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Roots of the American Labor Movement

Working Paper No. 28

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Prepared for Professor John Hall

Abstract: This inquiry seeks to establish that early developments in America’s workforce helped to shape the national labor movement that emerged at the end of the 19th Century. The first section discusses the changing social, economic, and legal landscapes from the colonial era to the Industrial Revolution. The second section examines the history of concerted action amongst the free and bound working classes leading up to 1842, when the case *Commonwealth v. Hunt* established the previously contested *per se* legality of labor combinations. The final section discusses developments in labor organization during the decades following *Hunt*, in which, amidst internal divisions in the working class and threats from without, the national trade union structure rose to become the dominant organizational form.

JEL Classification Codes: J50, K31, N31

Keywords: American Labor History, Bound Labor, *Commonwealth v. Hunt*,
Labor Organization

The aim of this inquiry is to establish that early developments in America's workforce helped to shape the national labor movement that emerged towards the end of the 19th Century. Since 1935, the National Labor Relations Board Act, also known as the Wagner Act, has served as the key document establishing protections for workers and their right to organize. The act was a crowning achievement of several decades of national efforts. Histories of the American labor movement often begin in the 19th Century, when countrywide organizations emerged in a significantly industrialized country. However, earlier social developments, and earlier disputes between workers and employers, in the workplace and in the courts, were important precursors.

In the centuries following the first European settlements, America transformed from an overwhelmingly agricultural economy, founded on bound labor and land acquisition, to an industrial powerhouse. During this time, America experienced a change of political regime and philosophy; an uneven progression from bound to free labor; and economic expansion through territory acquisition, industrialization, and immigration.

Labor combinations were present from the earliest days of colonization. The methods and aims of various combinations reflected the social position of the participants. The working class comprised several segments: indentured servants, slaves, wage workers, master craftsmen, and apprentices. Each group possessed

dramatically different levels of power and faced dramatically different ramifications for their actions. All labor combinations were vulnerable to prosecution as criminal conspiracies under the influence of English common law. In 1842, the case of *Commonwealth v. Hunt*, decided by the Massachusetts Supreme Court, set a new precedent by declaring worker combinations legal. The case did not, however, eliminate threats to unions from without, nor cure internal divisions within the working class. In the decades following, the highly structured, narrowly focused national trade union triumphed as the dominant form of labor organization.

America's Workforce from Colonization to the Industrial Revolution

In the centuries after the establishment of the thirteen colonies that would form the original government of the United States, America experienced a transformation from an agricultural economy subordinated to the British Empire into an industrialized, independent nation-state, displacing and surrounding Native populations and enfolding French and Spanish territories. The colonial relationship with Britain served as a determining factor in the economic development of these colonies in the pre-Revolutionary years through mercantilist trade policies, as detailed by Jonathan Hughes and Louis Cain (2007, 68) in their *American Economic History*. These policies guided colonies towards production of primary products, to which value could be added in Britain, and constrained trade with

other European countries. Imperial ambitions at first encouraged the African slave trade before its prohibition in 1807, leaving the institution of slavery to continue to grow. After the Revolution, the United States developed its own economy in which industry played an increasingly central role.

In the early colonial era, primary production such as farming and timbering engaged around 95% of the labor force, while crafts, trades, and services, along with primitive modes of manufacturing, engaged just five percent, as Hughes and Cain (2007, 73) document. By 1800, the percentage of the workforce engaged in agriculture declined to 74.4%, as Hughes and Cain (2007, 118-9), citing the work of Stanley Lebergott and Thomas Weiss, note. By 1860, the number was down to 55.8%. While only 14.5% of the working population was engaged in manufacturing at the time, the sector was growing at a rapid pace. Beginning with the appearance of the first textile mill in 1790, as Hughes and Cain (2007, 120) report, the burgeoning factory system, fed by the cotton grown by slaves in the South, propelled the nation's prodigious economic growth. A large wage worker population, among whom almost 40% were women and children, was emerging.

In the colonial era, the free wage-laborer, or "journeyman," was uncommon. The primary form of free labor, as Hughes and Cain (2007, 120) note, was family work, generally on a farm or in home crafts such as spinning and weaving. A small percentage of the population, however, did engage in wage labor, usually in skilled

craft industries. Influenced by the guild systems of Europe, craft operations enlisted a hierarchy of masters, journeymen, and apprentices. In certain regions, such as Massachusetts and Pennsylvania, guild systems developed more extensively, as Richard B. Morris (1946, 139), in his work, *Government and Labor in Early America*, notes. Entrance into a skilled trade through apprenticeship was a coveted privilege, particularly as the relative shortage of skilled labor meant higher incomes in comparison with Europe. The admission of a child into such an apprenticeship often involved a fee, as Morris (1946, 22) documents. Because of “poor laws” influenced by Europe, children of the poor were often required to serve as apprentices; often, however, the “apprenticeship” was nothing but an indentured servitude without skills training or entrance into an industry.

The mercantilist vision of building a stable and economically strong society meant that for all but the wealthy, work, including periodic contribution to public projects, was mandated by law, as Morris (1946, 17) points out. Influenced by English policies, as Hughes and Cain (2007, 434) document, “vagabonds” were sentenced to punishment and compulsory labor, a policy not fully eliminated until the 1930’s (though compulsory labor as a form of punishment for other crimes has remained policy to this day). In pursuit of maintaining a fully employed population, laws constrained not only workers but employers as well. Laws, for instance,

required a hefty severance for early termination of labor contracts. Regulations of wages and prices also formed an important part of the mercantilist regime.

Bound labor, in the form of indentured servants and slaves, formed the largest part of the colonial workforce. The practice of “redemption,” whereby Europeans paid their way to America by contracting themselves as servants for a number of years was the largest source of European settlers during the colonial era, as Morris (1946, 315-6) documents. Offers of freedom to convicts in return for a period of service in the colonies also brought thousands of incomers. Those who came to America in this way were often victims of abuse and hardship. The silver lining of indentured servitude was “freedom dues,” a sizeable payment, often including land, at the end of the term of service, a period which averaged four years. Freedom dues allowed former indentured servants to eventually enjoy relative economic independence.

Slavery served as the other major source of bound labor. The enslavement of persons of African origin began in 1619 in Jamestown, Virginia, when English colonists purchased 20 African prisoners from a Dutch warship, as Hughes and Caine (2007, 116) document. (This was the same year, according to the AFL-CIO, of the first *bone fide* strike in American history, by Polish workers, striking for the right to vote.) Slaves had no rights, and their status passed onto their children. While a very small percentage of the black population gained freedom, laws,

particularly in the South, increasingly solidified the identification between black racial status and bound position. Although slavery was widespread in both the North and South, the extensive agriculture of the South helped turn slavery into the central feature of the economy. The development of Eli Whitney's cotton gin in 1793, as Hughes and Caine (2007, 170) detail, further enhanced the economies of scale of large slave plantations. By 1850, slaves constituted almost 37% of the Southern population. Morris (1946, 39) notes that the largest plantations developed into multifaceted enterprises with industrial operations making use of both free and slave labor. Bound labor increasingly meant slave labor in the South; as Morris (1946, 315) notes, in these regions, slaves replaced white redemptioners. White skilled labor diminished as well. Because slaves performed skilled labor, as Morris (1946, 146) notes, white crafts workers often left the South for more advantageous markets. Thus, local trade unions failed to develop in the South. This fact would play an important part in the disparity between North and South unionization rates.

Enslavement of the Native population was also practiced, affecting somewhere between 2 and 5.5 million Native Americans, as Linford D. Fisher of Brown University has brought to light. Europeans sent North American Natives to other colonies for enslavement as well as enslaving them on the continent, placing them in short term as well as in permanent and heritable slave status. The practice increased after King Philip's War of 1675-6 solidified the adversarial dynamic

between Natives and settlers. Despite several colonies outlawing the practice, enslavement of Natives continued into the 19th Century, with some occurrence after the Civil War.

The latter half of the 19th Century saw a dramatic shift of the nation's workforce. A whirlwind of changes re-landscaped the economy. Nearly four million ex-slaves entered the free population at the end of the Civil War. Immigration brought hundreds of thousands of Chinese workers, as well as newcomers from various European nations. As the United States territory expanded across the continent, enfolding French and Spanish territories and displacing and surrounding Native populations, these communities entered the wage workforce in significant numbers. As the craft industries gave way to the factory system, conflict between apprentices, journeymen, and masters was another important source of division. A new workforce of immense size, rife with internal divisions, filled the continent as the Industrial Revolution gained pace.

Labor organization before 1842

Concerted resistance among the slave and free working classes dates back to the first days of colonization, appearing in a variety of forms. Morris (1946, 136) provides a useful categorization of six types of worker associations present in early American history: those of master tradesmen pursuing a monopoly of their industry

and control over who entered their trade; those by masters, or sometimes lower level workers, challenging price levels set for their products by mercantilist regulations; those in bound service protesting mistreatment, often employing the tactics of strikes, uprisings, and desertion; those by white artisans seeking to exclude black workers from their trade; those joining workers and employers in political protest of the British authority during colonial rule; and those of wage workers, or “journeymen,” seeking improved working conditions, an occurrence that increased significantly after the Revolution. The trade union that would emerge in the latter half of the 19th Century represented an amalgamation of these earlier forms of association. The conflicts within the working class as well as between the working class and outside forces would be important elements shaping the national labor movement.

Class affiliation determined both the aims and tactics of worker groups. Workers in craft operations faced two threats to their livelihoods. The first was the widespread price and wage regulation by local government in line with mercantilist economic policies. The second was the potential competition of newcomers to their industries. The relative privilege of free white workers in the crafts industries compared with black workers and those in bound or unskilled positions permitted some recourse to legitimate political action. As Morris (1946, 139-166) details,

local associations of this sort periodically succeeded in petitioning for laws regulating admission to their trade as well as shifting price schedules upward.

For those in bound status, the only viable tactics were mass desertion or insurrection. Prosecution was harsh and extended to those who provided aid to the rebels. As Morris (1946, 167-182) details, financial penalties, corporal punishment and, in more extreme cases, execution were employed, along with the return of the guilty to service. In the case of slaves, masters faced few limits to their power to mete out punishment. In order to bolster and stabilize the institution of slavery, punishment by slave owners was in certain cases mandated by law.

Rebellions in which white servants and black slaves joined together, such as the notable Bacon's Rebellion, demonstrated the potential dangers of interracial class solidarity, as Jonathan A. Bush (2001, 395) in his essay, "The British Constitution and the Creation of American Slavery," notes. In response to this threat, statutes dictated racial separation and encouraged the identification of the black population as inferior and fundamentally unfit for the full rights of freedom, proscribing the rights and social spheres of the small but significant free black population.

Racism was an important source of division in America's free workforce as well. As Morris (1946, 182-188) notes, racism spurred craftsmen in the North aiming to bar black slaves from competing in their industries. In light of the

relative strength of white craftsmen associations, including successful guild systems in Massachusetts and Pennsylvania, this fear of competition is almost certainly one source of anti-slavery attitudes (such as existed) in the North.

Until 1842, the very legality of any concerted worker action was in question. Under the influence of English common law, labor combinations were labeled by prosecution as criminal conspiracies. Morris (1946, 137-8) points out that such a precedent was developed as early as the fourteenth century and received an important reaffirmation in an early 18th Century treatise by the barrister William Hawkins. Such a position with respect to combinations was well in line with mercantilist aims to maintain a fully employed and stable society.

The relationship of English common law to colonial law was ambiguous, as Bush (2001, 381-2) discusses. Because of various English statutes indicating that colonies might be subject to a separate rule of law, the use of common law was selective and open to challenge. It was an ambiguity exploited to permit slavery after the practice had been made illegal in England in 1652; it also allowed for diverse prosecution efforts against labor combinations during the first centuries of the nation's history.

The first court case to successfully make a claim of criminal conspiracy in America was the *Commonwealth v. Pullis* in 1806. The trial occurred in Philadelphia in response to a strike by the Journeymen of Cordwainers, a union

established in 1794 which Hughes and Cain (2007, 433) identify as the first true union in the United States. The conspiracy conviction of the cordwainers stood on two counts, as Hughes and Cain (2007, 432) point out: that they had created a combination in order to attain higher wages, and that doing so had the aim of causing injury to others. Although the journeymen did not employ violence, as Walter Nelles (1931, 176), in his essay, “The First American Labor Case,” notes, the prosecution based its case in part on methods of intimidation against those who did not join with their efforts. (Interestingly, Nelles (1931, 174) also makes a note of the fact that the prosecution added to their case the argument that higher wages would mean higher prices. Here, we see an early instance of an argument that has become central to opposition to wage increases.)

Charges of conspiracy took a variety of tacks and rarely depended solely on the English precedent that combinations were *per se* illegal. Edwin E. Witte (1926, 826-7), in his essay, “Early American Labor Cases,” notes that while eighteen cases charging workers with conspiracy followed the *Pullis* case, only in the 1835 case in New York, *People v. Fisher*, did the prosecution hold the combining in order to raise wages was in itself illegal. Even then, the argument did not stand by itself. By aiming to eject non-union workers from the workplace, the prosecution argued, the combination caused injury to another party.

It is impossible to generalize doctrine underlying these early labor cases because these cases reflected the still evolving nature of industrial relations. This is a point Christopher L. Tomlins, in his work, *Labor, Law, and Ideology* (1993), brings to light. Tomlin (1993, 109) points out that these cases demonstrated competing visions of how the newly industrializing society would function. Political agendas and ideologies shaped the development of labor law in these early years. Tomlin (1993, 58-9) describes the development of two opposing discourses: In one, the Federalist fear of tyranny of the majority supported a strong government ruled by the most qualified. In the other, skepticism of government laid the foundation for the desire to keep government out of the private sphere. Labor combinations faced attacks from both sides. On the Federalist front, Tomlin (1993, 102-3) notes, there was a desire to paint labor combinations as criminal conspiracies that threatened the life of the republic. As Tomlin (1993, 130) describes, it was in light of the interests of the common welfare that labor organization was attacked. On the other hand, Tomlin (1993, 106) notes, the value for “personal liberty” was likewise invoked to suppress combinations. In this line of attack, those desiring to limit government justified the empowerment of employers as agents of the “private” rather than “public” sphere. We can see a parallel between these discourses and the philosophies underlying, respectively, mercantilist and laissez-faire economic regimes.

The result of these cases, Tomlin (1993, 110) concludes, was the development of an adversarial relation between two sharply defined opponents, capital and labor. The job of employers was to successfully characterize laborers as criminal conspirators. In response, workers began to embrace a critical position of American industrialism.

Early labor cases also marked a transition in the approach of elites to maintaining control. In Tomlin's view, (1993, 216-7), the Federalist attack gave way as the arguments for the sanctity of the private sphere increasingly emerged as a more promising route for conservative elites to maintain lasting control. By the end of the 1830's, recognizing the legality of unions appeared inevitable. In consonance with the eclipse of mercantilism by laissez-faire economic philosophy, elites coopted instead the language of freedom to justify prosecution. Labor combinations, they argued, would restrict freedom. Such an argument has survived into the present day, visible in today's "Right to Work" laws.

In 1842, a new precedent was set when the case of *Commonwealth v. Hunt*, decided by the Massachusetts Supreme Court declared the practice of labor combination legal. The effect of *Commonwealth v. Hunt* was, however, not straightforward, as several scholars have pointed out. Witte (1926, 825) makes the case that, paradoxically, the sanctioning of labor combinations in the United States actually paved the way for civil damage suits which proved even more crippling to

organized labor interests. Witte presents a paradox in the two lines of development of Britain and the United States: While in Britain, in contrast to the U.S., organized labor was at one point explicitly illegal, substantive law in the late 19th Century not only made it legal but effectively eliminated liability for lost gains to producers. The opposite was true in the case of the U.S. Rather than *Hunt* representing progress in labor's rights to organize, it pushed the question into another realm, from criminal conspiracy to civil charges, first in the form of injunctions, and later as suits for damages. A later perspective from Victoria Hattam, in her work, *Labor Visions and State Power: The Origins of Business Unionism in the United States* (1993), reaffirms this view. These continued vulnerabilities incentivized the creation of a strong, national organization with the resources to withstand economic threats.

Employers, for their part, secured protections from financial liability for worker injury early on, as Hughes and Cain (2007, 140) point out. Employers successfully argued that if any third party played a part in causing the injury to occur, they could not be held liable. They also argued that risk was factored into the wage. The single area in favor of labor with regard to financial liability was mechanic lien laws, which granted a form of property right to those working in crafts over the products of their work. Hughes and Cain (2007, 121) write that

mechanic lien laws were one way that labor rights began to develop in the early 19th century.

Labor rights and organization after 1842

While *Commonwealth v. Hunt* established unions as legitimate *per se*, the case did not eliminate the vulnerabilities of labor. Employers had many tools at their disposal to prosecute against organized labor efforts. They were able to prosecute on the basis of the specific methods used or, in the civil courts, order an injunction. In the following decades, the development of the labor movement culminated in the triumph of the approach pioneered by Samuel Gompers and his American Federation of Labor (AFL). Eschewing broad societal reform, the AFL made a steadfast commitment to pursuing economic goals and confining its focus to matters within the workplace.

After 1842, although labor combinations were legal, they faced a number of challenges. The methods used could still be prosecuted, as Hughes and Cain (2007, 433) note. Thus, as Hattam (1993, 39) discusses, a new wave of conspiracy trials occurred during the period of 1865-1896, before the shift to injunctions in the 1880's. These conspiracy trials, as Hattam (1993, 69-70) notes, continued to result in convictions in most cases. However, conspiracy trials were marked by a shift in discourse. Whereas arguments of the earlier era invoked the common good, in these later conspiracy trials, the focus shifted to private damages. Thus, financial

penalties, as Hattam (1993, 71) documents, significantly increased. As the laissez-faire economic regime penetrated legal discourse, prosecution shifted from criminal conspiracy towards civil suits. Hughes and Cain (2007, 436-7) note the success of injunctions in the late 19th Century. The power of injunction expanded with the Sherman Act of 1890, which declared illegal any combinations that resulted in “restraint of trade,” another invocation of laissez-faire economic philosophy. Citing Herbert Hovenkamp, Hughes and Cain suggest that even the Clayton Amendment of this act in 1914, which was supposed to prevent the targeting of unions, failed to do so.

There was for a time after *Hunt* an immense diversity of groups with a wide range of aims from higher pay to societal reform. These groups, however, often struggled to thrive. The first national effort at a union, the National Labor Union, succeeded in creating a political party, the National Labor and Reform Party, but it faded after the overwhelming defeat of its presidential candidate in the 1872 election, as Hughes and Cain (2007, 434) observe. It did, however, experience successes during its lifespan. It was this union that was largely responsible for securing the eight-hour work day, which became federal law in 1868.

Secret societies proliferated in the years following the Civil War, as Hughes and Cain (2007, 434) detail. A financial panic and the sudden, dramatic altering of society inspired groups with radical visions. The most notable among these was the

Noble Order of the Knights of Labor, which began as a secret society in 1869. Its ambitions were much broader than a simple raising of wages and shortening of hours. The Knights aimed for drastic social and political reform. In 1878, the organization went public as a national union with demands for a full overturn of the capitalist system. The group was the most inclusive of the national unions of that time, welcoming the black population, women, and unskilled workers into its ranks. The Knights achieved short-run success, peaking in 1885 with a successful strike against Jay Gould, a powerful railroad businessman, but fell with the violence of labor strikes that swept through the nation in 1886. Whether it was the need for a tamer, more disciplined approach, or the stronger foundations and political position of the crafts unions, ultimately the Knights could not find long term success.

In 1886, rioting occurred, and the Knights conflicted with the local crafts unions. Amid chaos and violence, efforts for a strong, national union built on the crafts unions came together, when the American Federation of Labor (AFL), officially established itself. With the power of longstanding local organizations behind it, the AFL quickly triumphed over the more inclusive and more radical Knights. Hughes and Cain (2007, 121) represent this success as a triumph of a “hard-nosed,” “bread-and-butter” approach over competing forms of organization with a range of political, economic, and social goals. As explained by Hughes and

Cain (2007, 435-6), the AFL restricted itself to economic goals and, influenced by its roots in the associations of skilled workers, opted for exclusivity. While initially open to all, the organization developed a policy by the 1890's of excluding unskilled workers and women, and discouraging and discriminating against black men. This policy, which Gerald Friedman (2000, 397), in his article, "The Political Economy of Early Southern Unionism: Race, Politics, and Labor in the South, 1880-1953" (2000) discusses, would be challenged in the 20th Century as it became more detrimental to success, but for a time exclusivity was a defining feature.

Racial dynamics were of central issue in determining the success of unionism as it grew in the late 19th Century. After the Civil War, the existence of a newly free, black working-class population was seen as a threat to white working-class interests. As Friedman (2000, 389) notes, the structure of the Southern economy was such that large companies wielded enormous political power, often gaining nearly hegemonic rights in "company towns." These companies successfully exploited racial division in the working class to ensure that white identity was prioritized among white workers above class solidarity. The overwhelming dominance of the Democratic party, furthermore, encouraged politicians to heed the interests of the powerful rather than the more numerous working class, whose votes were not nearly so necessary as they were in the North.

Thus, in addition to threats from above by master craftsmen and businessmen who became factory owners, the white working class perceived a number of challenges to its economic and political interests from those of lower social position. Furthermore, the white working class experienced division from within. As Hattam (1993, 96) notes, skilled journeymen faced the threat of replacement by less skilled workers. As industrialization advanced, the skill of the journeymen was less important to the success of the venture than sheer manpower. Apprentices and the “semiskilled” offered better value, as Hattam (1993, 77) observes. The other threat was the addition of black, Native, and immigrant populations to the workforce. Generally, unions identified these groups as a threat, until, as Friedman (2000, 398) notes, racial exclusivity became incompatible with success. The Chinese Exclusion Act of 1882, following up on earlier state level exclusion acts, was a product of white working-class fears of lower paid competition by an outsider group, as examined by Andrew Gyorky in his work, *Closing the Gate: Race, Politics, and the Chinese Exclusion Act* (1998). Native Americans also experienced discrimination. Colleen O'Neill, in examination of Native involvement in labor organization, notes that distrust went both ways between Natives and white wage workers. Natives saw their interests as distinct from the white population. While much of the black working class would eventually embrace labor organization, seeing common cause between civil and

labor rights (unionization rates in the black population now exceed numbers among the white population), Native interests tended to prioritize the maintenance of sovereignty over class solidarity.

Even from its position of relative power, the AFL continued to face challenges. The use of injunctions against union actions was a reflection of the power dynamics and ideological regime with which the AFL contended. Over the following decades, the success of the AFL eventually culminated in the broad span of protections secured with the passing of the Wagner Act in 1935, which, as Hughes and Cain (2007, 437) point out, embodied a transformation in “government philosophy.” Just as the economic regime had turned from mercantilism to laissez faire, the pendulum swung back towards regulation. In the meantime, the political power of the wage worker class had grown considerably.

Conclusion

This inquiry has sought to establish that early developments in America’s workforce played a crucial role in the subsequent dynamics of the late 19th Century labor movement. The examination of labor history is particularly relevant in our present context. Technological and sociological changes are again shifting the economic landscape for labor, with important consequences for labor organization. On the one hand, levels of unionization have continued a dramatic decline for

decades. On the other, unionization is occurring in new industries, and strike activity experienced a spike to a 20-year high in 2019, as the BLS (2019b) reported. New worker campaigns, such as the “Fight for \$15,” show the emergence of new forms of worker cooperation. The factory system that cultivated the first national labor movement has been displaced as the economic center of the nation. Racial demographics of the working class have also shifted, although we can see the legacy of earlier dynamics still in play. Understanding the economic and social underpinnings of the union form that emerged in the late 19th Century and dominated much of the 20th Century provides keys to understanding its current struggles. As the American economy and society continue to evolve, new methods of organization and action will be called forth to confront current challenges to labor interests. (4760 words)

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