nature of the strike and the identity of the decision maker (Howard 1941, 473-476).

²⁴The states in 1933 were California, Colorado, Kansas, Massachusetts, New Jersey, New York, Ohio, Texas, Utah, Virginia, and Wisconsin. In 1934 they included Illinois, Mississippi, New Mexico, South Carolina, Washington, West Virginia. Just as the NRA was about to be declared unconstitutional, Idaho, Indiana, Iowa, Montana, Nevada, and Wyoming enacted laws in 1935. See Bureau of Labor Statistics (1933, 1934, 1935).

in strike activity followed for all workers in the U.S., although the shares of strikers in coal mining dropped in 1934 in Figure 1. In August of 1933 the NRA advisory boards created a National Labor Board (NLB) with 7 members widely known for their expertise on labor issues. Senator Robert Wagner was the public representative, the three labor representatives were AFL president William Green, union scholar Leo Troy, and UMWA President John L. Lewis and the industry representatives were Walter Teagle of Jersey Standard, Gerald Swope of General Electric, and Louis Kirstein from Filenes' Department store. The NLB had no coercive power and had no statutory guidance as to what the rules for collective bargaining would be, and leading employer groups led a backlash against their rulings. In the process of mediating strikes they developed a process, known as the Redding Formula, to set up secret-ballot majority rule votes on representation, but a number of employers refused to cooperate. Roosevelt issued executive orders on December 16, 1933 and February 1, 1934 that confirmed the authority of the NLB to hold elections and investigate violations of NIRA section 7a (Vittoz 1987, 137-145).

On February 4, 1934 NRA head Hugh Johnson and NRA general counsel Donald Richberg issued a "clarification," however, that muddied the waters by stating that majority rule was not the exclusive voting method for determining representation and allowed for proportional representative of worker groups in the bargaining process. Unhappy with the process Senator Wagner introduced a new Labor Disputes bill designed to clarify the processes surrounding section 7a on March 1 into the Senate, but it faced substantial opposition and went nowhere (Vittoz 1987, 137-145).

Roosevelt asked for an enabling statute from Congress, Public Resolution No. 44 on June 19 1933, that allowed him to set up a new structure with an executive order. On June 29, 1934 Roosevelt issued Executive Order 6763 that closed the NLB and created the National Labor

Relations Board (NLRB) “to conduct investigations, order and hold shop elections, subpoena evidence and witnesses, and invoke the jurisdiction of circuit courts to secure enforcement of its ruling.” The NRA leaders were unhappy with the new NLRB’s powers and decisions and actively opposed them. After the board strongly endorsed majority rule in the ballots for representation, Roosevelt and the administration moved to weaken their impact. The uncertainty about proper voting rules and the enforcement powers of these boards contributed to continued labor strife during the period (Vittoz 1987, 137-145).

Seeing the uncertainty, Senator Wagner introduced an entirely new labor relations bill on February 21, 1935 that upgraded the National Labor Relations Board power to enforce workers’ rights to independent representation. The NLRB could go beyond just overseeing elections to certifying any organization that won a majority voted as the exclusive bargaining agent for all employees in the bargaining unit. Wagner was able to get Roosevelt to agree not to oppose the bill. Roosevelt’s agreement may have stemmed from his worries that the NRA would not be renewed. When the NRA was declared unconstitutional on May 27, 1935 by the Supreme Court in *Schechter Poultry Corp. v. United States* (295 U.S. 495, 1935), the Wagner Act received Roosevelt’s support and he signed it on July 5, 1935 (Vittoz 1987, 145-152).

The philosophy underlying the new act was laid out in its opening section. It clearly challenged the notion that labor agreements between individual workers and employers were contracts that should be protected by law. The Act states that denial of workers’ rights to organize and the refusal to collective bargain led to strikes and industrial unrest that obstructed economic activity. Further, bargaining power was unequal between workers who did not possess “full freedom of association or actual liberty of contract and employers who are organized in the corporate or of other forms of ownership association.” “Experience has proved that protection of

the law of the right of employees to organize and bargain collectively safeguards commerce...by removing recognized sources of industrial strife and unrest, by encouraging...friendly adjustments of industrial dispute...and by restoring equality of bargaining power between employers and employees.” “Experience has further demonstrated that certain practices by some labor organizations” harmed economic activity. “The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.” The goal of the Act was “to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self- organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.”

The essential features of the Act gave workers the right to collective bargain with their employer when more than 50 percent of the workers at the firm had voted to join together as a bargaining unit. The NLRB would run the elections and certify the bargaining representative, who would represent all members in the bargaining unit. Company unions were banned.

Yet, the stability of labor relations still faced challenges. A large share of employers were opposed to the act and were willing to test it in court. The Supreme Court had declared the NRA and the AAA unconstitutional in May 1935 and January 1936, respectively; therefore, there was great uncertainty as to whether the Act would be declared unconstitutional. The uncertainty increased after the Jones & Laughlin Steel Corporation of Aliquippa, Pennsylvania fired 10 workers for seeking to join the union. The Beaver Valley Lodge No. 200 of the Almagamated Association of Iron, Steel, and Tin Workers of America filed a complaint with the

NLRB, which ruled that the firm was engaging in an unfair labor practice. When the company did not comply, the NLRB petitioned the Circuit Court of Appeals to enforce the order. The court denied the petition, holding that the “order lay beyond the range of federal power.”

The NLRB appealed to the Supreme Court, which finally eliminated the uncertainty with its ruling on April 12, 1937 that the Act was constitutional (*NLRB v. Jones & Laughlin Steel Corp.* 301 US 1 (1937)).²⁵ Chief Justice Charles Evan Hughes wrote the majority opinion in a 5-4 decision that stated that the steel company was involved in interstate commerce and thus subject to federal law. Citing the *American Steel Foundries v. Tri-City Central Trades Council*, (257 U. S. 184, 257 U. S. 209) case from 1921, Hughes claimed

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

²⁵ The judges decided 5 cases related to the NLRB on April 12 simultaneously, and the identity of who dissented in each of the 5 is somewhat difficult to discern.

give laborers opportunity to deal on an equality with their employer.” (301 US
1 (1937, p. 33)

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

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

Generally, labor historians suggest that the shift to specific rules for determining representation for collective bargaining and the rules structure for bargaining and arbitration established by the National Labor Relations Act led to a marked long run reduction in violence in labor disputes. They argued that a specific peaceful process had been established for union recognition. The balance between freedom of contract and freedom of association among workers eliminated much of the tension involved when situations were uncertain. Further, once unions and employers had started negotiations, they established longer term relationships. Levi, et. al., (2017) argue that the NLRA established a framework that allowed labor, employers, and governments to commit to negotiate peacefully.

Studies by Rhodri Jeffreys-Jones (1978) and Philip Taft and Philip Ross (1969) reported extensively on the violent episodes across all industries prior to the 1935 Wagner Act, as did Fishback (1995) for the coal industry. Each searched through newspapers and a variety of sources for discussions of episodes. All document a large number of episodes in which state

militia or the national guard were called out to help resolve labor disputes. Jeffreys-Jones found an average of 14.5 deaths per year in labor disputes between 1890 and 1909. Between 1909 and 1927 Fishback (1995) an average of 5 per year were killed in coal mining alone. Taft and Ross (1969, 344-352) identified somewhere between 22 and 32 deaths in coal mining disputes, including inter-union struggle in Kentucky between 1932 and 1937. After the union recognition strikes that sharply increased unionization in the late 1930s, Taft and Ross (1969, 363-367) found marked declines in the number of disputes involving state militias and the number of deaths in strikes. After the 1946 amendments to the Hobbs Federal Anti-Racketeering Act of 1934 and the Taft-Hartley Act of 1947 limited some forms of union activity, the NLRB found only 3 occasions between 1947 and 1962 when the state militia was called out, and the number of deaths per year in strikes averaged about 1.9.²⁶ There were still a number of instances of intimidation, assaults, and damage to property, but nothing like the lineups of large numbers of strikers and guards in armed camps seen before 1940 (Thiebolt and Haggard 1983).

Uncertainty about collective bargaining rights likely played a significant role in driving union membership, strike activity, and violence in strikes. Figure 1 shows time series information for the bituminous coal industry between 1901 and 1941 for the share of workers on strike, the share in the United Mine Workers, the number of dispute-related deaths, and the

²⁶Theibolt and Haggard (1983, 245-300) describe the torturous history of interpretations of the Hobbs Federal Anti-Racketeering Act of 1934, which banned the use of violence to obtain payment, “not including, however, the payment of wages by a bona-fide employer to a bonafide employee.” The act also stated that courts should not construe the act in a way to limit “the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the U.S. (247).” The final version of the law had been rewritten to overcome any objections from the American Federation of Labor. The intent appears to have been to allow unions to follow peaceful means in labor disputes but disallowed violence. In *United States v. Local 807, International Brotherhood of Teamsters* (315 U.S. 521) in 1942 the Supreme Court appeared to allow teamster union members to threaten violence and demand payment of the equivalent of a day’s wage for letting trucks enter New York City. Attempts to void such an interpretation led Congress to rewrite the law with amendments in 1946 to prohibit more clearly violence in employment matters and labor disputes. The legislative and court cases show how difficult it can be to write the law clearly to protect workers to collective bargain but not use violence.

number of militia callouts during strikes. The share of workers on strike through 1922 rises in even years and falls in odd because the UMWA contracts in the Central Competitive Field of Pennsylvania, Ohio, Illinois, and Indiana expired on March 31 of even years, and that field set the basis for union agreements in the rest of the country. Figure 1 shows some sharp rises in strike deaths around 1909-10 and 1913-14 when the UMWA mounted large-scale drives to organize the nonunion coal fields in Colorado and West Virginia. Part of this drive likely occurred because of a slow recovery in per capita incomes following the recession of 1907-08. Per capita income did not return to pre-recession levels until 1914.

Strike activity and violence was reduced when the U.S. was participating in World War I. in 1917 and 1918. The federal government established a National War Labor Board between April 1918 and May 1919 to mediate disputes. The Board was not established by statute and did not have coercive power but it had legitimacy because it was voluntarily created by major employers and union leaders. It was composed of five members appointed by the American Federation of Labor, five appointed by the National Industrial Conference Board and public representatives former president William Howard Taft and Frank Walsh who had headed the Commission on Industrial Relations. The Board pushed for labor peace and the reward for workers was expansions in the right to collective bargain. As seen in Figure 1, the union share of coal miners rose by about 10 percent between 1916 and 1918 as part of an overall rise in the union share of the overall labor force. While fighting the War no one was going to brook the types of armed insurrections seen in earlier years (Gregg, 1919).

Since the Board had no coercive power, there was no carryover of the federal government's wartime support for collective bargaining. Employers presumed a return to the pre-war rules. The 1917 *Hitchman* decision meant that they could ask miners to sign nonunion

pledges and could obtain court injunctions to limit union efforts. Having tasted a world where collective bargaining had been more routine, unionized workers were unwilling to give up their new rights of association. The outcome was a large number of strikes over union recognition. Roughly 10 percent of the labor force and almost 70 percent of bituminous coal miners participated in a strike in 1919 (see Figure 1). When employers continued their intransigence in the face of the larger union share of membership, the share of workers on strike ranged from 2.6 to 3.8 percent between 1920 and 1922. Worse, many of the strikes turned violent. In coal mining strikes in multiple states Fishback (1995, Shogan 2004, and Angle 1952) describe armed insurrections with thousands of armed miners marching to close down mines protected by hundreds of private mine guards.

By 1925 labor peace reigned alongside a booming economy, while the unions had lost much of their strength. The share of workers in unions overall had declined by roughly one-third and strike activity had fallen to post-Civil War lows.²⁷ Strike activity did not rise again until the Norris-LaGuardia Act of 1932, followed by the PRA and NRA codes that gave unions *de jure* rights to collective bargain. As noted above, the administration of these rights was uncertain. Essentially, the government promised workers the unionization rights that they had offered during World War I without a set of consistent rules to guide the process. The share of strikers in the labor force jumped from less than one to 2.8 by 1934 and Taft and Ross (1969) describe a substantial rise in violence and militia callouts across many industries. In coal mining, the share of strikers in 1933 jumped to 30 percent. Most of the violence in coal mining occurred in the Kentucky mines between 1932 and 1937 when somewhere between 24 and 34

²⁷ The data on workers in all sectors involved in strikes is series Ba4955, number of union members is Ba4783, and civilian labor force is series Ba470 from Carter, et.al. (2006, volume II).

miners died, in part because of a battle between the UMWA and the Progressive Miners of America to become the bargaining agent with employers there.

After the NRA was declared unconstitutional and the National Labor Relations Act was passed in June 1935, the share of workers on strike abated while union membership rose from around 6 percent in 1934 to nearly 8 percent in 1936. In mining the union share rose from 57 to 64 percent. Yet, there was still violence because of uncertainty about whether the NLR Act of 1935 would be found constitutional. When the Supreme Court affirmed the Act, there was another explosion of strike activity from April through the end of the year, as workers struck for union recognition. The share of unionized workers in all sectors jumped sharply to 13 percent, and the share in coal mining jumped to 75 percent.. Strike rates fell while the union share continue to rise through 1940. During World War II strike activity rose to around 3-6 percent of the civilian labor force while union membership rose to 27.5 percent, in part because so many men were in the military. Taft and Ross report, however, that the number of violent events fell sharply and most of the violence that did occur was minor. In some settings the unions overplayed their hands. The 1946 amendments to the Hobbs Anti-Racketeering Act of 1934, and the Taft-Hartley Act of 1947 were enacted to reign in union violence and bargaining practices. Strike activity then diminished and union membership as a share of the labor force peaked around 28 percent during the Korean War and has diminished since.

III. Did State Collective Bargaining Laws Influence Strikes and Violence in Coal Mining?

To measure the relationship between the various state collective bargaining laws and strike activity and violence after 1900, I developed a panel data set with annual data for the years 1902 through 1936 and 1939 through 1941 for 23 coal mining states.²⁸ The number of men

²⁸ Janet Currie and Joseph Ferrie (2000) performed an analysis of the relationship between specific collective bargaining laws and strike activity between 1881 and 1894 in several states. They found that pro-union laws that

striking and the total days on strike in coal mining is not available for 1937 and 1938.²⁹ Starting with the data on labor laws related to collective bargaining from Holmes (2003) and Fishback, Holmes, and Allen (2009) through 1924, I used reports on labor legislation from the *American Labor Legislation Review* and from the *Monthly Labor Review* to compile information on the changes in collective bargaining and arbitration law between 1925 and 1941. For the entire period I then created an index of pronoun labor laws and antiunion labor laws by summing the laws in each category and dividing by the maximum number of laws that any state had in the two categories, 8 for pronoun laws and 7 for antiunion laws.

I then ran versions of the following fixed effects regression.

$$V_{it} = \beta_0 + \beta_1 \text{prolaw}_{it} + \beta_2 \text{conlaw}_{it} + \beta_3 \text{arblaw}_{it} + \gamma X_{it} + S + T + \varepsilon_{it}.$$

V_{it} is a strike and violence measure for state i in year t . There are three measures: the natural log of the number of men involved in bituminous coal strikes, the natural log of the number of strike days lost in bituminous coal strikes, and a dummy variable that takes a value of 1 if there was a death or the militia was called out during any of the bituminous coal strikes in the state that year. To avoid problems with 0 values for the number of strikers and the days lost to strikes I added one to all values before taking the natural log.

The law variables are the pro-union law index, prolaw_{it} , the anti-union index, conlaw_{it} , and a dummy variable for the presence of an arbitration or mediation law, arblaw_{it} . The vector X_{it} is a set of lagged variables that describe the situation in coal coming into year t . They include lags of the natural log of employment, a measure of the share of miners in the United Mine Workers, the real price of coal in 1967\$, coal tons produced per man day, and coal deaths per man day. The fixed effect model includes a vector S of state fixed effects that control for unchanging factors in each state, like geography, climate, and the fundamental structure of the

laws treating unions as legal were associated with higher wage gains for the strikers but also with use of more strike breakers. Anti-blacklist laws were associated with longer strikes and greater use of strikebreakers, while the use of injunctions were associated with longer strikes. They also found that laws limiting hours of work were associated with shorter strikes, higher wages and less use of strike replacements.

²⁹I used information by state for strikes in mining in the coal states to get estimates of coal mining strikes in 1935 and 1936 from Peterson (1937).

law and labor market, and a vector T of year fixed effects that control for features each year that have impact on all states, including changes in national labor laws, wars, and macroeconomic conditions. The error term ε_{it} captures factors not included in the model. The inclusion of state and year fixed effects implies that the variation used to measure the relationships are the changes across time within each state after controlling for nationwide shocks to the situation. The regression coefficients law measures show the relationships between these factors and cannot be considered to have causal impact if the law measures are correlated with the error term ε_{it} in the regression.

I also run another set of regressions in which I add interactions between these three law variables and dummies for specific time periods that reflect changes in the national climate of labor activity. The goal is to see how the influence of the state labor laws changes during periods when the national labor climate changed. These include a dummy for the pre-war period when state law controlled collective bargaining, and a dummy for the World War I years of 1917 and 1918 when the national government established a climate of collective bargaining. Another dummy is established for the years 1919 to 1931 when the national government stepped back from its support for collective bargaining rules and the situation was again dominated by state law. There were a large number of strikes and lockouts during the first few years after the war as employers and workers sought to ascertain what the new rules were. Union strength waned significantly during this period. An additional interaction dummy is added for the years 1932 through 1937 when the federal government returned to legislating about collective bargaining. The Norris-LaGuardia Act of 1932 changed several collective bargaining features, the National Recovery Administration codes were established, the National Labor Relations Act of 1935 and the series of lower federal court decisions on the Act and the final Supreme Court decision in

1937. A final dummy is included for the period 1938 through 1941 after the NLRA was established as constitutional and there was more certainty about the national laws related to collective bargaining. When the model is estimated with these interactions, the regression is estimated with the constant term suppressed, a fixed effect for each state, and a fixed effect for each year. This specification allows us to read the coefficient on the interactions between the laws and time periods directly as the complete relationship between strikes and laws during that time period.

The results from the regressions for the nonlaw variables are similar to expectations. States with more men working have more men on strike, more strike days, and more violence. A larger share of men in the coal union was associated with more men on strike and more strike day, but have no relationship with violence. Moving from a state with no unionization to a state with complete unionization was associated with a more than 100 percent increase in men on strike and more than 75 percent more strike days lost. Higher coal prices are associated with more men on strike, but greater output per man day has a negative relationship. Higher accident fatality rates are associated with more strike days.

The results for labor law coefficients in the baseline regression are roughly consistent with a view that pro-union laws made it less costly to strike, while anti-union laws made it more costly to strike. The anti-union laws had statistically significant and negative relationships with the number of men on strike and the number of days lost to strikes, while the pro-union laws had smaller positive relationships that are not statistically significant at the 90 percent level. Access to boards of arbitration did not have a statistically significant relationship with strike activity but was associated with a statistically significant 7.5 percent fewer violent episodes.

The regression with the interactions of the law measures and dummies for different national labor regimes show that the state laws had differential effects at different times. The anti-union laws had the strongest negative relationships with the number of men on strike and days lost to strikes during the years 1919 through 1931, when the federal government stepped back from its strong wartime support of collective bargaining. Strikes and lockouts were common soon after the war because there was so much uncertainty about whether state law or the federal wartime position held. The second strongest period for the anti-union laws came after 1937 after the Supreme Court decision of spring 1937 established that the National Labor Relations Act of 1935 was constitutional.

The pro-union state laws had strong positive relationships with strike activity between 1901 and 1916 and again from 1932 through 1937. State laws were the primary determinant of the collective bargaining climate in the earlier period. Between 1932 and 1937 the Norris LaGuardia Act and New Deal legislation made collective bargaining easier, although there was significant uncertainty about which rules were going to be considered constitutional. During this period the states with the strongest pro-union laws were 30.8 percent less likely to experience coal strike violence than the states with no pro-union laws.

States where there was access to arbitration or mediation never had statistically significant relationships with strike activity. On the other hand, the presence of state arbitration and mediation services was associated with statistically significantly less violence during the periods prior to 1932. There was a 7.7 percentage point lower probability of violence before World War I, the violence probability was 13.4 percent lower during the war and it was 11.8 percent lower in the period between the War and the Norris-LaGuardia Act of 1932.

The year fixed effects can also provide insight about the impact of the changes in the federal climate for collective bargaining. Figure 2 shows indices of the fixed effects from the regressions without interactions in the first three columns of Table 3. Remember that these fixed effects are measuring changes in strikes and violence related to each year after controlling for union shares, coal prices, total employment, productivity, safety, and the state laws. Essentially, the fixed effects tell the same story as in Figure 1. The two-year cycle of strike activity rising in years when the Central Competitive Field contracts were renegotiated is still there. The largest spikes of strike activity and violence follow the periods after World War I and between 1932 and 1937 when there was uncertainty about the federal government's role and rules for collective bargaining, even after all of the controls are incorporated

IV. Concluding Remarks

Prior to the New Deal state governments had the primary responsibility for regulating labor markets. Congress occasionally stepped in with statutory regulation in clear cases of interstate commerce, as with the railroads. The federal courts also played a role by making decisions about the constitutionality of state labor laws. Between 1900 and 1940 there was a great deal of uncertainty as to whether the states could limit men's hours and establish a minimum wage for women. The U.S. Supreme Court decisions on these issues were often close because the judges had different opinions about how to balance freedom of contract and protection of health and safety of workers. Even though the identities of the judges changed in three waves, there was always close to an even split in the number of judges on each side of the issue. Meanwhile, some state governments continued with their existing laws or passed new ones with language designed to avoid the constitutional pitfalls found in prior statutes. The

declines in wages and high unemployment during the Great Depression appear to have ultimately shifted the balance in favor of the health and safety arguments, as the federal government and some states enacted statutes that created wage regulations. The deciding vote on the Supreme Court was cast by Justice Owen Roberts in 1937 when he decided to overturn the 1923 *Adkins* decision and declare the Washington law from 1913 constitutional in *West Coast Hotel v. Parrish* in 1937. The decision paved the way for the Fair Labor Standards Act of 1938 that set minimum wages and applied overtime rules for both men and women.

The second area where the rule of law was challenged came from the tension between the workers' right of association to form unions versus the employer's right of association to avoid dealing with them. This period is infamous in American history for labor disputes, particularly violent ones. To try to avoid violent disputes, the states set up arbitration and mediation procedures and experimented with both pro-union and anti-union laws. Aside from a brief period during World War I in which the War Labor Board bought peace by supporting collective bargaining, state law was the primary factor that established the collective bargaining climate until the mid-1930s. Uncertainty about the specific rules for collective bargaining contributed to strike activity and labor violence, particularly during the aftermath of World War I and during the period 1932 to 1937 when the federal government was trying to establish the rules for collective bargaining through the Norris-LaGuardia Act, the National Industrial Recovery Act, and the National Labor Relations Act. A panel regression analysis shows that the state laws most associated with reduced labor violence were the arbitration procedures enacted in most states. The state pro-union laws were associated with more strikes. Even so, they were associated with less labor violence during the New Deal period of uncertainty about collective

bargaining rules. The anti-union laws were generally associated with fewer strikes but displayed no statistically significant relationship with labor violence.

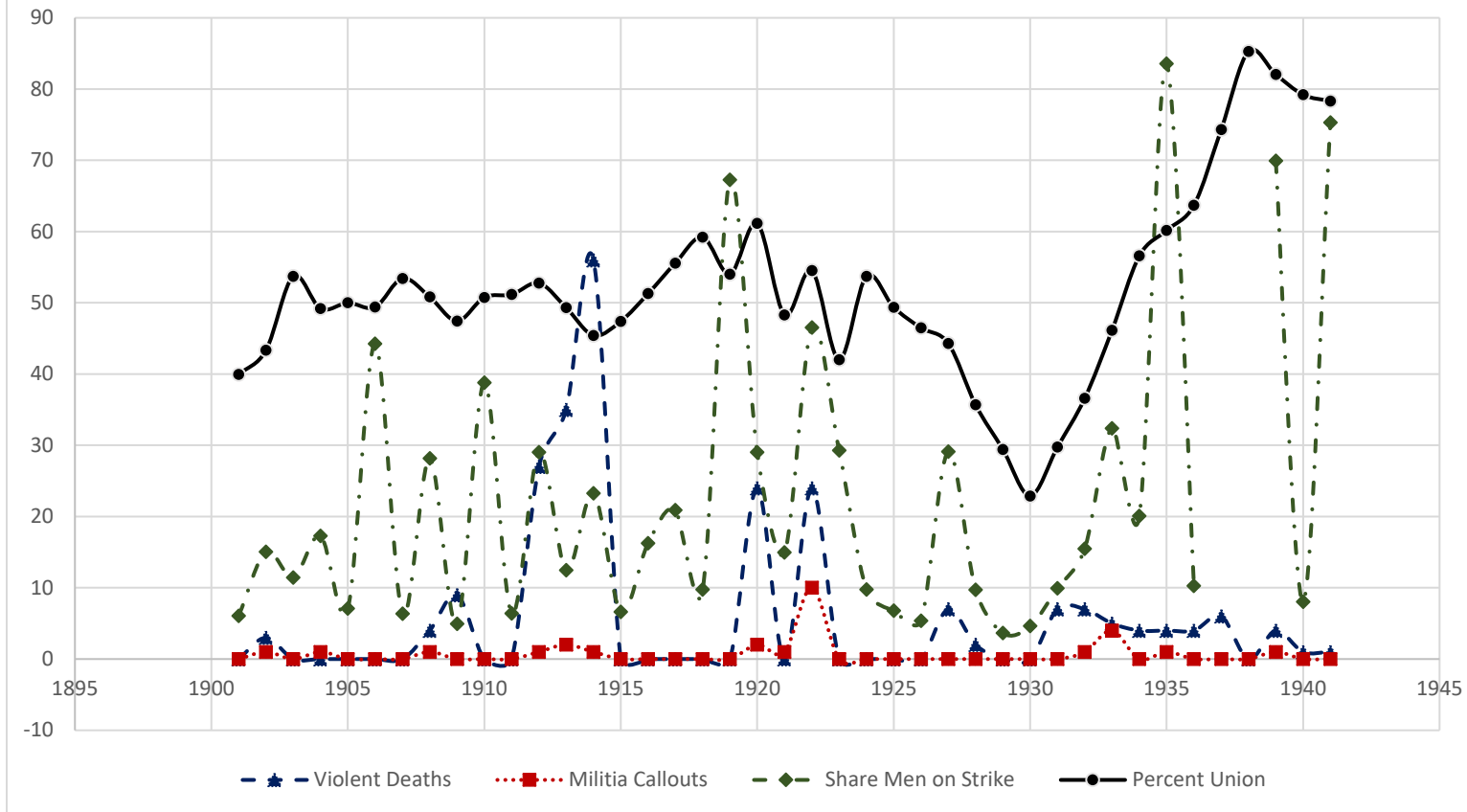
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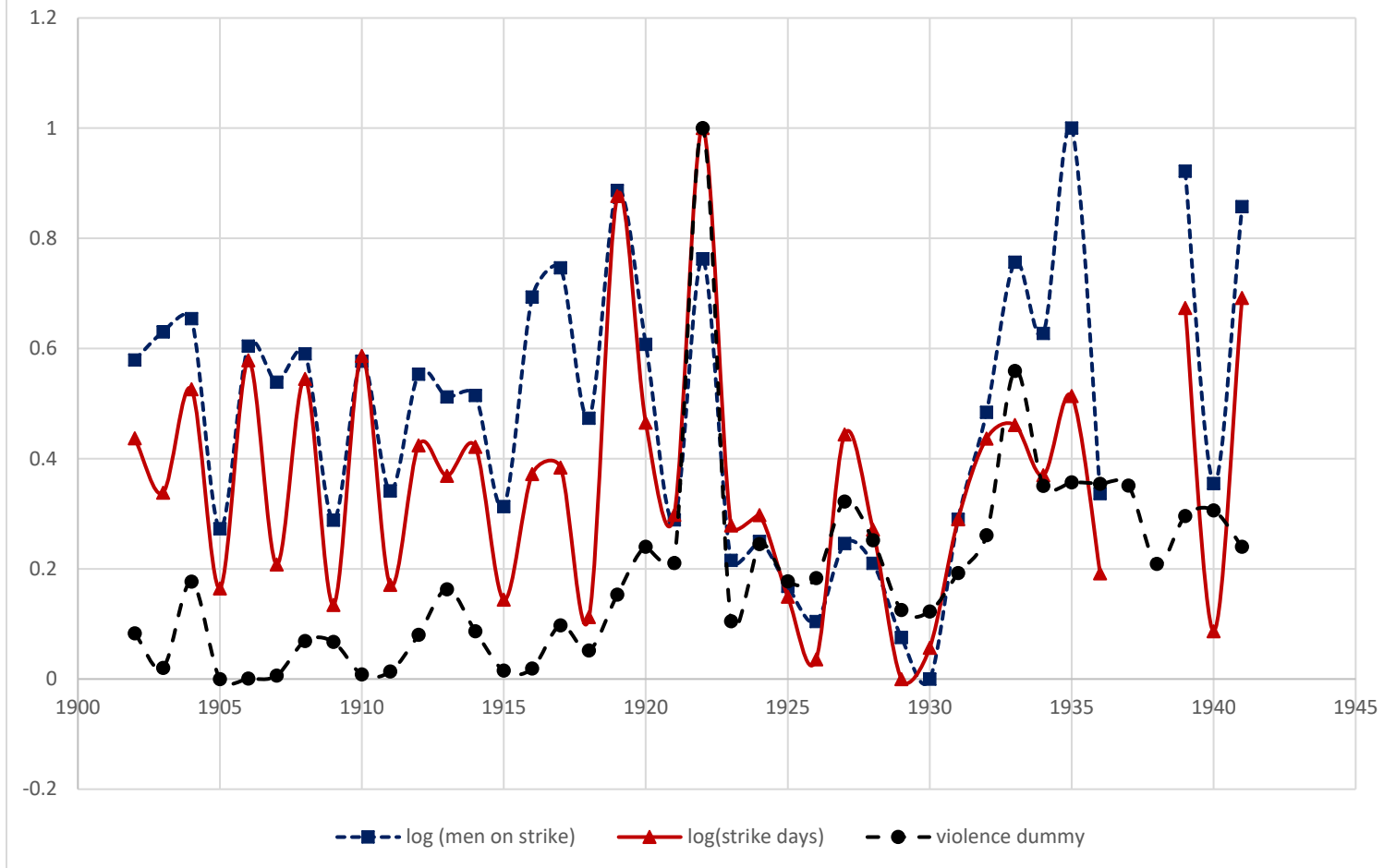
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Figure 1
Share of Men on Strike, Union Share, Deaths, and Militia Callouts in Bituminous Coal Strikes, 1901-1941



Sources and Notes. Workers on strike, employment and union membership are from data compiled by Fishback (1992) and Choi (1989). Violent deaths in bituminous coal mining strikes and militia callouts between 1900 and 1946 are compiled from Fishback (1995, 446-456) and Taft and Ross (1969, pp. 337-366).

Figure 2
Indices of Year Dummies from Regressions for Coal Strike Activity and Violence



Source and Notes: Calculated from the year fixed effects estimated without interactions in Table ??. The patterns are basically the same using year fixed effects from the regressions with interactions, as the correlations between the fixed effects from regressions for a specific dependent variable are above 0.87.

Table 1: Votes of Supreme Court Justices on Constitutionality of Statute in Major Labor Law Cases, 1898-1917

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

Table 2: Votes of Supreme Court Justices on Constitutionality of Statute in Major Labor Law Cases, 1898-1917

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

Notes. Horrace Lurton was on the court from 1910 through 1914 but did not participate in these cases.

Table 3
Fixed Effect Regression Estimates of the Relationship Between Strikes and Violence in
Bituminous Coal Strikes and State Laws for Collective Bargaining and Arbitration,
1902-1936, 1939-1941

| Lagged Coal Structure Variables | Log (Men on Strike) | Log (Strike Days Lost) | Violent Episode Dummy | Log (Men on Strike) | Log (Strike Days Lost) | Violent Episode Dummy | Mean (Std. Dev.) |
|--|------------------------------|---------------------------------|-----------------------------|------------------------------|---------------------------------|-----------------------------|------------------------|
| Lagged Coal Structure Variables | | | | | | | |
| Log (Total Coal Employment) | 1.103 <i>2.71</i> | 0.668 <i>2.48</i> | 0.095 <i>3.15</i> | 1.055 <i>2.72</i> | 0.661 <i>2.06</i> | 0.045 <i>1.33</i> | 9.090 <i>1.30</i> |
| Percent unionized | 1.428 <i>2.68</i> | 0.939 <i>2.13</i> | -0.012 <i>-0.26</i> | 1.181 <i>2.19</i> | 0.892 <i>1.89</i> | -0.017 <i>-0.40</i> | 0.534 <i>0.37</i> |
| Coal Price in 1967\$ | 0.746 <i>1.71</i> | 0.180 <i>0.73</i> | -0.028 <i>-0.94</i> | 0.677 <i>1.74</i> | 0.135 <i>0.53</i> | -0.029 <i>-0.87</i> | 2.024 <i>0.83</i> |
| Tons per Man Day | -0.279 <i>-1.95</i> | -0.117 <i>-1.99</i> | 0.001 <i>0.15</i> | -0.258 <i>-1.88</i> | -0.104 <i>-1.76</i> | 0.010 <i>1.01</i> | 3.821 <i>1.52</i> |
| Fatal Accidents Per 100,000 Man Days | 0.046 <i>0.95</i> | 0.057 <i>1.77</i> | -0.001 <i>-0.47</i> | 0.038 <i>0.71</i> | 0.053 <i>1.62</i> | -0.002 <i>-0.52</i> | 1.690 <i>1.58</i> |
| State Law Variables for Entire Period | | | | | | | |
| Anti-Union Law Index | -1.655 <i>-2.62</i> | -1.057 <i>-2.24</i> | -0.089 <i>-0.91</i> | | | | 0.441 <i>0.22</i> |
| Pro-Union Law Index | 1.333 <i>1.20</i> | 0.851 <i>1.49</i> | -0.062 <i>-0.68</i> | | | | 0.314 <i>0.27</i> |
| Board of Arbitration | -0.433 <i>-0.83</i> | -0.144 <i>-0.33</i> | -0.070 <i>-1.75</i> | | | | 0.710 <i>0.45</i> |
| Anti-Union Law Index in Different Periods | | | | | | | |
| State Law (1901-16) | | | | -0.828 <i>-0.85</i> | -0.831 <i>-1.40</i> | -0.182 <i>-1.58</i> | |
| World War I (1917-18) | | | | 0.101 <i>0.08</i> | -1.502 <i>-2.28</i> | -0.173 <i>-1.57</i> | |
| Return to State Law (1919-31) | | | | -3.832 <i>-2.91</i> | -1.734 <i>-2.00</i> | -0.124 <i>-1.04</i> | |
| New Federal (1932-37) | | | | -0.770 <i>-0.73</i> | -0.364 <i>-0.46</i> | 0.010 <i>0.09</i> | |
| Federal Set (1938-41) | | | | -2.442 <i>-1.92</i> | -1.476 <i>-1.50</i> | -0.017 <i>-0.16</i> | |
| Pro-Union Law Index in Different Periods | | | | | | | |
| State Law (1901-16) | | | | 2.142 <i>1.95</i> | 1.275 <i>1.66</i> | 0.058 <i>0.62</i> | |
| World War I (1917-18) | | | | 2.039 | 0.233 | 0.080 | |

| | | | |
|--|--------------|--------------|--------------|
| | <i>0.82</i> | <i>0.23</i> | <i>0.64</i> |
| Return to State Law (1919-31) | 1.472 | 0.573 | 0.054 |
| | <i>0.84</i> | <i>0.58</i> | <i>0.38</i> |
| New Federal (1932-37) | 2.456 | 1.522 | -0.308 |
| | <i>1.80</i> | <i>1.78</i> | <i>-1.90</i> |
| Federal Set (1938-41) | 1.231 | 0.399 | -0.317 |
| | <i>0.65</i> | <i>0.37</i> | <i>-2.92</i> |
| Board of Arbitration in Different Periods | | | |
| State Law (1901-16) | -0.102 | -0.058 | -0.077 |
| | <i>-0.26</i> | <i>-0.14</i> | <i>-2.07</i> |
| World War I (1917-18) | -1.177 | -0.456 | -0.134 |
| | <i>-0.84</i> | <i>-0.56</i> | <i>-2.51</i> |
| Return to State Law (1919-31) | 0.900 | 0.528 | -0.118 |
| | <i>1.32</i> | <i>0.97</i> | <i>-1.93</i> |
| New Federal (1932-37) | -1.498 | -0.443 | -0.144 |
| | <i>-1.45</i> | <i>-0.65</i> | <i>-1.33</i> |
| Federal Set (1938-41) | -0.314 | -0.251 | -0.106 |
| | <i>-0.27</i> | <i>-0.27</i> | <i>-1.35</i> |

Sources: Workers on strike, employment and union membership are from data compiled by Fishback (1992) and Choi (1989). Violent deaths in bituminous coal mining strikes and militia callouts between 1900 and 1946 are compiled from Fishback (1995, 446-456) and Taft and Ross (1969, pp. 337-366). The information on arbitration laws, prounion, and anti-union laws comes from data compiled by Rebecca Holmes (2003), and is available at <https://econ.arizona.edu/labor-law-data-sets-states-1900-1924>.